



U.S. Department of Transportation
**National Highway Traffic Safety
Administration**



February 10, 2023

VIA EMAIL & REGISTERED MAIL

Mr. Vincent Bisbee
President
Bisbee Importing, Inc.
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NEF-230

**Re: Bisbee Importing, Inc.
Registered Importer No. R-09-365
NHTSA File No. ICD 2021-008**

Notice of Revocation of the Registered Importer Registration of Bisbee Importing, Inc.

Dear Mr. Bisbee:

We are writing pursuant to 49 C.F.R. § 592.7 to provide Bisbee Importing, Inc. (Bisbee Importing or the Company) with written notice that the National Highway Traffic Safety Administration (NHTSA or the agency) is revoking the registered importer (RI) registration of Bisbee Importing for failing to comply with the statutes and regulations applicable to the RI program.

On May 20, 2022, NHTSA provided written notice to Bisbee Importing of the automatic suspension of its RI registration for a period of 270 days.¹ On December 20, 2022, as a result of its ongoing investigation, NHTSA provided written notice to Bisbee Importing that NHTSA preliminarily determined that the revocation of Bisbee Importing's RI registration was warranted because Bisbee Importing repeatedly failed to submit required certifications of conformance to NHTSA within 120 days after a vehicle entered the United States, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(a) and (d). Bisbee Importing was given thirty days to present data, views, and arguments in response to that notice in writing and/or in person (via teleconference or videoconference) on the issues of whether the alleged violations occurred, whether its registration should be revoked, whether its registration should continue to be suspended rather than revoked, and, if so, the appropriate length of suspension. Bisbee Importing

¹ The automatic suspension was for knowingly submitting false and misleading certifications of conformance regarding nonconforming vehicles it imported from Canada. See 49 U.S.C. § 30141(c)(4)(B); 49 C.F.R. § 592.7(a)(2), (c)(2).

submitted a written response on January 12, 2023.² After considering Bisbee Importing’s written response and the available information, NHTSA has determined that Bisbee Importing repeatedly failed to submit required certifications of conformance to NHTSA and that revocation of Bisbee Importing’s RI registration is appropriate. Based on these violations, **the RI registration of Bisbee Importing is revoked, effective as of the date of this notice.** The reasons for this decision are set forth below.

Effect of Revocation

If NHTSA “decides, on the basis of the available information, that the Registered Importer has violated a statute or regulation, the Administrator may . . . revoke the registration.” 49 C.F.R. § 592.7(b)(2). NHTSA must “notify the Registered Importer in writing of the decision, including the reasons for it,” and the revocation will be effective immediately upon written notification unless another date is specified. *Id.* There shall be no opportunity to seek reconsideration of a revocation decision. *Id.* Judicial review of a final agency action is available in a United States District Court. *See* 5 U.S.C. § 704.

Because Bisbee Importing’s registration is revoked, Bisbee Importing is no longer considered a Registered Importer, “will not have the rights and authorities” of an RI. 49 C.F.R. § 592.7(d)(1). Bisbee Importing “will not be refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked.” *Id.* As required by regulation, NHTSA will “notify the Bureau of Customs and Border Protection of any . . . revocation of a registration not later than the first business day after such action is taken.” *Id.*

Even though Bisbee Importing’s registration is revoked, Bisbee Importing remains obligated after the revocation to notify owners and to remedy noncompliances or safety-related defects for each vehicle for which it has provided NHTSA with a certification of conformance. *Id.* § 592.7(e).

Revocation of a Registered Importer’s Registration

Federal law and the regulations specify the bases and process for the revocation of the registration of a Registered Importer. *See* 49 U.S.C. § 30141(c)(4); 49 C.F.R. § 592.7. NHTSA is authorized to revoke an RI’s registration if the RI fails to comply with any requirement of 49 U.S.C. §§ 30112, 30115, 30117-30122, 30125(c), 30127, 30141-30147, or 30166, or any regulations issued under these sections, including, but not limited to, 49 C.F.R. Parts 567, 568, 573, 577, 591, 592, 593, and 594. *See* 49 U.S.C. § 30141(c)(4)(A); 49 C.F.R. § 592.7(b)(1).

If the agency “has reason to believe a Registered Importer has violated one or more of [these requirements] and that . . . revocation would be an appropriate sanction under the circumstances,” the agency is required to “notify the Registered Importer in writing of the facts giving rise to the allegation of the violation and . . . revocation.” *See* 49 C.F.R. § 592.7(b)(2).

² Bisbee Importing did not request to meet with NHTSA in person via teleconference or videoconference regarding the proposed revocation.

NHTSA's Investigation and Enforcement Proceedings

On November 12, 2021, NHTSA sent Bisbee Importing notice that it was the subject of a compliance investigation. On May 18, 2022, NHTSA sent Bisbee Importing an Information Request (IR) letter pursuant to 49 U.S.C. § 30166 and 49 C.F.R. § 592.6(o), to which Bisbee Importing was required to respond by June 22, 2022. On May 20, 2022, NHTSA sent Bisbee Importing a Notice of Automatic Suspension, pursuant to the applicable regulations, which provide that the registration of an RI may be automatically suspended if, among other things, the agency “decides that a Registered Importer has knowingly filed a false or misleading certification.” 49 C.F.R. § 592.7(a)(2). The Notice of Automatic Suspension identified thirteen separate false or misleading certifications of conformance, which the agency determined Bisbee Importing knowingly submitted to the agency. That same day, NHTSA also sent Bisbee Importing a Notice of Challenge requiring that each certification of conformance submitted by Bisbee Importing to NHTSA within the last 30 days be supplemented with evidence of compliance. On June 13, 2022, Bisbee Importing submitted a written response seeking reconsideration of NHTSA’s Notice of Automatic Suspension. Bisbee Importing requested and was granted a meeting with NHTSA staff via videoconference on June 14, 2022 where it presented data, views and arguments for reconsideration of its automatic suspension. Bisbee Importing submitted a written response to NHTSA’s IR letter on June 22, 2022 and submitted a supplemental response for requests Nos. 17 and 18 on July 20, 2022. On June 24, 2022, Bisbee Importing submitted a written response to NHTSA’s Notice of Challenge. On July 14, 2022, NHTSA denied Bisbee Importing’s Request for Reconsideration of the automatic suspension. *See* 49 C.F.R. § 592.7(a)(2).

On December 20, 2022, NHTSA provided a written Notice to Show Cause Why the Registered Importer Registration of Bisbee Importing, Inc. Should Not be Revoked (Notice of Proposed Revocation) to Bisbee Importing, explaining that NHTSA preliminarily determined that revocation was warranted. On January 12, 2023, Bisbee Importing submitted a written response to the Notice of Proposed Revocation. The substance of Bisbee Importing’s response is addressed below.

NHTSA’s Notice of Automatic Suspension, Notice of Denial of Request for Reconsideration of Automatic Suspension, and Notice of Proposed Revocation included specific facts, conclusions, and determinations regarding specific vehicles, violations, and certifications, together with supporting exhibits, which are all incorporated by reference into this Notice of Revocation and the record supporting it.

Bisbee Importing’s Failure to Submit Conformity Packages for Thousands of Nonconforming Vehicles it Imported into the United States in Violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. §§ 592.6(a) and (d)

Upon consideration of Bisbee Importing’s response to the Notice of Proposed Revocation and the information available to NHTSA, NHTSA concludes that Bisbee Importing failed to submit the required conformity packages for at least 29,048 vehicles that it imported into the United States under the RI program (Box 3) since February 2018, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. §§ 592.6(a) and (d). In its Notice of Proposed Revocation, NHTSA

preliminarily determined that Bisbee Importing failed to submit the required conformity packages for at least 33,579 such vehicles. NHTSA has since determined that it issued a bond release for some of those vehicles, as discussed further below. After further evaluation, NHTSA has determined that a significant number of vehicles (at least 29,048) were imported without Bisbee Importing submitting the required conformity packages.

Under the regulations governing RIs, an RI may not release an imported, nonconforming vehicle unless it first submits to NHTSA a conformity package including a certification of conformance for that vehicle in the manner prescribed by NHTSA. 49 U.S.C. § 30146(a)(1). NHTSA's regulations include specific requirements for both the process and the substance of the RI's certification of conformance. *See* 49 C.F.R. § 592.6.

RIs submit certifications of conformance to NHTSA on a NHTSA statement of conformity form.³ The form includes entries for required certification information such as vehicle make, model, model year, VIN, odometer reading, the customs entry number, the vehicle eligibility code, the location where the vehicle was conformed, and the location where the vehicle is available for inspection.

Per 49 C.F.R. § 592.6(d)(1), the certification must be submitted to NHTSA within 120 days after the entry of the vehicle into the United States and demonstrate that the RI "has brought the motor vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards in effect at the time the vehicle was manufactured by the fabricating manufacturer."

In its supplemental response to NHTSA's May 18, 2022 IR letter, Bisbee Importing asserted that due to Covid-19 it was short-staffed and fell behind on paperwork, including certifications of conformance submissions to NHTSA. Bisbee Importing, July 20, 2022 Supplemental Responses to IR, Request 17. As a result, Bisbee Importing admitted that it would release a vehicle and then not file with the agency the vehicle's certification of conformance within the 120-day mandatory time period, or sometimes it would not submit the certification of conformance at all. *Id.* This explanation, while not an excuse for violating the law, also does not address the scope of the violations found by NHTSA, which continued over many years. Later, in its response to the Notice of Proposed Revocation, Bisbee Importing acknowledged that "over an approximately five-year period, Bisbee fell short in fully complying with all RI regulations."

In further evaluating the scope of the violations for purposes of this final determination, NHTSA performed an additional review of the VINs identified in its Notice of Proposed Revocation. Exhibit B is a list of VINs Bisbee Importing imported into the United States without submitting a conformity package to NHTSA. To generate Exhibit B, NHTSA used data from Customs and Border Protection's Automated Commercial Environment (ACE) database, which includes import records on vehicles. The agency ran a query on such import records for VINs that were imported into the United States by Bisbee Importing from May 20, 2017 to May 20, 2022 under Box 3. NHTSA retrieved the following information specific to each VIN: make, model, model year, and date of entry. NHTSA then cross-checked that list of VINs against NHTSA's separate list of VINs for which the agency received conformity packages. NHTSA then cross-checked the

³ A blank copy of the current form is included as Exhibit A.

list of VINs left against its list of VINs that had been bond-released. NHTSA also cross-checked the list of remaining VINs against the list of VINs that were listed in Bisbee Importing's monthly invoices from NHTSA (Exhibits C-1 and C-2, transmitted via email only).

Through this process, NHTSA identified that Bisbee Importing imported at least 29,048 vehicles under Box 3 from February 2018 to May 20, 2022 (when the automatic suspension began) without submitting the required conformity documents. Bisbee Importing's conduct continued unabated even after NHTSA sent it a notification that Bisbee Importing was the subject of a compliance investigation on November 12, 2021, with the Company importing at least another 7,010 vehicles through May 20, 2022 without submitting conformity packages.

Based on information obtained by the agency through its investigation and upon consideration of Bisbee Importing's response to the Notice of Proposed Revocation and other information available to NHTSA, NHTSA has concluded that Bisbee Importing failed to submit the required certifications at all, much less within the 120-day window, for each of the 29,472 vehicles identified in Exhibit B.

Bisbee Importing has been an RI for over 24 years, and like all RIs, it certifies on an annual basis that it is familiar with and complies with regulations applicable to RIs. *See* 49 C.F.R. § 592.5(f)(2)(i). Accordingly, there is no dispute that Bisbee Importing understood its obligations as an RI and knew that it was required to submit the conformity documents for each of the vehicles it imported. This is a foundational requirement for RIs. By not submitting conformity packages for thousands of vehicles it imported into the United States, Bisbee Importing evaded the statutory and regulatory process that allows the import of nonconforming vehicles and apparently illegally released the vehicles into the United States. *See* 49 U.S.C. § 30146(a). The required conformity package includes, among other things, information and evidence regarding the conformity modifications that the RI made to bring the vehicle into conformance with the FMVSS, certification that the vehicles do not contain open safety recalls, and information that the agency may use to determine if further oversight is warranted, such as an inspection. Failure to submit conformity packages to NHTSA for thousands of vehicles was an abdication of Bisbee Importing's responsibility as an RI. This unlawful conduct persisted for years.

Revocation is an Appropriate Sanction

NHTSA determined that a revocation of the RI registration of Bisbee Importing is an appropriate sanction, based on the facts and circumstances surrounding Bisbee Importing's violations and the implications for public safety addressed in this notice.⁴ Bisbee Importing's response to the Notice of Proposed Revocation focused on this issue of an appropriate sanction, rather than providing further information related to the violations at issue. Bisbee Importing requested an opportunity to remain an RI, and it indicated it was committed to working with NHTSA and implementing process improvements. As described below, NHTSA has decided to impose a revocation.

⁴ In reaching its determination on revocation, NHTSA has considered Bisbee Importing's status as a small business and also has considered options other than a revocation.

Although the regulations applicable to RIs specify the appropriate bases for a revocation, they do not specify or provide guidelines for when it is appropriate to revoke a registration, instead of suspending it. *See* 49 C.F.R. § 592.7. This determination is left to the agency’s judgment and discretion. *See* 49 C.F.R. § 592.7(a)(6) (conferring the revocation decision to the “sole discretion” of the agency). To determine whether revocation is appropriate, NHTSA considers the unique facts of each enforcement action, including the number of violations and the nature and circumstances of the violations committed by the RI.⁵

Bisbee Importing failed to submit conformity packages for thousands of nonconforming vehicles it imported into the U.S. in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(a) and (d). In its response to the Notice of Proposed Revocation, Bisbee Importing argued that “the suspension already served, and a penalty and oversight, are warranted. Revocation is not.” Bisbee Importing’s response did not provide any further substantive information about the Company, its conduct, or its failure to meet its regulatory obligations. Rather, Bisbee Importing’s reasoning seems premised largely on its length of time as an RI (24 years), process improvements it has represented are being made, and its claim that it “takes very seriously its duties as a Registered Importer and its safety obligations to its customers, the general public, and the Agency.” Bisbee Importing also claims it “has learned from past mistakes.”

These assertions do not merit a lesser sanction than the revocation proposed, particularly given the nature and length of the conduct at issue. Indeed, the Company admits that it did not comply with the RI regulations over a lengthy period of time. The Company’s violations involve a large number of vehicles, including over 7,010 vehicles it imported into the U.S. without submitting certifications of conformance *even after receiving notification that it was the subject of a compliance investigation*. Bisbee Importing has characterized its admissions of violations as voluntary, but they came following NHTSA’s notice of an investigation, in response to the agency’s compulsory requests for information, and in connection with NHTSA’s presentation of evidence from its investigation to Bisbee Importing. The Company’s explanations have also shifted over time, first attributing the issue to pandemic-related staffing shortages before later acknowledging that its violations also predated the pandemic by years. The Company’s assertions that it will change going forward are insufficient in light of its proven track record of violations.

NHTSA has determined that a revocation of the RI registration of Bisbee Importing is appropriate based upon the agency’s determination that Bisbee Importing failed to submit the required conformity packages for at least 29,048 vehicles since February 2018. The violations committed by Bisbee Importing were serious and systemic. Given the large number of conformity packages Bisbee Importing failed to submit over several years and Bisbee Importing’s admission, it knew that it was repeatedly violating the law and its obligations as an RI. NHTSA previously explained that:

⁵ NHTSA’s determination in this context is similar to its consideration of “the nature, circumstances, extent, and gravity of the violation” for purposes of determining an appropriate civil penalty. *See* 49 U.S.C. § 30165(c); 49 C.F.R. § 578.8(a).

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.⁶

NHTSA is authorized to revoke an RI's registration following an RI's failure to submit required conformity packages to NHTSA because a failure to do so has a direct and substantive impact on public safety and undermines the RI program. By its failure to submit these required conformity packages, Bisbee Importing apparently illegally released over 29,000 vehicles into the United States. *See* 49 U.S.C. § 30146(a). The certification of conformance is necessary to ensure that a nonconforming vehicle, which otherwise would not have been permitted entry into the United States, has been properly modified into conformance and then certified as being in conformance with all FMVSS. Conformity packages are necessary for NHTSA to provide oversight of the safety of these imported vehicles and the RIs responsible for conforming them, including ensuring any recall repairs are performed.

Bisbee Importing knew that it was required to submit the conformity packages, having annually certified its knowledge of the applicable requirements and yet failed to submit packages for a significant proportion (approximately 19%) of the vehicles it imported under the RI program during the last five years. Its failure to do so on such a significant, widespread, and continuous basis—even after notice it was under investigation—represents a flagrant disregard for its statutory and regulatory obligations and prevents NHTSA from being able to oversee Bisbee Importing's compliance with the requirements of the RI program, designed to help ensure the safety of vehicles imported into the United States. Failure to comply with this core duty of the RI program warrants Bisbee Importing's removal from participation in the program. The magnitude and seriousness of the violations identified here provide more than sufficient basis to justify Bisbee Importing's revocation.

NHTSA has concluded that Bisbee Importing repeatedly failed to submit required certifications of conformance to NHTSA for thousands of vehicles in violation of the law and that revocation of Bisbee Importing's RI registration is appropriate. The RI registration of Bisbee Importing is therefore revoked, effective as of the date of this notice.

⁶ "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).

Sincerely,

Anne L. Collins
Associate Administrator for Enforcement

Enclosures: Exhibits A, B, C-1, and C-2 (Exhibits C-1 and C-2 were transmitted via email only)

cc: Rebecca Chaney, counsel for Bisbee Importing, Inc.
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