



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2013-0109, Notice 2]

Decision That Certain Nonconforming Model Year 2006-2007

European Market Ferrari 599 GTB Passenger Cars Manufactured

Prior to September 2007 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 (NHTSA) that certain model year (MY) 2006-2007 European market Ferrari 599 GTB passenger cars (PCs) manufactured prior to September 2007 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 MY 2007 Ferrari 599 GTB PC), and they are capable of being readily altered to conform to the standards.

DATES: This decision became effective on February 26, 2016.

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 MY 2006-2007 European market Ferrari 599 GTB PCs manufactured prior to September 2007 are eligible for importation into the United States. NHTSA published a notice of the petition on March 24, 2014 (79 FR 16099) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

COMMENTS:

On April 23, 2014, NHTSA received comments from Ferrari North America, Inc. (FNA), on behalf of Ferrari SpA, the vehicle's original manufacturer. In its comments, Ferrari stated that while it agreed that the U.S.- and the non-U.S.-certified versions of the vehicle are "substantially similar" within the meaning of 49 U.S.C 30141(a)(1)(A)(i), it strongly disputed JK's assertions that the non-U.S.-certified version could be readily altered to comply with all applicable FMVSS. FNA elaborated by presenting detailed reasons for its assertions with respect to specific FMVSS.

On May 21, 2014, NHTSA forwarded FNA's comments to JK to accord it an opportunity to respond and asked it to submit its response 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 FNA. NHTSA approved

JK's request for extension. JK provided its initial response on August 17, 2014 and submitted supplemental information on February 17, 2015.

A summary of FNA'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.

ANALYSIS OF COMMENTS AND AGENCY CONCLUSIONS:

NHTSA has reviewed the petition, FNA's comments and JK's responses to those comments, and has concluded that only the nonconforming European Market versions of the vehicles described in the petition are substantially similar to the U.S.-certified version of the MY 2006 and 2007 Ferrari 599 GTB PC and are capable of being readily altered to comply with all applicable FMVSS. 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, as described below, to show 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: FNA commented that the Electronic Control Unit ("ECU") for the instrument cluster would have to be "reflashed" with a "Proxy" file from the Ferrari factory to ensure that all of the other ECUs on the Control Area

Network ("CAN") are aware of the new ECU and are communicating properly. FNA additionally commented that the necessary reprogramming to achieve conformity to the standard can only be completed with proprietary hardware and software which is not available to RI's and can only be obtained from Ferrari and/or FNA.

JK responded that it has the Ferrari tools and the required access to reflash all computers as required.

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 images of the installation computer's monitor ("screenshots"), as practicable, must also be submitted as proof that the reprogramming was carried out successfully.

FMVSS No. 108 Lamps, Reflective Devices, and Associated Equipment: FNA commented that the reprogramming identified by JK would necessitate reflashing the control system with a "Proxy" file from the Ferrari Factory in order to assure that all aspects of the lighting system perform in accordance with this standard.

JK responded that it has the Ferrari tools and the required access to reflash all computers as required.

NHTSA has decided that a description of how the programming changes were accomplished and how compliance with FMVSS No. 108 is 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 successfully.

FMVSS No. 111 Rearview Mirrors: FNA commented that in addition to the modifications noted in the petition, the driver's outside rearview mirror would need to be replaced.

JK responded that no comment is necessary.

NHTSA has decided that proof, including photographs, must be submitted with each conformity package to show that the vehicle is equipped with a driver's side rear view 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, FNA contended that reprogramming could only be completed with proprietary hardware and software that is not available to RIs and can only be obtained from Ferrari and/or FNA.

JK responded that it has the Ferrari tools and the required access to reflash all computers as required.

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 successfully.

FMVSS No. 118 Power-Operated Window, Partition, and Roof Panel Systems: FNA commented that the reprogramming identified by JK is not necessary for the vehicles to conform to the standard.

Despite FNA's comment, NHTSA has decided that a description of how the vehicle's conformity was determined must accompany each conformity package. If any modifications were necessary to achieve conformity, a description of those modifications must be included in the conformity package.

FMVSS No. 138 Tire Pressure Monitoring Systems: In its petition, JK claimed that the subject non-U.S.-certified vehicles conform to FMVSS No. 138 as originally manufactured. FNA commented that tire pressure monitoring systems (TPMS) are not standard equipment on all European Ferrari 599 GTB vehicles and that substantial work would be required to bring vehicles into compliance with the standard. FNA further asserted that because of the extent and complexity of the required changes, vehicles not originally equipped with TPMS cannot be "readily altered" to comply with the standard.

JK responded that it has access to the appropriate equipment and has experience in installing TPMS and the equipment to make sure those systems are working properly.

NHTSA notes that because the subject nonconforming vehicles were manufactured prior to September 1, 2007, the date on or after which 100% of passenger cars must meet the requirements of FMVSS No. 138, compliance of the subject vehicles with FMVSS No. 138 is not an issue. An RI only needs to conform a vehicle to standards that are fully phased in by the vehicle's date of manufacture.

FMVSS No. 205 Glazing Materials: FNA commented that JK's assertion that the glazing material complies with the standard was incorrect. FNA states that the rear corner glazing directly behind the B-Pillar on both sides of the vehicle is made of plastic, which does not comply with the standard.

JK responded that the vehicle it inspected was equipped with compliant glazing, as it is properly labeled. JK states that each vehicle imported will be inspected and if not in compliance, will be brought into compliance by adding the appropriate 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. 207 Seating Systems: FNA commented that replacement of the driver and passenger seats with U.S.-model components would not be physically possible in the European market model due to differences in the chasses. Specifically, FNA stated that the chassis in the U.S.-model vehicles "dips down in order to accommodate the weight sensors needed to comply with the requirements of FMVSS No. 208."

JK disagreed with FNA's claim that there is a "dip" in the chassis, but noted that some of the chasses have "different seat mounts." JK provided parts listings and diagrams showing the different mounts.

JK also responded that the seat frames and mounting points are the same in the U.S.-model and European market vehicles, but observed that there are four brackets that are welded to the [chasses] of the European market vehicles on the passenger side only that could be removed, and U.S.-model seats and seat runners installed onto the resulting flat surface of the [chassis].

Ferrari also commented that, "JKT acknowledges that both driver and passenger seating systems in the European vehicle must be replaced with U.S. seats."

JK responded:

The reason the seats need to be replaced is NOT a safety issue. It's a leather matching issue. If you

"choose" to replace the passenger seat so that you get the U.S. seat with the baby seat tether hole, then you must replace the driver's seat to match the leather color [in the a replaced passenger seat].

If you choose to make a template and cut the hole for the baby seat tether [in the passenger seat] then you do not need to replace either seat. There is NO difference in the design or mounting points between the European seats and the U.S. seats. There are differences in the levels of the leather and options in both the U.S. seats and the European seats.

NHTSA has decided that a description of the seating systems present on the vehicle at the time of importation, including all differences from the U.S.-model, with part numbers and diagrams where applicable, and a description of all modifications necessary to conform the vehicle to the standard must accompany each conformity package. Additionally, photographs, as practicable, must be submitted as proof that modifications were carried out successfully.

FMVSS No. 208 Occupant Protection: FNA commented that JK did not identify all components that need to be replaced in order to bring the airbag system into compliance. FNA specifically notes that the European versions of the subject vehicles are not equipped with a "PASS AIR BAG OFF" telltale,

which is required for compliance. Additionally, FNA stated that JK did not identify certain portions of the instrument panel that differ from those on the U.S.-certified version of the vehicle and that would have to be changed to assure compliance with the unbelted crash requirements of the standard.

JK responded that the installation of the U.S. version instrument panel and reprogramming will ensure that a compliant system is installed providing the telltales that meet the requirements of FMVSS No. 208.

JK further stated that after the brackets are removed, it can install the rails and seats properly with the software and systems. JK states that it will program, reset, and test the systems, bringing them into compliance with the standard.

JK later clarified that the European vehicle it inspected was equipped with the proper parts as well as the proper programs and systems to meet the requirements of the standard in the same manner as the U.S.-version of the vehicle, including the complete instrument systems, dash, and "passenger airbag off" light.

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 it 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 assembly diagrams and associated part numbers for all components that were removed from and 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., screenshots) or report printouts, as practicable, must be submitted as proof that the reprogramming was carried out successfully. Proof must also be furnished that all portions of the instrument panel in the vehicle, after all conformance modifications are performed, are identical to the U.S. version instrument panel, or proof in the form of dynamic test results showing that the vehicle, as altered, conforms to the unbelted occupant requirements of FMVSS No. 208.

FMVSS No. 209 Seat Belt Assemblies: FNA commented that, as JK acknowledged in the petition, some European market vehicles are equipped with four-point seat belt assemblies that do not comply with this standard. FNA contends that the belts could not simply be replaced by a registered importer, due to the absence of an anchorage on the B-pillar.

JK responded that the vehicle it inspected was equipped with "the correct belts." JK indicated that if a vehicle is equipped with the non-compliant four-point seat belts it can make the appropriate tools to install the correct belts, using a U.S.-model vehicle as a guide.

NHTSA has decided that each conformity package must include photographic evidence that conforming safety belts have been installed in the vehicle. Safety belt anchorages are addressed in the following discussion of FMVSS No. 210.

FMVSS No. 210 Seat Belt Assembly Anchorages: In the petition, JK claims that the subject non-U.S. certified vehicles conform to FMVSS No. 210 as originally manufactured. FNA commented that European market vehicles that were equipped with optional four-point harnesses lack b-pillar anchorages that are necessary for the installation of compliant three-point harnesses. FNA expressed concern about the ability of an RI to install this anchorage and ensure that it meets the performance requirements of the standard without Ferrari's templates and tools, which are only used during production.

JK responded that any vehicle found to be equipped with the optional belts and lacking the aforementioned anchorage would have to be modified to meet this standard. JK further states that it will draw a template from a U.S. donor vehicle and that, as a result, all parts and engineering of the anchorage would be identical to the Ferrari mounting point. JK asserts that less than one percent of production is equipped with the optional belts.

NHTSA has decided that conformity packages for vehicles that require modification must include a detailed description of

the alterations made to achieve conformity with the standard. 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. 225 Child Restraint Anchorage Systems: FNA stated that European market vehicles do not include a top tether anchor plate that is included on U.S. market vehicles. FNA further expressed doubts about an anchorage installed by an RI being able to meet the strength requirements of the standard.

JK responded that it has the parts and tools to install the anchorage properly.

NHTSA has decided that conformity packages for vehicles that require modification must include a detailed description of the alterations made to achieve conformity with the standard. 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 standards.

FMVSS No. 301 Fuel System Integrity: FNA stated that the modifications to the fuel system that JK identified in the petition, while necessary to comply with emissions requirements, have no bearing on compliance with FMVSS No. 301. However, FNA additionally stated its belief that the addition of rear bumper reinforcements is necessary to insure compliance with FMVSS No. 301.

JK responded that no comment was necessary.

NHTSA has decided that the fuel system modifications identified in the petition are necessary to bring the vehicles into compliance with the standard. Additionally, 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.

FMVSS No. 401 Interior Trunk Release: FNA expressed agreement that the modifications described in the petition are necessary to conform the vehicle to the standard. The company noted, however, that the reprogramming could only be completed with proprietary hardware and software, which is not available to RIs and can only be obtained from Ferrari and/or FNA.

JK responded that it has access to all of the parts and programming necessary to bring the vehicle into compliance.

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: FNA commented that in addition to the modifications described by JK in its petition, additional bumper reinforcements would have to be installed in both the front and the rear of the vehicle.

JK responded that no comment was necessary.

NHTSA has decided that each conformity package must include a detailed description of all modifications made to achieve conformity with the standard, including necessary modifications to the bumper reinforcements. 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 FMVSS did not

also cause the vehicle to fall out of compliance with any other applicable FMVSS.

NHTSA'S DECISION:

Accordingly, on the basis of the foregoing, NHTSA hereby decides that model year 2006 and 2007 European market Ferrari 599 GTB passenger cars not originally manufactured to comply with all applicable FMVSS and manufactured from September 1, 2006 to August 31, 2007 are substantially similar to model year 2007 Ferrari 599 GTB passenger cars manufactured prior to September 1, 2007 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 Numbers: Ferrari stated in its comments on the subject petition that it did not certify any Ferrari 599 GTB passenger cars as model year 2006 for the U.S.-market. The agency notes that it previously decided that model year 2006 Ferrari 599 [GTB¹] passenger cars not originally manufactured to comply with all applicable FMVSS manufactured prior to September 1, 2006 are eligible for importation as model year 2006 vehicles under VSP-518 (75 FR 34524). At the time, NHTSA relied on Ferrari's submission of VIN deciphering information under 49 CFR

¹ At the time the decision was made, the full model name was abbreviated in the grant notice for the petition. The full model name is included here for consistency.

part 565, dated February 22, 2006, which indicated that the company planned to apply the model year 2006 designation to Ferrari 599 GTB passenger cars manufactured for sale in the United States. The agency also took note of the fact that Ferrari did not comment on the petition that resulted in eligibility number VSP-518 with regard to the model year designation.

After the original 2006 Ferrari 599 GTB petition was granted on July 7, 2009, NHTSA amended the definition of the term "model year" in 49 CFR 593.4 for the purpose of import eligibility decisions. The amendment was made to eliminate much of the confusion confronting RIs over the issue of whether a given vehicle manufactured for sale abroad has a substantially similar U.S.-certified counterpart of the same model year. The amendment, made in a final rule published on August 25, 2011 (76 FR 53072), deleted "the calendar year that begins on September 1 and ends on August 31 of the next calendar year," as one of the alternative definitions of the term "model year." In place of the deleted text, the amendment added the following alternative definition: "The calendar year (i.e., January 1 through December 31) in which manufacturing operations are completed on the vehicle at its place of main assembly."

In light of this change in the definition of "model year," as well as Ferrari's failure to raise any issue regarding the

model year designation in response to the original model year 2006 599 GTB petition, NHTSA considers Ferrari's comment on this issue in the subject petition to be moot.

Consequently, NHTSA reaffirms that nonconforming Ferrari 599 GTB passenger cars manufactured between January 1, 2006 and August 31, 2006 continue to be eligible under VSP-518.

NHTSA has also decided that nonconforming model year 2006 European market Ferrari 599 GTB passenger cars manufactured from September 1, 2006 through December 31, 2006 and nonconforming model year 2007 European market Ferrari 599 GTB passenger cars manufactured from September 1, 2006 through December 31, 2007, are admissible under vehicle eligibility number VSP-576. This number must be indicated on the form HS-7 accompanying entry of the vehicles eligible for entry.

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.

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