

Ms. Carol Morton  
Washington State Patrol  
Equipment and Standards Review Unit  
P.O. Box 42614  
Olympia, WA 98504-2614

Dear Ms. Morton:

This is in reply to your fax of May 23, 2000, addressed to Taylor Vinson of this Office. You have asked "Can Washington State legally license . . . off-road motorcycles for road use if they comply to our equipment requirements and are issued a 'state assigned vin'?" You report that Luke Loy of this agency sent you "information indicating that for our state to license off-road motor-cycles for road use appears to be a violation of 49 USC 30112."

Under the pertinent portion of 49 U.S.C. 30112, "a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States," any motor vehicle unless it complies with, and is certified as complying with, all applicable Federal motor vehicle safety standards (FMVSS). Federal law does not address the licensing or operation of motor vehicles, which is left to the States. Under Section 30103(b), however, a State is expressly preempted from having a standard applicable to the same aspect of performance as a FMVSS unless the State standard is identical to the Federal requirement. We have interpreted this as preventing States from adopting or enforcing operational or licensing requirements that would preclude the operation of vehicles that comply with the FMVSS. Thus, for example, a State could not prohibit a motorcycle from being equipped with a modulating headlamp system in order to be licensed or operated because there is a FMVSS (Standard No. 108) that expressly allows such a system.

Federal law does not prohibit Washington from registering a motorcycle meeting such requirements as the State may have imposed for licensing either new or reconstructed motor vehicles, provided that the State's requirements applicable to an aspect of performance regulated by the FMVSS are not more stringent than those of the FMVSS.

The letter you enclosed from Baja Designs of San Diego states that the company manufactures and sells modification equipment to help vehicle owners bring their motorcycles "up to State Department of Transportation criteria." In the company's opinion, 49 U.S.C. 30112 "was not intended to stop the individual vehicle owner from modifying a vehicle to comply with specific State DOT requirements and re-titling the vehicle under a state's reconstructed vehicle titling process."

Baja's interpretation of Section 30112 is not on point. To be sure, Section 30112 was not intended to "stop" a vehicle owner from complying with State requirements. Its intent is to prohibit "a person" from failing to comply with Federal requirements that apply to the manufacture and sale of motor vehicles. The issue with which we are concerned under Section 30112, then, is the Federal requirements that may apply to the conversion of an off-road motorcycle to on-road use.

For purposes of this discussion, an "off-road motorcycle" is one that was not manufactured and certified as meeting the FMVSS that apply to motorcycles, because, under our interpretations, it was not manufactured primarily for use on the public roads. The act of conversion for use on the public roads creates a motor vehicle to which new-vehicle FMVSS will become applicable at the time of the conversion. The FMVSS that apply to motorcycles are Standards Nos. 106 (brake hoses), 108 (lamps, reflective devices, and associated equipment), 111 (rearview mirrors), 119 and 120 (tires and rims), 122 (brake systems), 123 (controls and displays), and 205 (glazing materials, if the motorcycle has a

windshield). Therefore, the converted motorcycle must meet, and be certified to meet, all these FMVSS.

For purposes of compliance with DOT laws and regulations, we regard the converter as the manufacturer. However, under our interpretations on kit cars, a person who supplies all the equipment required to create a motor vehicle is also regarded as a "manufacturer." Baja has related that it supplies customers with "DOT approved lighting, DOT approved tires, mirrors, speedometers, custom wiring harnesses and other equipment to facilitate compliance with state and federal standards for street vehicles." From this list, we surmise that, at the least, Baja may be providing equipment that purports to bring off-road motorcycles into compliance with FMVSS Nos. 108, 111, 119, and 123. However, we cannot conclude on the basis of this correspondence that Baja is providing all equipment needed for on-road use, and specifically that required to comply with FMVSS Nos. 106, 120 and 122 . Therefore, it appears that the converter is the manufacturer and responsible under Federal law, 49 U.S.C. 30112, for the compliance of the vehicle and its certification of compliance. We encourage all States to refuse to license vehicles for use on their roadways unless they are certified by their manufacturer as complying with all applicable FMVSS.

Finally, we come to the question of whether the State may assign a VIN to a vehicle which we view as required to meet the FMVSS. One purpose of the Federal VIN, as expressed in section S565.1 of 49 CFR Part 565, Vehicle Identification Number Requirements, is "to increase the accuracy and efficiency of vehicle recall campaigns." As noted above, the converter has become the manufacturer, and, as the manufacturer, it is also responsible for conducting recall campaigns. Where an individual has only modified his or her own motorcycle, we would not insist that the single converted vehicle be furnished with a VIN meeting Part 565, as compliance is not needed to achieve the purpose of the regulation. In this instance, a State may assign a VIN to the motorcycle. Our answer would differ, of course, if we had concluded that Baja is the manufacturer. In that event, Baja would have to furnish VINs that meet the requirements of Part 565.

One final point. In its letter, Baja uses the term "DOT approved." This term has no basis in either fact or law. We have no authority to approve or disapprove items of motor vehicle equipment. If a "DOT" symbol appears on an item of equipment or its container, the "DOT" is the equipment manufacturer's certification that the equipment conforms to all applicable FMVSS. Such certification may be found as an indication of conformance with FMVSS Nos. 106, 108, 119, the rim requirements of 120, and 125. We do not know what Baja means by use of the term "DOT-approved mirrors," because FMVSS No. 111 does not apply directly to mirrors but specifies performance requirements that a motorcycle mirror system must meet when it is installed.

You have Taylor Vinson's e-mail address; please consult him if you have any further questions.

Sincerely,  
Frank Seales, Jr.  
Chief Counsel  
ref:571  
d.6/26/00