



December 15, 2021

VIA EMAIL

Mr. Richard Mast
Automotive Services Company
1502 South Hazelwood
Spokane, WA 99224
rmast@ascspokane.com

**Re: Automotive Services Company
Registered Importer No. R-14-383
NHTSA File No.: 12-2018-02**

Notice of Suspension of Automotive Services Company

Dear Mr. Mast:

We are writing to provide Automotive Services Company (ASC) 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 ASC for 180 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 ASC be suspended for 180 days in the agency's July 14, 2020 Notice to Show Cause Why the Registration of ASC Should Not be Suspended for 180 Days (Notice to Show Cause). NHTSA has considered the response of ASC to the Notice to Show Cause and finds that the evidence supports that ASC committed eight (8) violations, as alleged by NHTSA in the Notice to Show Cause. Based on these violations, the registered importer **(RI) registration of ASC is suspended for 180 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 ASC is suspended as of the date of this notice. During the term of this suspension, ASC 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, ASC 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 ASC has agreed to bring into compliance with all applicable standards and for which it has not furnished a certificate of conformity to NHTSA, ASC must immediately notify the owner of the vehicle in writing that its registration has been suspended. *Id.* § 592.7(d)(4). ASC 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 ASC will remain suspended through June 13, 2022, 180 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, ASC 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 ASC 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).¹ The categories of violations alleged in the Notice to Show Cause were as follows:

- 1) submitting five (5) improperly executed certifications of conformance in violation of 49 C.F.R. § 592(d)(3). Each of these certifications of conformance was signed by an individual who was not a principal of ASC;
- 2) selling, offering for sale, or titling two (2) imported vehicles for sale (or releasing custody of the vehicles to another person for purposes of selling or titling the vehicles) prior to expiration of the mandatory waiting period, in violation of 49 C.F.R. § 592.6(e)(2), (4)-(5); and
- 3) changing location of its RI operations without providing timely notification to NHTSA in violation of 49 C.F.R. § 592.6(l).

The Notice to Show Cause included information regarding the inspection of ASC facilities by a NHTSA inspector and referenced, as exhibits, documents that supported the allegations of violations. The Notice to Show Cause also provided ASC with the opportunity to present data, views, and arguments, in writing and/or in person (via videoconference), as to whether the

¹ The Notice to Show Cause and the exhibits referenced in and provided to ASC with the Notice to Show Cause, which included specific facts, conclusions, and determinations regarding specific vehicles, violations, and certifications, are incorporated by reference into this Notice of Suspension.

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).

ASC submitted a written response to the Notice to Show Cause on behalf of ASC on August 30, 2020 (Written Response). In its Written Response, ASC noted that Carfax reports referenced in the Notice to Show Cause were not included in the exhibits provided to ASC with that notice. The agency provided those Carfax reports to ASC by email on September 9, 2020. ASC submitted an addendum on behalf of ASC in response to the Notice to Show Cause on September 10, 2020 (Addendum Response). A meeting between NHTSA and ASC was held on September 11, 2020 (Meeting).² Following the Meeting, NHTSA requested additional information from ASC by email dated September 11, 2020. ASC submitted a response to this request on September 25, 2020 (Supplemental Response).³

C. NHTSA's Analysis and Findings

NHTSA is suspending ASC's RI registration based on its determination that ASC committed serious violations of the regulations applicable to RIs by submitting to NHTSA certifications of conformance signed by unauthorized individuals, improperly titling or releasing custody of vehicles prior to expiration of the mandatory waiting period, and failing to notify NHTSA when it moved its RI operations facility. ASC disputes these allegations for a variety of different reasons and contends that any violations that occurred were the result of inadvertent misinterpretations. As explained below, ASC does not dispute any of the underlying facts that establish the violations, and argues instead that its actions do not reflect a violation, should not be considered an "actionable" violation, or should otherwise be excused due to claimed confusion regarding the applicable regulations. NHTSA finds each of these arguments to be contrary to the law and/or unsupported by the evidence and concludes the evidence supports that ASC committed each of the eight violations.

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. ASC was represented at the Meeting by Richard Mast, the owner of ASC, and ASC's 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, and Jeff Eyres, a trial attorney in NHTSA's Office of Chief Counsel. During the Meeting, ASC repeated the arguments set forth in its Written Response and Addendum Response, but it did not make any new arguments.

³ The Written Response of ASC, the Carfax reports, the Addendum Response of ASC, and the Supplemental Response of ASC, together with the attachments to each of those submissions, also are incorporated by reference into this Notice of Suspension.

1. ASC Submitted Certifications of Conformance Signed by Unauthorized Persons to NHTSA, in Violation of 49 C.F.R. § 592.6(d)(3)

In the first category of alleged violations, NHTSA alleged in the Notice to Show Cause that ASC submitted five (5) certifications of conformance to the agency that were signed by persons who were not principals of ASC and who were therefore not authorized to sign these certifications on behalf of ASC.⁴

The regulations require that, for each motor vehicle imported by a RI, the RI must certify to the agency that the vehicle was brought into conformity within 120 days after import. 49 C.F.R. § 592.6(d)(1). This “certification must be signed and submitted by a principal of the RI designated in its registration application pursuant to § 592.5(a)(5)(iv).” *Id.* § 592.6(d)(3). A principal is defined under the regulations as:

any officer of a corporation, a general partner of a partnership, or the sole proprietor of a sole proprietorship. The term includes a director of an incorporated Registered Importer and any person whose ownership interest in a Registered Importer is 10% or more.

Id. § 592.4. Not all persons meeting the definition of and disclosed as principals are authorized to sign certifications of conformance. Instead, a RI must separately designate the “name of each principal” the RI “authorizes to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located.” *Id.* § 592.5(a)(5)(iv).

Each of the five certifications of conformance at issue in this first category of alleged violations was signed by Eric Prunier or Kristin Miller. Although Mr. Prunier and Ms. Miller were identified on ASC’s annual statements as “agents” of ASC, neither of them was designated as a principal of ASC authorized to sign certifications of conformance. Therefore, Mr. Prunier and Ms. Miller were not authorized to sign certifications of conformance for ASC.

In its Written Response, ASC admits that the certifications of conformance were improperly signed by managers (rather than principals) of ASC and states that this occurred due to “confusion and lack of clear clarifications.” ASC further states that it “believed that as an ‘S’ Corporation, management level employees that have authority to hire and fire employees, enter into contracts, authorize spending corporate money, etc., were deemed to be ‘principals’ of the company.” ASC states that there was no intent to deceive NHTSA (because the individuals were disclosed as agents rather than principals) and that ASC takes full responsibility for the certifications of conformance that were signed by these two unauthorized individuals.

⁴ The five vehicles for which ASC submitted the certifications of conformity at issue in this first category of alleged violations are a 2010 Dodge Ram 1500, VIN 1D7RV1CT0AS153803; a 2013 Ford Edge, VIN 2FMDK3JC3DBA33550; a 2009 Ford Ranger, VIN 1FTYR44E59PA44019; a 2010 RAM 2500, VIN 3D7TT2CT0AG144740; and a 2014 Nissan Titan, VIN 1N6AA0EJ9EN501608.

ASC does not dispute that the two individuals at issue were not authorized to sign certifications of conformance and that it improperly submitted to NHTSA certifications signed by these unauthorized individuals. Although ASC claims to have been confused about whether managers “were deemed to be principals” under Washington state law, NHTSA finds this contention irrelevant and unpersuasive. ASC annually certifies that it is familiar with NHTSA’s regulations applicable to RIs. 49 C.F.R. § 592.5(f)(2)(i). Those regulations include a clear definition of a principal, which does not include an agent or a manager or incorporate or otherwise refer to state law. *Id.* § 592.4. There was no reasonable basis for ASC to believe that either person met the requirements for signing certifications of conformance.

ASC also contends that, because NHTSA did not object when it disclosed these two individuals as “agents” on its annual statement and referenced these two individuals in correspondence with the agency, it was reasonable for ASC to assume that NHTSA accepted them as individuals authorized to execute certifications of conformance. This argument is unpersuasive because the regulations unambiguously require a principal to sign certifications of conformance and ASC never identified those two individuals as principals to NHTSA. Moreover, the responsibility of compliance is on the RI.

With respect to this first category of alleged violations, NHTSA finds that ASC submitted five certifications of conformance improperly executed by unauthorized individuals. This constitutes five separate violations of 49 C.F.R. § 592.6(d)(3).

2. ASC Titled Vehicles in a Name Other than Its Own Prior to Expiration of the Mandatory Waiting Period, in Violation of 49 C.F.R. § 592.6(e)(4)

In the second category of alleged violations, NHTSA alleged in the Notice to Show Cause that ASC sold, offered for sale, titled, or released custody for purposes of sale or titling of two vehicles in violation of the mandatory waiting period that follows a RI’s submission of a certification of conformance to NHTSA.⁵

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, title the vehicle in a name other than its own, or release custody of the vehicle to another person for purposes of selling or titling 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), (4)-(5). Compliance with this waiting period ensures both that the agency has adequate time to review the conformity package (which includes the certification of conformance) and decide whether to inspect the vehicle and that the RI is able to export any vehicle not appropriately conformed and certified.

⁵ The two vehicles involved in the second category of alleged violations are a 2009 Ford Ranger, VIN 1FTYR44E59PA44019; and a 2010 Dodge Ram 1500, VIN 1D7RV1CT0AS153803.

The Notice to Show Cause alleged violations of the mandatory waiting period on two different vehicles, including by identifying each of the vehicles and stating 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 ASC sold, titled, or otherwise released custody of each of these vehicles. The Notice to Show Cause also referenced, as exhibits, documents establishing these dates with the exception of the Carfax reports, which NHTSA provided separately to ASC prior to the Meeting.

The first vehicle was a 2009 Ford Ranger, which was purchased in Canada and imported into the United States by Crosspointe Autoplex (Crosspointe), a motor vehicle dealer affiliated with ASC.⁶ NHTSA received a conformity package from ASC for this vehicle on August 29, 2018. A Carfax report shows this vehicle was sold or offered for sale at auction on September 3, 2018.⁷ A Certificate of Title from the State of Colorado shows a title was issued to R&R Motors in Englewood, Colorado, on September 11, 2018. ASC should not have sold, offered to sell, or titled the vehicle in a name other than its own, and should not have released custody of the vehicle to another person for the purpose of selling, offering to sell, or titling the vehicle in a name other than its own prior to September 28, 2018.

The second vehicle was a 2010 Dodge Ram 1500, which was also purchased in Canada and imported into the United States by Crosspointe. NHTSA received a conformity package from ASC for this vehicle on October 2, 2018. A Certificate of Title from the State of Colorado shows a title for this vehicle was issued to R&R Motors in Englewood, Colorado, on September 7, 2018, more than three weeks before ASC submitted its conformity package to NHTSA and more than seven weeks before expiration of the 30-day waiting period. ASC should not have sold, offered to sell, or titled the vehicle in a name other than its own, and should not have released custody of the vehicle to another person for the purpose of selling, offering to sell, or titling the vehicle in a name other than its own prior to November 1, 2018.

ASC disputes this second category of violations and states that the titling of these vehicles in Colorado could not have been a violation because the vehicles never left ASC premises during the mandatory waiting period. This argument fails because it is based on a misreading of the regulations. During the mandatory waiting period, a RI may not, among other things: 1) “[s]ell the motor vehicle or offer it for sale”; 2) “[t]itle the motor vehicle in a name other than its own, or license or register it for use on public streets, roads, or highways”; or 3) “[r]elease custody of the motor vehicle to a person for sale, or for license or registration for use on public streets, roads, and highways, or for titling in a name other than that of the Registered Importer who imported the vehicle.” 49 C.F.R. § 592.6(e)(2), (4)-(5). Titling a vehicle in a name other than its own, therefore,

⁶ In its Supplemental Response, ASC represented that ASC and Crosspointe are separate companies, indirectly controlled by Richard Mast through a third company, Mast Family, LLC. Public records from the Secretary of State of the State of Washington, however, reflect that ASC and Crosspointe are both assumed names for R.C. Mast, Inc. The agency need not resolve this discrepancy in determining whether the alleged violations occurred.

⁷ Carfax reports relating to this vehicle, which were provided to ASC prior to the Meeting, are attached as Exhibit 14.

constitutes a violation regardless of whether the vehicle ever left ASC's physical possession. *See id.* § 592.6(e)(4).⁸

ASC also states in its Written Response that, “[i]n NHTSA’s legal interpretations, it was explained that maintaining control of a vehicle was part of the RI’s obligation, since if the vehicle needed to be exported, the RI could not be assured that it could fulfill its obligation to export.” Although ASC does not provide a citation to any specific NHTSA legal interpretation, the agency is aware that, in a legal interpretation issued in April of 2000, it previously stated as follows:

You have also asked if “the customer on whose behalf the vehicle is imported” may obtain a title for re-sale purposes before the bond is released. The answer is no; the title may not be in the name of the customer. One of the conditions of the bond is that the vehicle it covers be exported or abandoned to the United States in the event that an insufficient showing of conformity is made and the bond and the vehicle are not released (49 U.S.C. 30141(d)(1), as implemented by 49 CFR 591.8(e), and Appendices A and B, and 49 CFR 592,6(a)). If the RI has transferred or reassigned title to the vehicle to “the customer on whose behalf the vehicle is imported” before the bond has been released, the RI could not fulfill its duty to export or abandon the nonconforming vehicle because it would no longer own the vehicle. In that instance, NHTSA’s sole remedy would be to foreclose on the bond. This is insufficient to fulfill the safety purpose of the statute and the bond which is to ensure that imported noncomplying vehicles be brought into compliance before being licensed for use, and used, on the public roads.

Apr. 17, 2000 Ltr. from F. Seales, Jr., NHTSA, to P. Trupiano, Auto Enterprises.⁹ This legal interpretation provides no support for ASC’s argument. To the contrary, this interpretation explains that a RI may not transfer or reassign title of a vehicle during the mandatory waiting period because it would no longer have the legal title or custody necessary to export the vehicle.

Following the Meeting, NHTSA requested specific additional information regarding the relationship and transactions between ASC and R&R Motors, the dealership in Colorado that obtained title for both vehicles prior to expiration of the mandatory waiting period. In its Supplemental Response, ASC stated that it:

entered into a contract with R&R where R&R, a Colorado automobile dealer, would supply the state with the necessary documentation and be issued a title. Immediately after the title was issued in R&R’s name, it would be assigned to ASC. R&R was simply acting as a “straw-man.” The actual ownership of the vehicle did not change. Not only did ASC have possession of the vehicle, but [it] had the documentation to verify ownership. In other words, had R&R breached their contract and attempted to sell one of these units, that would

⁸ ASC refers only to 49 C.F.R. § 592.6(e)(5) in support of this argument. NHTSA’s Notice to Show Cause alleged violations based on 49 C.F.R. § 592.6(e)(2), (4)-(5).

⁹ Available online at <https://isearch.nhtsa.gov/files/title.ztv.html>.

have been a police matter. ASC was trying this method out and estimates that at most ten Crosspointe vehicles had titles obtained this way.

Different states have different rules and requirements for titling motor vehicles. As ASC explains in its Supplemental Response, it could not have obtained an original title in Colorado because Colorado requires that a title be issued in the name of a local dealership. Once R&R Motors obtained the original Colorado title, however, R&R Motors could (and did) assign that title to ASC with a simple notation on the back of the title, without filing any additional documents or creating any public records.

ASC admits that R&R Motors, pursuant to contract with ASC and at ASC's request, obtained titles for these vehicles in a name other than ASC. ASC likewise does not dispute that R&R Motors obtained title in its own name for these vehicles prior to the expiration of the mandatory waiting period. Although ASC attempts to downplay the seriousness of the violations by describing its agreement with R&R Motors as a cost-savings measure (because titling fees are \$25 less in Colorado than Washington¹⁰), it appears that this arrangement reflects intentional violations of the 30-day waiting period. ASC acknowledges in attachments to its Supplemental Response that it paid R&R Motors to apply for these titles, that it forwarded "ownership docs" to R&R Motors to allow it to apply for a title, and that, after R&R Motors obtained the title, it would assign the titles to ASC. It appears, therefore, that because ASC could not directly obtain a title in its own name during the mandatory waiting period, ASC directed R&R Motors to obtain a Colorado title in the name of R&R Motors prior to expiration of the mandatory waiting period, in violation of ASC's legal obligation. It is undisputed that ASC had the vehicles titled in a name other than its own during the mandatory waiting period in violation of 49 C.F.R. § 592.6(e)(4).

ASC also disputes an allegation in the Notice to Show Cause stating that the first vehicle was sold or offered for sale at auction prior to expiration of the mandatory waiting period. In support of this allegation in the Notice to Show Cause, the agency referenced a Carfax report. ASC contends that the Carfax report is insufficient evidence, by itself, to establish that the vehicle was sold or offered for sale and notes that Carfax reports on the vehicles at issue were not originally provided to ASC with the Notice to Show Cause. In its Addendum Response, ASC denies any knowledge relating to the Carfax entry and states that the "owner may have included the unit in some form of online Auto Auction without ASC's participation." NHTSA need not resolve this issue because, as explained above, ASC's titling of the vehicle in R&R Motor's name is an independent basis for this category of violations. Therefore, NHTSA is not making any finding with respect to the allegations in the Notice to Show Cause that ASC violated 49 C.F.R. § 592.6(e)(2) and (5).¹¹

¹⁰ ASC did not provide information on whether it paid R&R Motors more or less than \$25 for each vehicle it titled.

¹¹ This does not warrant a reduction in the length of suspension. NHTSA has concluded that ASC violated 49 C.F.R. § 592.6(e) with respect to both of the vehicles at issue in this category of violations in the Notice to Show Cause. Other considerations related to length of the suspension are discussed in further detail below.

With respect to this second category of alleged violations, NHTSA finds that ASC titled two vehicles in a name other than its own prior to the expiration of the mandatory waiting period. This constitutes two separate violations of 49 C.F.R. § 592.6(e)(4).

3. ASC Failed to Notify NHTSA and Submit Required Information When It Changed the Location of its RI Operations Center, in Violation of 49 C.F.R. § 592.6(l)

In the third category of alleged violations, NHTSA alleged in the Notice to Show Cause that ASC changed the location of its RI operations center without providing the required advance notice or submitting the required facility information to NHTSA.

The regulations require a RI, in its original application to NHTSA, to identify the street address and telephone number of each of its facilities for conformance, storage, repair, and record storage. 49 C.F.R. § 592.5(a)(5)(i). The regulations also require a RI to provide advance notice to NHTSA of any new facility it proposes to use and to submit information regarding that facility:

If a Registered Importer intends to use a facility that was not identified in its registration application, not later than 30 days before it begins to use such facility, it must notify the Administrator of its intent to use such facility and provide a description of the intended use, a copy of the lease or deed evidencing the Registered Importer's ownership or tenancy of the facility, and a copy of the license or similar document issued by an appropriate state or municipal authority stating that the Registered Importer is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by state or local law to have such a license or permission), and a sufficient number of unaltered photographs of that facility to fully depict the Registered Importer's intended use. If a Registered Importer intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, it shall notify the Administrator not less than 10 days before such change or discontinuance of such use, and identify the facility, if any, that will be used instead.

Id. § 592.6(l).

In the Notice to Show Cause, NHTSA explained that ASC had previously identified a facility at 10505 West Sunset Highway in Spokane, Washington as the primary facility for its RI operations. When a NHTSA inspector went to the business at that address to conduct an inspection of the ASC facility, a salesperson at Crosspointe, the automobile dealership at that location, stated that ASC was located around the corner at 1502 South Hazelwood Road, Spokane, Washington. Upon arrival at that second location, the NHTSA inspector spoke with an ASC manager, who confirmed ASC had previously moved its RI operations center in 2016 from 10505 West Highway 2 to 1502 South Hazelwood Road.

ASC admits that it moved its "RI operations center" and does not dispute that it failed to inform NHTSA of this change or to submit the required information regarding the new facility.

Nonetheless, ASC states that this should not be considered an “actionable” violation because the new facility is part of the same “compound” and in close proximity to the old facility, the properties are adjoining, and because there is a “well-worn path” in between the new and the old facilities.

This argument is not persuasive. The regulations applicable to RIs include specific requirements relating to a RI’s facilities. These regulations are intended to ensure that nonconforming vehicles are held in the exclusive physical custody of RIs, are available for inspection by the agency, and are not offered for sale or use until after those vehicles have been properly conformed, certified, and held for the mandatory waiting period. Likewise, the regulations require that a RI submit specific information regarding the facilities to ensure RIs have a possessory interest in the facility and are properly licensed by state authorities.

A RI must, for example, take possession of the vehicle, perform all modifications necessary to conform the vehicle to all Federal motor vehicle safety standards, and affix a certification label to the vehicle “at a facility that it has identified to” NHTSA. 49 C.F.R. § 592.6(c). A RI must also make any facility it has identified to NHTSA where any vehicle is being modified, repaired, tested, or stored available to NHTSA for inspection. *Id.* § 592.6(j)(1). A RI must own or have a leasehold interest in each of its facilities to ensure that it can grant NHTSA access in the event of an inspection. *Id.* § 592.6(l). A RI must be “licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles.” *Id.* Likewise, a RI must not “[s]tore the motor vehicle on the premises of a motor vehicle dealer” during the mandatory waiting period *Id.* § 592.6(e)(3).

These regulations (and the agency’s ability to enforce these regulations) are undermined when a RI fails to provide notice to NHTSA of a proposed move to a new facility or fails to submit the required information regarding the new facility. This is especially true where, as here, a motor vehicle dealer is operating at the address previously identified by the RI as the primary location of its “RI operations center.” A violation of the advance notice requirement, therefore, does not, as ASC suggests, turn on the geographic proximity of the two locations or the degree of difficulty in finding the new location.

With respect to this third category of alleged violations, NHTSA finds that ASC failed to provide NHTSA with the required advance notice and information regarding the move of its “RI operations center” to a different location in 2016. This constitutes a violation of 49 C.F.R. § 592.6(l).

D. Appropriate Length of Suspension of ASC

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 alleged violations occurred, the agency considers 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, ASC 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 ASC based on those factors.

ASC states in its Written Response that "[a]ny violations which were committed by ASC were caused by good faith misinterpretations." NHTSA disagrees and finds that ASC committed serious violations of the regulations applicable to the RI program. There is no dispute that ASC 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). ASC has been an RI since 2014.

The first category of violations (submitting certifications signed by unauthorized persons) and the third category of violations (failing to provide advance notice and information required prior to moving facilities) reflect a disregard for these regulations, for a RI's responsibility for public safety, and for NHTSA's oversight responsibility over RIs and the importation of nonconforming vehicles. The second category of violations (titling vehicles in a third-party's name in Colorado prior to expiration of the mandatory waiting period), involves ASC's deliberate use of an unlawful scheme that violated the regulations applicable to RIs. NHTSA notes that ASC initially

failed to acknowledge this unlawful scheme in its Written Response and stated instead that a “RI cannot control what the owner’s [sic] of vehicles do,” thereby suggesting that it had no involvement with the titling. Although ASC later admitted, in its Supplemental Response, the details of this scheme to use R&R Motors in these transactions, this admission came only in response to direct follow up questions from the agency. ASC’s intentional employment of this unlawful scheme and its initial lack of candor with the agency reflects significant culpability and justifies a significant suspension.

ASC argues in its Written Response that these violations had no impact on public safety or motor vehicle safety and that “there was no feasible risk of injury from these alleged violations.” NHTSA disagrees and believes this argument shows that ASC does not appreciate its role in and responsibility for public safety. The RI program was established to allow the importation of vehicles that would otherwise not be permitted entry into the United States because they do not comply and have not been certified as complying with all applicable Federal Motor Vehicle Safety Standards. The regulations applicable to the RI program, including those violated by ASC, are intended to ensure that RIs properly carry out their role in conforming and certifying vehicles before they are released into commerce and to provide NHTSA with oversight over those activities. NHTSA does not view these violations as isolated incidents, but rather as a clear indicator that ASC is dismissive of and does not take seriously its regulatory safety obligations.

ASC also argues that the 180-day suspension proposed in the Notice to Show Cause is disproportional to the alleged violations and would have a disproportional economic impact on its small business operations. More specifically, ASC argues that a 180-day suspension “will effectively terminate the company.” ASC, however, did not submit any business or financial information supporting this contention. In determining an appropriate suspension, NHTSA has taken into account that ASC is a small business and has considered options other than a significant suspension. The agency has also considered that, by electing to become a registered importer, ASC 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.

ASC references Executive Order 13924 (Regulatory Relief to Support Economic Recovery) in its Written Response, and states that this order:

directs the agencies to incorporate the current dire economic conditions when they consider their enforcement actions. NHTSA should consider the consequences to small businesses in the Spokane community should another ten people join the ranks of the unemployed.

Although Executive Order 13924 has since been revoked,¹² NHTSA has, as previously stated, considered both ASC’s status as a small business and the potential economic impact of this decision in determining whether and for how long to suspend the RI registration of ASC.

¹² Executive Order 13924 was revoked by Executive Order 14018, which was signed on February 24, 2021. *See Revocation of Certain Presidential Actions*, 86 Fed. Reg. 11855 (Mar. 1, 2021).

ASC 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 significant 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 eight (8) separate violations, and NHTSA has concluded that ASC committed all eight (8) of these violations. NHTSA concludes that a suspension of 180 days is appropriate based on the circumstances as described herein, after consideration of the information presented by ASC in its Written Response, Addendum Response, the Meeting, and its Supplemental Response.

Sincerely,

Anne L. Collins
Associate Administrator
for Enforcement

cc: Lance Beyer, representative of Automotive Services Company (via email)

Attachment: Exhibit 14