



---

August 12, 2021

**VIA EMAIL**

Mr. D. Michael Hockett  
Chief Executive Officer  
Diversified Vehicle Services, Inc.  
1919 S. Post Road, Suite B  
Indianapolis, IN 46239  
*mhockett@cilcap.com*

NEF-230

**Re: Diversified Vehicle Services, Inc.  
Registered Importer No. 98-165  
NHTSA File No. ICD-2021-001**

**Notice of Denial of Request for Reconsideration of Automatic Suspension of the  
Registered Importer Registration of Diversified Vehicle Services, Inc.**

Dear Mr. Hockett:

We are writing to provide Diversified Vehicle Services, Inc. (DVS) with written notice (Notice of Denial) that the National Highway Traffic Safety Administration (NHTSA or the agency) has considered and is hereby denying DVS's July 13, 2021 request for reconsideration of the previously imposed 365 day automatic suspension of DVS's registered importer (RI) registration. *See* 49 C.F.R. § 592.7(a)(2). The agency informed DVS of this suspension by notice dated June 30, 2021 (Notice of Automatic Suspension). Because NHTSA has denied DVS's request for reconsideration, the agency's suspension of DVS's RI registration remains in effect until June 30, 2022, or such earlier date as the agency may subsequently decide is appropriate. *See* 49 C.F.R. § 592.7(c)(2). The basis for the agency's decision is set forth below.

**Effect of NHTSA's Decision**

The suspension of DVS's RI registration, effective June 30, 2021, remains in effect for a period of 365 days based on NHTSA's conclusion that DVS submitted false or misleading certifications of conformance to the agency. *See* 49 U.S.C. § 30141(c)(4)(B); 49 C.F.R. § 592.7(a)(2). During the term of this suspension, DVS 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 notified U.S. Customs and Border Protection (CBP) of this suspension after providing DVS with the Notice of Automatic Suspension. *See id.*

Within thirty (30) days of the Notice of Automatic Suspension and with respect to each nonconforming vehicle currently in its possession that was imported into the United States, DVS

must have either 1) conformed the vehicle, affix to it a certification label, and submit a certification of conformance to NHTSA (all within 120 days of the vehicle's entry into the United States) or 2) exported the vehicle. 49 C.F.R. § 592.7(d)(2)-(3). The Notice of Automatic Suspension separately required DVS, with respect to any vehicle imported pursuant to 49 C.F.R. § 591.5(f)(2)(ii) that DVS has agreed to bring into compliance with all applicable standards and for which it has not furnished a certification of conformance to NHTSA, to immediately notify the owner of the vehicle in writing that DVS's registration has been suspended. *Id.* § 592.7(d)(4).

DVS remains obligated under 49 C.F.R. § 592.6(i) to notify owners and to remedy noncompliances or safety related defects for each vehicle for which it has furnished a certification of conformance to NHTSA. *Id.* § 592.7(e).

The RI registration of DVS will remain suspended until June 30, 2022, 365 days from the date of the Notice of Automatic Suspension or on such earlier date as NHTSA may subsequently determine is appropriate. *Id.* § 592.7(c)(2).<sup>1</sup> As a pre-condition of its reinstatement (unless revoked), DVS will be required to pay any outstanding annual fees, submit any outstanding annual statements, and otherwise comply with the requirements applicable to RIs. *See* 49 C.F.R. Part 592. There is no further opportunity for administrative reconsideration of this decision. *See id.* § 592.7(a)(2). Judicial review of an agency final action is available in a United States District Court. *See* 5 U.S.C. § 704.

### **Summary of Enforcement Proceeding**

On February 6, 2021, NHTSA sent DVS notice that it was the subject of a compliance investigation. The agency sent DVS an Information Request letter (IR) on March 26, 2021, pursuant to its authority under 49 U.S.C. § 30166 and 49 C.F.R. § 592.6(o). DVS provided certain information and documents in response to this IR on May 6-7, 2021 (IR Response). DVS provided additional information and documents in response to this IR on June 30, 2021 (Supplemental IR Response).<sup>2</sup>

NHTSA sent DVS the Notice of Automatic Suspension on June 30, 2021, pursuant to the applicable regulations, which provide that the registration of a 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 four separate categories of false or misleading certifications of conformance, which the agency determined DVS knowingly submitted to the agency.<sup>3</sup>

---

<sup>1</sup> The agency separately provided DVS with written notice of a proposed revocation of DVS's RI registration dated June 30, 2021 ("Notice to Show Cause Why the Registration of Diversified Vehicle Services Should Not Be Revoked"). The agency has not yet issued a final determination on the proposed revocation.

<sup>2</sup> The agency's IR, DVS's IR Response, and DVS's Supplemental IR Response are incorporated into the record supporting this Notice of Denial.

<sup>3</sup> The Notice of Automatic Suspension included specific facts, conclusions, and determinations regarding specific vehicles, violations, and certifications, together with supporting exhibits, which are incorporated by reference into this Notice of Denial and the record supporting it. Because DVS's request for reconsideration of the Notice of

In the first category of violations, NHTSA determined that DVS knowingly submitted false certifications of conformance for twenty-six (26) separate vehicles to NHTSA stating that DVS had taken possession of imported vehicles in the United States, modified those vehicles into conformity, and then affixed certification labels on the vehicles, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1). NHTSA determined that DVS knowingly submitted these false or misleading certifications because they were made and signed before the vehicles had been released for entry into the United States.

In the second category of violations, NHTSA determined that DVS knowingly submitted false or misleading certifications of conformance for fifty (50) separate vehicles to NHTSA that misrepresented the date that the subject vehicles entered the United States, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1). NHTSA determined that DVS knowingly submitted these false or misleading certifications because they were completed and signed before the vehicles had been released for entry into the United States.

In the third category of violations, NHTSA determined that DVS knowingly submitted false or misleading certifications of conformance to NHTSA for eight (8) separate vehicles that included altered DOT HS-7 forms, which were different than the DOT HS-7 forms that DVS submitted to CBP, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1). NHTSA determined that DVS knowingly submitted these false or misleading certifications because the forms had been intentionally altered and the altered forms had not been provided to CBP.

In the fourth category of violations, NHTSA determined that DVS knowingly submitted false or misleading certifications of conformance to NHTSA for four (4) vehicles stating that the vehicles had no uncompleted recalls, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1). NHTSA determined that these certifications were false or misleading certifications because each of these vehicles had open recalls as of the date of the Notice of Automatic Suspension that were also open prior to the date of DVS's certification. NHTSA determined that DVS knowingly submitted each of these certifications because the open recall was referenced on documents submitted by DVS with the certification.

The Notice of Automatic Suspension informed DVS that its RI registration was suspended, effective immediately, for a period of 365 days. Consistent with the regulations, the Notice of Automatic Suspension also informed DVS that it had "an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days." 49 C.F.R. § 592.7(a)(2). Through its counsel, DVS requested reconsideration of the decision and submitted written data, views, and arguments in support of its request on July 13,

---

Automatic Suspension addresses each category of certification rather than each vehicle, much of the specific information as to the vehicles and violations in the Notice of Automatic Suspension is not separately set forth in this Notice of Denial.

2021 (Request for Reconsideration). DVS also verbally submitted data, views, and arguments in support of its request at a July 15, 2021 meeting with NHTSA via teleconference (Meeting).<sup>4</sup>

Having considered the data, views, and arguments submitted by DVS (both in its Request for Reconsideration and at the Meeting), NHTSA is issuing this Notice of Denial informing DVS in writing of its decision and the reasons for the decision. *See* 49 C.F.R. § 592.7(a)(2).

#### **D. NHTSA’s Analysis of DVS’s Request for Reconsideration**

NHTSA suspended DVS’s RI registration based on its determination that DVS knowingly submitted false or misleading certifications of conformance to the agency. DVS’s primary contention in support of its request for reconsideration is that, while it did submit incorrect information in its certifications of conformance, it did not do so “knowingly.” Instead, DVS contends, the incorrect information was inadvertently submitted due to errors on the part of one of its customs brokers or the failure of another customs broker to take actions requested by DVS. These errors, DVS contended at the Meeting, reflect “sloppy paperwork” rather than any attempt to mislead NHTSA or any serious safety issue relating to the conformance or certification of the vehicles at issue.<sup>5</sup>

##### 1. Requirement of “Knowingly” Submitting a False or Misleading Certification

Under the regulations governing RIs, the agency is authorized to automatically suspend the registration of a RI if it “decides that a Registered Importer has knowingly filed a false or misleading certification.” 49 C.F.R. § 592(a). This regulatory authority was enacted pursuant to a statutory mandate providing that NHTSA “shall establish procedures . . . for automatically suspending a registration . . . for knowingly filing a false or misleading certification under section 30146 of this title.” 49 U.S.C. § 30141(c)(4)(B). Neither the regulation nor the statutory mandate, however, define the term “knowingly.”

The Supreme Court has explained that, with respect to criminal statutes, “unless the text of the statute dictates a different result, the term ‘knowingly’ merely requires proof of knowledge of the fact that constitutes the offense.” *Bryan v. United States*, 524 U.S. 184, 193 (1998). This does not mean that a criminal defendant must have knowledge of the law being violated; the defendant

---

<sup>4</sup> On behalf of NHTSA, the meeting was attended by Joseph Kolly, Acting Assistant Administrator for Enforcement; Brodie Mack, Chief of the Import and Certification Division of NHTSA’s Office of Vehicle Safety Compliance; Jeff Eyres, Trial Attorney in NHTSA’s Office of Chief Counsel; and David Serody, DOT Honors Attorney in NHTSA’s Office of Chief Counsel. On behalf of DVS, the meeting was attended by Mike Moon, counsel for DVS; D. Michael Hockett, the Chief Executive Officer of DVS; Ray Ramsey, the president of DVS; and other DVS employees. The videoconference was recorded, and the recording is incorporated as part of the record supporting this Notice of Denial.

<sup>5</sup> Although DVS presented additional information at the Meeting beyond its Request for Reconsideration regarding some of the remedial measures it has implemented since receiving notice that it was under investigation and notice of the agency’s IR, the substantive information and arguments it presented at the Meeting were similar to those provided in its Request for Reconsideration. The agency, therefore, generally does not distinguish between information and arguments presented in the Request for Reconsideration and at the Meeting.

must know the facts that make his conduct fit the definition of the offense “even if he does not know that those facts give rise to a crime.” *Elonis v. United States*, 575 U.S. 723, 735 (2015) (citing *Staples v. United States*, 511 U.S. 600, 608 n.3 (1994)). Other federal courts have applied this same construction of the term “knowingly” in construing civil statutes. *See Statoil USA E&P Inc. v. Dep’t of the Interior*, 352 F. Supp. 3d 748, 762 (S.D. Tex. 2018); *In re Toll Roads Litigation*, 2018 WL 6131178, at \*8 (E.D. Cal. 2018).

Consistent with this authority, a RI “has knowingly filed a false or misleading certification,” and therefore is subject to an automatic suspension under 49 C.F.R. 592.7(a)(2), if it submits a certification to NHTSA with the knowledge that it contains false or misleading information. A RI has knowledge that a certification is false or misleading if it is in possession of information that makes the certification false or misleading.

In seeking reconsideration, DVS does not dispute it had knowledge that every one of the certifications in the first, second, and third categories included false or misleading information in that the certification was dated before the vehicle entered the United States, the certification stated an incorrect date of entry for the vehicle into the United States, and/or the certification included a customs form that was altered and different from the form submitted to CBP. Instead, DVS contends, in various iterations, that it had no intent to deceive the agency with the false or misleading information, that the misrepresentations were not material to motor vehicle safety, and that it did not profit from or obtain any type of competitive advantage. The regulation at issue, however, does not require the agency to determine that a RI had an intent to deceive, that a false or misleading statement was material to motor vehicle safety, or that a RI submitted false or misleading certifications for monetary or other competitive purposes. The regulation requires only that the agency determine that a RI knowingly submitted a false or misleading certification. *See* 49 C.F.R. § 592.7(a)(2).<sup>6</sup> DVS also contends that it inadvertently submitted false or misleading certifications to NHTSA due to multiple errors on the part one of its customs brokers or the failure of yet another customs broker to take actions requested by DVS. The conformity packages (which include the certifications of conformance) submitted by DVS, however,

---

<sup>6</sup> When NHTSA published this final rule, it explained that it was rejecting a commenter’s suggestion that an automatic suspension be limited to circumstances involving a deliberate intent to deceive on a material issue relating to motor vehicle safety because any such limitation would be inconsistent with the statutory mandate:

Congress also directed us to establish procedures for automatically suspending a registration of a RI that has knowingly filed a false or misleading certification. 49 U.S.C. 30141(c)(4)(B). We proposed rules to implement this provision. Two commenters supported our proposal. Auto Enterprises suggested that such a suspension should only occur if we found that the RI “knowingly and deliberately attempted to deceive NHTSA on a material issue that could be reasonably viewed as having the potential of endangering motor vehicle safety.” However, this would limit the statutory provision, which refers only to knowingly filing a false or misleading certification. The limiting elements of “material issue” and “potential of endangering motor vehicle safety” are not specified by the statute. A RI is presumed to know the truth or falsity of what its principal has signed.

confirm that these customs brokers were acting pursuant to written powers of attorney or as agents of DVS. The knowledge and actions of these customs brokers, including the errors and omissions attributed to them, are therefore imputed to and inseparable from the knowledge and actions of DVS and its employees.<sup>7</sup> Thus, although DVS submitted no statements or other evidence from either of the customs brokers to which it attributes these actions and omissions, NHTSA need not determine how or why these errors occurred or whether the false or misleading information was originally supplied by DVS or one of its customs broker. It is undisputed that DVS principals signed the certifications and that DVS submitted the certifications to NHTSA after the false or misleading information had been included in the certifications. It is not relevant, therefore, whether the form was filled out by DVS employees or its agents.

In sum, DVS has not presented information sufficient to cause the agency to reconsider its conclusion that DVS “knowingly” submitted false or misleading certifications. DVS possessed information and therefore had knowledge, at the time it signed and at the time it submitted these certifications to NHTSA, that the date of the certification predated the entry of the vehicle into the United States, that the date of entry for the vehicle into the United States was incorrect, and/or that the attached customs form was altered and different from the form submitted to CBP.

## 2. The First Category of Violations

The first category of violations included twenty-six (26) separate vehicles.<sup>8</sup> In the Notice of Automatic Suspension, NHTSA explained that it determined that DVS knowingly submitted false certifications of conformance to NHTSA stating that DVS had taken possession of

---

<sup>7</sup> See, e.g., *United States v. Yip*, 930 F.2d 142, 143 (2d Cir. 1991) (“Brokers act as agents for importers in the import/export business”); *United States v. Fed. Ins. Co.*, 805 F.2d 1012, 1013 (Fed. Cir. 1986) (“[W]e reaffirm that a licensed broker is the agent of the importer, not the government”); *United States ex rel. Landis v. Tailwind Sports Corp.*, 324 F. Supp. 3d 67, 73 (D.D.C. 2018) (“Courts have held in False Claims Act cases that an employee’s or agent’s knowledge can be imputed to the employer or principal”); *Capella Sales & Services Ltd. v. United States*, 180 F. Supp. 3d 1293, 1298 n.12 (Ct. Int’l Trade 2016) (rejecting the importer’s argument that its customs broker was to blame for the misclassification of entries because the importer “remains liable for the actions of its broker”).

<sup>8</sup> These twenty-six vehicles are Vehicle B - 2016 Ford F-150, VIN 1FTEW1EG2GFB13486, Vehicle C - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJ9FG220856, Vehicle D - 2015 Chevrolet Cheyenne, VIN 3GCNK9ECXFG189462, Vehicle E - 2015 Chevrolet Silverado LD Reg, VIN 3GCNK9ECXFG190577, Vehicle G - 2014 RAM 1500 Sport Crew Cab, VIN 1C6RR7MT0ES324983, Vehicle H - 2017 Ford Escape, VIN 1FMCU9G96HUA42702, Vehicle I - 2019 Chevrolet Impala, VIN 2G11Z5S38K9141897, Vehicle J - 2019 Chevrolet Impala, VIN 2G11Z5S39K9146378, Vehicle L - 2019 Chevrolet Equinox D2, VIN 2GNAXVEX0K6283486, Vehicle M - 2019 Chevrolet Equinox D2, VIN 2GNAXVEX6K6280270, Vehicle N - 2016 Lincoln MKX, VIN 2LMPJ8LP8GBL33753, Vehicle O - 2018 GMC Sierra LD Crew, VIN 3GTU2MEC4JG448213, Vehicle P - 2015 Cadillac SRX, VIN 3GYFNEE35FS599615, Vehicle Q - 2016 Lincoln MKC, VIN 5LMCJ2D9XGUJ00116, Vehicle R - 2015 Ford Focus, VIN 1FADP3F20FL257681, Vehicle S - 2015 Ford Escape, VIN 1FMCU9GX0FUC69900, Vehicle V - 2015 Chevrolet Cruze, VIN 1G1PE5SB4F7249308, Vehicle X - 2017 GM Acadia C1, VIN 1GKKNRLA8HZ137945, Vehicle Y - 2017 Lincoln Continental, VIN 1LN6L9NC3H5610977, Vehicle AC - 2017 Ford Escape, VIN 1FMCU0G97HUC82692, Vehicle AD - 2017 Ford F-150, VIN 1FTEW1E88HFC08158, Vehicle AE - 2018 Ford F-150, VIN 1FTEW1EB8JFA49501, Vehicle AF - 2017 Ford F-150, VIN 1FTEW1EP0HFC39170, Vehicle AG - 2017 Ford F-150, VIN 1FTFW1EF5HKC08550, Vehicle AH - 2017 Ford F-150, VIN 1FTEW1E88HFA99975, and Vehicle AQ - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJXFG442757.

imported vehicles in the United States, modified those vehicles into conformity, had any open recalls completed on those vehicles, and then affixed certification labels to the vehicles. DVS knew these certifications of conformance were false because the certifications were dated before the vehicles had even been released for entry into the United States and before any of the acts to which DVS was certifying had been completed.

DVS's primary argument in support of its request for reconsideration regarding this first category of violations is that the "dates at the bottom of DVS's Statements of Conformity were pre-populated dates in the forms provided by DVS's broker, which DVS failed to change prior to submission to NHTSA." DVS states that the certification "form used by DVS was provided by its customs broker, Bay Brokerage, as part of its service to DVS" and that the signature dates on the forms were pre-populated with the date that Bay Brokerage made the request to U.S. Customs to allow the vehicle to enter the U.S." As noted above, Bay Brokerage was acting for DVS under a written power of attorney and as an agent of DVS. It does not matter, therefore, whether DVS or Bay Brokerage provided the dates or whether DVS or Bay Brokerage entered those dates into the form. It is undisputed that DVS principals signed these certifications with the false or misleading signature dates on them and that DVS submitted each of these forms to NHTSA with false signature dates. Each of these certifications was misleading in that it reflected the certification being made as of a date that none of the acts certified to had been completed.

DVS also states that "[t]he failure to change the date pre-populated at the bottom of the Statements of Conformity was merely an oversight and was not intended to represent to NHTSA the date by which the vehicles were conformed." DVS also states that it intended to certify conformity upon submission of conformity packages rather than as of the signature date of the certification. As previously explained, Section 592.7(a)(2) does not require that a false or misleading certification be made with an intent to deceive. The certifications at issue were false or misleading regardless of what DVS intended.

DVS states that "there is no requirement in 49 U.S.C. § 30146(a)(1) or 49 C.F.R. § 592.6(d)(1)[ ] that DVS certify to NHTSA the actual dates that DVS took possession of the vehicles imported to the U.S., modified the vehicles into conformity, affixed certification labels to the vehicles or signed a certificate of conformity. Similarly, there is no requirement to have a certification date on the certificate of conformity." This argument misconstrues the substantive requirements of the certification RIs are required to submit. A RI has an affirmative duty, with respect to each nonconforming motor vehicle it imports, to certify to NHTSA, among other things, that "it *has* brought the motor vehicle into conformity" and "that the vehicle is not subject to any safety recalls *as of the time of such certification.*" 49 C.F.R. § 592.6(d)(1),(5) (emphasis added). "If the [RI] certifies that it *has* modified the vehicle to bring it into compliance with a standard and *has*, in fact, not performed all required modifications, [NHTSA] will regard such certification as 'knowingly false.'" *Id.* § 592.6(d)(2) (emphasis added). A certification certifies the information in the certification as true as of the date the certification was made, and a certification that includes a signature date is made as of that signature date. A certification that is false as of when

it is made is still false, regardless of whether it was actually signed on a later date than indicated or the acts certified to were later performed.<sup>9</sup>

DVS, as the importer of record for each of these vehicles, knew when the vehicles entered the United States. DVS, as the RI for each of these vehicles, knew when it performed conformance modifications, had open recalls completed, and affixed certifications labels on each of these vehicles. DVS knew that, as of the date on each of these certifications, the vehicles had not yet entered the United States and that DVS had not yet taken possession of, performed conformance modifications on, or had open recalls completed for these. DVS therefore knowingly submitted a false and misleading certification for each of these vehicles when it submitted certifications dated before any of the acts to which DVS was certifying had been completed. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. § 592.6(d)(1).

DVS also states that, although each of the certifications was dated prior to the vehicle having entered the United States, none of those certifications was signed or submitted to NHTSA until after the vehicle entered the United States and DVS had completed the acts to which it certified. DVS provides no evidence, however, of the dates on which any of the certifications were signed or when the vehicles were actually modified into conformance.<sup>10</sup> Regardless of when these certifications were signed or submitted, each of them falsely and misleadingly stated that the acts to which DVS was certifying (taking possession of the vehicle, modifying a vehicle into conformance, completing any open safety recalls, and affixing a certification label) had been completed as of a date on which they had not been completed.

DVS has not presented information sufficient to cause the agency to reconsider its conclusion that DVS knew that each of the certifications in the first category was false and misleading. DVS knew, as the entity responsible for taking possession of the vehicles, performing conformance modifications, having open safety recalls submitted, and affixing certification labels to the vehicles, that none of these tasks had been performed as of the date of the certification. DVS does not dispute that, when its principals signed each of the certifications at issue, they were aware that the signature date on the form next to their signature was incorrect. Moreover, absent specific evidence to the contrary, a RI is presumed to know the truth or falsity of what its principal has signed in a certification to the agency. To suggest otherwise would render the entire

---

<sup>9</sup> DVS repeatedly refers to the signature date on the certification as a “date at the bottom of DVS’s form.” Although the date at issue is indeed at the bottom of the form, this characterization seriously understates the significance of these dates, which are the signature dates for required certifications to the United States government regarding the safety and compliance of imported motor vehicles. For each of these vehicles, DVS certified that it had completed the acts certified to as of a date those acts had not been completed. Those certifications were false and misleading regardless of whether DVS later performed those acts.

<sup>10</sup> The statement submitted by DVS from its president with its Request for Reconsideration states only that he investigated this issue, that “[w]e determined that the date line at the bottom of the Statement of Conformity was being auto-populated in the form provided by our broker, Bay Brokerage, with the date that DVS made the request to Bay Brokerage to import the vehicle into the U.S.,” and that DVS subsequently corrected this issue. Based on the information provided by DVS in its IR Response and Supplemental IR Response, it appears that DVS has no records indicating when the certifications were actually signed and no records documenting when or if any conformance modifications were actually performed on any of these vehicles.



certification meaningless, which, in turn, would undermine the entire RI program and the public trust that accompanies a RI registration. NHTSA therefore affirms its determination that DVS knowingly submitted each of the twenty-six (26) false or misleading certifications in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1).

### 3. The Second Category of Violations

The second category of violations included fifty (50) separate vehicles.<sup>11</sup> In the Notice of Automatic Suspension, NHTSA explained that it determined that DVS knowingly submitted false certifications of conformance to NHTSA that misrepresented the date that the subject vehicles entered the United States. DVS knew these certifications were false because, as the importer of record, it knew when the vehicles entered the United States and when it took possession of those vehicles. For each of these vehicles, DVS submitted a certification stating that the vehicle entered the United States before it was even approved for entry into the United States.

---

<sup>11</sup> These fifty vehicles are Vehicle A - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC9FG229882, Vehicle B - 2016 Ford F-150, VIN 1FTEW1EG2GFB13486, Vehicle C - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJ9FG220856, Vehicle D - 2015 Chevrolet Cheyenne, VIN 3GCNK9ECXFG189462, Vehicle E - 2015 Chevrolet Silverado LD Reg, VIN 3GCNK9ECXFG190577, Vehicle F - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC2FG371409, Vehicle G - 2014 RAM 1500 Sport Crew Cab, VIN 1C6RR7MT0ES324983, Vehicle H - 2017 Ford Escape, VIN 1FMCU9G96HUA42702, Vehicle I - 2019 Chevrolet Impala, VIN 2G11Z5S38K9141897, Vehicle J - 2019 Chevrolet Impala, VIN 2G11Z5S39K9146378, Vehicle K - 2015 Chevrolet Equinox, VIN 2GNALCEK2F6397001, Vehicle L - 2019 Chevrolet Equinox D2, VIN 2GNAXVEX0K6283486, Vehicle M - 2019 Chevrolet Equinox D2, VIN 2GNAXVEX6K6280270, Vehicle N - 2016 Lincoln MKX, VIN 2LMPJ8LP8GBL33753, Vehicle O - 2018 GMC Sierra LD Crew, VIN 3GTU2MEC4JG448213, Vehicle P - 2015 Cadillac SRX, VIN 3GYFNEE35FS599615, Vehicle Q - 2016 Lincoln MKC, VIN 5LMCJ2D9XGUJ00116, Vehicle R - 2015 Ford Focus, VIN 1FADP3F20FL257681, Vehicle S - 2015 Ford Escape, VIN 1FMCU9GX0FUC69900, Vehicle T - 2011 Ford F-150, VIN 1FTFW1ET3BFC53329, Vehicle U - 2014 Ford F-150, VIN 1FTFW1ET5EFC55183, Vehicle V - 2015 Chevrolet Cruze, VIN 1G1PE5SB4F7249308, Vehicle X - 2017 GM Acadia C1, VIN 1GKKNRLA8HZ137945, Vehicle Y - 2017 Lincoln Continental, VIN 1LN6L9NC3H5610977, Vehicle Z - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC6FG503815, Vehicle AA - 2015 Chevrolet Silverado LD Reg, VIN 1GCNC9EC3FZ270543, Vehicle AB - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC3FG109530, Vehicle AC - 2017 Ford Escape, VIN 1FMCU0G97HUC82692, Vehicle AD - 2017 Ford F-150, VIN 1FTEW1E88HFC08158, Vehicle AE - 2018 Ford F-150, VIN 1FTEW1EB8JFA49501, Vehicle AF - 2017 Ford F-150, VIN 1FTEW1EP0HFC39170, Vehicle AG - 2017 Ford F-150, VIN 1FTFW1EF5HKC08550, Vehicle AH - 2017 Ford F-150, VIN 1FTEW1E88HFA99975, Vehicle AI - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC6FG271555, Vehicle AJ - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC1FG372163, Vehicle AK - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC3FG160817, Vehicle AL - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC3FG248640, Vehicle AM - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC6FG306269, Vehicle AN - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJ3FG311329, Vehicle AO - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9ECXFG138605, Vehicle AP - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJ3FG170021, Vehicle AQ - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJXFG442757, Vehicle AY - 2019 Chevrolet Impala, VIN 2G11Z5S33K9146912, Vehicle BA - 2019 Chevrolet Impala, VIN 2G11Z5S31K9151817, Vehicle BC - 2016 Ford Edge, VIN 2FMPK3J94GBB96648, Vehicle BD - 2016 Ford Explorer, VIN 1FM5K8GT1GGB67219, Vehicle BE - 2014 Dodge Durango, VIN 1C4RDJDG2EC501566, Vehicle BF - 2015 Chevrolet Silverado, VIN 3GCUK9EJ3FG321262, Vehicle BH - 2015 Chevrolet Silverado, VIN 3GCUK9EC5FG452498, and Vehicle BI - 2015 Chevrolet Silverado, VIN 3GCUK9EJ0FG202486.

DVS's primary argument in support of its request for reconsideration regarding this second category of violations is that these incorrect dates, like the signature dates for the certification, were incorrectly entered or auto-populated by its customs broker, that it was not required to include the date of entry in its certification, and that its conformity packages otherwise included the correct dates of entry.

As with the signature dates, it matters not whether these dates were inserted by DVS or its broker, who was acting as an agent of DVS. DVS acknowledges that it "maintained accurate dates of entry in its inventory management system," but states that it "simply failed to check" these accurate entry dates against the false entry dates included on its certifications of conformance. It is undisputed that DVS had knowledge of the correct entry dates, that its principals signed the certifications with false entry dates on them, and that DVS then submitted the false certifications to NHTSA. Regardless of whether DVS was legally required to submit the entry date as part of its certification, it made these certifications on a NHTSA form that included the entry date of the vehicle.

DVS also contends that, although its certifications of conformance included false entry dates for each vehicle, the correct entry dates were included elsewhere in the documents DVS provided in support of the certification. This argument is not persuasive because the certifications were false and misleading regardless of whether the correct information was provided elsewhere. Moreover, NHTSA has reviewed multiple conformity packages included in this second category and is unable to find any that include the correct entry date elsewhere in the package.<sup>12</sup>

DVS has not presented information sufficient to cause the agency to reconsider its conclusion that DVS knew that each of the certifications in the second category was false and misleading. NHTSA therefore affirms its determination that DVS knowingly submitted each of these fifty (50) false or misleading certifications in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1).

#### 4. The Third Category of Violations

The third category of violations included eight (8) separate vehicles.<sup>13</sup> In its Notice of Automatic Suspension, the agency explained that it determined that DVS had knowingly submitted a false or misleading certification for each of these vehicles that included an altered DOT HS-7 form. The HS-7 form DVS submitted to CBP at the time of import for each of these vehicles declared

---

<sup>12</sup> Some of the certifications included in the Second Category include an "Entry Summary" prepared by a customs broker, the space on these forms for "entry date" was either left blank or included an incorrect date of entry. Other certifications included a "U.S. Customs Pro-Forma Invoice," which do not include an entry date.

<sup>13</sup> These eight vehicles are Vehicle A - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC9FG229882, Vehicle AI - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC6FG271555, Vehicle AJ - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC1FG372163, Vehicle AK - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC3FG160817, Vehicle AL - 2015 Chevrolet Cheyenne, VIN 3GCUK9EC3FG248640, Vehicle AM - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC6FG306269, Vehicle AN - 2015 Chevrolet Cheyenne, VIN 3GCUK9EJ3FG311329, and Vehicle AO - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9ECXFG138605.

that it was a fully compliant vehicle being imported under “Box 2A.” DVS then altered each of these forms before submitting it to NHTSA as part of its certification for that vehicle. The alterations, which were hand-written, changed (among other things) the import declaration on each form to state that the vehicle was nonconforming and being imported through the RI program under “Box 3.”

By submitting these altered HS-7 forms to NHTSA as part of its certifications, DVS falsely represented to NHTSA that the vehicle had been imported as a nonconforming and non-certified vehicle under Box 3, while concealing that each of these vehicles was improperly declared to CBP as a fully conforming, certified vehicle under Box 2A. As explained in NHTSA’s Notice of Automatic Suspension, these certifications also were misleading because the DOT HS-7 forms DVS submitted to the agency were not, as required, “the HS-7 Declaration form executed at the time of its importation.” 49 C.F.R. § 592.6(d)(6)(v). NHTSA concluded that each of these false or misleading certifications was knowingly submitted because the HS-7 form had been intentionally altered, and the altered HS-7 had never been submitted to CBP.

In its request for reconsideration as to this third category of violations, DVS states that “it initially supplied information to its broker indicating that these were Box 2A vehicles, by mistake, and requested that the broker correct the submissions to Box 3 vehicles, which was not done.” In support of this contention, DVS submits a written statement from its current president, who states that he recently spoke with the prior DVS president and was told that the prior DVS president “discovered that the information provided to the broker was in error,” asked the broker to correct the information, and was told by the broker that the amended HS-7 forms would be submitted to CBP correctly declaring the vehicles as nonconforming under Box 3. According to DVS, it was unaware of this issue until it received the Notice of Automatic Suspension.

Even if true, this information does not persuade the agency to reconsider its determination.<sup>14</sup> DVS states that it “was aware that these vehicles needed to be imported as Box 3 vehicles, and thus [it] believes that its employees made the hand-written “X” on the HS-7 forms noting that these were Box 3 vehicles.” DVS knew, however, that the vehicles had not been imported under Box 3. Moreover, there was no reason for DVS employees to alter and submit altered HS-7 forms to NHTSA if DVS believed that its broker had submitted amended HS-7 forms to CBP. As the RI, DVS was responsible for the accuracy of the certifications to NHTSA. DVS knew the certifications it submitted containing these altered forms were false and misleading. NHTSA therefore affirms its determination that DVS knowingly submitted each of these eight (8) false or misleading certifications in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1).

---

<sup>14</sup> Beyond the multiple levels of hearsay in the written statement submitted by DVS from a person with no direct knowledge, NHTSA notes that DVS provided no corroborating statements from either the former DVS president or the customs broker. Likewise, DVS provided no emails or other forms of communication suggesting that any such instructions were ever provided to the broker.

5. The Fourth Category of Violations

The fourth category of violations included four (4) separate vehicles.<sup>15</sup> In its Notice of Automatic Suspension, the agency explained that it determined that DVS had knowingly submitted a false or misleading certification for each of these vehicles stating that it had no open or uncompleted safety recalls at the time DVS made the certification.

Each of these four violations was based on NHTSA's determination, using its own recall search tool, that each of these four vehicles had recalls open at the time NHTSA issued its Notice of Automatic Suspension that were also open prior to the date DVS submitted its certification for each of these four vehicles.<sup>16</sup> DVS requested reconsideration regarding each of these four vehicles separately.

With respect to Vehicle A, DVS states in its request for reconsideration that it identified open recalls on this vehicle and delivered the vehicle to an authorized dealer to have the recalls completed. DVS further states that it failed to notice on the invoice from the dealer that one of four open recalls could not be completed and inadvertently submitted a false certification for Vehicle A stating that there were no open recalls on this vehicle.

The dealer invoice referenced by DVS, which showed this recall remaining open, was included in the conformity package it submitted to NHTSA. DVS therefore possessed this information and knew at the time it submitted the certification for Vehicle A that it was false.

With respect to Vehicle D, DVS states in its request for reconsideration that it identified open recalls on this vehicle and delivered the vehicle to an authorized dealer to have the recalls completed. DVS further states that, as evidenced by the dealer invoice included with the certification, the open recall identified by NHTSA was in fact completed before DVS submitted its certification and that it included this invoice with its certification for Vehicle D.

NHTSA has reviewed the dealer invoice attached to DVS's certification for Vehicle D, which appears to show that the recall in question was completed before DVS submitted its certification for Vehicle D. NHTSA also has rechecked Vehicle D against the agency's recall search tool, which continues to show that this recall remains uncompleted. On this record, NHTSA cannot determine whether the recall was completed. DVS has presented sufficient evidence to call into question the determination that DVS knowingly made a false or misleading certification regarding Vehicle D and that determination is therefore vacated.

With respect to Vehicle E, DVS states in its request for reconsideration that it identified open recalls on this vehicle and delivered the vehicle to an authorized dealer to have the recalls

---

<sup>15</sup> These four vehicles are Vehicle A - 2015 Chevrolet Silverado LD Crew, VIN 3GCUK9EC9FG229882, Vehicle D – 2015 Chevrolet Cheyenne, VIN 3GCNK9ECXFG189462, Vehicle E - 2015 Chevrolet Silverado LD Reg, VIN 3GCNK9ECXFG190577, and Vehicle BH – 2015 Chevrolet Silverado, VIN 3GCUK9EC5FG452498.

<sup>16</sup> See <https://www.nhtsa.gov/recalls>. Although this tool is hosted on NHTSA's website, the responses to queries are routed to individual manufacturers and the response generated reflects the manufacturer's own data regarding completed recalls.

completed. DVS further states that, as evidenced by the dealer invoice included with the certification, the open recall identified by NHTSA was in fact completed before DVS submitted its certification and that it included this invoice with its certification for Vehicle E.

NHTSA has reviewed the dealer invoice attached to DVS's certification for Vehicle E, which appears to show that the recall in question was completed before DVS submitted its certification for Vehicle E. NHTSA also has rechecked Vehicle E against the agency's recall search tool, which continues to show that this recall remains uncompleted. On this record, NHTSA cannot determine whether the recall was completed. DVS has presented sufficient evidence to call into question the determination that DVS knowingly made a false or misleading certification regarding Vehicle E and that determination is therefore vacated.

With respect to Vehicle BH, DVS states that, "due to open recalls, the conformity package has not been submitted to NHTSA." DVS further states that the certification identified by NHTSA in the Notice of Automatic Suspension was a draft, unsigned certification produced by DVS to NHTSA as part of its IR Response but never submitted to the agency as part of a conformity package.

NHTSA has reviewed the documents in question and confirms that the certification is an unsigned draft that was never submitted to the agency as part of a conformity package. DVS did not knowingly submit a false or misleading certification for this vehicle, and the agency's determination regarding Vehicle BH is therefore vacated.

In sum, NHTSA affirms its determination that DVS knowingly submitted a false or misleading certification for Vehicle A in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1) and vacates its determination that DVS knowingly submitted a false or misleading certification for Vehicle D, Vehicle E, and Vehicle BH.

#### **E. Conclusion**

After consideration of DVS's request for reconsideration, NHTSA has affirmed its determination that DVS knowingly submitted false or misleading certifications for twenty-six (26) vehicles in the first category, for fifty (50) vehicles in the second category, for eight (8) vehicles in the third category, and for one (1) vehicle in the fourth category.<sup>17</sup> NHTSA has vacated its determination that DVS knowingly submitted false or misleading certifications for three (3) vehicles in the fourth category.

DVS's arguments about the nature of the violations do not persuade the agency to reconsider the suspension. The violations committed by DVS were serious and systemic. They reflect a disregard for the rules applicable to the RI program – rules that are intended to protect public safety. The violations were not, as DVS repeatedly suggested at the Meeting, merely "sloppy paperwork." Instead, they reflect a disregard for the public trust placed in a RI and an abdication

---

<sup>17</sup> Because some of DVS's certifications of conformance are included in multiple categories, these determinations do not include eighty-five (85) unique vehicles or certifications of conformance.

of DVS's responsibility to provide the agency with accurate certifications of conformance that are not false or misleading. DVS's arguments suggest it believes certifications to NHTSA are administrative responsibilities, rather than reflecting an appreciation for a RI's active role in and responsibility for public safety.

In its Request for Reconsideration and at the Meeting, DVS explained that it had taken steps to correct the violations identified in the Notice of Automatic Suspension and represented that it was committed in the future to full compliance with the RI program. The agency does not have any reason to question that these corrective steps have been implemented. The agency also notes, however, that DVS's stated commitment to compliance is in contrast to the findings that led to this suspension.

NHTSA also finds that a suspension of 365 days is appropriate notwithstanding its decision to vacate its determination regarding three of the vehicles in category 4. The 365-day suspension imposed by the Notice of Automatic Suspension was not based on a ratio between the number of violations or vehicles and the days of suspension, but rather reflected the systemic and serious nature of the violations, considered as a whole. NHTSA's decision to vacate its determination as to three vehicles for one category of violations does not change NHTSA's conclusion regarding an appropriate term of suspension.

In reaching this decision on DVS's Request for Reconsideration, NHTSA has considered DVS's status as a small business and also has considered options other than a substantial suspension. NHTSA concludes, however, for all the reasons discussed above, that a substantial suspension is not only appropriate but necessary given the facts and circumstances surrounding these violations and the implications for public safety.

The regulations provide for an immediate and automatic suspension following a RI's submission of a false or misleading certification to NHTSA because a false or misleading certification has a direct and substantive impact on public safety. 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 inspected, properly modified into conformance, and then certified as being in conformance with all Federal Motor Vehicle Safety Standards (FMVSS). This certification is also necessary for NHTSA to provide oversight over the safety of these imported vehicles and the RIs responsible for conforming them. To suggest, as DVS has, that it matters not whether these safety modifications were completed before or after the RI made this certification or whether the certification accurately states when and how the vehicle entered the country, when the necessary safety modifications were made, and whether open safety recalls has been completed ignores the essential role of both the certification and the RI in ensuring motor vehicle and public safety.

For all these reasons, NHTSA denies DVS's request for reconsideration of the 365-day suspension imposed in the June 30, 2021 Notice of Automatic Suspension. The RI registration of DVS will remain suspended until June 30, 2022, or such earlier date as the agency may subsequently decide is appropriate. *See* 49 C.F.R. § 592.7(c)(2).

Sincerely,

Joseph Kolly  
Acting Associate Administrator for  
Enforcement

cc: Brian Burdick, Counsel for Diversified Vehicle Services, Inc.  
(via email [brian.burdick@btlaw.com](mailto:brian.burdick@btlaw.com))  
Michael Moon, Counsel for Diversified Vehicle Services, Inc.  
(via email [michael.moon@btlaw.com](mailto:michael.moon@btlaw.com))