



COMMONWEALTH of VIRGINIA

Department of Motor Vehicles

2300 West Broad Street

Richard D. Holcomb
Commissioner

Post Office Box 27412
Richmond, VA 23269-0001

November 21, 2016

The Honorable Ron A. Villanueva
Virginia House of Delegates
General Assembly Building, Room 503
Capitol Square
Richmond, Virginia 23219

The Honorable Charles W. Carrico
Senate of Virginia
General Assembly Building, Room 330
Capitol Square
Richmond, Virginia 23219

RE: Non-Conventional Vehicles Report

Dear Chairman Villanueva and Chairman Carrico:

The purpose of this letter is to provide a report on the work of the Department of Motor Vehicles' (DMV) Non-Conventional Vehicles Committee for 2016. The report outlines the background of the Non-Conventional Vehicles study and working group, discusses the formation of the Non-Conventional Vehicles Committee, and addresses the efforts of DMV and the Non-Conventional Vehicles Committee to review and consider the latest vehicle referred to the committee.

Background

In September 2011, Delegate Joe May, then chairman of the House Transportation Committee, and then-Chairwoman Senator Yvonne Miller, Senate Transportation Committee, called upon DMV to establish an ongoing working group to address the increasing consumer demand for vehicles that do not fit into the current motor vehicle definitions provided in the *Code of Virginia*. Since creation of the Non-Conventional Vehicles working group, numerous stakeholders, including representatives from local and state law enforcement, automobile and

motorcycle dealerships and dealer associations, the insurance industry, automobile manufacturers, safety groups and other state agencies, have been involved and have studied several issues. During 2012, the Non-Conventional Vehicles working group focused on low-speed vehicles, motorcycle classifications, mopeds, and all-terrain vehicles. Those proposed recommendations resulting from the study passed the General Assembly during the 2013 session (see Chapter 783 of the Virginia Acts of Assembly of 2013). In 2013, the Non-Conventional Vehicles working group studied and made recommendations for legislation proposing creation of a separate definition of “autocycle” and requirements for those three-wheel vehicles that operate and handle more as automobiles than motorcycles. Those proposed recommendations passed the General Assembly during the 2014 session (see Chapters 53 and 256 Virginia Acts of Assembly 2014). The legislation set forth the requirement that autocycles meet Federal Motor Vehicle Safety Standards (FMVSS) for motorcycles.

During 2013, as a result of the study, DMV also created a process for a special committee of the Non-Conventional Vehicles working group to consider vehicles that the DMV Vehicle Services Administration (hereinafter “Vehicle Services”) cannot upon initial review determine whether the vehicles are roadworthy and should be registered. The committee, originally called the Specially Constructed Vehicle Committee, and now simply called the Non-Conventional Vehicles Committee, is tasked with reviewing the registration request and may affirm Vehicle Services’ denial of registration or determine that registration should be granted.

In 2014, the Non-Conventional Vehicles working group reviewed and discussed a process to allow the conversion of off-road motorcycles to on-road use. The proposed legislation passed the General Assembly during the 2015 session (see Chapters 259 Virginia Acts of Assembly 2015). The legislation set forth the requirement that equipment modifications to the off-road motorcycle must meet FMVSS for motor vehicles for the year in which the off-road motorcycle is converted for on-road use.

The 2014 Non-Conventional Vehicles working group reported to the transportation committees of the General Assembly that DMV and the Non-Conventional working group had examined all issues originally referred to the working group by former Delegate Joe May and the late Senator Yvonne Miller. In addition, during the three year study the working group had also addressed other issues raised by stakeholders. The 2014 report was the third and final installment for the Non-Conventional study; however DMV continued the process for ongoing stakeholder input on non-conventional vehicles referred to the Non-Conventional Vehicles Committee.

Non-Conventional Vehicles Committee

As mentioned above, the Non-Conventional Vehicles Committee was formed and a procedure was developed for reviewing non-conventional vehicles presented to DMV for registration. With this process, if a non-conventional vehicle, such as a specially constructed vehicle, is denied registration by Vehicle Services and the customer wishes to appeal the decision, or if Vehicle Services cannot upon initial review determine whether the vehicle is roadworthy and should be registered, that vehicle registration request can be submitted to the Non-Conventional Vehicles Committee for further review. The Non-Conventional Vehicles Committee will review the registration request and may affirm Vehicle Services’ denial of

registration or determine that registration should be granted. This committee and process were established during the 2013 study; however, no vehicles were presented to this committee in 2014 or 2015.

Non-Conventional Vehicles Committee and TMI AutoTech, Inc.

On December 19, 2014, DMV received a request from the Division of Legislative Services (DLS) on behalf of Senator Stanley and Delegate Edmunds regarding TMI AutoTech, Inc. (hereinafter TMI), who requested that DMV look into the Ariel Atom, a vehicle TMI manufactures to determine whether legislation would be needed to allow this vehicle to be registered and operated on the highways of the Commonwealth.

On December 22, 2014, DMV responded to staff at DLS via telephone and by e-mail informing them that DMV staff contacted TMI's Vice President for Sales and Marketing at the time to ask if the Ariel Atom was built in compliance with FMVSS, which are set by the National Highway Traffic Safety Administration (NHTSA) under federal law. Vehicles are required to meet FMVSS standards to operate legally on the road. TMI indicated at that time that the Ariel Atom is an off-road vehicle and informed DMV that the vehicle does not meet FMVSS. No legislation regarding this matter was introduced during the 2015 General Assembly session.

On March 9, 2015, the issue arose again when Delegate Danny Marshall contacted DMV staff inquiring into whether TMI's vehicles could be registered and operated on the highways of the Commonwealth, since TMI indicated that they are considered "street legal" in other states, or whether legislation was needed. DMV responded to Delegate Marshall on March 17, 2015, explaining that the vehicle is not currently legal for on-road use without extensive modifications, primarily due to federal requirements. While the *Code of Virginia* could be changed to make the vehicle legal under Virginia law, it would still be a violation of federal law to operate it on the road. DMV further explained that a purchaser would be responsible for converting the vehicle from off-road to on-road use in order to make it street legal. When an off-road vehicle is converted to on-road use, NHTSA considers the converter to be the manufacturer, who is responsible for ensuring and certifying that the vehicle meets all applicable FMVSS in effect for new vehicles in the year of conversion. The vehicle would also have to meet the standards of, and pass, the Virginia safety inspection.

The question was also asked whether the TMI vehicle meets the definition of an auticycle. DMV responded that it does not, since it is not three-wheeled and does not meet FMVSS established for motorcycles (autocycles are considered motorcycles under federal law, and are subject to motorcycle FMVSS). DMV informed the Delegate of the existence of the Non-Conventional Vehicles Committee if he would like additional information.

On March 17, 2015, DMV received follow-up questions from Delegate Marshall regarding whether cars with low-production numbers or kit cars still have to comply with NHTSA FMVSS. On March 26, 2015, DMV responded to the Delegate explaining that any car operated on the roads must comply with FMVSS, as well as theft prevention and bumper standards, for the year in which it was manufactured, including low-production and kit cars (based on year of assembly). In addition to being required under federal law, doing so is the best

way to ensure that the vehicle can pass the Virginia safety inspection. With that said, federal law does allow the U.S. Department of Transportation (DOT), of which NHTSA is part, to grant public-interest exemptions to those standards for low-production vehicles. In general, exemptions are granted for individual standards based on any of the following conditions:

1. To prevent a substantial economic hardship to a manufacturer, who has tried to comply in good faith;
2. To facilitate the development and testing of new vehicle safety features or low-emission motor vehicles; or
3. To allow for the sale of a motor vehicle with an overall safety level at least equal to the level of nonexempt vehicles when compliance with the standard would prevent the sale of that vehicle.

FMVSS regulations are drafted in a manner that presumes the exemptions will be requested for vehicle lines, rather than individual vehicles. As a result, exemptions are authorized in 2 or 3-year periods and can be renewed. During the exemption period, a manufacturer may produce and sell vehicles of the identified line. NHTSA guidance indicates that assemblers of kit cars and converters of off-road vehicles to on-road use are deemed to be manufacturers subject to FMVSS.

Even though the exemption process is a valid method for making a vehicle street-legal under federal law, it represents a particular problem here in Virginia for vehicle safety inspectors. While the vehicles may obtain exemptions from FMVSS, there is no equivalent exemption from Virginia's vehicle equipment laws available. DMV has encountered this problem for other vehicles. For instance certain foreign-market vehicles that are brought to Virginia temporarily are granted an exemption to FMVSS under federal law and temporary registration under state law; however, they are still required to pass a Virginia safety inspection, which they cannot do with certain foreign parts.

When the foreign-market vehicle issue was raised, the Virginia State Police (VSP) advised DMV that there is no procedure in place for recognizing FMVSS exemptions in the safety inspection process. They indicated that the complexity of the FMVSS and the need to validate the exemption, understand how it might interplay with Virginia equipment laws, and ensure consistent application across the thousands of individual inspectors would make the development of such a process difficult, at best.

DMV's response expanded upon a statement made previously regarding the possibility of registering these vehicles without requiring FMVSS compliance or exemption. NHTSA says that a state is free to determine what vehicles can be registered in the state; however, the registration would have to be limited to intrastate-only and the owners would have to understand that the operation of a vehicle that does not properly comply with applicable FMVSS is a violation of federal law, even if legal in-state. This is something the General Assembly would need to take into consideration, should legislation to register these vehicles be introduced.

Delegate Marshall responded on March 26, 2015, recognizing the amount of time DMV staff spent on this issue and indicating that he would consult with TMI. DMV received nothing

further from the Delegate until November 19, 2015, when Delegate Marshall sent an e-mail to DMV indicating that he and other legislators would like to assist TMI to expand its business and employ more people. TMI hoped to double its production from 65 vehicles per year and employment level from 22 employees over the next two years. Delegate Marshall asked several questions regarding how Oregon and California allow road registrations and the use of Ariel Atoms on public roads and how those states are able to provide these exceptions or exemptions if the vehicles are not in compliance with federal requirements. Further, if those two states are able to recognize the on-road use of these types of vehicles as street-legal, why couldn't Virginia, with certain reasonable restrictions? Additional information was also requested regarding the DOT exemptions and how to avoid Virginia's safety inspection laws becoming an issue even if federal exemptions were granted for limited volume vehicles.

In previous emails to Delegate Marshall DMV provided information on FMVSS and the ability of individual states to register vehicles that do not meet these standards. On December 8, 2015, DMV responded to Delegate Marshall's questions with additional details. DMV clarified that NHTSA acknowledges that a state is free to choose the types of vehicles it registers; however, a state's decision to register vehicles that do not meet the FMVSS does not constitute an exemption from the FMVSS. State laws permitting such registration would only govern use of that vehicle on an intrastate basis. As a result, a noncompliant, but otherwise properly registered, vehicle could be subject to penalties if it were driven across state lines or onto federal property, such as a military base or Veterans Affairs medical facility. That is a consideration any state must make when deciding whether or not to allow the registration of vehicles like the Ariel Atom.

In reference to Oregon and California, DMV researched those laws in order to gain a better understanding of how they work. Oregon and California appear to have adopted laws regarding the operation of vehicles similar to those produced by TMI. First, the Oregon law applies to vehicles used for racing activities. Under that law, a vehicle permanently registered for racing activity may be driven to a racetrack within 90 miles of the owner's home, for maintenance or repair purposes, within 30 miles of where the vehicle is maintained or repaired, or in exhibitions, parades, or club activities. Second, the specially constructed vehicle program in California is for vehicles built for private use, not for resale, and not constructed by a licensed manufacturer or remanufacturer. The program appears to be centered on the state's emissions testing requirements and the need to identify how specially constructed vehicles should be tested. California gives 500 annual certificates to vehicle owners on a first-come-first-serve basis. However, that is not a limit on the total number of specially constructed vehicles that may be registered annually in California. They grant a special exemption to the emissions test by allowing the vehicle owner to choose the basis for the test (model year of the vehicle or model year of the engine), with a default model year of 1960 for vehicles that are not replicas. Vehicle owners can choose to register specially constructed vehicles without obtaining a certificate; however, those owners must ensure the vehicles are fitted with engines that can pass California's emissions testing for the year of application.

Beyond emissions, specially constructed vehicles in California are subject to vehicle verification inspections by the California Highway Patrol, which appear to be similar to Virginia's stolen parts inspections for those vehicles, brake and light inspections and

adjustments, as well as weight certifications for some vehicle types. California also requires the owner to submit a statement of construction that includes a certification that the equipment used complies with all applicable FMVSS; however, there appears to be no such certification required for the vehicle, as a whole. Furthermore, DMV looked for, but did not find, specific operational limitations for the vehicles.

In reference to the Virginia vehicle safety inspection administered by the VSP, in previous discussions regarding FMVSS exemptions and the state safety inspection, VSP indicated that designing a process to recognize exemptions would be difficult. Among the concerns were creating a system of identifying and verifying exemptions that all inspection stations could follow and that VSP could uniformly enforce. In addition, there could be liability concerns for inspection stations regarding recognizing claimed exemptions. Delegate Marshall was informed that further discussion with VSP representatives on this issue would be necessary if exemptions to the safety inspection were considered.

Finally, Delegate Marshall was provided with the general process for requesting exemptions to the FMVSS from NHTSA :

1. The vehicle manufacturer submits a petition to NHTSA requesting an exemption to one or more identified Federal Motor Vehicle Safety Standards;
2. NHTSA reviews the petition to determine whether the petitioner is eligible for the exemption. This is an initial determination only and not a final decision granting the exemption, which must be made based on the individual petition's merits;
3. NHTSA publishes a non-confidential copy of the petition in the Federal Register. The petition is also posted at Regulations.gov;
4. The publication/posting starts a 30-day period for public comment on whether the exemption should or should not be granted; and
5. At the end of the 30-day period, NHTSA makes a final decision on the exemption request. That decision is also published in the Federal Register.

DMV also offered to refer TMI to the Non-Conventional Vehicles Committee, suggesting that this would be the proper forum to discuss the issues raised regarding the Ariel Atom and to find a solution that would meet the needs of all interested stakeholders. No legislation regarding this matter was introduced during the 2016 General Assembly session.

Upon completion of the 2016 General Assembly session, DMV staff began coordinating a meeting of the Non-Conventional Vehicles Committee and TMI. On June 24, 2016, the Non-Conventional Vehicles Committee convened. The Committee was composed of DMV staff and other stakeholders including VSP, the Motor Vehicle Dealer Board, the Virginia Automobile Dealers Association (VADA) and Mr. Chris LaGow, an attorney/lobbyist representing the insurance industry with clients including AIG, Inc., Chubb Insurance Co., Nationwide Insurance Co., and the Property Casualty Insurers Association of America. The purpose of the June 24, 2016, meeting was to provide TMI with information on the DMV titling and registration process and requirements, to provide TMI with the opportunity to discuss the Ariel Atom and other TMI vehicles, and to discuss whether they should be registered for operation on the public highways in the Commonwealth.

TMI provided a limited amount of information to the committee and then responded to the committee's questions. Based on the discussion the concerns of the committee generally remained the same as DMV's concerns back in late 2014. When an off-road vehicle is converted to on-road use, NHTSA considers the converter to be the manufacturer, who is responsible for ensuring and certifying that the vehicle meets all applicable FMVSS in effect for new vehicles in the year of conversion. The vehicle would also have to meet the standards of, and pass, the Virginia vehicle safety inspection. TMI acknowledged at the meeting that its vehicles do not meet FMVSS. For example, the TMI vehicles are not equipped with air bags. The VSP representative on the committee indicated that if the vehicles do not meet FMVSS they are unlikely to pass the Virginia vehicle safety inspection.

The committee members informed TMI that NHTSA has a waiver/exemption process for low-production manufacturers that do not meet all FMVSS. TMI could seek the exemption from some of the FMVSS that the vehicles do not meet if it wants to make its vehicles street legal. TMI indicated that it may consider the exemption process. The committee did note that even though the exemption process is a valid method for making a vehicle street-legal under federal law, it represents a particular problem here in Virginia for vehicle safety inspectors. While the vehicles may obtain exemptions from FMVSS, there is no equivalent exemption from Virginia's vehicle equipment laws available.

During the meeting TMI relied on the experiences of Tanom Motors in successfully obtaining legislation to allow the operation of the autocycles it manufactures. However, the committee pointed out that the definition of an autocycle enacted by the General Assembly in VA Code § 46.2-100 requires the vehicle to meet FMVSS, and is similar to definitions throughout the country.

"Autocycle" means a three-wheeled motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride and is manufactured to comply with federal safety requirements for motorcycles.

In addition to concerns regarding the failure of the TMI vehicles to meet FMVSS, the Virginia Automobile Dealers Association (VADA) raised some concerns regarding TMI manufacturing and selling its vehicles in the Commonwealth. VA Code § 46.2-1572 provides that it is unlawful for any motor vehicle manufacturer to own, operate, or control any motor vehicle dealership in the Commonwealth. Ownership, operation, or control of a dealership by a manufacturer, is not prohibited if after a hearing the DMV Commissioner determines, that there is no dealer independent of the manufacturer, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest. In this case TMI has not requested any such hearing. However, TMI indicated that when TMI begins selling more vehicles in the Commonwealth dealers will be used.

During the committee meeting Mr. Chris LaGow raised the issue that most insurance providers would not insure the vehicles TMI manufactures. Without proof of insurance coverage owners of TMI vehicles would be subject to the uninsured motor vehicle fee required by VA Code § 46.2-706. Subsequent to the committee meeting, Mr. LaGow provided DMV staff with a

copy of the Nonconventional Vehicles Talking Points prepared by the Advocates for Highway and Auto Safety. The Advocates for Highway and Auto Safety specifically address the Ariel Atom and object to states enacting laws or allowing registration which would permit these vehicles to operate on public roadways.

On July 3, 2016, the TMI president and CEO emailed a letter to DMV staff regarding the June 24th meeting. While TMI thanked DMV for organizing and facilitating a meeting, it expressed dissatisfaction with the meeting and viewed it as a waste of all attendees' time and efforts. TMI expressed the intent to return to the lobbying efforts that it had previously initiated with respect to achieving recognition and acceptance of a limited number of annual Virginia road registrations for its vehicles.

On July 6, 2016, DMV received an inquiry from Delegate Edmunds regarding the June 24th meeting after Delegate Edmunds was contacted by TMI concerning submitting legislation to allow TMI vehicles on the highways. DMV responded to Delegate Edmunds on July 12, 2016, by explaining about the composition of the Non-Conventional Vehicles Committee, the chronology of DMV interactions regarding TMI, and sharing the committee's concerns that were identified at the meeting with TMI. The response also included an explanation of FMVSS and the role those standards have with respect to TMI vehicles being registered and operated on the highways of the Commonwealth.

On July 25, 2016, DMV responded to the letter sent by TMI's president and CEO on July 3, 2016. DMV thanked TMI for participating in the Non-Conventional Vehicles Committee meeting and for informing the agency of the intent to seek legislation for the registration of Ariel Atoms and other TMI vehicles for on-road use. DMV indicated that it understood that TMI was relying on the experiences of Tanom Motors in successfully obtaining legislation to allow operation of the autocycles it manufactures. However, DMV pointed out that the process of arriving at an acceptable definition and the resulting legislation involved Tanom Motors working in collaboration with stakeholders over a two year period and standards that are consistent with other states and with the American Association of Motor Vehicle Administrators (AAMVA) guidance on three-wheeled vehicles.

DMV reiterated that NHTSA considers the assembler of a kit car or other specially constructed vehicle to be the manufacturer, who is responsible for ensuring and certifying that the vehicle meets all applicable FMVSS in effect for new vehicles in the year of assembly or obtaining waivers for specific standards that cannot be met. The vehicle would also have to meet the standards of, and pass, the Virginia vehicle safety inspection. In pursuing legislative efforts, DMV also advised that the *Code of Virginia* could be changed to make a TMI vehicle legal under Virginia law; however, it could still be a violation of federal law to operate it on the road because of its failure to meet FMVSS. If the *Code* is amended, operation of the vehicles would have to be limited to intrastate-only. In addition, even with legal registration, owners of the vehicles could still be in violation of federal law and subject to citations by federal law enforcement within the Commonwealth on interstate highways or on any other federally owned property, such as national park lands, military bases, or veteran's hospitals.

DMV expressed disappointment that TMI viewed the meeting as a waste of time and that it did not want to continue to work with the Non-Conventional Vehicles Committee. DMV will continue to title the TMI vehicles for individuals who submit application to the agency. However, such vehicles do not currently qualify for registration. DMV indicated that if any information changes regarding TMI manufactured vehicles that TMI may submit it to the committee for consideration.

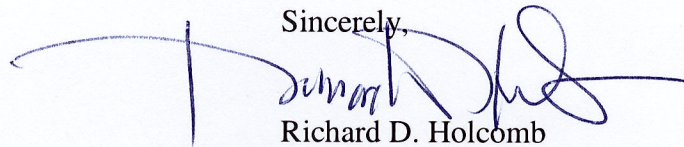
On September 13, 2016, Senator Ruff contacted DMV regarding TMI. DMV indicated that it stands ready to provide any assistance he may need as he considers proposing legislation regarding the registration of TMI vehicles. DMV has received nothing further directly from TMI.

Conclusion

This letter summarizes the work of DMV and the Non-Conventional Vehicles Committee to consider whether the Ariel Atom, manufactured by TMI, may be registered and operated on the highways of the Commonwealth under existing federal and state statutory and regulatory requirements. Should the General Assembly consider legislation to permit state registration of such vehicles, DMV is committed to providing any necessary information that members may require in evaluating the merits of such legislation.

I hope you find this information helpful. As always, my staff and I are available to answer any questions that you or other members of the General Assembly may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard D. Holcomb", is written over a horizontal line. The signature is stylized and cursive.

Richard D. Holcomb

c: The Honorable Aubrey L. Layne, Jr.
Secretary of Transportation