

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**
1200 New Jersey Avenue SE
Washington, DC 20590

In re: _____)
)
Diversified Vehicle Services, Inc.)
Registered Importer No. 98-165)
_____)

CONSENT ORDER

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation (“DOT”). This Consent Order sets forth the requirements and performance obligations agreed to by Diversified Vehicle Services, Inc. (“DVS”), under the following terms and conditions.

I. NATURE OF THE ACTION

1. The National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. Chapter 301, provides for regulation of motor vehicles and motor vehicle equipment and the promulgation of safety standards applicable to motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator. *See* 49 C.F.R. § 1.95(a). All authorities lawfully vested in and reserved to the Administrator may be exercised by the Deputy Administrator. 49 C.F.R. § 501.5(a).

2. Under the Safety Act, motor vehicles that do not comply and that the fabricating manufacturers have not certified as complying with all applicable Federal Motor Vehicle Safety Standards (“FMVSS”) may not be imported into the United States. 49 U.S.C. § 30112(a). There are limited exceptions to this general prohibition.

3. One of the exceptions is that a nonconforming vehicle may be imported under the registered importer program. Under this program, a nonconforming vehicle may be imported by a registered importer (“RI”) if NHTSA has determined that the particular make, model, and model year of the vehicle is capable of being modified to comply with all applicable FMVSS. *See* 49 U.S.C. § 30141(a); 49 C.F.R. Part 593. The result of this determination is referred to as import eligibility. *See* 49 C.F.R. §§ 591.5(f), 593.8(a).

4. If an import eligible, nonconforming vehicle enters the United States, the importing RI must furnish a conformance bond for the vehicle. *See* 49 U.S.C. § 30141(d); 49 C.F.R. §§ 591.5(f)(1), 591.6(c), 591.8, 592.6(a).

5. After a vehicle enters the United States under the RI program, the RI must modify the nonconforming vehicle to comply with all applicable FMVSS. *See* 49 U.S.C. § 30146(a); 49 C.F.R. § 592.6(c). Conformance 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). The RI must also “remedy . . . all noncompliances and defects that are the subject of any pending safety recalls.” 49 C.F.R. § 592.6(c).

6. Following completion of all necessary conformance modifications and recall repairs, the RI must permanently affix to the vehicle a certification label that identifies the RI, certifies that the vehicle complies with all applicable FMVSS, and otherwise complies with 49 C.F.R. § 567.4. *See* 49 U.S.C. § 30146(a)(3); 49 C.F.R. § 592.6(c).

7. The RI must also submit, within 120 days after importing the vehicle, a certification stating (and other information supporting the statement) that the vehicle has been modified to comply with all applicable FMVSS, and that the vehicle is not subject to any safety

recalls or that all noncompliances or defects that are the subject of safety recalls have been remedied. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. § 592.6(d). The RI's certification of conformance is included on a Statement of Conformity, which includes additional information regarding the importation, modification, and certification of the vehicle and the completion of any open safety recalls on the vehicle. 49 C.F.R. § 592.6(d). The RI's submission of the Statement of Conformity (including the certification of conformance) to NHTSA is subject to the terms of 18 U.S.C. § 1001, which provides for criminal penalties against any person who knowingly and willfully makes false statements or submits false entries to the United States.

8. After submitting the Statement of Conformity, the RI must maintain possession of the vehicle until either NHTSA releases the conformance bond for the vehicle or 30 days have elapsed from the time NHTSA receives the Statement of Conformity. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. §§ 592.6(e), 592.8(a).

9. During the 30-day waiting period, the RI may not, among other things, operate the vehicle on public roads (except for limited purposes), store the vehicle on the premises of a motor vehicle dealer, sell or offer the vehicle for sale, title the vehicle in any other person's name, or release custody of the vehicle for any of these purposes. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. § 592.6(e)(1)-(5). If the RI receives "no written notice from [NHTSA] by the end of the 30th calendar day" after NHTSA receives the conformity package, the RI "may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed, or registered for use on the public roads." 49 C.F.R. § 592.8(e).

10. To ensure that a RI understands its legal duties and the importance of compliance with those duties, each applicant to be a RI must certify as follows:

I certify that I have read and understood the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of applicant] will comply with each such duty.

49 C.F.R. § 592.5(a)(11).

11. To maintain its registration, a RI must file an annual statement that includes the following certification of continued compliance:

I certify that I have read and understand the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of Registered Importer] continues to comply with the requirements for being a Registered Importer.

49 C.F.R. § 592.5(f)(2)(i).

12. The Safety Act and regulations thereunder also specify the basis and process for suspensions or revocations of the registration of a RI. *See* 49 U.S.C. § 30141(c)(4); 49 C.F.R. § 592.7.

13. NHTSA is authorized to automatically suspend the registration of a RI if, among other reasons, it determines that the RI has knowingly filed a false or misleading certification. 49 C.F.R. § 592.7(a)(2).

14. Separate from the process for automatic suspensions, NHTSA also is authorized to “revoke or suspend a registration” if a RI fails to comply with the requirements of specific statutory and regulatory obligations, including 49 U.S.C. §§ 30141-30147 and 49 C.F.R. Part 591 and Part 592. *See* 49 C.F.R. § 592.7(b)(1). If NHTSA has reason to believe a RI has violated one or more of these requirements and that suspension or revocation would be an appropriate sanction under the circumstances, NHTSA is required to notify the RI in writing of the facts giving rise to the allegation of the violation and the proposed length of a suspension, if applicable, or revocation.” 49 C.F.R. § 592.7(b)(2). The notice must also provide the RI an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. *Id.* If NHTSA decides, based on available information, that the RI has violated a statute or regulation, it may

suspend or revoke the RI's registration. NHTSA shall notify the RI in writing of the decision, including the reasons for it. *Id.*

15. Following an automatic suspension issued under Section 592.7(a)(2) or a suspension imposed under Section 592.7(b)(2), the registration of the RI will be reinstated after the expiration of the period of suspension specified by NHTSA, or such earlier date as NHTSA may subsequently decide is appropriate. 49 C.F.R. § 592.7(c)(2), (5).

16. With respect to any vehicle for which a RI has submitted a certification of conformance to NHTSA pursuant to 49 U.S.C. § 30146(a) and 49 C.F.R. § 592.6(d), NHTSA may also, by written notice, demand an inspection of the vehicle, challenge the certification of conformance, and/or require that additional information be submitted in support of the certification of conformance. *See* 49 U.S.C. § 30146(c)-(d); 49 C.F.R. § 592.8(c)-(d).

17. DVS was a RI between 1998 and June 30, 2021.

18. In a June 30, 2021 Notice of Automatic Suspension, NHTSA imposed an automatic suspension on DVS of 365 days pursuant to 49 C.F.R. § 592.7(a)(2), based on its determination that DVS knowingly submitted false or misleading certifications to the agency, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1). NHTSA denied DVS's request for reconsideration of the automatic suspension in an August 12, 2021 Notice of Denial.

19. In a June 30, 2021 Notice of Challenge, Inspection, and Required Evidence, NHTSA informed DVS that it was challenging the certifications it had submitted for certain vehicles, that it intended to inspect certain vehicles, and that additional evidence was required for certain certifications of conformity submitted to NHTSA. Pursuant to this notice, NHTSA inspected certain DVS vehicles on July 20-22, 2021.

20. In a June 30, 2021 Notice of Proposed Revocation, NHTSA provided DVS with written notice pursuant to 49 C.F.R. § 592.7(b)(2) that it was proposing to revoke DVS's RI registration. In addition to the violations set forth in the Notice of Automatic Suspension (which were incorporated by reference), the Notice of Proposed Revocation alleged, among other things, that DVS imported nonconforming and noncertified vehicles under customs declarations stating that the vehicles were conforming and certified, in violation of 49 C.F.R. § 591.5; imported nonconforming and uncertified vehicles under an inapplicable import eligibility code, in violation of 49 C.F.R. § 592.6(a); submitted Statements of Conformity to NHTSA that incorrectly stated certain FMVSS were inapplicable to imported nonconforming vehicles and that failed to include other required information, in violation of 49 C.F.R. § 592.6(d); sold or otherwise released imported vehicles and titled imported vehicles in a name other than its own before the mandatory waiting period had expired, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(e); failed to make timely, complete, and accurate responses to an Information Request from NHTSA, in violation of 49 C.F.R. § 592.6(o); and was owned, controlled by, employed, or associated with a person who was convicted of a crime related to the importation, purchase, or sale of motor vehicles, in violation of 49 C.F.R. § 592.5(f)(1).

21. DVS submitted written responses to the Notice of Proposed Suspension on September 3, 2021 and September 8, 2021. At the request of DVS, NHTSA also held a videoconference meeting with DVS and its counsel on September 8, 2021. In its written responses and during its September 8, 2021 meeting with NHTSA, DVS disputed certain of the violations alleged in the Notice of Proposed Revocation, contended that it had not acted with the intent to deceive NHTSA, and presented arguments as to why its registration should not be revoked.

22. NHTSA has not yet issued a decision on the Notice of Proposed Revocation.

23. To administratively resolve these issues, NHTSA and DVS have mutually agreed to this Consent Order.

24. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, and in accordance with the delegations at 49 C.F.R. §§ 1.95, 501.5(a), to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); to inspect and investigate, 49 U.S.C. § 30166(b)(1); to ensure that nonconforming motor vehicles are lawfully imported, modified to conform, and properly certified as conforming, 49 U.S.C. §§ 30141, 30146; and to require reports or answers to specific questions, 49 U.S.C. § 30166(e).

It is **AGREED** by DVS and **ORDERED** by NHTSA that the following provisions shall apply.

II. TERMS AND CONDITIONS OF CONSENT ORDER

Admission of Violations

24. DVS admits that it violated certain provisions of the Safety Act and regulatory requirements applicable to RIs. These violations include, but are not limited to importing nonconforming and noncertified vehicles from Mexico under customs declarations stating that the vehicles were conforming and certified, in violation of 49 C.F.R. § 591.5; importing nonconforming and uncertified vehicles from Mexico under an inapplicable import eligibility code, in violation of 49 C.F.R. § 592.6(a); submitting Statements of Conformity to NHTSA that incorrectly stated certain FMVSS were inapplicable to imported nonconforming vehicles and that failed to include other required information, in violation of 49 C.F.R. § 592.6(d); selling (by executing assignments of title in dealer to dealer transfers) or otherwise releasing imported vehicles and titling imported vehicles in a name other than its own before the mandatory waiting

period had expired, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(e); failing to make timely, complete, and accurate responses to an Information Request from NHTSA, in violation of 49 C.F.R. § 592.6(o); and by associating with a person who was convicted of a crime related to the importation, purchase, or sale of motor vehicles, in violation of 49 C.F.R. § 592.5(f)(1). Notwithstanding this admission, DVS contends that none of the violations described in this Paragraph was committed with the intent to deceive or mislead NHTSA.

Suspension of DVS’s Registered Importer Registration

25. Subject to the terms of this Paragraph 25, the RI registration of DVS is suspended (the “Suspension”) for a period of 125 days. Under the circumstances of this action and for purposes of satisfying the Suspension, DVS shall receive a credit of 125 days against the Suspension for the period from July 1, 2021, through the Effective Date of this Consent Order, during which its RI registration has been suspended pursuant to the Notice of Automatic Suspension. The credit received by DVS shall be limited to 125 days, regardless of the actual number of days DVS was suspended pursuant to the Notice of Automatic Suspension.

Revocation of DVS’s Registered Importer Registration

26. Subject to the terms of this Paragraph 26 and its subparts, the RI registration of DVS is revoked (the “Revocation”).

a. The Revocation shall be held in abeyance during the term of this Consent Order pending DVS’s satisfactory completion, as reasonably determined by NHTSA, of the requirements of this Consent Order and compliance with the Safety Act and regulations thereunder, during the term of this Consent Order;

b. In the event DVS commits material violations of this Consent Order, the Safety Act, or regulations thereunder, during the term of this Consent Order, NHTSA

may impose the Revocation or an additional suspension in lieu of revocation (collectively, the “Abeyance Revocation”) pursuant to the terms of Paragraph 31. DVS may also separately be subject to revocation or suspension under 49 C.F.R. § 592.7 for those violations of the Safety Act and regulations thereunder.

27. Following any Abeyance Revocation (including any suspension in lieu of revocation) that may be imposed on DVS under Paragraph 31 or result from the termination of this Consent Order by DVS under Paragraph 58, DVS shall be subject to the terms set forth in 49 C.F.R. § 592.7(d) and the continuing obligations set forth in 49 C.F.R. § 592.7(e).

Civil Penalty

28. Subject to the terms of this Paragraph 28 and its subparts, DVS shall pay a civil penalty in the sum of five hundred thousand dollars (\$500,000) (the “Total Civil Penalty”).

a. Of the Total Civil Penalty, the sum of two hundred thousand dollars (\$200,000) (the “Imposed Amount”) shall be paid in two equal installments pursuant to instructions provided by NHTSA. The first payment shall be made by DVS within 10 calendar days after the Effective Date of this Consent Order and the second payment shall be made by DVS no later than April 1, 2022.

b. Of the Total Civil Penalty, the sum of three hundred thousand dollars (\$300,000) (the “Abeyance Amount”) shall be deferred and held in abeyance by NHTSA pending the satisfactory completion by DVS, as reasonably determined by NHTSA, of the requirements of this Consent Order and compliance with the Safety Act and the regulations thereunder, during the term of this Consent Order. In the event that DVS commits material violations of this Consent Order, the Safety Act, or regulations thereunder, during the term of this Consent Order, DVS may be obligated to pay the

Abeyance Amount, or any part of it, in accordance with Paragraph 31, and may be liable for additional civil penalties beyond the Abeyance Amount for those violations of the Safety Act and regulations thereunder.

29. Pursuant to the terms of this Consent Order, DVS admits that it owes a debt in the amount of five hundred thousand dollars (\$500,000), as provided for in Paragraph 28, arising from activities under the jurisdiction of the U.S. Department of Transportation, due and owing to the United States under the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the “Claims Collection Act”).

30. If DVS fails to timely make either payment of the Imposed Amount as set forth in Paragraph 28.a or fails to make payment of the Abeyance Amount or any portion thereof as set forth in Paragraph 28.b that becomes due under the terms of this Consent Order, DVS shall be in default of this Consent Order and the remaining balance of the Total Civil Penalty shall become due immediately. In that event: (i) DVS agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to applicable law, including the Claims Collection Act and the U.S. Department of Transportation’s regulations, 49 C.F.R. Part 89, either administratively or in any court, and (ii) DVS affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding. In addition, in such a proceeding, DVS shall pay the United States all reasonable costs of collection and enforcement, including attorneys’ fees and expenses. This provision does not preclude DVS from contesting the imposition of the Abeyance Amount or any portion of it pursuant to Paragraph 31.

Imposition of Abeyance Revocation and Abeyance Amount

31. Should NHTSA reasonably believe that DVS has materially violated the Safety Act, the regulations thereunder, or the terms of this Consent Order, NHTSA shall provide written

notice to DVS regarding the alleged violation, including a statement regarding the Abeyance Revocation (including any suspension in lieu of revocation) that will be imposed and/or the Abeyance Amount or portion thereof that will be due if NHTSA makes a determination in accordance with this Paragraph 31. DVS will have thirty (30) calendar days or such other time as mutually agreed by NHTSA and DVS, from the date on which written notice was communicated to DVS by NHTSA (“Evaluation Period”) to respond to the notice in writing. DVS’s response will provide its views regarding the allegations in NHTSA’s written notice, along with any supporting information and documentation. Should there be a dispute, the parties agree to discuss the alleged violation. If no mutually agreeable resolution is reached after discussion and NHTSA determines that DVS has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, then DVS shall be subject to the Abeyance Revocation (including any suspension in lieu of revocation) determined by NHTSA, effective immediately, and/or liable for the Abeyance Amount or a portion thereof as determined by NHTSA, to be paid in accordance with instructions from NHTSA within thirty (30) calendar days of such determination.

32. DVS shall only be subject to the Abeyance Revocation or liable for payment of the Abeyance Amount or any portion of the Abeyance Amount in accordance with the terms in Paragraphs 31 and 59.

Additional Terms

33. The RI registration of DVS, which was suspended as set forth in Paragraphs 18 and 25, shall be reinstated and the Suspension shall be deemed completed as of the Effective Date of this Consent Order.

34. NHTSA withdraws its June 30, 2021 Notice of Challenge, Inspection, and Required Evidence with respect to the required evidence of compliance for any vehicles imported by DVS on or after the Effective Date of this Consent Order.

Release

35. Upon expiration of the Consent Order (including any extension), DVS, including its current and former directors, officers, employees, agents, successors, and assigns will be deemed released from liability for civil penalties pursuant to 49 U.S.C. § 30165 and from any suspension or revocation pursuant to 49 C.F.R. § 592.7, other than may be imposed pursuant to the terms of this Consent Order, in connection with any and all violations of the Safety Act and regulations thereunder alleged in the Notice of Automatic Suspension and the Notice of Proposed Revocation for all vehicles imported by DVS prior to June 30, 2021.

36. Nothing in this Consent Order discharges DVS from any obligation to comply with the Safety Act or regulations thereunder.

37. This Consent Order does not release DVS from liabilities, if any, that may be asserted by the United States, the U.S. Department of Transportation, NHTSA, or any governmental entity, other than the civil penalty liability under 49 U.S.C. § 30165 and the suspension or revocation under 49 C.F.R. § 592.7 described in Paragraph 35.

Performance Obligations

Independent Monitor

38. DVS will retain, at its sole costs and expense, an independent monitor (the “Monitor”) during the term of this Consent Order who shall report to NHTSA directly. The Monitor will be selected pursuant to the process set forth in Paragraphs 38-39. The Monitor must be a professional, familiar with corporate controls and compliance programs. The Monitor must,

as part of the Monitor's responsibilities under this Consent Order, be or expeditiously become familiar with provisions of the Safety Act and regulations thereunder applicable to RIs, including 49 U.S.C. §§ 30141, 30146-47 and 49 C.F.R. Parts 591 and 592. The Monitor must be independent of DVS and must not have had any prior financial or other contractual relationship with DVS (including as an attorney or consultant to DVS). DVS agrees to cooperate with the Monitor to ensure the Monitor has access to the information (including from records and from DVS personnel) that is reasonably necessary to carry out its duties under the Consent Order.

39. Within seven (7) calendar days after the Effective Date of this Consent Order, DVS shall provide NHTSA with the names, qualifications, and contact information of two individuals who are qualified to serve as the Monitor and confirmation that each individual is willing to perform the obligations of the Monitor under the terms of this Consent Order. Provided that NHTSA determines that the individuals proposed by DVS are qualified under Paragraph 38 and suitable to serve as the Monitor, NHTSA will select one of these individuals to serve as the Monitor after receiving the names and qualifications of the two individuals proposed by DVS and having the opportunity to interview both individuals. NHTSA will inform DVS of that selection in writing. DVS shall retain the individual selected by NHTSA to serve as the Monitor and provide written confirmation of such retention within fourteen (14) calendar days after NHTSA informs DVS in writing of its selection of the Monitor. If NHTSA determines that neither of the two individuals is a suitable and appropriate selection to serve as the Monitor, NHTSA will notify DVS in writing and provide DVS seven (7) calendar days to provide two additional names for NHTSA's consideration, subject to the terms of this Paragraph. Notwithstanding the foregoing, if NHTSA determines that none of the four individuals is a

suitable and appropriate selection to serve as the Monitor, it may appoint a Monitor and inform DVS of its selection in writing.

Written Procedures and Employee Training

40. DVS, with assistance from the Monitor, shall develop written procedures and employee training materials to improve its compliance with the Safety Act and regulations thereunder. The written procedures and employee training materials shall separately incorporate and address each of the duties of a RI specified in 49 C.F.R. § 592.6 and the performance requirements specified in Paragraphs 43-55.

41. DVS shall submit the written procedures and training materials required under Paragraph 40 to the Monitor and obtain written confirmation of the Monitor's approval of the written procedures and training materials.

42. DVS shall submit the written procedures and training materials required under Paragraph 40 and the written confirmation of the Monitor's approval required under Paragraph 41 to NHTSA within ninety (90) calendar days after it retains the Monitor under Paragraphs 38-39, together with a proposed training schedule that includes both intervals and required attendees (identified by employee position and/or responsibilities) at training sessions. The training schedule shall include mandatory annual training for all employees with responsibility for NHTSA compliance and mandatory on-boarding training within a reasonable time-period for new employees with responsibility for NHTSA compliance. DVS shall incorporate any feedback provided by NHTSA to the written procedures and training materials and adopt the written policies and training schedule as mandatory company policies (applicable to all DVS locations) within thirty (30) calendar days after it submits the written procedures, training materials, and training schedule to NHTSA under this Paragraph 42. These policies shall not be changed by

DVS during the term of this Consent Order without prior notice and opportunity for feedback from NHTSA through the quarterly meetings described in Paragraph 43.

Quarterly Meetings

43. DVS and the Monitor shall meet with NHTSA, either virtually or in person, on at least a quarterly basis during the term of this Consent Order, and will include in those meetings a discussion of its progress on the Performance Obligations specified in this Consent Order, the results of the compliance audits performed under Paragraph 46 and the Monitor's reports under Paragraph 47, and any issues identified by NHTSA relating to the compliance of DVS with the terms of this Consent Order, the Safety Act, or the regulations thereunder. These quarterly meetings shall be scheduled by DVS. The first of these quarterly meetings shall take place within ninety (90) calendar days after the Effective Date of this Consent Order and, in each subsequent quarter, at least fourteen (14) calendar days after NHTSA receives the quarterly audit report from the prior quarter under Paragraph 47. DVS attendees for each of these quarterly meetings shall include the owner or President of DVS and each principal that has signed certifications of conformance submitted to NHTSA during the previous 120 calendar days.

Individual Vehicle Records

44. DVS shall create and retain individual vehicle records ("IVR") for each nonconforming vehicle it imports during the term of this Consent Order. The IVR shall be maintained in an electronic format that allows information and records relating to each vehicle to be identified and retrieved by reference to the vehicle's Vehicle Identification Number ("VIN"). The IVR shall include, at a minimum, the following information for each vehicle:

- a. the dates on which DVS i) purchased the vehicle or entered into a contract to conform and certify the vehicle; ii) imported the vehicle (including the day that the

vehicle entered the United States); iii) took physical possession or legal custody of the vehicle; iv) modified the vehicle into conformance; v) affixed a certification label to the vehicle; vi) submitted a certification of conformance to NHTSA under 49 C.F.R. § 592.6(d) for the vehicle; vii) applied for, obtained, assigned, or was assigned title for the vehicle (in its own name or the name of another); and viii) sold or otherwise released physical possession or legal custody of the vehicle;

b. information and photographs including metadata establishing the date on which and location where each of the photographs was taken demonstrating the conformance and/or nonconformance of the vehicle both prior to and after any modifications are performed with respect to FMVSS 101 (regarding speedometer and odometer displays and the brake malfunction telltale), FMVSS 109 (regarding the required DOT mark on tires), FMVSS 138 (regarding the tire pressure monitoring system (“TPMS”)), and FMVSS 208 (regarding the passenger air bag telltale);

c. information describing how (the manner), stating when (the calendar date) and where (physical location), and identifying by whom (the individual) each necessary conformance modification was completed;

d. information and documents reflecting the manner in which DVS determined whether the vehicle was subject to any open safety recalls and the manner and person who completed repairs on any open safety recall;

e. the date on which NHTSA received DVS’s certification under 49 C.F.R. § 592.6(d) for the vehicle; the calculated date 30 days thereafter; and the date on which NHTSA issued a bond release for the vehicle;

f. photographs including metadata establishing the date on which and location where each of the photographs was taken clearly depicting the vehicle both on the day DVS first takes physical possession of the vehicle and on the earlier of 30 days after NHTSA receives DVS's certification under 49 C.F.R. § 592.6(d) or issues a bond release for the vehicle; and

g. all documents relating to the purchase, importation, transportation, conformance, repair, certification, titling, and sale of the vehicle by or to DVS (for clarification, this subpart does not require DVS to generate any documents but instead requires DVS to maintain all such documents as part of the IVR).

The information, photographs, and documents required to be created or maintained by DVS as IVR under this Paragraph 44 do not supplant or relieve DVS of its burden of compliance with all other record and information keeping or submission requirements applicable to RIs, including its duty to provide timely, complete, and accurate responses to requests for information from NHTSA under 49 U.S.C. § 30166, 49 C.F.R. Part 510, 49 C.F.R. § 592.6(o), or any other applicable authority.

45. In response to any written request from NHTSA referencing this Paragraph 45, DVS shall provide NHTSA with the IVR for any vehicle(s) identified in the request by Vehicle Identification Number ("VIN"). DVS shall provide NHTSA with the requested IVR for each such vehicle within three (3) business days in an electronic format. DVS agrees and acknowledges that the response by DVS to any such request specifically referencing this Paragraph 45 constitutes a required report under 49 U.S.C. § 30166(e) and a response to a NHTSA request under 49 C.F.R. § 592.6(o).

Compliance Audits

46. The Monitor shall perform, and DVS shall submit to and fully cooperate with, an audit of thirty (30) vehicles (the “Audit Vehicles”) and two (2) DVS facilities (the “Audit Facilities”) during each quarterly period (beginning with the first quarter of 2022) during the term of this Consent Order (the “Compliance Audits”). If the term of this Consent Order is extended by NHTSA, the quarterly Compliance Audits required under this Paragraph 46 shall continue uninterrupted through the expiration of the Consent Order. The Audit Vehicles shall be chosen by the Monitor, in consultation with NHTSA, from a list that DVS shall provide to the Monitor and to NHTSA, on the first day of each quarterly period, of all vehicles for which DVS has submitted a Statement of Conformity to NHTSA under 49 C.F.R. § 592.6(d) within the prior quarterly period. The Audit Facilities shall be chosen by the Monitor, in consultation from NHTSA, from all existing DVS facilities. At a minimum, the Monitor shall audit DVS’s compliance, with respect to each of the Audit Vehicles and each of the Audit Facilities, with the requirements and duties set forth in 49 C.F.R. § 592.6 and the requirements relating to IVR set forth in Paragraph 44 of this Consent Order. The Monitor, in consultation with NHTSA, shall determine the extent to which each Compliance Audit will include physical inspections of vehicles and on-site inspections of facilities. The number of Audit Vehicles and Audit Facilities included in each quarterly Compliance Audit may be increased pursuant to the terms of Paragraph 51.

47. Within thirty (30) calendar days following each of the quarterly periods described in Paragraph 46, the Monitor shall provide a written report to NHTSA and DVS that identifies the Audit Facilities and the Audit Vehicles by make, model, and VIN, confirms that each of the Audit Facilities and Audit Vehicles was subject to audit in a manner consistent with the

requirements of Paragraph 46, and separately describes each noncompliance or potential noncompliance (if any) with each of the requirements and duties set forth in 49 C.F.R. § 592.6 or the requirements relating to IVR set forth in Paragraph 44 of this Consent Order with respect to each of the Audit Facilities and Audit Vehicles. If the Monitor identifies any such noncompliance or potential noncompliance, the report for that Audit Period shall include the Monitor's conclusion regarding the underlying cause of each such noncompliance or potential noncompliance and the Monitor's recommendations regarding process changes and controls to mitigate the risk of any similar future noncompliance or potential noncompliance.

48. DVS shall adopt and integrate any recommendations made by the Monitor in an audit report under Paragraph 47 as mandatory corporate policy or take other appropriate action to implement the recommendations within thirty (30) calendar days after receiving the audit report.

49. Nothing in the reporting or meeting structure established in this Consent Order is intended to restrict the ability for the Monitor to otherwise raise issues to NHTSA, at any time during the Consent Order, as the Monitor reasonably deems warranted.

Financial Interests

50. DVS represents that it does not currently and shall not during the term of this Consent Order directly or indirectly hold, acquire, accept, or otherwise possess any financial, controlling, or ownership interest in any other entity.

Additional Facilities

51. If DVS proposes to utilize or provides notice regarding any new proposed conformance or storage facility during the term of this Consent Order, any such facility is subject to approval by NHTSA under 49 C.F.R. § 592.6(l). In the event that NHTSA approves one or more additional conformance or storage facilities during the term of this Consent Order, the

number of vehicles subject to Compliance Audit each calendar quarter under Paragraph 46 shall be increased by five (5) vehicles for each new conformance or storage facility and that the number of on-site inspections will be increased by one (1) location for each new conformance or storage facility.

Full-Time Employee at Each Facility

52. DVS shall employ at least one full-time employee at each of its conformance facilities during the term of this Consent Order, unless the conformance facility received less than five (5) cars in the previous month.

Certifications of Conformance

53. DVS acknowledges that the Statements of Conformity (including certifications of conformance) it submits to NHTSA are subject to the requirements of 49 C.F.R. § 592.6 and the criminal penalties provided for in 18 U.S.C. § 1001. DVS further agrees and represents that it will not submit any certification of conformance to NHTSA during the term of this Consent Order unless the principal who signs the certification, prior to signing any such certification and in support of the certification, first reviews the IVR information and photographs described in Paragraph 44(b)-(d) and any other information, documents, or photographs necessary to determine that DVS has performed all necessary conformance modifications, completed any open safety recalls, and affixed a certification label in compliance with 49 C.F.R. § 592.6(c).

Exported Vehicles

54. DVS shall export and submit written verification to NHTSA that it has exported, within ten (10) calendar days after the Effective Date of this Consent Order: 1) any vehicle imported under a "Box 3" declaration (49 C.F.R. § 591.5(f)) for which DVS has not submitted a Statement of Conformity to NHTSA within 120 days after the vehicle entered the United States;

2) any vehicle imported under a “Box 3” declaration (49 C.F.R. § 591.5(f)) for which NHTSA denied or returned the most recent Statement of Conformity submitted by DVS; and 3) any vehicle imported under “Box 13” declaration (49 C.F.R. § 591.5(l)) for which DVS has submitted an import eligibility petition that NHTSA has denied or for which DVS has submitted an import eligibility petition that is pending with NHTSA as of the Effective Date of this Consent Order.

Odometer Disclosure Forms

55. DVS shall not execute or permit its employees or agents to execute an odometer disclosure form required by Federal law as both the “transferor” and the “transferee” as defined in 49 C.F.R. §580.3, in its own name or in the name of another entity via power-of-attorney, or in any other manner not permitted by 49 C.F.R. Part 580. This requirement survives expiration of the Consent Order and any termination of the Consent Order by DVS under Paragraph 58.

III. TERM OF THE CONSENT ORDER

56. Unless otherwise specified, the term of this Consent Order is two years from the Effective Date; provided, however, that NHTSA may extend the term of this Consent Order for up to an additional year if NHTSA reasonably finds that an extension is warranted.

57. If, pursuant to Paragraph 56, NHTSA finds that an extension of the original term of two years of the Consent Order is warranted, it shall provide DVS with written notice of the extension, the factual basis for its determination that an extension is warranted, and the duration of the extension, no later than 90 days before the expiration of the original two year term of the Consent Order.

58. Notwithstanding the term of this Consent Order set forth in Paragraphs 56-57, DVS may terminate this Consent Order by providing written notice of termination to NHTSA. In

the event DVS sends such a notice of termination to NHTSA, the Abeyance Revocation shall immediately take effect and DVS's RI registration shall immediately be revoked (without need for the process as specified by Paragraph 31), and the Total Civil Penalty, to the extent not already paid by DVS, shall immediately become due. The terms of Paragraphs 29-39 regarding the collection of amounts due shall survive any notice of termination provided by DVS under this Paragraph 58.

IV. AMENDMENT

59. This Consent Order cannot be modified, amended, or waived except by an instrument in writing signed by all parties, and no provision may be modified, amended, or waived other than by a writing setting forth such modification, amendment or waiver.

60. The parties may agree, without need for an amendment as specified in Paragraph 59, to reasonable changes to specified report or meeting dates, schedules, or meeting cadences.

V. MISCELLANEOUS

61. DVS shall use its best efforts to take all actions and to do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order.

62. Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any Federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

63. None of the specific reporting or record keeping obligations described in this Consent Order relieves DVS of its obligation to submit any other reports or maintain any other records required by the Safety Act or regulations thereunder, or otherwise comply with existing laws and regulations.

64. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 30.

65. This Consent Order shall be effective upon its full execution by all individuals and parties listed as signatories below ("Effective Date"). Any breach of the obligations under this Consent Order, may, at NHTSA's option, be immediately enforceable in any United States District Court. DVS agrees that it will not raise any objection as to venue or request a transfer of venue.

66. In the event of a breach of, or failure to perform, any term of this Consent Order by DVS, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely civil penalty payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

67. This Consent Order was negotiated and prepared by both NHTSA and DVS. If any of the provisions in this Consent Order require a court's interpretation, no ambiguity shall be construed against the drafter.

68. The parties who are the signatories to this Consent Order each warrant that they have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

69. In any legal action between the parties concerning the enforceability of this Consent Order, DVS expressly waives any and all defenses and agrees not to plead, argue, or otherwise raise any defenses other than that DVS has substantially complied with the terms of this Consent Order.

70. This Consent Order shall be binding upon, and inure to the benefit of, DVS and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. DVS agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between DVS and any of its parents, subsidiaries, or affiliates.

71. Should any condition or other provision contained herein be held invalid, void, or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Consent Order and shall in no way affect, impair, or invalidate any other provision of this Consent Order.

72. This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order.

73. This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

74. This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced, and governed under the Federal law of the United States. This Consent Order, which is fully incorporated hereto by reference, sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order.

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: November 17, 2021

By: STEVEN
SCOTT CLIFF Digitally signed by STEVEN
SCOTT CLIFF
Date: 2021.11.17 21:29:28
-05'00'

Steven S. Cliff, Ph.D.
Deputy Administrator

Dated: November 16, 2021

By: *Ann Carlson*

Ann Carlson
Chief Counsel

Dated: November 16, 2021

By: KERRY E
KOLODZIEJ Digitally signed by KERRY E
KOLODZIEJ
Date: 2021.11.16 13:38:05
-05'00'

Kerry E. Kolodziej
Assistant Chief Counsel
for Litigation and Enforcement

Dated: November 16, 2021

By: JEFFREY
ARTHUR EYRES Digitally signed by JEFFREY
ARTHUR EYRES
Date: 2021.11.16 13:36:31
-05'00'

Jeffrey A. Eyres
Senior Trial Attorney

AGREED:

Diversified Vehicle Services, Inc.

Dated: 11/16/2021

By: 

Michael Hockett
Diversified Vehicle Services, Inc.

Dated: 11/16/21

By: 

Michael D. Moon, Jr.
BARNES & THORNBURG, LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Counsel for Diversified Vehicle Services, Inc.