DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0141, Notice 2]

Denial of Petition for Import Eligibility

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

ACTION: Denial of Petition.

SUMMARY: This document sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(B). The petition, which was submitted by US SPECS of Havre de Grace, Maryland, a registered importer (RI) of motor vehicles, requested NHTSA to decide that what US SPECS described as a ''2012 Lita GLE–6 low-speed vehicle (LSV)'' that was not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards. NHTSA is denying the petition because the 2012 Lita GLE–6 as originally manufactured would be classified as something other than an LSV, and could not be converted to an LSV through the RI process.

SUPPLEMENTARY INFORMATION: NHTSA published a notice of receipt of the petition, with a 30-day public comment period, on May 21, 2013, in the **Federal Register** (78 FR 29808). The notice contained the following cautionary statement: ''It should be noted that the publication of this notice is not an acknowledgment that the vehicle that is the subject of the petition, the 2012 Lita GLE–6, is a low speed vehicle. In addition, in NHTSA's view, a vehicle that is not a low speed vehicle may not be converted to one by installing a governor (electronic or mechanical) or by removing weight such as by removing a seat, which may be reinstalled.'' See 78 FR 29809. The agency solicited comments on these specific issues. Ibid. No comments were submitted in response to the notice. Despite the absence of comments, NHTSA has reviewed the petition, and concluded that it must be denied. The reasons for this conclusion are set forth below.

In evaluating the petition, NHTSA has concluded that the activities US SPECS is proposing to undertake with respect to the vehicle in question are not ones that fall within the limited scope of activities an RI is authorized to perform. As detailed in the agency's regulations at 49 CFR part 592 *Registered Importers of Vehicles not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards,* an RI is responsible for taking possession of a nonconforming motor vehicle that has been offered for importation, performing all modifications necessary to conform the vehicle to all Federal motor vehicle safety and bumper standards that apply to the vehicle, and then certifying the vehicle as conforming to those standards. See 49 CFR 592.6(c).

Under the Safety Act, RIs are not in the same position as original manufacturers. In general, manufacturers that produce motor vehicles and motor vehicle equipment for the United States market and that import vehicles and equipment for the United States market must produce and import vehicles and equipment that comply with, and are certified to, Federal Motor Vehicle Safety Standards (FMVSSs). See 49 U.S.C. 30112(a), 30115. RIs are on a different footing. An exception to the general rule, which applies to motor vehicles (but not to motor vehicle equipment), is that vehicles that were not originally manufactured to comply with FMVSSs may be imported under the registered importer program if a number of conditions are met.

Under the statute, RIs are recognized as occupying a unique position as modifiers of previously manufactured vehicles. Section 30141 permits importation of vehicles that do not comply with FMVSSs only if NHTSA determines that the vehicle can be modified to meet all applicable FMVSSs. 49 U.S.C. 30141. More specifically, Section 30141(a)(1)(A), which governs the import eligibility of vehicles with a substantially similar U.S. certified counterpart, authorizes NHTSA to allow importation of such a vehicle if the vehicle is ''capable of being *readily altered* to comply with applicable motor vehicle safety standards prescribed under this chapter.'' (Emphasis added), 49 U.S.C. 30141(a)(1)(A)(iv). When a non-compliant vehicle does not have a substantially similar U.S. counterpart, NHTSA may only determine that the vehicle is eligible for importation if ''the safety features comply with or are capable of being *altered to comply* with . . .'' applicable FMVSS. (Emphasis added), 49 U.S.C. 30141(a)(1)(B). The agency is empowered to make such determinations on its own initiative or ''on petition of a manufacturer or importer registered under subsection (c) of this section.'' 49 U.S.C. 30141(a). An importer registered under subsection (c) of § 30141 is an RI. Therefore, on its face, § 30141 establishes that Congress distinguished RIs from original ''manufacturer[s]''.

RI's have a special status and responsibilities and duties beyond those generally imposed on ''manufacturer[s]'' under the Safety Act. In contrast to companies that produce and import vehicles certified to comply with FMVSSs, RI's must post a bond when importing vehicles. 49 U.S.C. 30141(d). Congress also established ownership restrictions for RI's and directed NHTSA to establish regulations unique to these entities. 49 U.S.C. 30141(c). Unlike original manufacturers that self-certify vehicles, RIs must also demonstrate, to NHTSA's satisfaction, that particular vehicles have been brought into compliance with all applicable FMVSS. Under 49 U.S.C. 30146(a) an RI may ''release custody of a motor vehicle imported by the registered importer . . . only after . . . the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured and that applies in that year to that vehicle.'' Where an RI has certified a vehicle that is substantially similar to a vehicle certified for the U.S. market by its original manufacturer, the RI must recall the vehicles it has certified if the original manufacturer recalls its U.S.-certified counterpart. 49 U.S.C. 30147(a)(1)(A).

NHTSA's regulations properly recognize the congressional determination that an RI's role is to modify non-compliant vehicles. Petitions for import eligibility must identify the original manufacturer of the vehicle and the vehicle's model name and model year. 49 CFR 593.6(a)(1) and (b)(1). In the case of petitions seeking eligibility on a ''substantially similar'' basis, the petition must identify the necessary modifications that must be completed to bring the non-compliant vehicle into compliance with the FMVSS applicable to the vehicle's U.S.-certified counterpart. § 593.6(a)(5). For other vehicles, the petition must show that the vehicle is capable of being modified to meet the standards that would have applied had it been originally manufactured for importation into and sale in the U.S. § 593.6(b)(2).

Any examination of the petition filed by US SPECS is premised on the notion that the 2012 Lita GLE–6 is a ''motor vehicle.'' For the purposes of the Safety Act, a ''motor vehicle'' is ''a vehicle driven or drawn by mechanical power and manufactured primarily for use on

public streets, roads, and highways.'' See 49 U.S.C. 30102(a)(6). In filing the petition, US SPECS acknowledges 2012 Lita GLE–6 is manufactured primarily for use on public streets, roads and highways. If this were not the case, and the 2012 Lita GLE–6 was not manufactured primarily for highway use, then it is not a ''motor vehicle'' subject to the FMVSS, and there would be no reason to consider performing conformance modifications to ensure that the 2012 Lita GLE-complies with those standards.

Because there is no need to examine whether the 2012 Lita GLE–6 is a motor vehicle, the next question that arises is what class of vehicle is at issue in this petition. US SPECS contends that the 2012 Lita GLE–6 should be classified as a Low Speed Vehicle (LSV). NHTSA's regulations at 49 CFR 571.3 define, among other things, the types of vehicles that are subject to the FMVSS. Those regulations state: ''*Low-speed vehicle (LSV)* means a motor vehicle, (1) That is 4-wheeled, (2) Whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface, and (3) Whose GVWR [gross vehicle weight rating] is less than 1,361 kilograms (3,000 pounds).'' Requirements for LSVs are specified in FMVSS No. 500 *Low-Speed Vehicles,* at 49 CFR 571.500. The purpose of the standard is to ensure that low-speed vehicles operated on the public streets, roads, and highways are equipped with the minimum motor vehicle equipment appropriate for motor vehicle safety. The standard requires an LSV to be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, reflex reflectors, mirrors, a parking brake, a windshield that conforms to the FMVSS on glazing materials (49 CFR 571.205), a vehicle identification number or VIN that conforms to the requirements of 49 CFR part 565 *Vehicle Identification Number Requirements,* and a Type 1 or Type 2 seat belt assembly at each designated seating position that conforms to FMVSS No. 209 *Seat Belt Assemblies* (49 CFR 571.209).

Consistent with these requirements, US SPEC's petition stated that the company would need to install headlights, turn signals, tail lights, a stop light, reflex reflectors, mirrors, a parking brake, and a compliant windshield, seat belts and VIN plate on the vehicle if it was not already so equipped. In addition, the petition stated that every vehicle must be weighed and ''[a]ny vehicle not meeting the required GVWR for low speed vehicle (sic) must have some of the seating removed to achieve the correct calculated GVWR.'' This statement was made in reference to the requirements for calculating a vehicle's GVWR that are found in NHTSA Certification regulations at 49 CFR part 567. Section 567.4(g)(3) of those regulations specifies that a vehicle's stated GVWR ''shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the number of the vehicle's designated seating positions.'' Finally, the petition states: ''Every vehicle must be checked to insure that it does not exceed the maximum (25 mph) and minimum (20 mph) speed requirement. We must reprogram any vehicle that is not within the required speed limits.''

Given the modifications that US SPECS described as potentially needing to be performed on the 2012 Lita GLE–6, a question can be raised as to whether the vehicle was originally manufactured as an LSV. If the 2012 Lita GLE–6, as originally manufactured, had the characteristics of LSV but also has a GVWR of 3,000 pounds or more, then it would need to be classified as a motor vehicle of some type other than a low speed vehicle, such as a passenger car, multipurpose passenger vehicle, or truck. If the vehicle met one of those classifications, it could not be modified and certified as a low speed vehicle by a registered importer, as a registered importer is not authorized to change a vehicle's type classification to circumvent the need for bringing the vehicle into compliance with standards that would have applied to the vehicle had it been originally manufactured for sale in the United States.

By changing the vehicle's minimum or maximum speed capability, by removing designated seating positions to justify a reduction in its GVWR, and by adding equipment items required by FMVSS No. 500 that were not installed on the vehicle as originally manufactured, US SPECS would not be conforming something originally manufactured as an LSV to applicable FMVSS, as RI's are authorized to do, but would instead be converting a passenger car, multi-purpose vehicle, truck or bus into an LSV.

In view of these considerations, NHTSA has decided to deny the petition under 49 CFR 593.7(e). That section provides that a notice of denial must state that the Administrator will not consider a new petition covering the model that is the subject of the denial until at least 3 months from the date of the notice of denial. Because the 2012 Lita GLE–6 would not be classified as an LSV as originally manufactured, NHTSA will not consider any further import eligibility petitions covering that vehicle as an LSV.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.95 and 501.8.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

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DEPARTMENT OF THE TREASURY

Office of The Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: December 2, 2014.

Danielle Rolfes,

International Tax Counsel (Tax Policy).

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Guidance Relating to the Provision of Certain Temporary Sanctions Relief, as Extended Through June 30, 2015

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, publication of guidance.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing Guidance