



December 15, 2021

VIA EMAIL

Ms. Caroline DeLuca  
Managing Partner  
Northern Imports, LLC  
11509 W 21<sup>st</sup> Ave.  
Suite 200  
Airway Heights, WA 99001  
caroline.l.deluca@gmail.com

**Re: Northern Imports, LLC  
Registered Importer No. R-14-381  
NHTSA File No.: 12-2018-03**

**Notice of Suspension of Northern Imports, LLC**

Dear Ms. DeLuca:

We are writing to provide Northern Imports, LLC (Northern Imports) 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 Northern Imports for 75 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 Northern Imports be suspended for 180 days in the agency's July 8, 2020 Notice to Show Cause Why the Registration of Northern Imports Should Not be Suspended for 180 Days (Notice to Show Cause). NHTSA has considered the response of Northern Imports to the Notice to Show Cause and finds that the evidence supports that Northern Imports committed three of the six violations alleged by NHTSA in the Notice to Show Cause. Based on these violations, **the registered importer (RI) registration of Northern Imports is suspended for 75 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 Northern Imports is suspended as of the date of this notice. During the term of this suspension, Northern Imports 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, Northern Imports 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 Northern Imports has agreed to bring into compliance with all applicable standards and for which it has not furnished a certificate of conformity to NHTSA, Northern Imports must immediately notify the owner of the vehicle in writing that its registration has been suspended. *Id.* § 592.7(d)(4). Northern Imports 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 Northern Imports will remain suspended through February 28, 2022, 75 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, Northern Imports 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 Northern Imports with notice of the facts giving rise to the allegations of violations and the length of the proposed suspension in its Notice to Show Cause. *See* 49 C.F.R. § 592.7(b)(2). The categories of violations alleged in the Notice to Show Cause were as follows:

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

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

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

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

Northern Imports submitted a written response to the Notice to Show Cause, through its representative, on August 28, 2020 (Written Response).<sup>1</sup> A meeting between NHTSA and Northern Imports was held on September 15, 2020 (Meeting).<sup>2</sup>

### **C. NHTSA's Analysis and Findings**

NHTSA is suspending Northern Imports' RI registration based on its determination that Northern Imports committed serious violations of the regulations applicable to RIs by improperly selling, offering for sale, or releasing custody of vehicles for the purpose of sale prior to expiration of the mandatory waiting period. Northern Imports admits these violations. The Notice to Show Cause also alleged that Northern Imports falsely certified vehicles as compliant with the Federal Motor Vehicle Safety Standards (FMVSS) by affixing certification labels on imported vehicles prior to completion of all necessary conformance modifications. Due to factual disputes that cannot be resolved based on the current record, NHTSA declines to determine whether Northern Imports falsely certified these vehicles as compliant before it performed all necessary conformance modifications. NHTSA therefore concludes the evidence supports that Northern Imports committed three of the six alleged violations.

#### **1. NHTSA Declines to Determine Whether Northern Imports Falsely Certified Compliance with the FMVSS By Affixing Certification Labels to Imported Vehicles Prior to Completion of all Necessary Conformance Modifications in Violation of 49 U.S.C. § 30115 and 49 C.F.R. § 592.6(c).**

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

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

<sup>2</sup> The purpose of the Meeting was to provide Northern Imports 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. Northern Imports was represented at the Meeting by Caroline DeLuca, Northern Imports' Managing Partner, and Lance Beyer, Northern Imports' representative. 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, Jeff Eyres and Alexandra Cohen, attorneys in NHTSA's Office of Chief Counsel, and Kenneth Copeland, the NHTSA inspector who conducted an on-site inspection of the Northern Importers facilities in Airway Heights, Washington. During the Meeting, Northern Imports repeated the arguments set forth in its Written Response but did not make any new arguments.

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

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

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

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

During the Inspection, the NHTSA Inspector examined vehicles on the lot and observed that vehicle certification labels were placed on the imported vehicles before any conformance modifications had occurred. The NHTSA Inspector asked Taylor Montee, Northern Imports Operations Manager, when the certification labels are placed on the vehicles. Mr. Montee stated, “as soon as the vehicles arrive at their lot.” Caroline DeLuca, a principal of Northern Imports, confirmed to the NHTSA [inspector] that it was the policy of Northern Imports to put the certification labels on as soon as the vehicles arrive.

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

Northern Imports disputes the alleged violations with respect to each of the three vehicles. Northern Imports argues that there were no violations because each of these three vehicles was already in compliance before Northern Imports affixed a certification label. According to Northern Imports’ Written Response:

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

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<sup>3</sup> The three vehicles at issue are: 1) a 2015 Ford F250, VIN 1FT8W3BT7FED34211; 2) a 2012 Nissan Titan, VIN 1N6AA0EC4CN318955; and 3) a 2016 GMC Acadia Denali, VIN 1GKKVTKD4GJ255528.

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

As part of this argument, Northern Imports also contends that the incomplete modifications the NHTSA inspector observed (removed and missing instrument clusters on each of the vehicles) were being performed for cosmetic reasons, at a customer's request, rather than as conformance modifications.

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

Each of the three vehicles at issue was imported by Northern Imports under a "Box 3" sworn declaration to the Federal government stating that "[t]he vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards." *See* 49 C.F.R. § 591.5(f). The statement of conformity Northern Imports subsequently submitted to NHTSA for each of these vehicles likewise represented that the vehicle had been modified into conformity with FMVSS 101. NHTSA therefore rejects any suggestion that these vehicles already conformed with the FMVSS when imported and needed no modifications to make them compliant.

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

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

CMVSS 101(4).<sup>4</sup> In contrast, to be compliant with FMVSS 101, the speedometer on a vehicle must display speed only in units identified as miles per hour ("MPH") or both miles per hour ("MPH") and kilometers-per-hour ("km/h"). *See* 49 C.F.R. § 571.101, Tbl. 1. To modify a vehicle imported from Canada that is not equipped with a compliant dual scale speedometer (or a dual scale speedometer that includes other display options), a RI must remove the existing instrument cluster and either replace it with a compliant instrument cluster or "reflash" (i.e., re-program) the instrument cluster to ensure that the speedometer does not and is not capable of displaying speed in only kilometers per hour. *See id.* During his inspection, the NHTSA

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<sup>4</sup> The text of this CMVSS is available at [https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C\\_c.\\_1038/FullText.html](https://laws-lois.justice.gc.ca/eng/regulations/C.R.C.%2C_c._1038/FullText.html).

inspector documented that Northern Imports had affixed a certification label to the vehicle even though the instrument cluster had been removed and had not yet been replaced.

Northern Imports does not dispute that Ms. DeLuca and Mr. Montee both stated to the NHTSA inspector that it was standard company practice to affix certification labels on imported vehicles as soon as they arrived on the lot. Northern Imports states that this was a “simple communication failure” and that Ms. DeLuca and Mr. Montee both understood the NHTSA inspector’s questions about the timing of modifications to relate to *any* “changes” made to the vehicles rather than the conformance modifications a RI is required to perform prior to affixing a certification label. Northern Imports also suggests that, through these statements, Ms. DeLuca and Mr. Montee “probably intended to impress the NHTSA inspector with the promptness of Northern[ Import]’s procedures.”

NHTSA finds these explanations unpersuasive. If, as Northern Imports now contends, the vehicles in question had already been conformed, it presumably would have explained this to the NHTSA inspector during the inspection rather than stating that the certification labels were placed on the vehicles as soon as they arrived on the lot. Likewise, if, as Northern Imports now contends, the modifications referred to by its representatives any changes (rather than conformance modifications), Northern Imports presumably would have explained this to the NHTSA inspector during the inspection while he was documenting the missing instrument clusters on certified vehicles.

Despite the lack of evidence supporting the contentions made by Northern Imports, NHTSA declines, on the current record, to resolve factual disputes about whether Northern Imports modified each of the three vehicles into full conformance prior to affixing a certification label to the vehicle. Although Northern Imports declared each of the vehicles to be noncompliant at the time it was imported, there are unresolved factual questions regarding the nature of the noncompliance(s) on each of the vehicles and whether the vehicle could have been and in fact was conformed before Northern Imports affixed the certification labels. NHTSA declines therefore to determine whether Northern Imports violated 49 U.S.C. § 30115(a) and 49 C.F.R. § 592.6(c) with respect to these three vehicles.

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

In the second category of alleged violations, NHTSA alleged that Northern Imports sold, offered for sale, or released vehicles for sale in violation of the mandatory waiting period that follows a RI’s submission of a certification of conformance to NHTSA.

The regulations provide that, following submission of the certification of conformance, a RI must maintain possession of the vehicle and not sell or offer it for sale, or release custody of the vehicle to another person for purposes of selling the vehicle, until either the RI receives a bond release letter from the agency or until 30 days have elapsed after the agency receives the certification of conformance. 49 C.F.R. § 592.6(e)(2), (5). The registered importer therefore must

take possession of the vehicle to perform the conformance modifications, and it must maintain possession of the vehicle during the waiting period following completion of the conformance modifications and submission of the conformity package to the agency. Compliance with this waiting period ensures that the agency has adequate time to review the conformity package and decide whether to inspect the vehicle. It also ensures that the RI is able to export the vehicle in the event the agency finds that it was not properly certified.

The Notice to Show Cause alleged violations of the mandatory waiting period on three different vehicles, identified each of the vehicles, and stated the date on which NHTSA received the certification of conformance for each of these vehicles, the date on which NHTSA released the bond on each of these vehicles, and the date on which Northern Imports sold, offered for sale, or otherwise released custody for sale of each of these vehicles. The Notice to Show Cause also referenced, as exhibits, documents establishing these dates.<sup>5</sup>

Northern Imports admits the violations on all three vehicles for this category. In its Written Response, Northern Imports states that the vehicles in this category were mistakenly released for sale prior to the expiration period due to “rushed and overloaded staff people.”

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

#### **D. Appropriate Length of Suspension of Northern Imports**

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).

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<sup>5</sup> The three vehicles and corresponding exhibits involved in the second category of alleged violations are: 1) a 2006 Ford Ranger, VIN 1FTZR45E26PA26401; 2) a 2017 GMC Acadia, VIN 1GKKNXLS2HZ160179; and 3) a 2014 Toyota Tundra, VIN 5TFDY5F16EX346690

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

In its Written Response, Northern Imports addresses 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 Northern Imports based on those factors.

There is no dispute that Northern Imports 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). Northern Imports has been an RI since 2014.

The violations admitted by Northern Imports were serious. NHTSA previously has explained that:

As part of its responsibilities, an RI has the duty to ensure that each nonconforming vehicle that it imports or agrees to modify is brought into compliance with all applicable Federal motor vehicle safety and bumper standards, that an accurate statement of conformity is submitted to NHTSA certifying the vehicle’s compliance following the completion of the modifications, and that the vehicle is not released for operation on the public roads until NHTSA releases the conformance bond. The agency approves RIs for the specific purpose of carrying out these important safety responsibilities. In this respect, each RI occupies a position of public trust to ensure that nonconforming vehicles imported under its auspices are properly conformed to all applicable standards before they are operated on public roads in the United States.<sup>6</sup>

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<sup>6</sup> *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).

Northern Imports betrayed the public trust of its RI registration when it prematurely released vehicles during a mandatory waiting period. NHTSA therefore concludes that a suspension is an appropriate sanction.

Northern Imports argues that the risk to public safety from the alleged violations “is minimal” because the violations relate to Canadian vehicles and the mandatory waiting period. While NHTSA appreciates that different violations could create more significant safety risks, it also remains concerned that Northern Imports does not appreciate its role in and responsibility for public safety. NHTSA views these violations as a clear indicator that Northern Imports is dismissive of and does not take seriously its regulatory safety obligations.

Northern Imports also argues that the 180-day proposed suspension in the Notice to Show Cause was disproportional to the alleged violations and would have a disproportional economic impact on its small business operations.<sup>7</sup> More specifically, Northern Imports argues that the suspension would “effectively terminate the company.” Northern Imports, however, failed to submit any business or financial information supporting this contention. In determining an appropriate suspension, NHTSA has taken into account that Northern Imports is a small business and has considered options other than the proposed suspension. The agency has also considered that, by electing to become a registered importer, Northern Imports 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.

Northern Imports 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,<sup>8</sup> NHTSA has, as previously stated, considered both Northern Imports’ 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 Northern Imports.

Northern Imports 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. NHTSA has concluded, for all the reasons discussed above, that

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<sup>7</sup> In its Written Response, Northern Imports mistakenly refers to the proposed suspension as one year.

<sup>8</sup> 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).

a suspension is appropriate given the undisputed facts and circumstances surrounding these violations, the implications for public safety, and the integrity of the RI program.

NHTSA also recognizes, however, that Northern Imports responded to notice of the mandatory waiting period violations by retrieving each of the vehicles that was prematurely released and by implementing corrective actions following the NHTSA inspection. These corrective actions include the termination of a prior lot manager, new procedures for tracking the waiting period, and new processes (that require new approvals) to release a vehicle from the Northern Imports storage facility. The agency has considered these remedial actions in determining an appropriate suspension.

NHTSA's Notice to Show Cause alleged six (6) separate violations, and NHTSA has concluded that the evidence supports its finding that Northern Imports committed three (3) of these violations. NHTSA further concludes that a suspension of 75 days is appropriate based on the circumstances as described herein, after consideration of the information presented by Northern Imports in its Written Response and at the Meeting.

Sincerely,

Anne L. Collins  
Associate Administrator  
for Enforcement

cc: Lance Beyer, representative of Northern Imports (via email)