

Barjan Products
2751 Morton Drive
East Moline, IL 61244

Dear Sir/Madam:

It has come to our attention that your company manufactures a product called the Air Blow Gun (ABG), which is described as a length of 11.5-foot coiled 1/4 inch tubing with brass fittings on either end and a lever-type blow gun. The ABG attaches to the vehicle's compressed air system which supplies compressed air for its braking system. When attached to the air system, it can be used to clean various surfaces with air pressure. The ABG's container carries the notation "D.O.T. approved" in four places.

By way of background information, the National Highway Traffic Safety Administration (NHTSA), by delegation from the Secretary of Transportation, has the statutory authority to issue Federal motor vehicle safety standards (FMVSSs) applicable to new motor vehicles and new items of motor vehicle equipment (49 U.S.C. Chapter 301). That statutory scheme establishes a self-certification system under which motor vehicle and equipment manufacturers themselves certify that their products comply with all applicable FMVSSs. Most of the FMVSSs that apply to motor vehicle equipment require such equipment to be certified by the manufacturer. Where required, that certification is often shown by marking the product itself with the symbol "DOT." NHTSA enforces compliance with the standards by purchasing and testing motor vehicles and equipment. The agency also investigates safety-related defects. If NHTSA or the manufacturer finds that a vehicle or item of equipment does not comply with applicable standards or is found to have a safety-related defect, the manufacturer is responsible for remedying the defect or noncompliance at no charge to the customer. In carrying out its functions, consistent with the self-certification aspects of the program, NHTSA does not approve, disapprove, endorse, test, or grant clearances for products prior to their introduction into the retail market.

Turning now to the ABG, we would classify it as an item of motor vehicle equipment, which is defined in 49 U.S.C. 30102(a)(7)(B) as any "part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle." The ABG would be classified as an accessory if it meets the following two tests:

- a. A substantial portion of its expected uses are related to the operation and/or maintenance of motor vehicles; and
- b. It is purchased or otherwise acquired, and principally used, by ordinary users of motor vehicles.

After reviewing the product and the information on its container, we conclude that the ABG is an accessory. It was obviously designed and is being marketed with the expectation that a substantial portion of its expected use will be in or on motor vehicles. Further, it would appear that the ABG is intended to be purchased and principally used by ordinary users of motor vehicles, specifically vehicles equipped with air brake systems, as opposed to professional vehicle repair personnel, since its stated purpose is "for fast and easy cleaning," using the vehicle's own compressed air supply. Motor vehicle repair businesses can be expected to have their own air supply.

While the ABG is a motor vehicle accessory, NHTSA has not issued any FMVSSs establishing performance standards applicable to this particular product.⁽¹⁾ Thus, under the certification provisions, certifying or marking the ABG with the "DOT" symbol is not warranted. Nevertheless, you, as the manufacturer, are subject to the requirements of 49 U.S.C. §§30118 - 30120, which set forth the

notification and remedy procedures for products with defects related to motor vehicle safety.

As stated above, NHTSA does not approve motor vehicle equipment or accessories. The phrase "D.O.T. approved," where there are no applicable FMVSSs, is a false certification in violation of 49 U.S.C. §30115 and could be misleading to the public. Accordingly, the notation "DOT approved" must be removed from the product's container and any other promotional literature or information pertaining to this product.

I hope this information is helpful to you. Should you have any questions or need additional information, feel free to contact Walter Myers of my staff at this address or at (202) 366-2992, or by fax at (202) 366-3820.

Sincerely,
Frank Seales, Jr.
Chief Counsel
ref:121#VSA
d.3/23/99

1. FMVSS No. 121. *Air brake systems*, specifies performance and equipment requirements for braking systems on motor vehicles that are equipped with air brake systems. The standard does not address the use of air pressure from the brake air supply for other purposes, such as use of the ABG for cleaning, but doing so could affect the vehicle's compliance with the air brake standard. Further, if the ABG is permanently integrated into the vehicle's compressed air supply system, as opposed to being attached and detached as needed, the ABG could be subject to FMVSS No. 106, *Brake hoses*. It could be subject to the brake hose standard if it transmits or contains the brake air pressure used to supply force to a vehicle's brakes, or stated another way, if a failure of the hose would result in a loss of air pressure in the brake system. In such a case, the ABG would be a brake hose and must comply with FMVSS No. 106. If a check valve or other device is used to prevent loss of pressure, however, then the ABG would not contain or transmit the vehicle's brake air pressure and would not be required to comply with the brake hose standard.