

September 09, 2022

COMMENT  
For  
NHTSA-2022-0060  
Document #: 2022-14938  
Information Collection Approval  
Imported Vehicles

This is a response to NHTSA's request for comments prior to OMB's approval for reauthorization of forms used during the importation and conformity process for imported motor vehicles.

These comments refer to importations declared as "Box 3" on the HS-7 form.

Specifically, these forms are:

HS-7 Form

Bond to Ensure Conformity

Statement of Conformity

Uniform Conformity Package Rejection Letter

## **HS-7 AND BOND TO ENSURE CONFORMITY FORMS:**

These forms include a "Date of Entry" field. However, since the inception of these forms in 1994, US Customs/Border Protection now require submission of completed forms for pre-clearance of importations.

The process is:

1. RI completes and sends forms to Customs House Broker;
2. Broker sends to Customs for pre-clearance;
3. Customs send Broker pre-clearance approval;
4. Broker notifies Registered Importer;
5. Registered Importer notifies shipper;
6. Shipper submits manifest to Customs for pre-clearance;
7. Shipper arrives at border with vehicles for inspection;
8. Vehicles cross the border.

It is very unusual for the actual importation date to be the same as the date of submission of the forms. Typically, this delay is one to three days, although Customs allows up to thirty days.

This inaccurate date on these forms could lead to confusion. The Registered importer is required to submit documentation of conformity or exportation to NHTSA within 120 days of importation.

The titles for these fields should be changed to convey the date which it represents:

Date of Preparation

Date of Submission to US Customs.

## **STATEMENT OF CONFORMITY:**

This form is required by the Office of Vehicle Safety Compliance (OVSC) for submission to NHTSA for each individual vehicle along with supporting documentation.

## DATE OF ENTRY ISSUE:

This form also includes a "Date of Entry" field. While it would seem straightforward to ensure that this field lists the actual date of crossing, there is concern that since the Customs House Broker is allowed ten days to complete their filing of the final entry documents-this will require changes in the process. The cost of these changes should be considered.

## SUPPORTING DOCUMENTATION:

During the COVID emergency, NHTSA ceased acceptance of paper submissions of compliance. Registered Importer's were required to submit all information via an electronic secured portal. The documents and photographs were typically submitted in PDF format.

OVSC recently mandated that all photographs submitted be in the JPEG format which includes metadata. This new requirement was announced without inclusion of input from the Registered Importer community, and no indication that any approval was sought or obtained from OMB.

## 592.6 REQUIRES:

*(vi) Unaltered front, side, and rear photographs of the vehicle,*

*(vii) Unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed),*

*(viii) Unaltered photographs and documentation sufficient to demonstrate conformity with all applicable Federal motor vehicle safety and bumper standards to which the vehicle was not originally manufactured to conform*

JPEG photographs are very large files, and submitting them electronically requires significant additional effort.

In order to include the meta-data with each JPEG photograph, the Registered Importers had to use either a smart phone, or a smart tablet-which would include the date and

location of where each photograph was taken. The transfer of this data also requires efforts.

The 2004 Final Rule excludes JPEG submissions. This regulation did specifically mention JPEG's were not permitted.

NHTSA has indicated that only electronic submissions will be accepted.

There seems to have been a lack of OMB oversight on the above issues:

1. No consideration of the cost/benefit of electronic versus paper submissions;
2. No consideration of the cost/benefit of the production, submission and review of JPEG format versus PDF format photographs;
3. No change in the **regulations** which requires "*...an original handwritten signature and not with a signature that is stamped or mechanically applied*" [49 CFR 592.6(d)(3);
4. No consideration as to whether the requiring METADATA is additional information which must be approved by OMB.

## MODIFICATIONS PERFORMED PRIOR TO IMPORTATION:

Part of the Statement of Conformity form lists potentially applicable Federal Motor Vehicle Safety Standards (FMVSS) and the RI is required to check either that:

"O"=Conformed at time of original manufacture

"M"=Modified to conform after original manufacture

"N"= Not applicable

On occasion, some compliance modifications are performed prior to a vehicle's importation. Frequently the owner of the vehicle will have the work done in Canada in order to save time and expenses, and the RI is not involved in this transaction.

None of the above boxes seem appropriate, since the modification was performed following the "time of original manufacture," but the modification must be attested to by the Registered Importer as personally witnessed each modification performed or performed by an employee of the RI.

The 2004 Final Rule which promulgated these regulations did specifically mention with approval the pre-importation modification of speedometers.

This form does not include pre-importation modification as an option.

## **SIGNATURE DATE:**

Two Registered Importers were suspended by NHTSA due to using the entry date from the HS-7 form as the date included on the Statement of Conformity form next to the RI's signature. Obviously, this was an error on the RI's part.

However, to reduce such errors:

1. This field should be eliminated, since the date of signature is not required by 592.6; or
2. The name of this field should be changed to: "DATE OF SIGNATURE"

The current three-page version of the Statement of Conformity, which also uses the OMB No.: 2127-0002 has the following

*"PAPER REDUCTION ACT STATEMENT....The information collected on this form is necessary to obtain registration with NHTSA as an importer of motor vehicles...The information is used to verify the applicant's eligibility to obtain such registration...."*

Not only should this statement refer to the Paperwork Reduction Act, but also the burden information refers to a different collection form: that for an application to become a Registered Importer.

This form, the Statement of Conformity as well as the accompanying documents and photographs, present to NHTSA the Registered Importer's "data, views and arguments" to substantiate the Registered Importer's certification of conformity with the US Federal Motor Vehicle Safety Standards.

## UNIFORM CONFORMITY PACKAGE REJECTION LETTER:

Following review of a conformity submission, if the OVSC analyst determines that a submission is not sufficient to substantiate conformity, the RI will be emailed a form letter with the reason for rejection, as well as the additional information required.

A copy of this form is attached.

An additional processing fee of \$57 dollars is assessed per vehicle.

This form letter lists five categories for rejection:

1. *Active Safety Recall;*
2. *Conformity Package is Incomplete or has Erroneous Errors (sic);*
3. *Imported vehicle is not FMVSS 138 compliant-Referred to Safety Compliance Engineer;*
4. *Investigative Hold to Determine Statutory and Regulatory Violations Subject to Enforcement;*
5. *Statement of Conformity Received 120 days of more than imported vehicle's Date of Entry.*

Even though this form requests information, it has not been reviewed by OMB.

## ISSUES:

1. "Active Safety Recalls" This category has been used to reject vehicles which have had recalls announced following submission of the compliance information to NHTSA. A recall which is announced following the submission should not be rejected, nor subject to an additional fee;
2. "Investigative Hold" This category is not reasonable when used as a basis for rejection. The thirty day hold period is the maximum time period set by Congress to determine safety compliance. Rejection (along with the \$57 fee) and being placed on an indefinite hold to determine non-safety compliance violations seems to be beyond the regulatory authority.
3. This form letter is stated as being issued "Pursuant to 49 CFR 592.8(d)(2)." We have not been able to find or view this regulation



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



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**BY EMAIL**

Date:

Principal:  
Registered Importer:  
Address:  
City, State, and Zip Code:

RI#

**Notice of Refusal of Certification and Conformity Documents Submission Rejection**

**Reason for Rejection:**

- ☐ Active Safety Recall
- ☒ Conformity Package is Incomplete or has Rejectable Errors
- ☐ Imported Vehicle Is Not FMVSS 138 Compliant - Referred to Safety Compliance Engineer
- ☐ Investigative Hold to Determine Statutory and Regulatory Violations Subject to Enforcement
- ☐ Statement of Conformity Received 120 Days or More Than Imported Vehicle's Date of Entry

**Conformity Document Submission Information:**

Date of Conformity Document Submission Receipt:

The number of Packages Submitted Subject to Rejection:

Dear

Pursuant to 49 CFR § 592.8(d)(2), this is written notice that the National Highway Traffic Safety Administration (NHTSA) refuses to accept submitted certification(s) because of discrepancies or inadequacies discovered. During the review of your company's conformity package submissions, an analyst found discrepancies or inadequacies resulting in the refusal of certifications and rejection of conformity packages for reasons checked off above. Please refer to the attached "Conformity Document Review Rejection Details Sheet" listing those vehicles, identified by their vehicle identification numbers (VINs), giving the details of the discrepancies or inadequacies discovered.

**The thirty-day review after which you may release custody of vehicles referenced in 49 CFR § 592.8(e) of those affected conformity packages is suspended, and no bond release letter will be issued until the reasons for rejection are addressed and resolved.** Please note that your company will be assessed a \$57.00 fee for each rejected package resubmitted that can be corrected unless extenuating circumstances exist. Be advised rejection due to regulatory and/or statutory violations discovered could result in an enforcement action ranging from an exportation demand to bond forfeiture, civil penalties, suspension, or revocation of your registration.

You should also note that the 120-day period during which you must submit a suitable certification covering the subject vehicles referenced in 49 CFR § 592.6(d)(1) continues to run.

If you believe this determination has been made in error, you should submit to this office, in writing, all data and arguments as to why the certification(s) provided should not be refused and the conformity documents rejected. Furthermore, please present evidence that the certification(s) was/were not false or misleading or does/did not

contain a misrepresentation if that is the case. You are also encouraged to present evidence of extenuating circumstances to waive the assessment of the resubmission fee. The assigned analyst will allow you to explain any issues regarding the rejected submissions you may have. If further clarification is needed, or you have additional questions and concerns, you may contact:

Assigned Analyst:

Email:

Telephone Number:

Sincerely,

A handwritten signature in black ink that reads "Brodie M. Mack, Jr." The signature is written in a cursive, flowing style.

Brodie M. Mack, Jr., Chief  
Import and Certification Division  
Office of Vehicle Safety Compliance