



December 15, 2021

VIA EMAIL

Ms. Loretta Gutshall
VIP Traders, Inc.
2329 South Hayden Road
Airway Heights, WA 99001
vip_traders04@yahoo.com

**Re: VIP Traders, Inc.
Registered Importer No. R-96-127
NHTSA File No.: 12-2018-04**

Notice of Suspension of VIP Traders, Inc.

Dear Ms. Gutshall:

We are writing to provide VIP Traders, Inc. (VIP Traders) with written notice of the decision by the National Highway Traffic Safety Administration (NHTSA or the agency) to suspend the registered importer (RI) registration of VIP Traders for 340 days, effective as of the date of this notice (Notice of Suspension). *See* 49 C.F.R. § 592.7(b)(2).

NHTSA proposed that the RI registration of VIP Traders be suspended for 365 days in the agency's June 23, 2020 Notice to Show Cause Why the Registration of VIP Traders Should Not be Suspended for One Year (Notice to Show Cause). NHTSA has considered the response of VIP Traders to the Notice to Show Cause and finds that the evidence supports that VIP Traders committed fourteen of the fifteen violations alleged by NHTSA in the Notice to Show Cause. Based on these violations, **the registered importer (RI) registration of VIP Traders is suspended for 340 days, effective as of the date of this notice.** The reasons for this decision are set forth below.

A. Effect of Suspension

The RI registration of VIP Traders is suspended as of the date of this notice. During the term of this suspension, VIP Traders is not considered a RI, does "not have the rights and authorities" of a RI," and "must cease importing, and will not be allowed to import, vehicles for resale." 49 C.F.R. § 592.7(d)(1). As required by the regulations, NHTSA will notify U.S. Customs and Border Protection (CBP) of this suspension not later than the first business day after the date of this notice. *Id.*

With respect to each nonconforming vehicle in its possession, VIP Traders must, within thirty (30) days of the date of this notice and within 120 days of the vehicle's entry into the United

States, either 1) conform the vehicle, affix to it a certification label, and submit a certification of conformance to NHTSA or 2) export the vehicle. *Id.* § 592.7(d)(2)-(3). Separately, with respect to any vehicle imported pursuant to 49 C.F.R. § 591.5(f)(2)(ii) that VIP Traders has agreed to bring into compliance with all applicable standards and for which it has not furnished a certificate of conformity to NHTSA, VIP Traders must immediately notify the owner of the vehicle in writing that its registration has been suspended. *Id.* § 592.7(d)(4). VIP Traders remains obligated under 49 C.F.R. § 592.6(i) to notify owners of and to remedy noncompliances or safety related defects for each vehicle for which it has furnished a certificate of conformity to NHTSA. *Id.* § 592.7(e).

The RI registration of VIP Traders will remain suspended through November 20, 2022, 340 days from the date of this Notice of Suspension or on such earlier date as NHTSA may subsequently determine is appropriate. *Id.* § 592.7(c)(5). As a pre-condition of its reinstatement, VIP Traders will be required to pay any outstanding annual fees, submit any outstanding annual statements, and otherwise comply with the requirements applicable to RIs. 49 C.F.R. Part 592. There is no opportunity to seek administrative reconsideration of this decision. *Id.* § 592.7(b)(2). Judicial review of a final agency action is available in a United States District Court. *See* 5 U.S.C. § 704.

B. Summary of Enforcement Proceedings

As required by the applicable regulations, NHTSA provided VIP Traders with notice of the facts giving rise to the allegations of violations and the length of the proposed suspension in its Notice to Show Cause. *See* 49 C.F.R. § 592.7(b)(2). The categories of violations alleged in the Notice to Show Cause were as follows:

- 1) falsely certifying compliance on four (4) imported, noncomplying vehicles by affixing certification labels to the vehicles prior to completion of all necessary conformance modifications and repairs, in violation of 49 U.S.C. § 30115 and 49 C.F.R. § 592.6(c);
- 2) making false statements in four (4) certifications of conformance submitted for imported vehicles, in violation of 49 C.F.R. § 592.6(d)(1); and
- 3) selling or offering seven (7) imported vehicles for sale (or releasing custody of the vehicles to another person for purposes of selling the vehicles prior to expiration of the mandatory waiting period), in violation of 49 C.F.R. § 592.6(e)(2), (5).

The Notice to Show Cause included information regarding the inspection of VIP Traders facilities by a NHTSA inspector, the statements made by the owner of VIP Traders during the inspection, and copies of the photographs taken by the inspector and the documents gathered by the inspector that supported the allegations of violations.

The Notice to Show Cause also provided VIP Traders with the opportunity to present data, views, and arguments, in writing and/or in person (via teleconference), within 30 days of the date of the notice, as to whether the violations occurred, why the registration ought not to be

suspended or revoked, or whether the suspension should be shorter than proposed. 49 C.F.R. § 592.7(b)(2).

VIP Traders submitted a written response to the Notice to Show Cause, through its representative, on July 20, 2020 (Written Response).¹ A meeting between NHTSA and VIP Traders was held on July 21, 2020 (Meeting).²

C. NHTSA's Analysis and Findings

NHTSA is suspending VIP Traders' RI registration based on its determination that VIP Traders committed multiple, serious violations of the regulations applicable to RIs by falsely certifying vehicles before they were conformed, falsely certifying to NHTSA that conformance modifications had been performed by employees of VIP Traders, and improperly selling, offering for sale, or releasing custody of vehicles for the purpose of sale prior to expiration of the mandatory waiting period. VIP Traders admits the majority of the violations relating to the mandatory waiting period, but disputes the remaining violations, claiming that the vehicles at issue were properly conformed before it affixed certification labels on the vehicles or had a third-party perform "cosmetic" work. As explained below, NHTSA concludes that these arguments are not supported by the evidence and are contradicted by prior statements or representations made by VIP Traders.

1. VIP Traders Falsely Certified Compliance with the FMVSS By Affixing Certification Labels to Imported Vehicles Prior to Completion of all Conformance Modifications and Repairs in Violation of 49 U.S.C. § 30115 and 49 C.F.R. § 592.6(c).

In the first category of alleged violations, NHTSA alleged in the Notice to Show Cause that VIP Traders affixed certification labels on four separate vehicles prior to performing all necessary conformance modifications. NHTSA alleged that, because the vehicles had not yet been modified into conformance, the certification labels were necessarily false. These alleged

¹ The Notice to Show Cause included specific facts, conclusions, and determinations regarding specific vehicles, violations, and certifications, together with supporting exhibits, which are incorporated by reference into this Notice of Suspension. The Written Response of VIP Traders is also incorporated by reference.

² The purpose of the Meeting was to provide VIP Traders with the opportunity to present information to the agency pursuant to 49 C.F.R. § 592.7(b)(2). A meeting held pursuant to this regulation is not a formal adjudication hearing or proceeding subject to 5 U.S.C. §§ 556-557 and does not otherwise confer a RI with the right to question NHTSA employees or compel the attendance of witnesses or the production of documents. VIP Traders was represented at the Meeting by Ms. Loretta Gutshall, the owner and President of VIP Traders, and VIP Traders' representative, Lance Beyer. NHTSA was represented at the Meeting by Jeffrey Giuseppe, NHTSA's then Associate Administrator for Enforcement, Otto Matheke, Director of NHTSA's Office of Vehicle Safety Compliance, Brodie Mack, Chief of NHTSA's Import and Certification Division in the Office of Vehicle Safety Compliance, Jeff Eyres and Alexandra Cohen, attorneys in NHTSA's Office of Chief Counsel, and Kenneth Copeland, the NHTSA inspector who conducted an on-site inspection of the VIP Traders facilities in Airway Heights, Washington. During the Meeting, VIP Traders repeated the arguments set forth in its Written Response, but it did not make any new arguments.

violations were based on observations made by, photographs taken by, and information documented by the NHTSA inspector during his inspection of the VIP Traders facilities.

The Safety Act specifically prohibits certification of a vehicle “if, in exercising reasonable care, the [certifier] has reason to know the certificate is false or misleading in a material respect.” *See* 49 U.S.C. § 30115(a). A RI that places a certification label on a vehicle *prior* to completing all necessary conformance modifications and repairs is falsely certifying that the vehicle conforms with all applicable Federal Motor Vehicle Safety Standards (FMVSS) in violation of 49 U.S.C. § 30115(a).

The regulations applicable to the RI program likewise require that a RI take possession of each vehicle and perform all necessary conformance modifications and repairs at a facility previously identified for these functions. *See* 49 C.F.R. § 592.6(c). The regulations further require that, upon completion of these modifications and repairs, a RI must apply a permanent label certifying that the vehicle complies with all FMVSS and bumper standards. 49 C.F.R. § 592.6(c).

With respect to this first category of violations, NHTSA’s Notice to Show Cause specifically alleged that:

During the Inspection, the NHTSA Inspector reviewed vehicles on VIP Traders’ import lot and observed certification labels were placed on the imported vehicles before any conformance modifications had occurred. The NHTSA Inspector asked Loretta Gutshall (a principal of VIP Traders) when certification labels are placed on VIP Traders’ imported vehicles. She indicated certification labels are placed as soon as the vehicles arrive at its lot and confirmed that modifications had not been performed before application of the label.

The Notice to Show Cause identified each of the four vehicles at issue with these violations and referenced, as exhibits, photographs of each of the vehicles taken by the NHTSA inspector showing that VIP Traders had placed a certification label on the vehicles even though the instrument cluster on each of the vehicles had been removed and had not yet been replaced with a repaired or otherwise compliant instrument cluster.³

VIP Traders disputes the alleged violations with respect to each of the four vehicles. VIP Traders argues that there were no violations because each of these vehicles was already conformed before VIP Traders affixed a certification label. According to VIP Traders’ Written Response:

[The NHTSA inspector] did not realize that the vehicles were in compliance with US FMVSS when the labels were affixed. The subject vehicles required only changing an option to show the odometer reading in miles, which included the “miles” descriptor. The speedometer was dual scale with both km/h and mph descriptors in their proper position.

³ The four vehicles were: 1) a 2015 Cadillac, VIN 2G61R5S33F9127731; 2) a 2015 Chevrolet Silverado K2500HD, VIN 1GC1KWE86FF599850; 3) a 2016 GMC Sierra K2500, VIN 1GT120E8XFF190649; and 4) a 2015 GMC Sierra K3500 Denali, VIN 1GT424E80FF646517.

Typically, the only actual compliance modification for the vehicles was changing the option for odometer display. Some did not even require that, since the odometer had the proper descriptors displayed.

As part of this argument, VIP Traders contends in its Written Response that the incomplete modifications the NHTSA inspector observed -- removed and missing instrument clusters on each of the vehicles -- were being performed for cosmetic reasons, at a customer's request, rather than as conformance modifications:

If Ms. Gutshall told [the NHTSA inspector] that "modifications" would subsequently be performed, she was referring to changing the cluster to one which looked like a US cluster, miles per hour in the predominant position. This was done to many vehicles at the customer's request, not as part of a safety modification -- it already complied. Clusters that were going to be "Americanized" would be removed following the compliance process.

VIP Traders submitted no evidence regarding any of the four vehicles in support of its contention that each of the vehicles was compliant when VIP Traders affixed the certification label. VIP Traders submitted, for example, no evidence that any of the vehicles, as imported, was already equipped with a compliant "dual scale" speedometer, no evidence that the odometer display on any of the vehicles was already compliant or modified into compliance, and no evidence regarding any such customer request for any of the four vehicles to have the instrument cluster replaced for cosmetic purposes.

Each of the four vehicles at issue was imported by VIP Traders under a "Box 3" sworn declaration to the Federal government stating that "[t]he vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards." *See* 49 C.F.R. § 591.5(f).⁴ The statement of conformity (including the certification of conformance) VIP Traders submitted to NHTSA for each of these four vehicles likewise represented that the vehicle subsequently had been modified into conformity with FMVSS 101.⁵ NHTSA therefore rejects any suggestion that

⁴ The Box 3 declarations VIP Traders made for the 2015 Cadillac, VIN 2G61R5S33F9127731, and the 2016 GMC Sierra K2500, VIN 1GT120E8XFF190649, are documented in CBP's "Entry and PGA data" for Entry No. 799-01311288, which is attached as Exhibit 13. The Box 3 declarations VIP Traders made for the 2015 Chevrolet Silverado K2500HD, VIN 1GC1KWE86FF599850, and 2015 GMC Sierra K3500 Denali, VIN 1GT424E80FF646517, are documented in CBP's "Entry and PGA data" for Entry No. 799-01311171, which is attached as Exhibit 14. Although Exhibits 13 and 14 were not included with the agency's Notice to Show Cause, the agency is considering them in response to an assertion made by VIP Traders that was unsupported by any evidence. Likewise, the information included in Exhibits 13 and 14 is information submitted by VIP Traders to the United States in connection with the importation of these four vehicles.

⁵ The statement of conformity (which includes the certifications of conformance) that VIP Traders submitted to NHTSA for these four vehicles are attached as Exhibit 15 (the 2015 Cadillac, VIN 2G61R5S33F9127731), Exhibit 16 (the 2015 Chevrolet Silverado K2500HD, VIN 1GC1KWE86FF599850), Exhibit 17 (the 2016 GMC Sierra K2500, VIN 1GT120E8XFF190649), and Exhibit 18 (the 2015 GMC Sierra K3500 Denali, VIN 1GT424E80FF646517). Although Exhibits 15-18 were not included with the agency's Notice to Show Cause, the agency is considering them in response to an assertion made by VIP Traders that was unsupported by any evidence.

these vehicles already conformed with the FMVSS when imported and needed no modifications to make them compliant.

Each of the four vehicles at issue was imported from Canada and previously certified by the vehicle manufacturer as compliant with the Canadian Motor Vehicle Safety Standards (CMVSS). With respect to speedometer displays, the CMVSS provide that:

A speedometer shall indicate the speed of the vehicle in kilometres per hour or in kilometres per hour and miles per hour. The unit or units of measurement shall be identified on the speedometer or at a location adjacent to it.

CMVSS 101(4).⁶ In contrast, to be compliant with FMVSS 101, the speedometer on a vehicle must display speed only in units identified as miles per hour (“MPH”) or both miles per hour (“MPH”) and kilometers-per-hour (“km/h”). *See* 49 C.F.R. § 571.101, Tbl. 1. To modify a vehicle imported from Canada that is not equipped with a compliant, dual scale speedometer, a RI must remove the existing instrument cluster and either replace it with a compliant instrument cluster or “reflash” (i.e., re-program) the instrument cluster to ensure that the speedometer does not and is not capable of displaying speed in only kilometers per hour. *See id.* On each of the vehicles at issue here, the NHTSA inspector documented that VIP Traders had affixed a certification label to the vehicle even though the instrument cluster had been removed and had not yet been replaced.

The argument that these vehicles were conforming or had already been conformed before VIP Traders affixed its certification label also is directly contradicted by Ms. Gutshall’s admission during the inspection that certification labels are placed on the vehicles as soon as they arrive at the lot and that modifications had not been performed before application of the label. In its Written Response, VIP Traders attempts to explain away, but does not deny, that Ms. Gutshall made this admission:

Perhaps Ms. Gutshall’s answer was intended to assure and impress the inspector that the compliance process for each vehicle is performed immediately. That her company was on top of each vehicle.

* * *

Likewise, Exhibits 15-18 are Statements of Conformity that were completed, signed, and submitted to NHTSA by VIP Traders.

⁶ The text of this CMVSS is available at https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1038/FullText.html.

If Ms. Gutshall told [the NHTSA inspector] that “modifications” would subsequently be performed, she was referring to changing the cluster to one which looked like a U.S. cluster, miles per hour in the predominate position.⁷

NHTSA finds these explanations unpersuasive. If, as VIP Traders now contends, the vehicles in question had already been conformed, Ms. Gutshall presumably would have explained this to the NHTSA inspector during the inspection rather than stating that the certification labels were placed on the vehicles as soon as they arrived on the lot and before any modifications were done. Likewise, if, as VIP Traders now contends, the modifications referred to by Ms. Gutshall were being done for cosmetic purposes at a customer’s request rather than as conformance modifications, Ms. Gutshall presumably would have explained this to the NHTSA inspector during the inspection while he was documenting the missing instrument clusters on certified vehicles.

VIP Traders’ response to this first category of violations is also contradicted by the statements of conformity it submitted to NHTSA for these vehicles. These statements of conformity include a certified representation by VIP Traders to NHTSA that it had affixed a certification label on the vehicle either seven days (on two of the vehicles) or one day (on the other two vehicles) *before* it was even admitted for entry into the United States.⁸ These previous certified representations directly contradict VIP Traders’ current contention that it affixed certifications only after it took possession of the vehicles in the United States and performed all necessary conformance modifications.⁹

As previously noted, there is no evidence suggesting that any of the four vehicles at issue was originally equipped with a FMVSS 101 compliant speedometer. To the contrary, publicly available information regarding the vehicles at issue contradicts any such claim.¹⁰ There also is

⁷ Although VIP Traders does not dispute deny that Ms. Gutshall made these statements, which were referenced in the Notice to Show Cause, NHTSA attaches the report of investigation (ROI) documenting these statements as Exhibit 19.

⁸ The 2015 Chevrolet Silverado K2500HD, VIN 1GC1KWE86FF599850, and the 2015 GMC Sierra K3500 Denali, VIN 1GT424E80FF646517, were permitted entry into the United States by CBP on November 14, 2018. *See* Exhibits 13, 14. The statement of conformity submitted to NHTSA by VIP Traders for each of these vehicles stating that a certification label had been affixed was dated November 7, 2018. *See* Exhibits 16, 18. The 2015 Cadillac, VIN 2G61R5S33F9127731, and the 2016 GMC Sierra K2500, VIN 1GT120E8XFF190649, were also permitted entry into the United States by CBP on November 14, 2018. *See* Exhibits 13, 14. The statement of conformity submitted to NHTSA by VIP Traders for each of these vehicles stating that a certification label had been affixed was dated November 13, 2018. *See* Exhibits 15, 17. NHTSA notes that VIP Traders, as the importer of record for each of these vehicles and the submitter of the statements of conformity, has had access to this same information.

⁹ Those previous certified representations are either false or demonstrate that VIP Traders violated the law by affixing certification labels before the noncompliant vehicles were even imported and brought into compliance with the FMVSS.

¹⁰ NHTSA reviewed publicly available owner’s manuals that cover U.S., Canadian, and Mexican versions of each of the four vehicles at issue to determine whether the owner’s manuals illustrated or described a compliant “dual scale” speedometer. The owner’s manual for the 2015 Cadillac at issue states that the “speedometer shows the vehicle’s speed in *either* kilometers per hour (km/h) *or* miles per hour (mph).” *See* <https://my.cadillac.com/content/dam/>

persuasive evidence establishing that the NHTSA inspector observed four unconformed vehicles that had been improperly certified as conforming, and that Ms. Gutshall admitted to the NHTSA inspector that certification labels were placed on the vehicles as soon as they arrived on the lot and before the necessary conformance modifications had been made. The weight of the evidence establishes that VIP Traders placed its certification label on each of the four vehicles at issue before the instrument clusters were removed for conforming modifications.

As an alternative argument, VIP also argues in its Written Response that:

[e]ven if the certification labels were affixed prior to completion of the compliance modifications, this was an inadvertent error with no impact on vehicle safety. The label would have been part of the “compliance kit” provided to the employee to perform. It would be only natural for the certification label to be one of the first tasks completed.

VIP Traders offered no evidence establishing that these violations were the result of an “inadvertent error” rather than, as Ms. Gutshall told the NHTSA inspector, the normal practice and custom of VIP Traders. The regulations likewise do not include an exception for inadvertent or unintentional violations. Under either scenario, however, NHTSA is persuaded that VIP Traders has failed to take seriously the important process of properly conforming vehicles and then (and only then) certifying them as compliant.

With respect to this first category of violations, NHTSA finds that VIP Traders improperly placed its certification label on each of the four vehicles prior to completing all necessary conformance modifications. This constitutes four separate violations of 49 U.S.C. § 30115(a) and 49 C.F.R. § 592.6(c).

2. VIP Traders Made False Certifications on Certifications of Conformance Submitted to NHTSA in Violation of 49 C.F.R. § 592.6(d)(1).

In the second category of violations, NHTSA alleged that VIP Traders submitted false certifications of conformance to NHTSA on four (4) vehicles. The Notice to Show Cause alleged that each of these certifications falsely stated that all conformance modifications had been performed by a VIP Traders employee.

gmownercenter/gmna/dynamic/manuals/2015/cadillac/escalade/2k15escalade2ndPrint.pdf (emphasis added). The owner’s manual for the 2015 Chevrolet Silverado K2500HD at issue states that the “speedometer shows the vehicle’s speed in *either* kilometers per hour (km/h) *or* miles per hour (mph).” See https://my.gm.com/content/dam/gmownercenter/gmna/dynamic/manuals/2015/chevrolet/silverado_1500/2k15silverado2ndPrint.pdf (emphasis added). The owner’s manual for the 2016 GMC Sierra K2500 at issue likewise states that the “speedometer shows the vehicle’s speed in *either* kilometers per hour (km/h) *or* miles per hour (mph).” See <https://my.gmc.com/content/dam/gmownercenter/gmna/dynamic/manuals/2016/GMC/Sierra/2k16sierra2ndPrint.pdf> (emphasis added). The owner’s manual for the 2015 GMC Sierra K3500 Denali at issue likewise states that the “speedometer shows the vehicle’s speed in *either* kilometers per hour (km/h) *or* miles per hour (mph).” See https://my.gm.com/content/dam/gmownercenter/gmna/dynamic/manuals/2015/gmc/sierra_3500hd/2k15sierra2ndPrint.pdf (emphasis added). These owner’s manuals suggest that the speedometer in vehicles certified to meet Canadian standards is not a “dual scale” compliant speedometer, as VIP Traders contends, and that speedometer on these vehicles is capable of displaying vehicle speed in only kilometers per hour and therefore is not compliant with the FMVSS.

A RI must, after an imported vehicle enters the United States, modify the nonconforming vehicle to comply with all applicable FMVSS and remedy (or have remedied) all noncompliances and defects that are the subject of any pending safety recalls. *See* 49 U.S.C. § 30146(a); 49 C.F.R. § 592.6(c). Conformity modifications may only be performed by a RI, and a RI is not permitted to delegate, contract with others, or have non-employee agents perform conformance modifications. *See* 49 U.S.C. § 30146(a); 49 C.F.R. § 592.6(c), (d)(1).

A RI must also, for each motor vehicle it imports, certify to the agency that the vehicle was brought into conformity within 120 days after import. *See* 49 C.F.R. § 592.6(d). The individual signing the certification of conformance must also certify that he or she either personally witnessed the modifications being performed or reviewed full documentation of the modifications performed by a RI employee and is “satisfied that the vehicle as modified complies.” 49 C.F.R. § 592.6(d)(1).

NHTSA’s Notice to Show Cause to VIP Traders alleged that VIP Traders submitted false certifications for four vehicles in violation of 49 C.F.R. § 592.6(d)(1). Specifically, the Notice to Show Cause alleged that:

Loretta Gutshall (a principal of VIP Traders) signed a certification of conformance (as part of a form entitled “Statement of Conformity”) for each of the vehicles identified below with the certification that: “I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because the person who performed the necessary modifications to the vehicle is an employee of VIP Traders and has provided full documentation of the work that I have reviewed, and I am satisfied that the vehicle as modified complies.”

Ms. Gutshall advised the NHTSA Inspector that VIP Traders contracted with Kelowna Instruments to remove, modify, and replace vehicle clusters for all imported vehicles from Canada, and she was aware it was a violation of federal regulations to utilize someone other than an employee to perform the work. She also indicated she urged the Canadian-based company to open an office in Spokane, Washington, so she could have it modify VIP Traders’ import dash clusters. Ms. Gutshall took the Inspector to Kelowna’s Spokane office where a demonstration of the type of modifications performed was provided by a company technician, Mitchell Realff, the General Manager for Kelowna Instruments. Mr. Realff provided an email describing the modifications made by his company and why they are necessary to bring the vehicle into conformity with U.S. requirements. When Ms. Gutshall signed certifications of conformance for the following vehicles, she knew the modifications were not made by an employee of VIP Traders.

The Notice to Show Cause identified each of the four vehicles at issue with these violations and referenced the certification of conformance submitted by VIP Traders for each of these vehicles.¹¹ In each of these certifications, Ms. Gutshall certified, on behalf of VIP Traders, that

¹¹ The four vehicles were 1) a 2014 Jeep Wrangler, VIN 1C4AJWBG9EL308692; 2) a 2013 Dodge Ram, VIN 1C6RR7GTXDS570420; 3) 2015 Dodge Ram, VIN 1C6RR7MT2FS576557; and 4) a 2016 Ford F350, VIN 1FT8W3BT7GEA34542.

all conformance modifications had been performed by employees of VIP Traders. *See* Exhibits 5-001, 6-001, 7-001, 8-001. Each of these four vehicles had been imported from Canada by VIP Traders under a Box 3 sworn declaration to the Federal government stating that “[t]he vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards.” *See* 49 C.F.R. § 591.5(f).¹² It is undisputed that Kelowna removed, modified, and/or replaced the instrument clusters on each of these vehicles.

VIP Traders makes the same basic argument in response to the second category of alleged violations that it made in response to the first category of alleged violations. VIP Traders argues that the work performed by Kelowna was cosmetic work done at the request of a customer rather than a conformance modification, and that each of the vehicles was already in conformance or had previously been conformed and certified as conforming before Kelowna removed, modified, and then replaced the instrument cluster in each of these vehicles. As with the first category of violations, VIP Traders provided no evidence supporting this argument with respect to any of the four vehicles.

In support of this argument, VIP Traders also refers to statements from the email provided to NHTSA by Kelowna Instruments saying that the NHTSA inspector, during his visit to Kelowna, provided positive feedback regarding “how we performed our modifications” and never brought up any issues with a third-party service provider. This same email, however, makes clear that Kelowna understood that it was performing conformance modifications (and not cosmetic changes) with the statement that, “[t]hrough programming of the speedometers we’re able to bring a speedometer up to US standards in every measurable way.” This contention by VIP Traders also fails to recognize that NHTSA does not regulate third-party service providers and that the inspector’s visit to Kelowna’s Spokane location, which was suggested and arranged for by VIP Traders, was not a compliance inspection of Kelowna but rather to further the inspection of VIP Traders. Finally, this contention also fails to acknowledge that, prior to this visit, Ms. Gutshall had already admitted to the NHTSA inspector that she knew the arrangement between VIP Traders and Kelowna to remove, modify, and replace vehicle clusters constituted a violation of federal regulations applicable to RIs.

For the same reasons described above with respect to the first category of alleged violations, NHTSA finds the response of VIP Traders to the second category of violations to be unpersuasive. VIP Traders submits no evidence supporting its arguments, which are directly

¹² The Box 3 declaration VIP Traders made for the 2014 Jeep Wrangler, VIN 1C4AJWBG9EL308692, is documented in CBP’s “Entry and PGA data” for Entry No. 799-01310082, which is attached as Exhibit 20. The Box 3 declaration VIP Traders made for the 2013 Dodge Ram, VIN 1C6RR7GTXDS570420, is documented in CBP’s “Entry and PGA data” for Entry No. 799-00929296, which is attached as Exhibit 21. The Box 3 declaration VIP Traders made for the 2015 Dodge Ram, VIN 1C6RR7MT2FS576557, is documented in CBP’s “Entry and PGA data” for Entry No. 799-01310140, which is attached as Exhibit 22. The Box 3 declaration VIP Traders made for the 2016 Ford F350, VIN 1FT8W3BT7GEA34542, is documented in CBP’s “Entry and PGA data” for Entry No. 799-01310108, which is attached as Exhibit 23. Although Exhibits 20-23 were not included with the agency’s Notice to Show Cause, the agency is considering them in response to an assertion made by VIP Traders that was unsupported by any evidence. Likewise, the information included in Exhibits 20-23 is information submitted by VIP Traders to the United States in connection with the importation of these four vehicles.

contradicted or unsupported by the admissions made by Ms. Gutshall at the time of the inspection,¹³ the email from Kelowna,¹⁴ the Box 3 declarations made by VIP Traders,¹⁵ the statements of conformity submitted by VIP Traders,¹⁶ and publicly available information regarding the four vehicles at issue.¹⁷ NHTSA incorporates its findings, analysis, and conclusions regarding the first category of alleged violations in support of its rejection of this same argument regarding the second category of alleged violations.

¹³ See Exhibit 19.

¹⁴ The email from Kelowna is quoted in the Written Response of VIP Traders.

¹⁵ See Exhibits 20, 21, 22, 23.

¹⁶ VIP Traders submitted statements of conformity stating that it had affixed a certification label on the vehicle before the vehicle was permitted entry into the United States on three of the four vehicles at issue. The 2013 Dodge Ram, VIN 1C6RR7GTXDS570420, was permitted entry into the United States on October 10, 2018 (Exhibit 21), and the statement of conformity VIP Traders submitted to NHTSA for this vehicle was dated October 8, 2018 (Exhibit 6-001). The 2015 Dodge Ram, VIN 1C6RR7MT2FS576557, was permitted entry into the United States on October 23, 2018 (Exhibit 22), and the statement of conformity VIP Traders submitted to NHTSA for this vehicle was dated October 22, 2018 (Exhibit 8-001). The 2016 Ford F350, VIN 1FT8W3BT7GEA34542, permitted entry into the United States on October 23, 2018 (Exhibit 23), and the statement of conformity VIP Traders submitted to NHTSA for this vehicle was dated October 20, 2018 (Exhibit 9-001). The fourth vehicle, the 2014 Jeep Wrangler, VIN 1C4AJWBG9EL308692, was permitted entry into the United States on October 22, 2018 (Exhibit 20), and the statement of conformity VIP Traders submitted to NHTSA for this vehicle was also dated October 22, 2018 (Exhibit 5-001).

¹⁷ As it did with the vehicles at issue in the first category of violations, NHTSA reviewed publicly available owner's manuals that cover U.S., Canadian, and Mexican versions of each of the four vehicles at issue to determine whether the owner's manuals illustrated or described a compliant "dual scale" speedometer. The owner's manual for the 2013 Dodge Ram at issue states that the "speedometer shows the vehicle speed in miles per hour and/or kilometers per hour (mph/km/h), which suggests that the speedometer in vehicles certified to meet Canadian standards is capable of displaying vehicle speed in only kilometers per hour and therefore is not compliant with the FMVSS. See <http://cdn.dealereprocess.com/cdn/service/manuals/ram/2013-150025003500.pdf> (emphasis added). The owner's manual for the 2015 Dodge Ram at issue likewise states that the "speedometer shows the vehicle speed in miles per hour and/or kilometers per hour (mph/km/h)," which suggests that the speedometer in vehicles certified to meet Canadian standards is capable of displaying vehicle speed in only kilometers per hour and therefore is not compliant with the FMVSS. See http://www.fcacanada.ca/owners/en/manuals/2015/2015E-RAM_15_25_35-OM-4th.pdf (emphasis added). The owner's manual for the 2014 Jeep Wrangler at issue includes an image of a dual scale speedometer, but the text of the manual states that "Display Units of Measure" is a programmable feature that can be changed for "Personal Settings." See <http://jeep-manual.ru/files/TJ/2014-wranglerunlimited.pdf>. The owner's manual for the 2016 Ford F350 at issue includes an image of a dual scale speedometer, but the text of the manual states that the "RESET button" is used to display "UNITS" in "English or Metric." See https://www.fordservicecontent.com/Ford_Content/Catalog/owner_information/2016-F-250-350-450-550-Owners-Manual-version-1_om_EN-US_04_2015.pdf. With respect to the 2014 Jeep Wrangler and the 2016 Ford F350, the owner's manuals for each of these vehicles makes clear that there are multiple display options, but does not describe or otherwise provide information regarding the display options available for Canadian certified vehicles. Neither owner's manual establishes that the Canadian certified version of the vehicle was originally equipped with a speedometer that made the vehicle compliant with the FMVSS. The greater weight of the evidence demonstrates that, contrary to the certification submitted to NHTSA by VIP Traders, conformance modifications on both vehicles were performed by a third-party.

With respect to this second category of alleged violations, NHTSA finds that VIP Traders submitted false certifications of conformance to NHTSA for each of the four vehicles at issue. This constitutes four separate violations of 49 C.F.R. § 592.6(d).

VIP Traders Sold or Offered Imported Vehicles for Sale (or Released Custody of the Vehicles to Another Person for Purposes of Selling the Vehicles) Prior to Expiration of the Mandatory Waiting Period in Violation of 49 C.F.R. § 592.6(e)(2), (5).

In the third category of alleged violations, NHTSA alleged that VIP Traders sold, titled, or released vehicles in violation of the mandatory waiting period that follows a RI's submission of a certification of conformance to NHTSA.

The regulations provide that, following submission of the certification of conformance, a RI must maintain possession of the vehicle and not sell or offer it for sale or release custody of the vehicle to another person for purposes of selling the vehicle until either the RI receives a bond release letter from the agency or until 30 days have elapsed after the agency receives the certification of conformance. 49 C.F.R. § 592.6(e)(2), (5). The registered importer therefore must take possession of the vehicle to perform the conformance modifications, and it must maintain possession of the vehicle during the waiting period following completion of the conformance modifications and submission of the conformity package to the agency. Compliance with this waiting period ensures that the agency has adequate time to review the conformity package and decide whether to inspect the vehicle.

The Notice to Show Cause alleged violations of the mandatory waiting period on seven different vehicles, identified each of the vehicles, and stated the date on which NHTSA received the certification of conformance for each of these vehicles, the date on which NHTSA released the bond on each of these vehicles, and the date on which VIP Traders sold, titled, or otherwise released custody of each of these vehicles. The Notice to Show Cause also referenced, as exhibits, documents establishing these dates.¹⁸

VIP Traders admits the violation on five of these seven vehicles and disputes the violation on two of these vehicles. The admitted violations involve a 2014 Jeep Wrangler, a 2013 Dodge Ram 1500, a 2017 GMC Sierra, a 2016 Ford F350, and a 2015 Ford F150.

The first disputed alleged violation in this category involves a 2015 Dodge Ram 1500. In the Notice to Show Cause, the agency alleged that:

¹⁸ The seven vehicles and corresponding exhibits involved in the third category of alleged violations are: 1) a 2014 Jeep Wrangler, VIN 1C4AJWBG9EL308692 (Exhibit 5); 2) a 2013 Dodge Ram 1500, VIN 1C6RR7GTXDS570420 (Exhibit 6); 3) a 2017 GMC Sierra, VIN 1GTV2MEC6HZ137123 (Exhibit 7); 4) a 2015 Dodge Ram 1500, VIN 1C6RR7MT2FS576557 (Exhibit 8); 5) a 2016 Ford F350, VIN 1FT8W3BT7GEA34542 (Exhibit 9); 6) a 2015 Ford F150, VIN 1FTEW1EP5FFA43741 (Exhibit 10); and 7) a 2017 Jeep Wrangler, VIN 1C4AJWAG1HL631849 (Exhibit 11).

In an email dated December 18, 2018, David Pendergraft, General Manager of DAA Northwest (an automobile wholesaler), stated this vehicle was consigned to the auction on November 21, 2018, and was sold on November 29, 2018. Documentation obtained from CARFAX also shows the vehicle was sold at auction on November 29, 2018. A VIP Traders list identifying conformity packages submitted to NHTSA on October 25, 2018, includes this vehicle. An email from Loretta Gutshall (a principal of VIP Traders) dated December 12, 2018, confirms that the conformity packages on the VIP Traders list noted above were received by NHTSA on October 29, 2018. NHTSA issued a Bond Release Letter on December 4, 2018. VIP Traders should not have sold or offered to sell this vehicle or released custody of this vehicle to another person for purposes of selling the vehicle prior to November 28, 2018.

In response to this alleged violation, VIP Traders contends in its Written Response that the act of consigning “does not necessarily mean that it was physically at the auction or being offered for sale on that date.” VIP Traders offered no evidence demonstrating that it retained physical possession or legal custody of the vehicle. Moreover, the regulation prohibits a RI from releasing custody of the vehicle to another person *for purposes of selling the vehicle*. 49 C.F.R. § 592(e)(5). By consigning the vehicle to an auction on November 21, 2018, VIP Traders was releasing custody by assigning its possessory rights to another company for purposes of selling the vehicle. Without legal custody and possessory rights to the vehicle, VIP Traders could not, as it is required to do, export the vehicle if it was not timely conformed and certified. *Id.* §§ 591.8(d)-(e), 592(h). The regulation also prohibits a RI from offering a vehicle for sale during the mandatory waiting period. *Id.* § 592(e)(2). By consigning the vehicle to an auction, regardless of whether it maintained physical possession of the vehicle, VIP Traders was using a third party to offer the vehicle for sale prior to expiration of the mandatory waiting period. This constitutes a violation of the mandatory waiting period.

The second disputed alleged violation in this third category involves a 2017 Jeep Wrangler. In the Notice to Show Cause, the agency alleged that:

The Arkansas Department of Finance and Administration, Office of Motor Vehicles, provided State of Arkansas vehicle registration information showing this vehicle was titled under the name of Auto Exports International LLC on October 31, 2018.

A VIP Traders list identifying conformity packages submitted to NHTSA on October 25, 2018, includes this vehicle. An email from Loretta Gutshall (a principal of VIP Traders) dated December 12, 2018 confirms that the conformity packages on the list noted above were received by NHTSA on October 29, 2018. NHTSA issued a Bond Release Letter on December 4, 2018. VIP Traders should not have sold or offered to sell this vehicle or released custody of this vehicle to another person for purposes of selling the vehicle prior to November 28, 2018.

In response to this alleged violation, VIP Traders argues that the act of titling was performed by a third-party over which it had no control. NHTSA agrees that, without evidence demonstrating a

connection between VIP Traders and the actions of a third-party that titles the vehicle, the evidence does not support the finding of a violation of the waiting period for this vehicle.

With respect to this third category of alleged violations, NHTSA finds that VIP Traders sold, offered for sale, or released custody of six vehicles for purposes of sale during the mandatory waiting period. This constitutes six separate violations of 49 C.F.R. § 592.6(e).

D. Appropriate Length of Suspension of VIP Traders

A RI registration permits RIs to do what others are prohibited from doing – i.e., to import nonconforming vehicles, conform those vehicles to all applicable FMVSS, certify them as compliant vehicles, and then release them for sale in the United States. *See* 49 U.S.C. §§ 30112(a)(1); 30141(a)(2). To obtain a RI registration, a person must apply to NHTSA and demonstrate its technical and financial ability to perform the duties and fulfill the obligations of a RI. *See* 49 U.S.C. §§ 30141(c)(1), 30147(b); 49 C.F.R. § 592.5. Likewise, a RI that violates the statutory or regulatory requirements applicable to the RI program is subject to suspension or revocation from the program by NHTSA. *See* 49 U.S.C. § 30141(c)(4); 49 C.F.R. § 592.7. NHTSA’s decision to suspend or revoke a RI’s registration therefore differs from other agency enforcement actions that result in an affirmatively punitive sanction against a regulated entity in the form of civil or criminal penalties. *See* 49 U.S.C. §§ 30165, 30170. In contrast to these other punitive enforcement sanctions, the effect of NHTSA’s decision to suspend or revoke a RI’s registration is that “the entity will not be considered a Registered Importer, will not have the rights and authorities appertaining thereto, and must cease importing, and will not be allowed to import, vehicles for resale.” 49 C.F.R. § 592.7(d)(1).

The regulations specifying the basis and process for RI suspensions do not include factors to be considered regarding the appropriate length of a suspension. *See* 49 C.F.R. § 592.7. Instead, in the context of making a final decision on a proposed suspension under 49 C.F.R. § 592.7(b), NHTSA’s primary consideration is whether the available information, including any “data, views, and arguments” submitted by the RI, supports a finding that one or more of the alleged violations occurred, and, if so, whether the RI’s registration should be suspended as previously proposed. *Id.* § 592.7(b)(2). Where, as here, the agency finds that the evidence fails to support one of the alleged violations, the agency considers whether the violations that did occur nonetheless support the proposed suspension or a shorter suspension or whether there is any new information or evidence (not considered by the agency when it proposed a suspension) supporting a departure from the proposed suspension. *See id.*

In its Written Response, VIP Traders addressed certain statutory and regulatory factors NHTSA considers in determining a civil penalty. *See* 49 U.S.C. § 30165(c); 49 C.F.R. § 578.8. These factors include the nature, circumstances, extent, and gravity of the violations. 49 U.S.C. § 30165(c); 49 C.F.R. § 578.8(a). Other discretionary factors include, as appropriate the “[k]nowledge by the respondent of its obligations,” “[a]ctions taken by the respondent to identify, investigate, or mitigate the condition,” and “[t]he appropriateness of [the suspension] in relation to the size of the business of the respondent, including the potential for undue adverse economic impacts.” 49 U.S.C. § 30165(c); 49 C.F.R. § 578.8(b). Without adopting or suggesting

the applicability of the civil penalty factors to a decision regarding the length of a RI suspension, NHTSA responds to the arguments made by VIP Traders based on those factors.

The violations committed by VIP Traders were serious, intentional, and systemic. The certification that a vehicle complies with all applicable FMVSS is one of the most important actions taken under the Safety Act. Certification is the formal culmination of a process requiring that the certifier understands all applicable FMVSS requirements and has exercised reasonable care to ensure that those requirements have been satisfied prior to certification. *See* 49 U.S.C. § 30115(a). The statements made by Ms. Gutshall to the NHTSA inspector during the course of the inspection demonstrate that, while VIP Traders was aware of its duties and responsibilities, it knowingly enacted policies and processes that were in direct violation of the legal requirements intended to protect public safety. These same statements strongly suggest that the violations in the first and second categories reflected normal business practices for VIP Traders and that these types of violations were far more pervasive than the four vehicles in each category identified during the inspection.

NHTSA previously has explained that:

As part of its responsibilities, an RI has the duty to ensure that each nonconforming vehicle that it imports or agrees to modify is brought into compliance with all applicable Federal motor vehicle safety and bumper standards, that an accurate statement of conformity is submitted to NHTSA certifying the vehicle's compliance following the completion of the modifications, and that the vehicle is not released for operation on the public roads until NHTSA releases the conformance bond. The agency approves RIs for the specific purpose of carrying out these important safety responsibilities. In this respect, each RI occupies a position of public trust to ensure that nonconforming vehicles imported under its auspices are properly conformed to all applicable standards before they are operated on public roads in the United States.¹⁹

VIP Traders betrayed the public trust of its RI registration when it certified noncompliant vehicles as compliant, submitted false certifications of conformance to NHTSA, and prematurely released vehicles during a mandatory waiting period intended to give NHTSA the time and access to inspect vehicles to ensure they were properly conformed and certified. NHTSA therefore concludes that a substantial suspension is an appropriate sanction.

There is no dispute that VIP Traders understood its obligations as a RI. All RIs annually certify their familiarity with and understanding of those obligations and their continued compliance with those obligations. *See* 49 C.F.R. § 592.5(f)(2)(i). VIP Traders has been an RI since 1996.

VIP Traders argues that the risk to public safety from the alleged violations “is minimal” because the violations relate to Canadian vehicles and issues like the units in which vehicle speed is

¹⁹ *Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards*, 76 Fed. Reg. 2631, 2632 (Jan. 14, 2011).

displayed on a speedometer. While NHTSA appreciates that different violations could create more significant safety risks, it also remains concerned that VIP Traders does not appreciate its role in and responsibility for public safety. NHTSA does not view these violations as isolated incidents, but rather as a clear indicator that VIP Traders is dismissive of and does not take seriously its regulatory safety obligations.

NHTSA also remains concerned that VIP Traders refuses to take any responsibility for the first two categories of violations. Despite the admissions made by Ms. Gutshall during the inspection regarding these violations and the photographs that recorded these violations, VIP Traders responded to the Notice to Show Cause with unsupported arguments that were directly contradicted by other evidence and statements made by VIP Traders. A RI's lack of candor with the agency is a significant breach of the public trust.

In its Written Response, VIP Traders stated that "Ms. Gutshall had invited the [NHTSA] inspection" and argued that this should be viewed as both "exculpatory" and supportive of the conclusion that any violations were unintentional. At the Meeting, however, Ms. Gutshall explained that she contacted NHTSA and "invited" the inspection because she had heard that a NHTSA inspector was in town and conducting unannounced investigations of other RIs and because she was scheduled to be out of town in the immediate future. She therefore preemptively invited the NHTSA inspector to the VIP Traders facilities before she left town. NHTSA appreciates that Ms. Gutshall, as the owner and President of VIP Traders, may have preferred that the inspection take place by invitation while she was present rather than after she left town, but it does not consider this fact exculpatory or supportive of the conclusion that any violations were unintentional.

VIP Traders also argues that the one-year suspension proposed in the Notice to Show Cause was disproportional to the alleged violations and would have a disproportional economic impact on its small business operations. More specifically, VIP Traders argues that a one-year suspension "would in fact terminate the company" and proposes a three-month probationary period as an appropriate sanction. VIP Traders, however, failed to submit any business or financial information supporting this contention. In determining an appropriate suspension, NHTSA has taken into account that VIP Traders is a small business and has considered options other than a substantial suspension. The agency has also considered that, by electing to become a registered importer, VIP Traders assumed the legal responsibilities of that program and is bound by the statutory and regulatory provisions governing that program, including the prospect of a suspension or revocation for failure to do so.

VIP Traders specifically requests a "probationary period of three months" in lieu of any suspension. The regulations, however, do not include a "probationary period" as a potential sanction. *See* 49 C.F.R. § 592.7. Moreover, even a three-month suspension is insufficient given the circumstances and nature of the violations. NHTSA has concluded, for all the reasons discussed above, that a substantial suspension is not only appropriate but necessary given the facts and circumstances surrounding these violations and the implications for public safety and the integrity of the registered importer program.

NHTSA's Notice to Show Cause alleged fifteen (15) separate violations, and NHTSA has concluded that VIP Traders committed fourteen (14) of these violations. Of the original proposed suspension of 365 days, NHTSA concludes that a suspension of 340 days is appropriate based on the circumstances as described herein, after consideration of the information presented by VIP Traders' in its Written Response and at the Meeting.

Sincerely,

Anne L. Collins
Associate Administrator
for Enforcement

cc: Lance Beyer, representative of VIP Traders, Inc. (via email)

Attachments: Exhibits 13 – 23.