



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



June 2, 2022

VIA EMAIL

Mr. Thomas Hattey
President
Metro Auto Importer, LLC
1180 South Gratiot Ave.
Clinton Township, MI 48036
th6591@aol.com

NEF-230

**Re: Metro Auto Importer, LLC
Registered Importer No. R-95-91
NHTSA File No. IC 2021-040**

**Notice of Denial of Request for Reconsideration of Automatic
Suspension of the Registered Importer Registration of Metro Auto
Importer, LLC**

Dear Mr. Hattey:

We are writing to provide Metro Auto Importer, LLC (Metro Auto Importer) with written notice (Notice of Denial) that the National Highway Traffic Safety Administration (NHTSA or the agency) has considered and is hereby denying Metro Auto Importer's May 6, 2022 request for reconsideration and reinstatement (Request for Reconsideration) of the previously imposed 270-day automatic suspension of Metro Auto Importer's registered importer (RI) registration. *See* 49 C.F.R. § 592.7(A)(2). The agency informed Metro Auto Importer of this suspension by notice dated April 15, 2022 (Notice of Automatic Suspension). Metro Auto Importer's contention that the errors in its certifications of conformance were inadvertent does not support a change in NHTSA's determination that Metro Auto Importer knowingly made false or misleading statements in certifications of conformance submitted to NHTSA. Metro Auto Importer had sufficient knowledge at the time it submitted the certifications to NHTSA to know they were false or misleading. Because NHTSA has denied Metro Auto Importer's Request for Reconsideration, the agency's suspension of Metro Auto Importer's RI registration remains in effect until January 11, 2023, 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 in further detail below.

A. Effect of NHTSA's Decision

The suspension of Metro Auto Importer's RI registration, effective April 15, 2022, remains in effect for a period of 270 days based on NHTSA's conclusion that Metro Auto Importer 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, Metro Auto Importer 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 Metro Auto Importer 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, Metro Auto Importer 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 Metro Auto Importer, with respect to any vehicle imported pursuant to 49 C.F.R. § 591.5(f)(2)(ii) that Metro Auto Importer 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 Metro Auto Importer's registration has been suspended. *Id.* § 592.7(d)(4).

Metro Auto Importer 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 Metro Auto Importer will remain suspended until January 11, 2023, 270 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). As a pre-condition of its reinstatement, Metro Auto Importer 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 a final agency action is available in a United States District Court. *See* 5 U.S.C. § 704.

B. Summary of Enforcement Proceeding

On September 9, 2021, NHTSA sent Metro Auto Importer notice that it was the subject of a compliance investigation. NHTSA sent Metro Auto Importer the Notice of Automatic Suspension on April 15, 2022, 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 twelve separate false or misleading certifications of conformance, which the agency determined Metro Auto Importer knowingly submitted to the agency.¹ Metro submitted a Request for Reconsideration on May 6, 2022.

As set forth in the Notice of Automatic Suspension, NHTSA determined that Metro Auto Importer knowingly submitted false or misleading certifications of conformance with respect to twelve (12) vehicles.

For each of the twelve (12) vehicles at issue, Metro Auto Importer:

1. Signed and submitted a sworn declaration (the HS-7 form) to the Federal government prior to importing the vehicle stating that the vehicle did not comply with all applicable FMVSS and then submitted this declaration to NHTSA as part of its certification of conformance for the vehicle.
2. Signed, on the same day as it signed the sworn declaration on the HS-7 (and before the vehicle was even released for entry into the United States), a false or misleading certification of conformance that was submitted to NHTSA stating that the principal signing the certification knew the vehicle conformed to all applicable FMVSS because the principal had personally witnessed each such modification, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1).
3. As part of the certification it submitted to NHTSA: a) falsely stated the date the vehicle entered the United States, b) represented that, as of the date of the certification, no modifications had been made to the vehicle to conform it to any applicable FMVSS, and c) represented that, as of the date of the certification, a certification label had been affixed to the vehicle, in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1).

NHTSA determined that Metro Auto Importer 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, and because the certifications it submitted to NHTSA indicated that no conformance modifications were actually made to the vehicles despite Metro Auto Importer also signing and submitting a sworn declaration to the CBP and to NHTSA that the vehicles did not comply with all applicable FMVSS.

¹ 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 Metro Auto Importer's Request for Reconsideration of the Notice of Automatic Suspension addresses each of the violations of the 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.

The Notice of Automatic Suspension informed Metro Auto Importer that its RI registration was suspended, effective immediately, for a period of 270 days. Consistent with the regulations, the Notice of Automatic Suspension also informed Metro Auto Importer 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 representative, Metro Auto Importer requested reconsideration of the decision and submitted arguments in support of its request on May 6, 2022 Request for Reconsideration. Metro Auto Importer also verbally submitted data, views, and arguments in support of its request at a May 11, 2022 meeting with NHTSA via teleconference (Meeting).²

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

C. NHTSA’s Analysis of Metro Auto Importer’s Request for Reconsideration

NHTSA suspended Metro Auto Importer’s RI registration based on its determination that Metro Auto Importer knowingly submitted false or misleading certifications of conformance to the agency. Metro Auto Importer’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, Metro Auto Importer contends, the incorrect information was inadvertently submitted due to errors on the part of its staff. These errors, Metro Auto Importer contended, reflect “a simple clerical and procedural error” rather than any attempt to mislead NHTSA or any serious safety issue relating to the conformance or certification of the vehicles at issue. Metro Auto Importer also contended that the “there is no requirement that this submission [a certification of conformance] be dated.”

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

² On behalf of NHTSA, the meeting was attended by Anne Collins, Associate Administrator for Enforcement; Otto Matheke, Director of NHTSA’s Office of Vehicle Safety and Compliance; Brodie Mack, Chief of the Import and Certification Division of NHTSA’s Office of Vehicle Safety Compliance; Kimberly Childers, Safety Compliance Analyst in the Import and Certification Division of NHTSA’s Office of Vehicle Safety and Compliance; John Driscoll, Automotive Enforcement Investigator in the Import and Certification Division of NHTSA’s Office of Vehicle Safety and Compliance; Jeff Eyres, Trial Attorney in NHTSA’s Office of the Chief Counsel; and Sean Ward, Trial Attorney in NHTSA’s Office of the Chief Counsel. On behalf of Metro Auto Importer, the meeting was attended by Lance Beyer, representative of Metro Auto Importer; and Thomas Hattey, President of Metro Auto Importer. The videoconference was recorded, and the recording is incorporated as part of the record supporting this Notice of Denial.

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 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, Metro Auto Importer does not dispute that it was responsible for submitting the certifications for the twelve (12) vehicles that 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, the certification to NHTSA stated the principal signing the certification knew the vehicle conformed to all applicable FMVSS because the principal had personally witnessed each modification, represented that as of the date of the certification, a certification label had been affixed to the vehicle and signed and submitted a sworn declaration (the HS-7 form) to CBP prior to importing the vehicle stating that the vehicle did not comply with all applicable FMVSS and then submitted this declaration to NHTSA as part of its certification of conformance for the vehicles.

Metro Auto Importer contends, in various iterations, that although Metro Auto Importer is responsible for the date on the certification of conformance, Metro Auto Importer did not intentionally or knowingly provide false or misleading information to NHTSA, that the certification of conformance requires the RI’s hand-written signature, but there is no requirement that this submission be dated, 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 statute and regulation at issue, however, do 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

statute and regulation require only that the agency determine that a RI knowingly submitted a false or misleading certification. *See* 49 U.S.C. § 30141(c)(4)(B); 49 C.F.R. § 592.7(a)(2).³

Metro Auto Importer also contends that it inadvertently submitted false or misleading certifications to NHTSA due to multiple errors by its staff. According to Metro Auto Importer's Request for Reconsideration, Metro Auto Importer staff pre-populated the date of the certifications of conformance with the date on the HS-7 form "for reasons unknown." Mr. Hattey "never even looked at the date as he was signing the [Statement of Conformity]." Although Metro Auto Importer submitted no statements or other evidence from any of the Metro Auto Importer staff to which it attributes these actions, NHTSA need not determine how or why these errors occurred or whether the false or misleading information was originally supplied by a Metro Auto Importer principal or staff. It is undisputed that Mr. Hattey, a Metro Auto Importer principal, signed the certifications and Metro Auto Importer submitted the certifications to NHTSA with the false or misleading information included in the certifications. It is not relevant, therefore, whether the form was filled out by Metro Auto Importer staff.

In sum, Metro Auto Importer has not presented information sufficient to cause the agency to reconsider its conclusion that Metro Auto Importer "knowingly" submitted false or misleading certifications. Metro Auto Importer possessed information and therefore had knowledge, at the time it signed and at the time it submitted each certification 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 different from the form submitted to CBP.

³ 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.

2. Metro Auto Importer's Certification of Conformance Violations

In its Notice of Automatic Suspension, the agency explained that it determined that Metro Auto Importer had knowingly submitted a false or misleading certification for each of these vehicles that included a false or misleading DOT HS-7 form. For each of these twelve vehicles,⁴ Metro Auto Importer submitted a DOT HS-7 Form to CBP that included a "Box 3" sworn declaration, made under 49 C.F.R. § 591.5(f), stating that "[t]he vehicle does not conform to all applicable" FMVSS. The "Entry and PGA [Partner Government Agency] data" maintained by CBP for each of these vehicles confirms the "Box 3" declaration made by Metro Auto Importer stating that the vehicle does not conform with all applicable FMVSS and also documents the date on which CBP first released the vehicle for entry into the United States.

The certification of conformance Metro Auto Importer submitted to NHTSA for each of these twelve vehicles includes an affirmative representation that, as of the date of the certification, the vehicle had been fully conformed to all applicable FMVSS at an approved facility in the United States. Specifically, Thomas Hattey, the Metro Auto Importer principal who signed the certifications for each of these vehicles, certified that:

I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because I personally witnessed each modification performed on the vehicle to effect compliance.

Mr. Hattey signed and dated each of these certifications on a date prior to the date on which the vehicle was first permitted entry into the United States by CBP. Mr. Hattey signed and dated the certification for each vehicle on the same day as he signed and dated the HS-7 Form for each of the vehicles. These certifications were necessarily knowingly false. Mr. Hattey could not have witnessed modifications or certified conformance to all applicable FMVSS before these nonconforming vehicles were even permitted entry into the United States. Mr. Hattey signed both the HS-7 Form submitted to CBP and the certification of conformance submitted to NHTSA. The agency therefore concludes that these false or misleading statements were knowingly made in the certifications submitted to NHTSA.

On the certification of conformance it submitted for each of these vehicles, Metro Auto Importer stated that the certification was its "initial certification for this make, model, and model year." Metro Auto Importer was therefore required to provide a "description, with respect to each

⁴ These twelve vehicles are Vehicle AI - 2019 Expedition, VIN 1FMJK2AT9KEA66535, Vehicle AJ - 2018 Ford F-250 SD, VIN 1FT7W2B67JEC15261, Vehicle AK - 2019 Ford F-250 SD, VIN 1FT7W2BT6KEG60517, Vehicle AL - 2017 Ford F-150, VIN 1FTFW1EG2HFC47307, Vehicle AM - 2016 Chevrolet Silverado 2500, VIN 1GC1KXE80GF284582, Vehicle AN - 2018 GMC Yukon XL, VIN 1GT12REG7JF278711, Vehicle AO - 2015 GMC Sierra 1500, VIN 1GTV2TEC0FZ402108, Vehicle AP - 2018 Chevrolet Silverado 2500, VIN 1GC1KUEY3JF116442, Vehicle AQ - 2018 Ford F-150, VIN 1FTFW1EG5JFC32838, Vehicle AR - 2017 Ford F-350 SD, VIN 1FT8W3DT3HED28714, Vehicle AS - 2017 Dodge 1500, VIN 1C6RR7MT7HS534162, and Vehicle AT - 2020 Dodge Durango, VIN 1C4SDJGJ1LC356414.

standard for which modifications were needed, of the modifications performed” for each of these vehicles. 49 C.F.R. § 592.6(d)(6). As explained above, however, the certifications Metro Auto Importer submitted for these vehicles reflected that no conformance modifications were made to any of these vehicles.

As part of its certification of conformance to NHTSA for each of these vehicles, Metro Auto Importer also misrepresented the actual date of entry of the vehicle into the United States by stating an earlier (false) date, thereby obscuring the fact that each of these certifications were made prior to the date the vehicle was actually released for entry into the United States. Metro Auto Importer, as the importer of record for each of these vehicles, knew when the vehicle entered the United States and when Metro Auto Importer took possession of the vehicle. The agency therefore concludes that these false or misleading statements were knowingly made in the certifications submitted to NHTSA.

On the certification of conformance it submitted to NHTSA for each of these vehicles, Metro Auto Importer represented that the vehicle either conformed to the FMVSS at the time of its original manufacture (by filling in the “O” oval) or that the FMVSS was inapplicable to the vehicle (by filling in the “N” oval). Metro Auto Importer did not represent, with respect to any FMVSS, that the vehicle had been modified into compliance with that FMVSS (by filling in the “M” oval). This representation – that no conformance modifications were made to the vehicle – cannot be reconciled with Metro Auto Importer’s sworn declaration on the HS-7 Form that the vehicle was not compliant with all applicable FMVSS and Mr. Hattey’s certification (on behalf of Metro Auto Importer) that he knew the vehicle was fully compliant because he personally witnessed each modification made to effect compliance. Because Mr. Hattey signed the certification based on his alleged personal witnessing of these modifications, the agency concludes that these false or misleading statements were knowingly made in certifications submitted to NHTSA.

On the certification of conformance it submitted to NHTSA for each of these vehicles, Metro Auto Importer represented (by filling in the “M” oval) that, as of the date of the certification, it had affixed a certification label on the vehicle, thereby complying the vehicle to Part 567. Metro Auto Importer made this representation with respect to each of the vehicles before the vehicle was permitted entry into the United States. A RI is required to affix a certification label in the United States after it modifies the vehicle into conformance. *See* 49 C.F.R. § 592.6(c). The agency therefore concludes that Metro Auto Importer knowingly made these false or misleading statements in certifications submitted to NHTSA.

Metro Auto Importer’s primary argument in support of its Request for Reconsideration regarding whether it made these false or misleading statements in certifications submitted to NHTSA is that Metro Auto Importer “staff would date the Statement of Conformity (SOC) in order to help Mr. Hattey. For reasons unknown, the date which they wrote down on the Statement of Conformity was the date on the HS-7 form.” Mr. Hattey stated “he never even looked at the date as he was signing the SOCs.” Metro Auto Importer failed to change the date prior to submission

to NHTSA. As noted above, Metro Auto Importer staff were acting on behalf of Metro Auto Importer. It does not matter whether a Metro Auto Importer staff or a Metro Auto Importer principal entered those dates into the form. It is undisputed that a Metro Auto Importer principal signed these certifications with the false or misleading dates on them and that Metro Auto Importer submitted each of these forms to NHTSA with false 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.

Metro Auto Importer states that the failure to change the date at the bottom of the certification of conformance filled in by Metro Auto Importer staff “was a simple clerical and procedural error” and “not an intentional attempt to mislead NHTSA.” Even if this is true, this information does not persuade the agency to reconsider its determination. 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 Metro Auto Importer intended. Metro Auto Importer is responsible for the accuracy of the information it submits, and a failure to review the information on the form before signing is no excuse.

Metro Auto Importer states that “[w]hile, [49 U.S.C. §] 592.6(d)(3) details that the principal of the RI’s signature must be ‘an original hand-written signature’ **there is no requirement that this submission be dated.**” 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.” 49 C.F.R. § 592.6(d)(1) (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.

Metro Auto Importer certifies on an annual basis that it is familiar with and complies with regulations applicable to RIs. *See* 49 C.F.R. § 592.5(f)(2)(i). Metro Auto Importer knew, therefore, that it was required to take possession of each of the vehicles, perform all necessary conformance modifications, and affix a certification label at one of its designated facilities in the United States prior to making and submitting an accurate and truthful certification of conformance. *Id.* § 592.6(c)-(d).

Metro Auto Importer, as the importer of record for each of these vehicles, knew when the vehicles entered the United States. Metro Auto Importer, as the RI for each of these vehicles, knew when it performed conformance modifications, and affixed certification labels on each of these vehicles. Metro Auto Importer knew that, as of the date on each of these certifications, the vehicles had not yet entered the United States and that Metro Auto Importer had not yet taken

possession of, or performed conformance modifications on. Metro Auto Importer therefore knowingly submitted a false or misleading certification for each of these vehicles when it submitted certifications dated before any of the acts to which Metro Auto Importer was certifying had been completed. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. § 592.6(d)(1).

Metro Auto Importer has not presented information sufficient to cause the agency to reconsider its conclusion that Metro Auto Importer “knowingly” submitted false or misleading certifications. Metro Auto Importer 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, and that the date of entry for the vehicle into the United States was incorrect, the certification of conformance submitted to NHTSA stating the principal signing the certification knew the vehicle conformed to all applicable FMVSS because the principal had personally witnessed each such modification was false, and that as of the date of the certification, a certification label had not been fixed to the vehicle. 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 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 Metro Auto Importer knowingly submitted each of the twelve (12) false or misleading certifications in violation of 49 U.S.C. § 30146(a)(1) and 49 C.F.R. § 592.6(d)(1).

D. Conclusion

After consideration of Metro Auto Importer’s Request for Reconsideration, NHTSA has affirmed its determination that Metro Auto Importer knowingly submitted false or misleading certifications for twelve (12) vehicles.

Metro Auto Importer’s arguments about the nature of the violations do not persuade the agency to reconsider the suspension. The violations committed by Metro Auto Importer 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 Metro Auto Importer repeatedly suggested at the Meeting, merely “clerical error.” Instead, they reflect a disregard for the public trust placed in a RI and an abdication of Metro Auto Importer’s responsibility to provide the agency with accurate certifications of conformance that are not false or misleading. Metro Auto Importer’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, Metro Auto Importer 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 Metro Auto Importer's stated commitment to compliance is in contrast to the findings that led to this suspension.

NHTSA also finds that a suspension of 270 days is appropriate. The 270-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.

In reaching this decision on Metro Auto Importer's Request for Reconsideration, NHTSA has considered Metro Auto Importer'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 Metro Auto Importer 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, or when a certification label had been affixed to the vehicles ignores the essential role of both the certification and the RI in ensuring motor vehicle and public safety.

For all these reasons, NHTSA denies Metro Auto Importer's Request for Reconsideration of the 270-day suspension imposed in the April 15, 2022 Notice of Automatic Suspension. The RI registration of Metro Auto Importer will remain suspended until January 11, 2023, or such earlier date as the agency may subsequently decide is appropriate. *See* 49 C.F.R. § 592.7(c)(2).

Sincerely,

Otto Matheke for Anne L. Collins
Associate Administrator for Enforcement

cc: Lance Beyer, representative of Metro Auto Importer, LLC
(via email lbeyer1@rochester.rr.com)