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	(c) Growers and packers who are members of the California Date Commission, whose facilities are located in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15073]

RIN 2127–AI67

Federal Motor Vehicle Safety Standards; Motorcycle Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this document, we (NHTSA) amend the Federal motor vehicle safety standard on motorcycle controls and displays to require that the rear brake control on scooters without a clutch be located on the left handlebar. In doing so, we have selected the second of two alternative proposals that were set forth in a notice of proposed rulemaking published in November 2003. This final rule also includes requirements for motorcycles with single-point (combined) braking for supplemental rear brake controls.

This final rule also makes two additional minor changes to the standard. The first change removes a potentially confusing abbreviation, and the second change clarifies requirements for motorcycle speedometer labeling.

DATES: This final rule takes effect August 30, 2006. Optional compliance is available as of August 30, 2005.

Any petitions for reconsideration of today's final rule must be received by NHTSA no later than October 14, 2005.

ADDRESSES: Petitions for reconsideration of today's final rule should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His fax number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her fax number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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Regulatory Text

I. What Does FMVSS No. 123 Require at Present?

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays*, specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays. The purpose of FMVSS No. 123 is to minimize accidents caused by operator error in responding to the motoring environment, by standardizing certain motorcycle controls and displays.

Among other requirements, FMVSS No. 123 (at S5.2.1, Table 1) requires the control for a motorcycle's rear brakes to be located on the right side of the motorcycle and be operable by the rider's right foot. Section S5.2.1 at Table 1 also requires the control for a motorcycle's front brakes to be located on the right handlebar.

Although the rear brake control is generally operated by the rider's right foot, FMVSS No. 123 permits a "motor-driven cycle"¹ to have its rear brake controlled by a lever on the left handlebar. FMVSS No. 123 also states that, if a motorcycle has an "automatic clutch" (i.e., a transmission which eliminates the need for a clutch lever) and a supplemental rear brake control (in addition to the right foot control), the supplemental control must be located on the left handlebar. If a motorcycle is equipped with a single control for both the front and rear brakes, that control must be located and operable in the same manner as a rear brake control.

¹ "A motorcycle with a motor that produces five brake horsepower or less" (49 CFR 571.3).

II. How This Rulemaking Began—Granting Vectrix's Petition

As described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** (68 FR 65667) on November 21, 2003, this rulemaking began with NHTSA's decision to grant a petition for rulemaking from Vectrix Corporation. We granted the petition in light of a number of petitions we received requesting temporary exemption from the rear brake location requirement of FMVSS No. 123, *i.e.*, temporary exemptions from S5.2.1 (Table 1) of FMVSS No. 123. These petitions have come from manufacturers of scooters with automatic transmissions and handlebar-mounted brake controls, which is a common arrangement for scooters sold in Europe, Asia, and other parts of the world outside of the United States. These manufacturers wished to sell their scooters in the United States but were prevented from doing so by the requirement that motorcycles be equipped with a right foot control for the rear brake.

NHTSA then focused its discussion on the first manufacturer, Aprilia S.p.A. of Noale, Italy, to petition for a temporary exemption from S5.2.1 (Table 1) of FMVSS No. 123. For the rear brakes, Aprilia's Leonardo 150 motorcycle had a left handlebar control, not the right foot control specified in FMVSS No. 123. Aprilia petitioned to be permitted to use the left handlebar as the location for the rear brake control for the Leonardo 150. The Leonardo's 150 cc engine produces more than the five horsepower maximum permitted for motor-driven cycles, so it was not permitted to have its rear brake controlled by a lever on the left handlebar.

When NHTSA received Aprilia's petition, there was little current information available on motorcycle crashes with adequate detail to identify relevant issues such as to what extent riders' unfamiliarity with motorcycle controls results in crashes. As part of our consideration of the petition, we reviewed the available studies, and concluded that they did not show a connection between rear brake control location and crashes. Before we granted Aprilia's petition for temporary exemption for the Leonardo 150, we asked Aprilia to comment on our concern that differing rear brake control locations may contribute to unfamiliarity with a motorcycle's controls and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with a

conventionally configured (right foot operable) control.

Aprilia responded by hiring Carter Engineering of Franklin, Tennessee, to conduct a study comparing braking reaction times of riders on an Aprilia scooter without a foot brake and a conventional scooter with a foot brake. The report on that effort, "Motor Scooter Braking Control Study" (Report No. CE-99-APR-05, May 1999), may be reviewed at <http://dms.dot.gov>, Docket No. NHTSA-98-4357.

The Carter Engineering report appeared to show that American riders do not seem to hesitate in using a left handlebar-mounted rear brake control and that riders may actually gain some benefit in their braking response time. Based in part on the Carter Engineering study, we granted the Aprilia petition, interpreting the Carter Engineering report as an indication that the Leonardo 150 rider's braking response was not likely to be degraded by the different placement of the brake controls.

III. Notice of Proposed Rulemaking (NPRM)—The Regulatory Alternatives for Rear Brake Control Location

With the motorcycle crash causation studies and Carter Engineering tests as background, in a notice of proposed rulemaking (NPRM) published on November 21, 2003 (68 FR 65667) [DOT Docket No. NHTSA-03-15075], we proposed two regulatory alternatives for the rear brake control location. We stated that after considering the comments on this proposal, we contemplated adopting one of the alternatives in the final rule. For a full description of each of the proposed alternatives, please see the NPRM at 68 FR pages 65,669 through 65,670.

A. Alternative I

As the first alternative, we proposed that FMVSS No. 123 would specify two brake control configurations. The factor determining which of the two configurations the motorcycle manufacturer must use would be dependent on whether the motorcycle is equipped with a clutch lever. Motorcycles with a clutch lever would be required to have the rear brake control on the right side operated by the rider's right foot. Motorcycles without a clutch lever would be required to have the rear brake control on the left handlebar and would have the option of a supplemental control on the right side operated by the rider's right foot. For the front brake control, FMVSS No. 123 would continue to require a lever on the right handlebar in all cases.

B. Alternative II

For the second alternative, we proposed a regulatory approach for the U.S. similar to that specified in European countries and in Japan. We proposed that FMVSS No. 123 would require that scooters without manual clutch levers have their rear brake control located on the left handlebar. This alternative would define "scooter" as a subset of motorcycles. We proposed to use the "platform" on a motorcycle as the characteristic distinguishing "scooters" from "motorcycles." As further explained below, the ECE regulation allows the left handlebar location that we proposed to require under this alternative. Specifying the left handlebar location for the rear brake control would result in greater international harmonization.

We also discussed how scooters can be distinguished from other motorcycles. First, we noted that scooters have a step-through frame architecture that leaves the space directly in front of the rider's seat largely open to allow the rider to mount the seat without having to swing a leg over it. In contrast, other motorcycles almost always have their gas tanks and engines located in the space forward of the seat and have rigid frame members located there.

Second, scooters are characterized by having platforms or floorboards for the rider's feet built into the body structure. The platforms are in contrast to the foot pegs used on other motorcycles. Some other motorcycles may be equipped with individual platforms or floorboards for each of the rider's feet, but the individual platforms usually are not part of the body structure of the motorcycle as are the platforms on a scooter.

We also noted that although they are usually smaller than full-sized motorcycles, scooters often have engines generating more than five horsepower. Because their engines may exceed five horsepower, scooters may not qualify as "motor-driven cycles" as defined in 49 CFR part 571.3.

We also described how the approach taken in the second regulatory alternative would achieve a measure of international harmonization with existing global regulations that has previously been lacking. We noted that most of the scooter models which have been granted exemptions from FMVSS No. 123's rear brake control placement requirements are identical to scooter models sold in Europe and Japan.

C. Supplemental Rear Brake Controls also addressed supplemental rear brake controls in the NPRM, noting that under the second alternative, the current requirement in S5.2.1 ("If a motorcycle with an automatic clutch is equipped with a supplemental rear brake control, the control shall be located on the left handlebar.") would still be relevant because most motorcycles would continue to have a right foot pedal to control their rear brakes, and a supplemental rear brake control would be located on the left handlebar if no clutch lever was present. However, under the second alternative, it would be necessary to specify that, if a clutchless scooter has a supplemental rear brake control, it must be a right foot pedal.

D. Motorcycles With Integrated Braking

1. The Honda Petition for Temporary Exemption

We also addressed an issue resulting from a request for temporary exemption from FMVSS No. 123's right foot rear brake control requirements from American Honda Motor Company, Inc. for its NSS250 scooter, also called the "Reflex." The NSS250 scooter is equipped with an integrated braking system that replaces the dedicated rear brake control with a control connected to the rear brake caliper but also to one piston of the multi-piston front caliper, thus providing partial front brake application along with rear brake application. In accordance with FMVSS No. 123, a separate front brake control on the right handlebar activates the remaining front caliper pistons.

At present, FMVSS No. 123 at S5.2.1 specifies that, if provided, an integrated brake control must be located and operable in the same manner as a rear brake control. This provision addresses motorcycles which have only a single control for all braking functions, *i.e.*, those without separate front and rear brake controls. It also addresses systems with two separate controls in which one of the two is a control that applies braking force to both brakes, as in the case of the NSS250.

Under both proposed regulatory alternatives, on any motorcycle with a manual clutch, the control for an integrated brake system would be required to be on the right foot pedal since that would be the required location of the rear brake control. For motorcycles without clutches, the first alternative would require that a control for an integrated brake system be located on the left handlebar. Under the second alternative, for scooters without clutches a control for an integrated

brake system would be required to be on the left handlebar. For all other motorcycles without clutches, the second alternative would require the integrated brake system control to be on the right foot pedal.

On the Honda NSS250, for example, the integrated brake system control is in effect the rear brake control since the integrated system acts primarily on the rear brake caliper and is the only rear brake control provided. The NSS250 and other motorcycles with integrated braking systems are designed such that the motorcycles would be able to comply with either regulatory alternative.

2. Supplemental Controls on Integrated Braking Systems

Since a motorcycle could be equipped with integrated braking as well as a supplemental brake control, it is necessary to specify that the supplemental control provide the same integrated braking effect that is provided by the primary rear brake control.

In cases where the primary control is an integrated control, we proposed to add the following statement to S5.2.1: "The supplemental brake control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard."

Because an integrated control may be located either on the left handlebar or on the right foot pedal depending on whether a motorcycle is clutchless (first alternative) or is a clutchless scooter (second alternative), we believe that it is important to make the regulatory text clear on this issue. In order to clarify that an integrated brake control must be located as if it were a rear brake control, we proposed to modify the last statement in S5.2.1 under both regulatory alternatives as follows: "If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, *as specified in Table 1, Item 11, and in this paragraph.*" (Italicized language is new language that would be added to the texts of both regulatory alternatives.)

3. Request for Comments on New Developments in Motorcycle Integrated Braking Systems

Since the new type of braking system on the NSS250 has generated a high level of interest from members of the public, the agency sought information about alternative configurations for motorcycle brake controls and other anticipated developments that might influence future brake system safety

requirements. We requested responses to six questions and asked for test data, crash data, simulation data, or other information that would support any suggested actions in this area.

IV. Comments on the NPRM and NHTSA's Response

NHTSA received comments on the NPRM from the following seven parties: American Honda Motor Company, Inc. (Honda); American Suzuki Motor Corporation (Suzuki); Harley-Davidson Motor Company (Harley-Davidson); International Motorcycle Manufacturers Association (IMMA); Peugeot Motorcycles of PSA Peugeot Citroen (Peugeot); Piaggio USA, Inc., (Piaggio), and Yamaha Motor Corporation USA (Yamaha). The comments can generally be categorized as focusing on two major issues: (1) Whether manufacturers should have discretion in locating brake controls and (2) the definition of "scooter." The issues raised in the public comments, and NHTSA's response to the comments, are discussed below. We have also addressed several additional comments, primarily on supplemental rear brake controls and on motorcycles with integrated braking.

A. Comments on Alternative I

1. Public Comments

Regarding manufacturer choice in brake control location, the commenters noted that both versions proposed in the NPRM (*i.e.*, Alternatives I and II), would mandate a particular control arrangement. The commenters all stated that manufacturers should be given some discretion in the arrangement of brake controls. The commenters differed on the extent to which discretion should be provided. For example, Suzuki stated that its main concern:

[I]s that both alternatives would mandate, rather than permit, the left handlebar rear brake control location for certain motorcycles. Suzuki sees no safety benefit in prohibiting any motorcycle from using the rear brake control location currently required by FMVSS No. 123 * * * Suzuki recommends that NHTSA adopt a regulatory requirement that is based on the first proposed alternative, but which permits, rather than mandates, the left handlebar location for the rear brake control on motorcycles without a clutch lever.

Harley-Davidson stated that Alternative I is unacceptable. That company does not presently sell motorcycles with a transmission without a clutch lever. The rear brake on Harley-Davidson motorcycles has been operated by the right foot pedal on all its vehicles since the early 1970's. Harley-Davidson stated that the NPRM provided no "compelling reasons" why

the rear brake control location should change on the full-sized motorcycle offered by Harley-Davidson merely if a clutchless transmission motorcycle were to be offered for sale. Harley-Davidson further stated that the option that a rear brake control on clutchless transmission motorcycles could be supplemented by a second control for the right foot would prove "troublesome," adding manufacturing complexity and creating differences that are not readily discernible between vehicles with and without a clutch lever. If Harley-Davidson should market a clutchless transmission motorcycle, Alternative I would require it to use an arrangement of brake controls unlike that on all other motorcycles it presently sells, and would be unfamiliar to its customers.

IMMA stated that since 1984, manufacturers have been able to choose between either a left-hand or right-foot location for the rear brake control on scooters sold outside the U.S. IMMA stated that since it is not aware of any study showing a safety problem from manufacturers having a choice in the rear brake control location, manufacturers should continue to be free "to select whichever control layout best suits their vehicle concept."

Piaggio noted that the ECE regulation permits either the left hand or the right foot placement for the rear brake control. Piaggio stated:

[M]any examples can be found of vehicles adopting both of the aforementioned configurations. To our knowledge, we are not aware of any study, which has shown that this particular policy has caused operator confusion or compromised safety in any way. On the other hand our experience has shown that whenever a rider is presented with a new scooter, he/she rapidly adapts him/herself to the riding characteristics and input requirements of the new bike. It is therefore our opinion that the manufacturer should be allowed to adopt the layout which best satisfies the technical requirements for the vehicle.

Yamaha did not specify whether it favored Alternatives I or II, but recommended three possible arrangements for motorcycle brake controls which were the most common ones.² Yamaha stated that a manufacturer should be able to select any of the three at its discretion for any clutchless motorcycle. Peugeot went further, listing virtually every possible permutation of brake control arrangement, and indicating which

arrangements it believes should be deemed acceptable, and which should be prohibited.

Honda stated that Alternative I, which would create distinctions between motorcycles with and without clutch controls, would:

[C]reate a condition where a single motorcycle * * * offered with both manual and automatic transmission would have different locations for the rear brake controls. Being similar in every other way, this difference in rear brake control location could lead to rider confusion if an individual were to ride both versions of this model.

Honda concluded that based on the background of FMVSS No. 123 (to minimize confusion among motorcycle riders, caused by varying locations of brake and clutch controls from one manufacturer to another), mandating exceptions to the layout (depending on whether there is a clutch), will result in more variations from this arrangement, which "could lead to a greater number of crashes caused by critical confusion of riders."

2. NHTSA's Response to the Comments

In responding to comments on the issue of manufacturer discretion in determining rear brake control location, we begin by noting that no commenter presented any kind of crash data, research studies, or other quantitative information to support their arguments. Although there may not be any studies showing a safety problem in European or Asian countries where manufacturers are allowed to choose either brake control arrangement, and where similar motorcycles with different controls may co-exist, the absence of research is not the same as positive evidence of the lack of a safety effect. Therefore, the public comments have not persuaded us to permit manufacturer choice in rear brake control location.

We further note that not all commenters agreed on how much choice should be provided. For example, Harley-Davidson did not support differing rear brake control location requirements, depending on whether the motorcycle had a clutch. Honda did not recommend a choice of brake control location for non-scooter motorcycles, stating that non-scooter motorcycles should not be allowed to have a rear brake control on the left handlebar.

Some commenters, in particular Honda and Harley-Davidson, objected to the possibility of non-scooter motorcycles that they manufacture being equipped with left hand controls for their rear brakes under any circumstances, *i.e.*, they did not voice support for Alternative I. We agree that

such an arrangement would be markedly different from existing motorcycles and would be counter to the objective of standardization. While there is only one manufacturer (Ridley Motorcycle Company of Oklahoma City) currently marketing non-scooter motorcycles with automatic transmissions in the U.S., additional motorcycles of that kind might become available in the near future.

FMVSS No. 123 was established to standardize motorcycle controls and displays, reducing the possibility of unfamiliarity with controls from contributing to motorcycle crashes. When NHTSA adopted FMVSS No. 123 in the early 1970's, the layout of controls specified in FMVSS No. 123 was that used by the overwhelming majority of motorcycles sold in the U.S. at that time. The layout included a lever on the right handlebar for the front brake, and a foot control on the right side for the rear brake.

Currently, our main objective in amending FMVSS No. 123 is to address the industry trend towards rear brake control placement on the left handlebar on certain motorcycles, resulting in many requests for temporary exemption, so that those motorcycles can comply with the rear brake control location requirements without redesign. At the same time, NHTSA believes there must be continued attention on maintaining standardization, which is the foundation of FMVSS No. 123. For these reasons, NHTSA is reluctant to consider amendments that reduce standardization of the controls and displays of similar motorcycles.

Therefore, we decline to implement the left hand rear brake control location as an optional location to the existing right foot location. Permitting manufacturers to choose between two different arrangements could result in similar or even identical clutchless motorcycles having different rear brake controls. While some commenters asserted that such an outcome would not have any safety consequences, without probative data, we continue to believe that the goal of standardization is better served if FMVSS No. 123 specifically requires one brake control arrangement over another. Thus, this final rule makes the left hand rear brake control a requirement, not an option, on certain motorcycles.

In summary, we have decided to amend FMVSS No. 123 so that scooter-type motorcycles with automatic transmissions (*i.e.*, scooters without a clutch) are required to have a left hand rear brake control. Non-scooter motorcycles are not subject to any new or different requirements. In the next

² (1) Left hand for rear and right hand for front operation of brake control levers; (2) right hand front brake operated brake lever and right foot rear brake pedal; and (3) left hand rear and right hand front operated brake control levers with supplemental right foot-operated rear brake pedal.

section, "Definition of a Scooter," we discuss our decision to adopt the regulatory text of Alternative II (in the NPRM), so that the left hand rear brake control is required only on "scooters" as defined in the regulatory text, and not on clutchless non-scooter motorcycles.

B. Comments on Alternative II

1. Public Comments

The second major issue in this rulemaking is the proposed definition in Alternative II for "scooter." As discussed in the NPRM, NHTSA derived the definition of "scooter" from the regulatory text of United Nations ECE Regulation No. 60, Addendum 59. Honda favored Alternative II, but several commenters stated that NHTSA's proposed definition was ambiguous and would lead to difficulty in interpreting the Standard.

Harley-Davidson stated that the proposed definition is "troublesome" and needs to make clear that non-scooter motorcycles are not included. Harley-Davidson stated that if NHTSA is to define "scooter," it needs to use terms that are "unambiguous and clear."

Suzuki stated that the "scooter" definition "could quickly become outdated as motorcycle designs continue to evolve."

IMMA described the deliberations that went on during the development of ECE Regulation No. 60, recounting that a debate had occurred among the attendant parties over whether a "scooter" category should be defined. IMMA stated that the argument in favor of defining "scooter" was that typical scooters were a type of motorcycle which had particular features to make them appropriate for new riders uninterested in non-scooter motorcycles.

IMMA stated that the arguments against defining "scooter" were: It would cut across existing categories, *i.e.*, moped and motorcycle, in ECE regulations; a practical definition is difficult to develop; and such an approach is design-based rather than performance-based. IMMA further stated:

The outcome of these discussions was a compromise which was designed to unblock the discussion and yet increase the freedom for the manufacturer to provide new vehicles, which were designed to attract a new class of customer. Hence, the Regulation [ECE Regulation] refers to both the absence of a clutch and to footrests integrated into a platform.

Piaggio urged the agency to abandon its attempt to categorize "scooters" and instead to adopt a definition that used functional characteristics, such as

whether the motorcycle has pedals for propulsion or a manual versus automatic transmission.

Honda recommended adopting Alternative II, but with appropriate revision to allow, but not require, a left handle bar-mounted rear brake control instead of the right foot control. Honda stated that this would "permit more freedom of design in the event future developments lead to designs that advance safety beyond current levels." However, Honda also stated its concern that "the line between scooter and motorcycle will continue to blur" as new scooters acquire more of the features associated with non-scooter motorcycles. Honda stated that a "scooter" definition must therefore be clear in prohibiting a non-scooter motorcycle from having a left hand rear brake control. Honda stated that such a design would be contrary to convention and would introduce the potential for "critical confusion" of controls. Honda stated: "We discourage allowing this design at all for fear of the potential safety hazards, and have no current plans of selling a motorcycle with such a configuration."

Some commenters stated that a separate definition of "scooter" would not serve the interests of global harmonization of motor vehicle safety standards. IMMA and Piaggio both indicated that a U.S. regulation with a "scooter" category would complicate harmonization efforts under the 1998 Global Agreement at Geneva which has the intended purpose of influencing signatory nations to make their corresponding standards as alike as possible when amending them. Honda on the other hand, stated that Alternative II would more closely align FMVSS No. 123 with impending changes to ECE Regulation No. 60, that are "due this calendar year." Honda requested FMVSS No. 123 to allow the same latitude in design for scooters as ECE 60 allows.

2. NHTSA's Response to the Comments

In responding to the comments on the definition of "scooter," we begin by noting that there is no regulatory or statutory definition in U.S. motor vehicle safety laws or regulations, nor any voluntary industry standard, to distinguish scooters from other motorcycles. In our attempt to define "scooter," we have reviewed the most relevant current regulation, United Nations ECE Regulation No. 60, Addendum 59, which is the basis for national regulations concerning motorcycle controls in many European countries and Japan. The following sections discuss issues considered by

NHTSA in its consideration of a "scooter" definition.

a. ECE Regulation No. 60 Definitions That We Reviewed

ECE Regulation No. 60 does not define "scooter" but refers in paragraph 6.2.2.2 to "vehicles equipped with a platform or footrests integrated into a platform * * * [Emphasis added.]" ECE Regulation No. 60 allows a vehicle of that description, *i.e.*, a scooter, to have its rear brakes controlled by a lever on the left handlebar if it has an automatic transmission. This arrangement is allowed unless the scooter is also a moped, in which case it is required. If the motorcycle has a manual transmission, it must have a foot pedal on the right side for the rear brake.

ECE Regulation No. 60 defines "platform" (one of the attributes of a "scooter" proposed in NHTSA's NPRM) as: "that part of the vehicle on which the driver places his feet, when seated in the normal driving position, in the case that the vehicle is not equipped with riding pedals or footrests for the driver." The term "riding pedals" refers to the pedals on mopeds used for human-powered propulsion.

"Footrests" are defined in the ECE standard as "the projections on either side of the vehicle on which the driver places his feet when seated in the driving position." Footrests are usually in the form of foot pegs, although many motorcycles use small platforms which are mounted like foot pegs but are elongated to support the entire foot.

b. Maximum Speed Characteristic

We noted in the NPRM that ECE Regulation No. 60 limits the use of a left handlebar lever for the rear brake to motorcycles which, in addition to having a platform, "have a maximum design speed not exceeding 100 km/h." Modern, clutch-less scooters almost universally have their rear brake control located on the left handlebar even if they can exceed 100 km/h because directives of the individual nations where most scooters are sold do not adhere to the 100 km/h maximum speed limit of the ECE regulation. We also noted that most of the scooter/motorcycles (intended to be sold in the U.S) granted exemptions from FMVSS No. 123 brake control placement are capable of exceeding 100 km/h (62 mph). Ultimately, this inconsistency means that a speed-based definition was not likely to be practical.

c. Other Design Characteristics

In the past, scooters could be distinguished from non-scooter motorcycles by a number of design

characteristics. For example, scooters were generally smaller in overall size and engine displacement, were lighter, and had smaller wheels. For scooter-type motorcycles today, many of those distinctions are no longer universal. The largest scooters are now as big and heavy as non-scooter motorcycles, with equal or greater engine displacement and wheel size. In addition, scooters often have engines in excess of five horsepower, and so do not qualify as motor-driven cycles by the definition in 49 CFR 571.3. Scooters with engines in excess of five horsepower is the reason why many modern scooters have had to be exempted from FMVSS No. 123 requirements, and why this rulemaking is necessary.

d. Need for an Enhanced Scooter Definition

The regulatory text of Alternative II in the NPRM, which is the basis for the final rule, was derived in large part from ECE Regulation No. 60, but focuses on the "platform" characteristic instead of the maximum speed characteristic. Scooters are generally characterized by having a continuous platform or floorboard, or right and left floorboards, built into their body structures, or some other built-in accommodation for the operator's feet. This contrasts with the foot pegs used on non-scooter motorcycles.

As earlier indicated, several commenters, expressing dissatisfaction with the NPRM definition, indicated a potential for misunderstanding about how some motorcycles should be classified, due to crossover models between the scooters and non-scooter motorcycles. NHTSA has recognized that many non-scooter motorcycles are now equipped with individual platform-style footrests for each of the rider's feet. Although such footrests are not usually part of the body structure of the motorcycle (as they typically are on a scooter), we recognized the potential for confusion.

e. New Step-Through Architecture Criterion for Defining Scooters

Because it is critical that "scooter" be defined as accurately as possible, we have decided it is appropriate to add an additional criterion in this final rule to distinguish between scooters and non-scooter motorcycles. As discussed in the NPRM, we note that scooters can be differentiated from other motorcycles by the step-through frame architecture that leaves the space directly in front of the operator's seat largely open, allowing the rider to mount the seat by stepping through the scooter, rather than having to swing a leg over it. The scooter

configuration also provides the operator with room to adjust his or her leg position for comfort. In contrast, for non-scooter motorcycles, the engine and fuel tank occupy the space forward of the seat, and there are usually rigid frame members located in the space forward of the seat.³

Although traditional scooter construction adheres closely to this step-through architecture, some modern scooters have become more like non-scooter motorcycles. Still, on all scooters of which NHTSA is aware, the section of the vehicle forward of the seat that is between the operator's legs is always lower than the seat itself. In contrast, the corresponding part of a non-scooter motorcycle is higher than the seat in all models that we have observed. We believe this difference provides another obvious way to distinguish between scooters and other motorcycle types.

Therefore, in response to NPRM comments, we have added regulatory language referring to the step-through architecture characteristic to enhance the proposed S4 "scooter" definition. The final rule's definition now reads as follows (the italicized text has been added to the definition that was proposed in the NPRM):

"Scooter" means a motorcycle that (1) has a platform for the operator's feet or has integrated footrests, and (2) *has a step-through architecture meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position is lower in height than the operator's seat.*

NHTSA notes that under this expanded definition, a motorcycle must have both platforms and the step-through characteristics in order to be considered a "scooter." Thus, this definition will allow for easier differentiation between scooters and other types of motorcycles. NHTSA believes the definition presented in this final rule ensures that all existing scooter designs can be adequately differentiated.

C. Other Issues

1. Single-Point (Combined) Braking

In response to the NPRM, Honda reiterated "our strongly held belief that a single-point control for a combined braking system must be located in one or the other of the current locations—either on the right handlebar or for

operation by the right foot." Harley-Davidson stated that it does not offer motorcycles with single-point braking for sale, and had no opinion on where the single brake control on such motorcycles should be located.

However, it urged caution, noting that FMVSS No. 123 at present

"contemplates offering" a single brake control, operated by the right foot.

Harley-Davidson stated it was not aware of any motorcycles using a single-point brake control.⁴ Harley-Davidson also noted that although one may use the left foot on a car's brakes if necessary, that would not be possible on a motorcycle.

After considering the comments, in this final rule, we have decided not to amend the S5.2.1 requirement for motorcycles with combined brake systems and for manual transmission scooters with combined brake systems. Both types of motorcycles with combined brake systems will continue to have their single-point control located at the right foot.

For clutchless scooters, however, this final rule requires that a single-point control for a combined brake system be located on the left handlebar. In its comments, Honda asserted that a single-point control should be located on the right side. However, NHTSA believes that a single-point control on the left handlebar is acceptable for the following reason. On a clutchless scooter with combined braking, the operator would be freed from the task of shifting gears and of controlling front and rear brakes separately. Therefore, the driving task would be reduced to throttling with the right hand and braking with the left. It is NHTSA's belief that such inherently uncomplicated operation would safeguard the operator from confusion over controls.

In order to further clarify that a single-point brake control must be located as if it were a rear brake control, NHTSA has modified the last statement in S5.2.1 as follows (new text italicized):

If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, *as specified in Table 1, Item 11, and in this paragraph.*

2. Supplemental Rear Brake Controls

In response to the NPRM, Honda stated its view that the right foot activated rear brake control is primary, and the left hand control for the rear

³ We acknowledge that some motorcycles, and in particular, one popular model of touring bike, have a storage compartment in place of the fuel tank, the latter being located under the seat; nevertheless, in overall appearance and layout, they are essentially like non-scooter motorcycles.

⁴ Except for some three-wheeled models with enclosed cabins similar in function to an automobile.

brake is supplemental. Honda stated that its preferred control location is more in keeping with FMVSS No. 123 in its current form, and “is more supportive of the consistent location of brake controls.” No other commenter provided views on this issue.

After considering Honda’s comment (which essentially recommended maintaining the status quo), with regard to supplemental rear brake controls, under this final rule, we have decided that all non-scooter motorcycles will continue to have right foot pedal control of their rear brakes, and a supplemental rear brake control would be located on the left handlebar if no clutch lever were present, as the standard currently requires.

However, it is necessary to specify that, on a clutch-less scooter with a supplemental rear brake control, that control must be located at the right foot pedal. This change is reflected in S5.2.1 of the regulatory language of the final rule.

To ensure that a supplemental brake control provides the same braking function as a primary rear brake control in cases where the primary control is a single-point control, NHTSA has added the following statement to the regulatory

text: “The supplemental brake control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard.”

3. Minor Revision to Table 1

In three places in Column 2 of Table 1 of FMVSS No. 123, the abbreviation “do.”, a shortening of “ditto,” is used to indicate that the previous entry in the column is repeated. The text that is replaced by the abbreviation is “Left handlebar” in the first instance where the abbreviation appears, and “Right handlebar” in the two subsequent instances. This abbreviation is potentially confusing, and it is also unnecessary since the replaced text can be expressed in full without difficulty. Therefore, in this final rule, in Table 1, the “do.” abbreviation is replaced with the full text, “Left handlebar” or “Right handlebar” as appropriate. The revised regulatory text in Table 1 is that of Column 2, Items 4, 9, and 10.

4. Minor Revisions to Table 3

Motorcycle manufacturers or importers have asked NHTSA whether motorcycle speedometers in the U.S. must indicate speed in miles per hour, or if kilometers per hour suffices.

“Motorcycle Control and Display Identification Requirements” are listed in Table 3 of FMVSS No. 123 and include speedometer labeling specifications. A potential source of confusion about speedometer labeling appears to be that Item 8 in Table 3 lists “M.P.H.” and “km/h” to denote the required display units. For comparison, FMVSS No. 101, which in Table 2 has corresponding requirements for passenger vehicles, lists “MPH” and “MPH and km/h” to denote the required display units. As with FMVSS No. 101 for passenger vehicles, FMVSS No. 123 is meant to require motorcycle speedometers in the United States to read in either miles per hour alone or in miles per hour with kilometers per hour. The rulemaking history of FMVSS No. 123 makes clear that NHTSA never intended to allow a motorcycle speedometer to read only in kilometers per hour.

In order to minimize any confusion about motorcycle speedometer labeling, we are making the following minor revision to Table 3 of FMVSS No. 123. In Columns 2 and 4, the display specifications for “Speedometer” (Item No. 8) are modified as follows (changes indicated in bold text):

MOTORCYCLE CONTROL AND DISPLAY IDENTIFICATION REQUIREMENTS

No.	Column 1 Equipment	Column 2 Control and Display Identification Word	Column 3 Control and Display Identification Symbol	Column 4 Identification at Appropriate Position of Control and Display
8	Speedometer	MPH or MPH, km/h		MPH⁴ MPH, km/h⁵

In addition, in No. 5, “Headlamp Upper-Lower Beam Control,” Column 4 is corrected to read “Hi, Lo”. All other items in Table 3 and associated footnotes remain unchanged.

V. Final Rule

As discussed in the previous sections, in this final rule, we adopt Alternative II proposed in the NPRM, and define a “scooter” category that is different from other motorcycles. In addition to the feature of platforms proposed in the NPRM, in this final rule, we add the feature of the step-through architecture, so the scooter definition consists of two parts, a motorcycle that has (1) a platform for the operator’s feet or has integrated footrests, and (2) has a step-through architecture, meaning that the part of the vehicle forward of the operator’s seat and between the legs of an operator seated in the riding position

is lower in height than the operator’s seat. Scooters with automatic transmissions (*i.e.*, motorcycles without a clutch) are required to have a left hand rear brake control.

In this final rule, FMVSS No. 123 continues to require non-scooter motorcycles with combined brake systems, and to require manual transmission scooters with combined brake systems, to have their single-point control be located at the right foot, the required location for the rear brake control. For clutchless scooters, however, this final rule requires that a single-point control for a combined brake system be located on the left handlebar.

With regard to supplemental rear brake controls, under this final rule, all non-scooter motorcycles will continue to have right foot pedal control of their rear brakes, and a supplemental rear

brake control would be located on the left handlebar if no clutch lever were present, as the standard currently requires. On a clutchless scooter with a supplemental rear brake control, that control must be located at the right foot pedal.

Finally, we have made minor changes to Tables 1 and 3.

VI. Leadtime

In the NPRM, we proposed to make the amendments effective 12 months after the final rule is published, but to allow optional early compliance 30 days after the final rule is published. We stated our belief that because this proposal would permit controls for rear motorcycle brakes to be placed on left motorcycle handlebars, a regulatory restriction would be lifted, and motorcycles that do not presently meet FMVSS No. 123 would be permitted. All

other existing motorcycles would also meet the provisions of the proposed rule.

Except for Honda's recommending "early compliance" with the final rule, urging us to make the final rule effective as soon as possible, we received no comments on the leadtime issue. Thus, as NHTSA proposed in the NPRM, this final rule takes effect one year after the date of publication in the **Federal Register**. Optional compliance is available as of the date of publication of this final rule in the **Federal Register**.

VII. Statutory Basis for the Final Rule

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. Section 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 123. As previously discussed in detail, we have solicited

public comment in an NPRM and have carefully considered the public comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following decisions in this final rule.

At present, FMVSS No. 123 requires the control for a motorcycle's rear brakes to be located on the right side of the motorcycle and be operable by the rider's right foot. FMVSS No. 123 requires the control for a motorcycle's front brakes to be located on the right handlebar. For rear brakes on a "motor-driven cycle⁵," FMVSS permits the control on the left handlebar. If a motorcycle has an automatic clutch (eliminating the need for a clutch lever) and a supplemental rear brake control (in addition to the right foot control), the supplemental control must be located on the left handlebar. Finally, if a motorcycle is equipped with a single control for both the front and rear brakes, that control must be located and operable in the same manner as a rear brake control.

Since 1999, we have granted several petitions for temporary exemption from the brake control location requirements. These petitions have come from manufacturers of scooters with automatic transmissions (without clutch levers) and handlebar-mounted brake controls, which is a common arrangement outside of the United States. These manufacturers could not sell their scooters in the U.S. because the scooters could not meet the requirement that motorcycles be equipped with a right foot control for the rear brake. We reviewed a study that American riders do not appear to hesitate in using a left handlebar-mounted rear brake control and that riders benefit in their braking response time.

In the NPRM, we proposed to amend FMVSS No. 123 by proposing two regulatory alternatives for the location of the rear brake control. The first alternative would require the rear brake control to be located on the left handlebar for any motorcycle that lacks a clutch, regardless of the motorcycle's configuration. The second alternative would require the left handlebar location only for clutchless motorcycles that are "scooters," a newly defined subset of motorcycles. Under either alternative, all other motorcycles would meet present FMVSS No. 123 rear brake

location requirements that the rear brake is operated by a right foot control.

In general, the public comments stated that manufacturers should be given some discretion in the arrangement of brake controls. In response to the comments, we reiterated that FMVSS No. 123 was established to reduce the possibility of unfamiliarity with controls contributing to motorcycle crashes. When NHTSA adopted FMVSS No. 123 in the early 1970's, the layout of controls specified in FMVSS No. 123 was that used by the overwhelming majority of motorcycles sold in the U.S. at that time. The layout included a lever on the right handlebar for the front brake, and a foot control on the right side for the rear brake.

Our current objective is to address the industry trend towards rear brake control placement on the left handlebar on certain motorcycles, resulting in many petitions for temporary exemption, so that those motorcycles can comply with the rear brake control location requirements without redesign. At the same time, we believed there must be continued attention to maintaining standardization, which is the foundation of FMVSS No. 123. Thus, we were reluctant to consider amendments that reduce standardization for similar vehicles.

Therefore, we decided not to implement the left hand rear brake control location as an optional location to the existing right foot location. Permitting manufacturers to choose between two different arrangements could result in similar or even identical clutchless motorcycles having different rear brake controls. While some commenters asserted that such an outcome would not have any safety consequences, without probative data, we continue to believe that the goal of standardization is better served if FMVSS No. 123 specifically requires one brake control arrangement over another. Thus, this final rule makes the left hand rear brake control a requirement, not an option, on certain motorcycles.

In summary, we have decided to amend FMVSS No. 123 so that scooter-type motorcycles with automatic transmissions (*i.e.*, motorcycles without a clutch) are required to have a left hand rear brake control. Non-scooter motorcycles need not meet any new or different requirements.

As indicated, we have thoroughly reviewed the public comments and amended the final rule to reflect the comments, consistent with meeting the need for safety. We believe that this final rule meets the need for safety.

⁵ "A motorcycle with a motor that produces five brake horsepower or less" (49 CFR section 571.3).

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we have concluded that this final rule will not have any cost effect on motor vehicle manufacturers. This rule will have no substantive effect on motorcycles that are already manufactured for the U.S. market, and will facilitate the import of motorcycles that do not meet present requirements for the location of motorcycle rear brake controls. This final rule will have a slight economic benefit to manufacturers of the import motorcycles, which will now not have to design and build separate motorcycles for the U.S. market and for Europe and Japan.

Because the economic impacts of this rule are so minimal, no further regulatory evaluation is necessary.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to motorcycle manufacturers, not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply.

C. Executive Order 13045 (Economically Significant Rules Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in

E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children. This final rule makes changes affecting only motorcycle manufacturers. Many States do not permit children under 18 years of age to be licensed to drive motorcycles, or to be passengers on motorcycles.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. We conclude that it will not have such an effect.

Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Agency Administrator considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial

number of small entities. The factual basis for this certification is that this final rule will have no effect on small U.S. motorcycle manufacturers. The small manufacturers already manufacture motorcycles that meet the present motorcycle rear brake control requirements and that meet this final rule's amendments to the rear brake control requirements.

F. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any "collection of information" burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action will not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have found no applicable voluntary consensus standards.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA

rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this rulemaking easier to understand?

In the November 21, 2003 NPRM, we asked for public comment on whether the NPRM meets Plain Language principles. We received no comments on the Plain Language issue.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.123 of Title 49, Code of Federal Regulations is amended by adding a definition of "scooter" in the correct alphabetical order to S4, by revising S5.2.1, by revising table 1, and by revising table 3 to read as follows:

§ 571.123 Motorcycle Controls and Displays.

* * * * *

S4. Definitions.

* * * * *

Scooter means a motorcycle that:

- (1) Has a platform for the operator's feet or has integrated footrests, and
- (2) Has a step-through architecture, meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position, is lower in height than the operator's seat.

* * * * *

S5.2.1 Control location and operation. If any item of equipment listed in Table 1, Column 1, is provided, the control for such item shall be located as specified in Column 2, and operable as specified in Column 3. Each control located on a right handlebar shall be operable by the operator's right hand throughout its full range without removal of the operator's right hand from the throttle. Each control located on a left handlebar shall be operable by the operator's left hand throughout its full range without removal of the operator's left hand from the handgrip. If a motorcycle with an automatic clutch other than a scooter is equipped with a supplemental rear brake control, the control shall be located on the left handlebar. If a scooter with an automatic clutch is equipped with a supplemental rear brake control, the control shall be on the right side and operable by the operator's right foot. A supplemental control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard. If a motorcycle is equipped with self-proportioning or antilock braking

devices utilizing a single control for
front and rear brakes, the control shall
be located and operable in the same
manner as a rear brake control, as

specified in Table 1, Item 11, and in this
paragraph.
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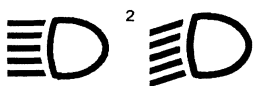



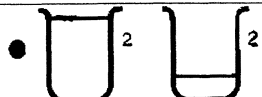
Table 1 - Motorcycle Control Location and Operation Requirements

	Equipment Control - Column 1	Location -- Column 2	Operation -- Column 3
1	Manual clutch or integrated clutch and gear change	Left handlebar	Squeeze to disengage clutch.
2	Foot-operated gear change	Left foot control	An upward motion of the operator's toe shifts transmission toward lower numerical gear ratios (commonly referred to as "higher gears"), and a downward motion toward higher numerical gear ratios (commonly referred to as lower gears"). If three or more gears are provided, it shall not be possible to shift from the highest gear directly to the lowest, or vice versa.
3	Headlamp upper-lower beam control	Left handlebar	Up for upper beam, down for lower beam. If combined with the headlight on-off switch, means shall be provided to prevent inadvertent actuation of the "off" function.
4	Horn	Left handlebar	Push to activate.
5	Turn signal lamps	Handlebars.	

6	Ignition		"Off" - counterclockwise from other positions.
7	Manual fuel shutoff control		Rotate to operate. "On" and "Off" are separated by 90 degrees of rotation. "Off" and "Reserve" (if provided) are separated by 90 degrees of rotation. Sequence order: "On" - "Off" - "Reserve".
8	Twist-grip throttle	Right handlebar	Self-closing to idle in a clockwise direction after release of hand.
9	Supplemental engine stop	Right handlebar	
10	Front wheel brake	Right handlebar	Squeeze to engage.
11	Rear wheel brakes	Right foot control Left handlebar for a motor-driven cycle and for a scooter with an automatic clutch	Depress to engage. Squeeze to engage.
¹ See S5.2.1 for requirements for vehicles with a single control for front and rear brakes, and with a supplemental rear brake control.			

* * * * *

Table 3
Motorcycle Control and Display Identification Requirements

No.	Column 1	Column 2	Column 3	Column 4
	<i>Equipment</i>	<i>Control and Display Identification Word</i>	<i>Control and Display Identification Symbol</i>	<i>Identification at Appropriate Position of Control and Display</i>
1	Ignition	Ignition	_____	Off
2	Supplemental Engine Stop (Off, Run)	Engine Stop		Off, Run
3	Manual Choke or Mixture Enrichment	Choke or Enrichener		_____
4	Electric Starter	_____		Start ¹
5	Headlamp Upper-Lower Beam Control	Lights		Hi, Lo
6	Horn	Horn		_____
7	Turn Signal	Turn		L, R
8	Speedometer	MPH OR MPH and km/h ⁵	_____	MPH ⁴ MPH, km/h ⁵
9	Neutral Indicator	Neutral	N	_____
10	Upper Beam Indicator	High Beam		_____
11	Tachometer	R.P.M. or r/min.	_____	_____
12	Fuel Tank Shutoff Valve (Off, On, Res.)	Fuel		Off, On, Res.

¹ Required only if electric starter is separate from ignition switch.

² Framed areas may be filled.

³ The pair of arrows is a single symbol. When the indicators for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.

⁴ MPH increase in a clockwise direction. Major graduations and numerals appear at 10 mph intervals, minor graduations at 5 mph intervals. (37 F.R. 17474 – August 29, 1972. Effective: 9/1/74)

⁵ If the speedometer is graduated in miles per hour (MPH) and in kilometers per hour (km/h), the identifying words or abbreviation shall be "MPH" and "km/h" in any combination of upper or lower case letters.

Issued on: August 23, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05-17103 Filed 8-29-05; 8:45 am]

BILLING CODE 4910-59-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333-5040-02; I.D. 082405B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2005 total allowable catch (TAC) of pollock for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 29, 2005, through 1200 hrs, A.l.t., October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2005 TAC of pollock in Statistical Area 620 of the GOA is 4,446 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 1,357 mt, the amount by which the A and B season allowance of the pollock TAC in Statistical Area 620 was exceeded. The revised C season allowance of the pollock TAC in Statistical Area 620 is

therefore 3,089 mt (4,446 mt minus 1,357 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2005 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,039 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333-5040-02; I.D. 082405A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2005 total allowable catch (TAC) of pollock for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2005, through 1200 hrs, A.l.t., October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2005 TAC of pollock in Statistical Area 630 of the GOA is 6,274 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 2,547 mt, the amount by which the A and B season allowance of the pollock TAC in Statistical Area 630 was exceeded. The revised C season allowance of the pollock TAC in Statistical Area 630 is therefore 3,727 mt (6,274 mt minus 2,547 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2005 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional