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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0004, Notice 2]

Decision That Nonconforming 2012 McLaren MP4-12C

Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA),
Department of Transportation (DOT)

ACTION: Grant of petition

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration that certain 2012 McLaren MP4-12C passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2012 McLaren MP4-12C PC), and they are capable of being readily altered to conform to the standards.

DATES: This decision became effective on March 26, 2015.

ADDRESSES: For further information contact George Stevens,
Office of Vehicle Safety Compliance, NHTSA (202-366-5308).

SUPPLEMENTARY INFORMATION:Background

Under 49 U.S.C 30141(a) (1) (A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

J.K. Technologies, LLC, of Baltimore, Maryland ("JK") (Registered Importer# RI-90-006), petitioned NHTSA to decide whether 2012 McLaren MP4-12C PCs are eligible for importation

into the United States. NHTSA published a notice of the petition on March 3, 2014 (79 FR 11869) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

COMMENTS:

On March 27, 2014, NHTSA received a request from McLaren Automotive Inc. (McLaren), the vehicle's original manufacturer, to extend the comment period by two weeks. NHTSA approved this request to allow McLaren additional time to respond to the issues presented in the petition.

McLaren submitted its comments on April 15, 2014. In its comments, McLaren stated that while it agreed that the U.S. and the non-U.S. versions of the vehicle are "substantially similar" within the meaning of section 30141(a)(1)(A)(i), it strongly disputed JK's assertions that the non-U.S. version could be readily altered to comply with all applicable FMVSS. McLaren elaborated by presenting detailed reasons for its assertions with respect to specific FMVSS.

On May 21, 2014, NHTSA forwarded McLaren's comments to JK and asked that it respond by June, 4, 2014. By letter dated June 10, 2014, JK requested a 45 day extension in order to gather engineering data to adequately address the concerns raised by McLaren. NHTSA approved JK's request for this extension and JK responded on July 29, 2014.

A summary of McLaren's comments, JK's responses, and the conclusions that NHTSA has reached with regard to the issues raised by the parties is set forth below.

COMMENTS AND CONCLUSIONS:

NHTSA has reviewed the petition, McLaren's comments and JK's responses to those comments, and has concluded that the vehicles covered by the petition are capable of being readily altered to comply with all applicable FMVSS. However, NHTSA has also decided that an RI who imports or modifies one of these vehicles must include in the statement of conformity and associated documents (referred to as a "conformity package") it submits to NHTSA under 49 CFR 592.6(d) specific proof to confirm that the vehicle was manufactured to conform to, or was successfully altered to conform to, each of the following standards:

FMVSS No. 101, Controls and displays; McLaren commented that the necessary reprogramming to achieve conformity to the standard can only be performed with a tool available only to authorized McLaren dealers that can only be operated by an authorized McLaren entity using a recognized username and password. McLaren claimed that the tool is not offered for sale to non-McLaren affiliated entities.

JK responded that the reprogramming equipment it used to modify the vehicle to the standard is available in Europe and

that it validated the programs and encryption codes on a U.S. version of the vehicle.

NHTSA has decided that a description of how the programming changes were completed and how compliance with the standard was verified must be included in each conformity package.

Photographs, printouts, and/or screenshots, as practicable, must also be submitted as proof that the reprogramming was carried out.

FMVSS No. 108, Lamps, reflective devices, and associated equipment; McLaren commented that in addition to the modifications described in the petition, "a completely new US vehicle [wiring] harness would be required." Moreover, as it contended with regard to FMVSS No. 101, McLaren asserted that reprogramming "can only be performed using an approved McLaren tool" which the manufacturer claimed is "only available to authorized McLaren dealers" and "can only be used by an authorized McLaren entity with the use of a username and password."

JK responded that it has "a USA version vehicle for these programs and encryption codes," and that it will replace or add wiring harnesses as necessary.

NHTSA has decided that a description of how the programming changes were completed and how compliance was verified must accompany each conformity package. Photographs, printouts,

and/or screenshots, as practicable, must also be submitted as proof that the reprogramming was carried out.

FMVSS No. 111, Rearview mirrors; McLaren commented that in addition to the modifications noted in the petition, the driver's outside rearview mirror would need to be replaced with a compliant mirror.

NHTSA has decided that proof, including photographs, must be submitted with each conformity package to show that the vehicle was either originally equipped with, or was altered through the addition of, a driver's side rearview mirror that allows the vehicle to meet the applicable requirements of FMVSS No. 111.

FMVSS No. 114 Theft protection and rollaway prevention; As was the case with FMVSS Nos. 101 and 108, McLaren contended that reprogramming "can only be performed using an approved McLaren tool" which is "only available to authorized McLaren dealers" and "can only be used by an authorized McLaren entity with the use of a username and password."

JK responded that it has "a USA version vehicle for these programs and encryption codes."

NHTSA has decided that a description of how the programming changes were completed and how compliance was verified must accompany each conformity package. Additionally, photographs,

printouts, and/or screenshots, as practicable, must be submitted as proof that the reprogramming was carried out.

FMVSS No. 138, Tire pressure monitoring systems; McLaren contended that tire pressure monitoring systems (TPMS) are not standard equipment on all European 12C vehicles and that substantial work would be required to bring vehicles into compliance with the standard. McLaren asserted that because of the extent and complexity of the required changes, vehicles not originally equipped with TPMS cannot be "readily altered" in order to bring them into compliance with the standard. According to McLaren, even if the vehicle is already equipped with the TPMS hardware, "a reconfiguration using an approved McLaren dealership tool would be required to bring the TPMS functionality into compliance with FMVSS No. 138." McLaren reiterated that this tool is "only available to authorized McLaren dealers" and "can only be used by an authorized McLaren entity with the use of a username and password".

JK responded that it has "a USA version vehicle for these programs and encryption codes."

NHTSA has decided that a description of how any applicable programming changes were completed and how compliance was verified must accompany each conformity package. Additionally, photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that the reprogramming was carried out.

FMVSS No. 205, Glazing materials; McLaren commented that contrary to the claim in the petition, non-U.S. vehicles do not comply with this standard because they are "fitted with AS3 glass in the rear of the vehicle (behind the B-Pillar). Such AS3 glass does not comply with the light transmittance requirements of FMVSS No. 205. It would be difficult to replace that AS3 glass with the AS2 glass required by FMVSS No. 205; in some cases the entire engine would have to be removed to make the modification."

JK responded that each vehicle will be inspected and that any non-compliant glass will be replaced. J.K. contended that the non-U.S. certified vehicle it inspected was already equipped with compliant glass.

NHTSA has decided that photographic evidence of the required markings to demonstrate that the glazing complies with the standard must be submitted with each conformity package.

FMVSS No. 208, Occupant Protection; McLaren challenged the petition's assertion that the non-U.S. certified vehicles are originally manufactured to meet all requirements of this standard, noting in particular that European model vehicles are not equipped with "advanced air bags," as that term is used in the United States. McLaren contended that the occupant restraint software system used in U.S. vehicles is specific to those vehicles and that only vehicles with a designated U.S. vehicle

identification number (VIN) can be programmed with that software. For that reason, McLaren claimed the necessary reconfiguration of the system would be impossible, since a European 12C vehicle's VIN would not be recognized, and the software upload would be prevented.

JK responded that it "will change and/or add all the US model systems to the European vehicles modified under this petition." JK noted that these parts include knee airbags, wiring harnesses, and sensors, and claimed that "the programming of the ECU is a modification that JK is very familiar with." JK also stated that it has "the necessary equipment to load the correct US McLaren MP4-12C advanced airbag programs into the European MP4-12C and retain the European VIN."

NHTSA has decided that each conformity package must include a detailed description of the occupant protection system in place on the vehicle at the time was delivered to the RI, and a similarly detailed description of the occupant protection system in place after the vehicle is altered, including photographs of all required labeling. The description must also include parts assembly diagrams and associated part numbers for all components that were removed from or installed on the vehicle, a description of how the programming changes were completed, and a description of how compliance was verified. Additionally, photographs (e.g., monitor print screen captures) or report

printouts, as practicable, must be submitted as proof that the reprogramming was carried out.

FMVSS No. 225, Child restraint anchorage systems; McLaren disputed the petition's claim that U.S. and non-U.S.-certified vehicles are identical with regard to this standard. The manufacturer contended that European vehicles lack a top tether anchor plate and further observed that installation of the anchor plate requires drilling into the fuel cell bulkhead.

JK responded that the upper anchorages will be added in the exact position designated by McLaren and that it has all of the engineering drawings for the U.S. model MP4-12C for these tethers.

NHTSA has decided that a detailed description of the alterations made to achieve conformity with the standard must be included in each conformity package. The description must include sufficient information to validate how the alterations allowed the vehicle to meet the requirements of the standard. This information must include photographic evidence that the modification was carried out, as well as testing and/or engineering analysis reports documenting how the RI has verified that the alterations will allow the vehicle to meet all applicable requirements of the standard.

FMVSS No. 401 Interior trunk release; McLaren commented that reprogramming can only be performed using an approved

McLaren tool that is only available to authorized McLaren dealers and can only be used by an authorized McLaren entity with the use of a username and password.

JK responded that it has the necessary equipment to load the correct US McLaren programs.

NHTSA has decided that each conformity package must include a description of how the programming changes were completed and how compliance was verified. Additionally, photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that the reprogramming was carried out.

49 CFR Part 581, Bumper Standard; McLaren commented that in addition to the modifications set out in the petition, the bumper foam would need to be replaced and a different rear bumper skin would need to be installed in the license plate area.

JK responded that it is aware of all the parts necessary to bring these vehicles into compliance with this standard and it will change all parts of the system to U.S. parts to make the vehicle compliant.

NHTSA has decided that each conformity package must include a detailed description of all modifications made to achieve conformity with the standard. This description must include part numbers for each part replaced and be supported with

photographic evidence of the modifications made to achieve conformity.

In addition to the information specified above, each conformity package must include evidence showing how the RI verified that the changes it made in loading or reprogramming vehicle software to achieve conformity with each separate FMVSS, did not also cause the vehicle to fall out of compliance with any other applicable FMVSS.

DECISION:

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 2012 McLaren MP4-12C passenger cars that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to 2012 McLaren MP4-12C PCs manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal Motor Vehicle Safety Standards.

VEHICLE ELIGIBILITY NUMBER FOR SUBJECT VEHICLES:

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-569 is the vehicle

eligibility number assigned to vehicles admissible under this notice of final decision.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe, Director
Office of Vehicle Safety Compliance

Billing Code: 4910-59-P

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