

REGISTERED IMPORTER NEWSLETTER No. 58

National Highway Traffic Safety Administration

Office of Vehicle Safety Compliance

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Duty to Hold Nonconforming Vehicles Imported Under Box 3

Recent Reports of Increasing Violations: NHTSA has received increasing reports in recent months that vehicles imported by Registered Importers (RIs) are being transported directly to automotive auction facilities or dealerships, and are not being picked up at the border by the RI or taken to a facility that NHTSA has approved for the RI's use. NHTSA is also aware that an increasing volume of vehicles are being presented for titling and registration at State Departments of Motor Vehicles well before NHTSA has released the DOT conformance bonds covering the vehicles and well before 30 days have elapsed from the date the RIs submit conformity data covering the vehicles to NHTSA. These practices are in violation of the statutory and regulatory provisions described below.

Available Penalties and other Enforcement Actions: Civil penalties can be imposed for these violations under 49 U.S.C. § 30165. The agency's civil penalty authority has recently been increased by Congress to \$21,000 per violation, up to a maximum penalty of \$105,000,000 for a related series of violations. A registered importer's registration with NHTSA can also be suspended or revoked for a violation of these provisions under 49 CFR 592.7(b). A DOT conformance bond can also be forfeited under 49 CFR 592.9(e) if, before the bond is released, the RI releases custody of the vehicle to any person for licensing or registration for use on public streets, roads, and highways, or licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have elapsed after the RI has filed a certificate of compliance with the Administrator. The regulation further specifies that for its purposes, a vehicle is deemed to be released from custody if it is not located at a duly identified facility of the RI and the RI has not notified the Administrator in writing of the vehicle's location, or if written notice has been provided, if the Administrator is unable to inspect the vehicle, or if the RI has transferred title to any other person regardless of the vehicle's location.

Anticipated Increase in NHTSA's Enforcement Staff: Congress has recently appropriated funds to increase the agency's enforcement staff. These funds will be used, in part, to hire additional personnel to monitor the RI program. All RIs are on notice that violations of the statutes and regulations that govern their activities, including those detailed below, can be the basis for future enforcement actions. By increasing the enforcement of these provisions, the agency hopes to level the playing field for all RIs, so that those who abide by the rules are not placed at a competitive disadvantage by those who are willing to cut corners for financial gain.

Registered Importers' Responsibilities with Regard to Imported Nonconforming Vehicles: The following describes an RI's responsibilities with regard to vehicles that are not originally manufactured or certified to conform to all applicable Federal motor vehicle safety standards (FMVSS) that they import under Box 3 on the HS-7 Declaration form. An RI can import such a vehicle provided the National Highway Traffic Safety Administration (NHTSA) has decided that the vehicle is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS. NHTSA has made blanket import eligibility decisions covering most Canadian-certified passenger cars, multipurpose passenger

vehicles, trucks, buses, trailers, and motorcycles, and has issued vehicle eligibility numbers VSA-80 through VSA-83 to cover these vehicles. To be lawfully imported, vehicles that are not originally certified to the Canadian motor vehicle safety standards must be found eligible on an individual make, model, and model year basis. A comprehensive list of vehicles that NHTSA has found eligible for importation can be found in Appendix A to Title 49, Code of Federal Regulations (CFR), Part 593 or on the agency's website at www.nhtsa.gov/cars/rules/import. The fact that a vehicle has been determined eligible for importation does not mean that it can be directly imported and offered for sale at automotive auction facility or dealership once the vehicle is in the United States. Instead, NHTSA's rules, as detailed below, require the vehicle to be transported to a facility that NHTSA has approved for the use of the importing RI, where the vehicle is to be conformed to all applicable FMVSS and certified to those standards by the RI by affixing a certification label to the vehicle once all necessary conformance modifications have been performed. Once the certification label is affixed, the RI is not free to release custody of the vehicle. Instead, the RI must retain custody of the vehicle until NHTSA has released the DOT conformance bond that was furnished for the vehicle at the time of entry, or until 30 days have elapsed from the date that a conformity package has been submitted to NHTSA to obtain release of the DOT conformance bond. These requirements derive from the following provisions:

49 U.S.C. § 30146. Paragraph (a) of this section provides, in pertinent part, that an RI "may license or register an imported motor vehicle for use on public streets, roads, or highways, or release custody of a motor vehicle imported by the registered importer or imported by an individual . . . and altered by the registered importer to meet applicable [FMVSS] to a person for license or registration for use on public streets, roads, or highways, only after 30 days after the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured and that applies in that year to that vehicle." Paragraph (a) of the section further provides that "[a] vehicle may not be released if the Secretary gives written notice before the end of the 30-day period that the Secretary will inspect the vehicle under subsection (c) of this section." Paragraph (c) (1) of the section provides, in pertinent part, that "[i]f the Secretary gives notice of an inspection, an importer may release the vehicle only after—(A) an inspection showing the motor vehicle complies with applicable motor vehicle safety standards prescribed under this chapter for which the inspection was made; and (B) release of the vehicle by the Secretary." Paragraph (a)(2)(A) of the section directs the Secretary to issue regulations "ensuring the release of a motor vehicle and bond . . . at the end of the 30-day period, unless the Secretary . . . issues a notice of inspection under subsection (c) of this section."

49 CFR 592.6 Duties of a Registered Importer. Paragraph (c) of this section provides that each Registered Importer must, with respect to each motor vehicle it imports into the United States, "[t]ake possession of the vehicle and perform all modifications necessary to conform the vehicle to all Federal motor vehicle safety and bumper standards that apply to the vehicle at a facility that it has identified to the Administrator pursuant to § 592.5(a)(5)(i), and permanently affix to the vehicle at that facility, upon completion of conformance modifications and remedy of all noncompliances and defects that are the subject of any pending safety recalls, a label that identifies the Registered Importer and states that the Registered Importer certifies that the vehicle complies with all Federal motor vehicle safety and bumper standards that apply to the vehicle, and contains all additional information required by § 567.4 of this chapter."

49 CFR 592.6 Duties of a Registered Importer. Paragraph (e) of this section provides that each Registered Importer must, with respect to each vehicle that it imports, not take any of the following actions until the DOT conformance bond has been released, unless 30 days have elapsed from the date the Administrator receives the Registered Importer's certification of compliance: (1) Operate the motor

vehicle on the public streets, roads, and highways for any purpose other than transportation to and from a franchised dealership of the vehicle's original manufacturer for remedying a noncompliance or safety related defect or mileage accumulation to stabilize the vehicle's catalyst and emissions control systems in preparation for precertification testing to obtain an EPA certificate of conformity; (2) Sell the motor vehicle or offer it for sale; (3) Store the motor vehicle on the premises of a motor vehicle dealer; (4) title the motor vehicle in a name other than its own, or license or register it for use on public streets, roads, or highways; or (5) Release custody of the motor vehicle to a person for sale, or for licensing or registration for use on public streets, roads, and highways, or for titling in a name other than that of the Registered Importer who imported the vehicle.

49 CFR 592.8 Inspection, Release of Vehicle and Bond. Paragraph (a) of this section provides that a Registered Importer shall not obtain title, licensing, or registration of a motor vehicle for which it must furnish a statement of conformity to the Administrator for use on public roads, or release custody of such a vehicle for such titling, licensing, or registration, except in accordance with the provisions of this section. The first of those provisions, as set forth in paragraph (b), is for the RI to submit a statement of conformity to the Administrator. Paragraph (c) of the section provides that before the end of the 30th calendar day after receiving a complete certification of conformity, the Administrator may notify the Registered Importer in writing that an inspection of the vehicle is required to verify the certification. Paragraph (d) provides that the Administrator may by written notice request the Registered Importer to verify its certification of a motor vehicle before the end of the 30th calendar day after the date the Administrator receives a complete certification of conformity. Paragraph (e) provides that if the Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a complete certification of conformity, the Registered Importer may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed, or registered for use on public roads. Paragraph (g) provides that release of the conformance bond shall constitute acceptance of certification or completion of inspection of the vehicle concerned.

Contact for Further Information: If you have any questions about the contents of this newsletter, please contact Coleman Sachs, Chief, Import and Certification Division, Office of Vehicle Safety Compliance, at 202-366-3151 or coleman.sachs@dot.gov.