

and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above. The EA and FONSI can be viewed at the Toledo—Lucas County Public Libraries (Main, Sanger, West Toledo, Kent, and Lagrange Branches), the City of Toledo—Division of Transportation Office, ODOT District 2 Office in Bowling Green, City of Toledo—Clerk of Council Office, City of Toledo—Division of Streets, Bridges, and Harbor, and the Toledo Metropolitan Area Council of Governments (TMACOG).

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303.]

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: June 30, 2008.

**Herman D. Rodrigo,**

*Director of Engineering and Operations,*  
*Columbus, Ohio.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2008–0113; Notice 1]

#### Request for Public Comments on Guidance and Recommended Best Importer Practices To Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comments.

**SUMMARY:** This notice solicits comments from the public, from importers and manufacturers of motor vehicles and motor vehicle equipment, and from other interested parties concerning best practices to be followed by importers of motor vehicles and motor vehicle equipment to reduce the likelihood of importing products that contain defects related to motor vehicle safety or do not comply with applicable Federal motor vehicle safety standards.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than August 7, 2008.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

**Instructions:** For detailed instructions on submitting comments, see the Public Participation heading of the

Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://DocketInfo.dot.gov>.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket or visit the docket at the street address listed above.

**FOR FURTHER INFORMATION CONTACT:** Clint Lindsay, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5288).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA) administers the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act). Under that authority, NHTSA issues and enforces Federal motor vehicle safety standards (FMVSS) that apply to motor vehicles and to certain items of motor vehicle equipment. NHTSA also monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS. In recent years, an ever-increasing number of motor vehicles and motor vehicle equipment items sold in the United States have been imported. For example, in 1996 imported tires comprised just 19 percent of the 282 million tires sold that year in the United States. By 2006, imported tires rose to 46 percent of all tire sales, with 140 million tires being imported. Nearly all motorcycle helmets are now imported, as is the case for a large percentage of vehicle lighting equipment sold in this country.

NHTSA's enforcement program has two major elements, compliance testing and defects investigation. As the volume

of motor vehicle and equipment imports has increased, NHTSA's scrutiny of those imports through both compliance testing and defect investigations has also grown. However, recent experience has demonstrated that companies importing products regulated by NHTSA, particularly motor vehicle equipment, play an especially important role in ensuring that those items comply with the FMVSS and are not likely to be defective. At the same time, both NHTSA's recent experience and that of other agencies with regulatory authority over the safety of imported goods indicate that the entire importing community could benefit by following practices that help ensure the safety of imported products and reduce the likelihood of unsafe products entering the United States.

#### B. The Interagency Working Group Report—Strategic Framework

On July 18, 2007, the President issued Executive Order 13439 to establish the Interagency Working Group on Import Safety (the "Working Group"). The Department of Transportation, including NHTSA, participated in the Working Group. As part of its mission, the Working Group identified strategies that could be pursued within existing resources to promote the safety of imported products. To begin identifying best practices for import safety, the Working Group held consultations with the private sector, reviewed current import safety procedures and methods, surveyed the authorities and practices of Federal agencies, and worked with the importing community. The Working Group recognized that U.S. importers are responsible for ensuring the safety of regulated products they import into the United States and should follow best practices to assure safety through methods that include: (1) Selecting foreign manufacturers to produce their products; (2) inspecting foreign manufacturing facilities; (3) inspecting goods produced on their behalf either before export or before distribution in the United States; (4) identifying the product's country of origin; and (5) safeguarding the supply chain.

In September 2007, the Working Group published a report entitled "*Protecting American Consumers Every Step of the Way: A Strategic Framework for Continual Improvement in Import Safety*" (the "Strategic Framework"), which inaugurated the process of identifying action steps needed to enhance the safety of imported products.<sup>1</sup> The Strategic Framework

promotes taking a cost-effective, risk-based approach that has the following key principles:

(1) Prevention—Prevent harm in the first place. The Strategic Framework recognizes that the Federal government must work with the private sector and with foreign governments to adopt an approach to import safety that builds safety into the manufacturing and distribution processes;

(2) Intervention—Intervene when risks are identified. The Strategic Framework encourages Federal, state, local, and foreign governments, along with foreign manufacturers and the importing community, to adopt more effective techniques for identifying potential noncompliant and/or defective products. When problems are identified, the Strategic Framework recognizes that government officials must act swiftly, and in a coordinated manner, to seize, destroy or otherwise prevent noncompliant and/or defective products from advancing beyond the point-of-entry; and

(3) Response—Respond rapidly after harm has occurred. In the event that an unsafe imported product makes its way into domestic commerce, the Strategic Framework recommends swift action to limit potential exposure and harm to the American public.

#### C. Working Group—Action Plan

The Working Group promised to solicit extensive comments and recommendations from the public, and to provide an action plan by mid-November. On November 6, 2007, the Working Group submitted its report entitled "*Action Plan for Import Safety: A roadmap for continual improvement*" (the "Action Plan").<sup>2</sup> As described in the Action Plan, that document represents the culmination of thousands of hours of research and analysis, as well as public comment received from hundreds of stakeholders. In the Action Plan, the Working Group set forth 14 broad recommendations and 50 specific action steps based on the key principles described above—Prevention, Intervention, and Response. For each of these key principles, the Action Plan identifies the cross-cutting building blocks that departments and agencies should use to guide their import safety programs. Building Block Number 2,

*Way: A strategic framework for continual improvement in import safety*" (Washington, DC, September 2007) <http://www.importsafety.gov/report/report.pdf>.

<sup>2</sup> Interagency Working Group on Import Safety, "*Action Plan for Import Safety: A roadmap for continual improvement*" (Washington, DC, November 2007) <http://www.importsafety.gov/report/actionplan.pdf>.

with the subject heading *Increase Accountability, Enforcement, and Deterrence*, acknowledges that while it is important to remember that industry has a financial interest to sell safe products to consumers, all stakeholders involved in the production, distribution, and sale of imports must be held accountable to ensure that imported products meet Federal safety standards in the United States. The Action Plan recommended that Federal agencies "work with the importing community and other members of the public to develop Good Importer Practices and issue guidance with respect to particular product categories."<sup>3</sup> Although some members of the importing community have established best practices on their own, the majority of importers do not have available best practices that are focused on ensuring product safety. The Working Group believes that by developing best importer practices, the entire importing community may benefit from taking appropriate steps to ensure the safety of imported products and to reduce the likelihood of unsafe products entering the United States.

#### II. NHTSA's Implementation of the Working Group's Recommendation on Best Importer Practices

The Action Plan encourages Federal agencies to work with the importing community to develop best importer practices that will provide strategies for evaluating foreign suppliers and imported products. The Food and Drug Administration (FDA) is in the process of issuing a set of Good Importer Practice recommendations on behalf of select Federal agencies and departments that are members of the Interagency Working Group on Import Safety. Those departments and agencies include the Consumer Product Safety Commission, the Environmental Protection Agency, the U.S. Department of Agriculture, the U.S. Department of Commerce, the U.S. Department of Health and Human Services, the U.S. Department of Homeland Security, and the U.S. Department of Transportation (DOT). As the DOT representative to this working group, NHTSA has participated in the development of the Good Importer Practice recommendations that are awaiting issuance by the FDA. Those recommendations are intended to be generic in nature, and not specific to the products that are regulated by any particular Federal agency. In contrast, the Best Importer Practice recommendations that are the subject of this notice are intended for importers of

<sup>3</sup> *The Action Plan*, Recommendation 3.1, pp. 20–21.

<sup>1</sup> Interagency Working Group on Import Safety, "*Protecting American Consumers Every Step of the*

motor vehicles and motor vehicle equipment, the products that are regulated by NHTSA. The FDA will be publishing a **Federal Register** notice in the future to solicit public comments on the generic Good Importer Practices recommendations.

In this notice, NHTSA begins the process of assembling for guidance and informative purposes a set of suggested best practices for importers of motor vehicles and motor vehicle equipment. NHTSA is not establishing a binding set of rules on best practices or even suggesting that a single set of best practices would apply in all situations. The agency fully realizes that best practices may vary widely depending on the item being imported and the scale of an importer's operations. We also recognize that such practices must remain fluid to account for changes in safety regulations and the global economic environment. Importers remain free to choose the practices that best fit their needs in ensuring compliant and defect-free products. Moreover, these recommended practices do not establish any defenses to any violations of the statutes and regulations that NHTSA administers.

In the paragraphs that follow, we have presented our proposed recommendations on best importer practices under the following headings:

- Fully Understand the Importer's Obligations under Motor Vehicle Safety Statutes and Regulations;
- Exercise Great Care in Selecting Foreign Manufacturers;
- Inspect Foreign Manufacturing Facilities;
- Inspect Goods Either Before They Are Exported to or Distributed in the United States;
- Identify the Product's Country of Origin;
- Establish a Consumer Service Program;
- Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, and Defect Issues; and
- General Assistance with Federal Regulations.

After receiving comments, we will issue a subsequent notice delineating a final set of recommended best practices for informative purposes. We will also post those best practices on the agency's Web site for easy reference.

### III. Comments and Recommendations Requested

Under the Vehicle Safety Act, manufacturers, including importers, are responsible for the safety of their products that are sold in or otherwise enter the United States. NHTSA has a

standard setting and oversight/enforcement role and may issue guidance that provides valuable information to the affected communities. U.S. consumers provide valuable feedback to manufacturers and to NHTSA, which has a hotline for consumers to report problems with motor vehicles and motor vehicle equipment. To further this objective, the agency is asking the public, the importing community, and both foreign and domestic fabricating manufacturers of motor vehicles and motor vehicle equipment to provide comments and recommendations that address the agency's initial thoughts on the suggested guidance regarding best importer practices set forth below.

We are confident that capable and responsible manufacturers possess a body of knowledge about their respective products that, if shared, could benefit the importing community. We also welcome comments and recommendations from accreditation and certification bodies, as well as professional organizations with interests relating to best practices, particularly in the area of monitoring engineering design and manufacturing processes and facilities, recordkeeping incident to those activities, assessing safety defects and noncompliances and taking needed corrective actions, and facilitating continual process improvements. Commenters who recommend specific best practices should be careful to address the practical impacts that those practices may have on businesses of differing size and the relative costs and benefits of implementing various practices.

### IV. Public Participation

#### *How Do I Prepare and Submit Comments?*

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management identified at the beginning of this document, under **ADDRESSES**.

#### *How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you must follow the procedures found in 49 CFR part 512. Requests for confidential treatment are submitted to the Chief Counsel, NHTSA, (NCC-111), Room W41-227, 1200 New Jersey Avenue, SE., Washington, DC 20590. Each request must be made in writing, explain the basis for the request and describe the materials for which confidential treatment is sought. Confidential information must be properly marked and accompanied by a certification attesting to the confidential nature of the materials. Each request for confidential treatment should include two copies of the confidential material and one copy from which the information claimed as confidential has been removed. In addition, you should submit two additional copies of the information without the claimed confidential business information to Docket Management at the address given above under **ADDRESSES**.

#### *Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date identified at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

#### *How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management at the address and times given at the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page <http://www.regulations.gov>.

(2) On that page, click on "search for dockets."

(3) On the next page (<http://www.regulations.gov/fdmspublic/component/main>), select NATIONAL HIGHWAY TRAFFIC SAFETY

ADMINISTRATION from the drop-down menu in the Agency field, enter the Docket ID number and title shown at the heading of this document, and select "NOTICES" from the drop-down menu in the Type field.

(4) After entering that information, click on "submit."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

#### V. Executive Order 12866 on "Significant Guidance"

On January 18, 2007, the President issued Executive Order (E.O.) 13422, "Further Amendment to Executive Order 12866 on Regulatory Planning and Review." On the same day, in connection with E.O. 13422, the Director of the Office of Management and Budget (OMB) issued OMB Bulletin No. 07-02 on "Agency Good Guidance Practices." The primary focus of E.O. 13422 and OMB Bulletin No. 07-02 is to improve the way the Federal government does business with respect to guidance documents—by increasing their quality, transparency, accountability, and coordination.

Both Executive Order 13422 and OMB Bulletin No. 07-02 define "guidance documents" as "an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue." Guidance documents that are not "significant" are not covered by E.O.s 13422, 12866, or Bulletin No. 07-02.

A "significant" guidance document is one disseminated to regulated entities or the general public that may reasonably be anticipated to:

(1) Lead to an annual effect of \$100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impacts of entitlements, grants, user fees or loan programs or the rights or obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Today's proposed "Best Importer Practices" document does not meet any of the four stated criteria for a guidance document to be "significant." In fact, one purpose of this draft document is to help manufacturers and importers of motor vehicles and motor vehicle equipment to understand the coordinated roles of NHTSA and U.S. Customs and Border Protection in the import process. Therefore, this document is not subject to E.O. 13422, E.O. 12866, or to OMB Bulletin 07-02. For this reason, no economic analysis of this document has been prepared.

However, since NHTSA recognizes the public interest in this document, we solicit public comment, before issuing a final "Best Importer Practices" document. We hope to publish a final guidance document that will be as understandable and as user-friendly as possible for manufacturers and importers of motor vehicles and motor vehicle equipment.

In writing this draft "Best Practices" document, we have also voluntarily sought to incorporate E.O. 12866's principles (applicable to rules) that agencies write in "plain language." Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Does this document contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make this document easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this document easier to understand?

Comments on how this draft document may be made more understandable to manufacturers and importers of motor vehicles and motor vehicle equipment and to the general public are solicited.

In light of the foregoing, NHTSA proposes the following guidance and recommended best practices for importers of motor vehicles and motor vehicle equipment:

#### *Guidance and Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment*

The National Highway Traffic Safety Administration (NHTSA) is the U.S. government agency responsible for implementing and enforcing the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act), and certain other laws relating to motor vehicle safety. Those laws impose distinct duties on manufacturers, including importers, of motor vehicles and motor vehicle equipment intended for on-road use in the United States. Companies that import these products must ensure that the products comply with Federal motor vehicle safety standards (FMVSS). If a product does not comply with an applicable FMVSS or contains a defect related to motor vehicle safety, including a defect that manifests itself after considerable operation in the field, the manufacturer must recall it. Obviously, it is best if the motor vehicle or equipment complies with applicable FMVSS and does not manifest defects. To reduce the likelihood of defects and noncompliances, manufacturers, including importers, should become familiar with the best practices suggested here and adapt them to their specific needs. NHTSA is also very willing to work closely with individual importers to explain our standards, reporting requirements, regulatory program, and enforcement process.

#### (1) Fully Understand the Importer's Obligations under Motor Vehicle Safety Statutes and Regulations

Before importing motor vehicles or motor vehicle equipment into the United States, it is essential that the importer understand its obligations under Federal statutes and regulations governing vehicle safety. This section summarizes those obligations stemming from the Vehicle Safety Act, which the NHTSA administers.<sup>4</sup>

#### (a) Certification of Motor Vehicles and Equipment to the Federal Motor Vehicle Safety Standards

The Safety Act authorizes NHTSA to issue the FMVSS, which set minimum performance requirements for motor vehicles and for certain items of motor vehicle equipment. See 49 CFR part 571. In general, motor vehicles are vehicles driven or drawn by mechanical power

<sup>4</sup> It is wise for manufacturers and importers to become familiar with other laws not administered by NHTSA, such as State tort laws, which could impact the decision to sell products in the United States.

and manufactured primarily for use on public roads. Motor vehicles have the following type classifications:

- Buses;
- low-speed vehicles;
- motorcycles;
- multipurpose passenger vehicles;
- passenger cars;
- trailers; and
- trucks.

The following motor vehicle equipment items are also subject to the FMVSS:

- Tires;
- rims;
- brake hoses;
- brake fluid;
- seat belt assemblies;
- lamps, reflective devices, and associated equipment;
- glazing (automotive glass and plastics);
- motorcycle helmets;
- child restraint systems (child safety seats);
- platform lift systems for the mobility impaired;
- rear impact guards for trailers;
- triangular reflective warning devices, and;
- compressed natural gas containers.

The Vehicle Safety Act requires manufacturers to certify that motor vehicles and regulated items of motor vehicle equipment they produce for sale in the United States comply with all applicable FMVSS. See 49 U.S.C. 30115. Motor vehicle equipment items that are not subject to the FMVSS do not require certification; however, such items may be found (by either NHTSA or the manufacturer) to have a safety-related defect, and if so, the manufacturer will have an obligation to furnish owners of the equipment with notification of, and a remedy for, the defect, usually at no charge to the consumer.

Type approval<sup>5</sup> is not required for motor vehicles and motor vehicle

<sup>5</sup> In many countries, before motor vehicles or motor vehicle equipment items may be sold to consumers, the fabricating manufacturer must prove that these items comply with safety regulations and receive pre-approval from a government agency. This approach is commonly referred to as "type approval." Under type approval, a manufacturer submits production samples and specifications to an approved laboratory and if the product complies with the standards, the government issues a type approval certificate of compliance. Because this can take many months, the manufacturer begins the process of obtaining type approval well in advance of bringing the product to market. After type approval is granted, the manufacturer ensures that each vehicle or equipment item is produced in conformance with the specifications that were submitted for approval. If countries enter into international agreements covering vehicle safety regulations, one country's type approval may be valid for another member country. For example, the Vehicle Certification Agency, an Executive Agency of the United Kingdom Department for Transport,

equipment sold in the United States. NHTSA does not issue type approval certifications and does not certify any motor vehicles or motor vehicle equipment as complying with applicable FMVSS. Instead, we have a "self-certification" process, which places responsibility on the fabricating manufacturer to certify the vehicle or equipment item as complying with the applicable FMVSS. Self-certification reduces the cost and time associated with lengthy, government-mandated testing that is required under type approval. Self-certification also reduces regulatory costs and facilitates international trade because it allows manufacturers to quickly bring to market vehicles and equipment items that incorporate safety and technology advancements.

The Vehicle Safety Act requires the manufacturer to exercise "reasonable care" when issuing its certification. See 49 U.S.C. 30115. To this end, NHTSA encourages manufacturers to conduct tests in accordance with the tests specified in the FMVSS. See 49 CFR part 571.

#### (b) Noncompliance with a FMVSS or a Safety-Related Defect

Notwithstanding the certification of a product, a manufacturer may subsequently determine that a safety-related defect or a noncompliance with a FMVSS exists in a motor vehicle or a motor vehicle equipment item it has produced. Manufacturers have a duty to notify NHTSA if they learn the vehicle or equipment contains a defect and in good faith they decide that the defect is related to motor vehicle safety, or in good faith they decide that the vehicle or equipment does not comply with an applicable FMVSS. See 49 U.S.C. 30118(c). The manufacturer must notify NHTSA within five working days after determining the existence of a safety-related defect or noncompliance. See 49 CFR 573.6. Alternately, NHTSA may determine the existence of a safety-related defect or noncompliance in a particular motor vehicle or motor vehicle equipment item and order manufacturers to recall those items. See 49 U.S.C. 30118(b).

#### (c) Notification and Remedy for a Safety-Related Defect or Noncompliance

Regardless of whether the safety-related defect or noncompliance with an FMVSS is determined to exist by the manufacturer or by NHTSA, the manufacturer must provide NHTSA, as well as owners and dealers of the

administers type approval in the U.K. See: <http://www.vca.gov.uk/index.asp>.

affected products, with notification of the defect or noncompliance and must remedy the defect or noncompliance, usually without charge. The notification and remedy process is commonly referred to as a "safety recall campaign" or more simply as a "recall." There is a limited exception under which a manufacturer that has reported a noncompliance to NHTSA may petition the agency for a determination that the noncompliance is inconsequential as it relates to motor vehicle safety.<sup>6</sup> See 49 CFR part 556. NHTSA monitors the remedy program to ensure its successful completion. The agency is not authorized to expend its funds on recalls; the expense of notifying owners and providing a remedy must be borne by the manufacturer and/or importer of the products found to contain the defect or noncompliance. See 49 U.S.C. 30118–30120.

#### (d) Importers' Recall Obligations

Under the Vehicle Safety Act, importers of motor vehicles and motor vehicle equipment for resale are considered "manufacturers." See 49 U.S.C. 30102(a)(5). Therefore, importers must recognize that they have obligations under the Vehicle Safety Act, which continue after motor vehicles or items of motor vehicle equipment are sold to consumers within the United States. If an importer becomes aware that a vehicle or equipment item it has imported contains a defect related to motor vehicle safety or does not comply with an applicable FMVSS, it must provide NHTSA, as well as owners and dealers of the affected vehicles or equipment, with notification of the defect or noncompliance and must remedy the defect or noncompliance, usually without charge. An importer also has notification and remedy responsibility if NHTSA determined the existence of the defect or noncompliance and ordered it to undertake a notification and remedy campaign.

If a fabricating manufacturer is not located in the United States and does not conduct business operations in this country, including through a subsidiary or other controlled entity, the U.S. judicial system likely will not be able to effectively compel the foreign

<sup>6</sup> The National Traffic and Motor Vehicle Safety Act of 1966 gives NHTSA the authority to exempt manufacturers from the requirement to provide notification and remedy for safety-related defects or noncompliances if the agency determines that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. See 49 U.S.C. 30118, 30120. The procedures for implementing this statutory authority are set forth in 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

manufacturer to conduct a recall. In that case, the burden of providing notification to owners and dealers and a free remedy will fall solely upon the importer, unless the fabricating manufacturer voluntarily supports the recall.

(e) NHTSA Defect Investigations

In addition to the actions of the manufacturers and importers in recalling noncompliant and defective motor vehicles and motor vehicle equipment, NHTSA investigates suspected noncompliances and safety-related defects in motor vehicles and motor vehicle equipment items. Before initiating an investigation of a suspected safety-related defect, NHTSA ordinarily reviews consumer complaints that are submitted to the agency and other available information to determine whether a defect trend exists. Among the other information the agency reviews is Early Warning Reporting (EWR) information submitted by manufacturers under regulations issued pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. These regulations require manufacturers, including by definition, importers, to submit information that could assist the agency in determining whether a safety-related defect exists in a vehicle or in specified items of motor vehicle equipment. See 49 CFR part 579, subpart C. Under the EWR rules, manufacturers must generally report claims they receive on incidents resulting in fatalities or injuries allegedly caused by a defect in their vehicles or motor vehicle equipment items used in the United States or deaths allegedly caused by a defect in their identical or substantially similar vehicles or equipment used in a foreign country. Moreover, depending on the level of annual production and the type of product, manufacturers may also be required to provide NHTSA with information on production, property damage claims, consumer complaints, warranty claims, field reports, as well as other information.

(f) Compliance Needed to Import Motor Vehicles and Equipment

As part of its safety mandate, NHTSA monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS. To be imported free of restriction, a motor vehicle less than 25 years old must be originally manufactured to comply with all applicable FMVSS and bear a label certifying such compliance that is permanently affixed by the vehicle's

original (i.e. "fabricating") manufacturer. To be lawfully imported, a new or used item of motor vehicle equipment that is subject to an FMVSS must, as originally manufactured, conform to the standard and be so certified by its original manufacturer. See 49 U.S.C. 30112 and 30115. As noted above, items of motor vehicle equipment that are subject to the FMVSS include tires, rims, brake hoses, brake fluid, seat belt assemblies, lamps, reflective devices, and associated equipment, glazing (automotive glass and plastics), motorcycle helmets, child restraint systems (child safety seats), platform lift systems for the mobility impaired, rear impact guards for trailers, triangular reflective warning devices, and compressed natural gas containers. In most instances, the manufacturer's certification of compliance with the applicable FMVSS for regulated safety equipment is evidenced by the symbol "DOT" either inscribed on the equipment item in a prescribed location, or placed on the outside of the container in which the equipment item is shipped.

As previously noted, NHTSA has authority to investigate possible safety-related defects in a motor vehicle equipment item regardless of whether the item is subject to the FMVSS. When an item is subject to a FMVSS, compliance with the standard does not ensure that the item is free of a safety-related defect. NHTSA investigates numerous vehicles and items of equipment each year for possible defects.

(g) Procedural Requirements for Fabricating Manufacturers

Before offering a vehicle or motor vehicle equipment item for sale in the United States, the fabricating manufacturer must: (1) Designate a U.S. resident as its an agent for service of process if the manufacturer is not located in the United States (49 CFR part 551, Subpart D *Service of Process on Foreign Manufacturers and Importers*) and (2) submit to NHTSA identifying information on itself and the products it manufactures to the FMVSS, not later than 30 days after the manufacturing process begins (49 CFR part 566 *Manufacturer Identification*). The fabricating manufacturer of a motor vehicle must also submit to NHTSA information the agency will need to decipher the manufacturer's vehicle identification number or "VIN" format not later than 60 days prior to offering the first vehicle for sale in the United States (49 CFR part 565 *Vehicle Identification Number Requirements*). The manufacturer of certain regulated

equipment items such as brake hoses, glazing (automotive glass and plastics), and tires must label its products with identification numbers assigned to the manufacturer by NHTSA.<sup>7</sup>

(h) Penalties

Manufacturers and importers may be subject to substantial civil penalties for failure to meet the requirements of the statutes and regulations that NHTSA administers. See 49 U.S.C. 30165. Currently, those penalties can be as high as \$6,000 for each violation with a maximum of \$16,375,000 for a related series of violations. See 49 CFR part 578.

(2) Exercise Great Care in Selecting Foreign Manufacturers

International trade presents unique risks. A company engaged in importing foreign manufactured goods or considering becoming an importer should have a complete and detailed business plan. The plan should reflect careful consideration of the following questions:

- Who will determine the specifications for the product?
- On what basis will the product specifications be developed?
- Who will design the product?
- Who will verify the product's design?
- What laboratory and field tests will be undertaken?
- Who will test product prototypes?
- What entity will fabricate various parts?
- What manufacturing quality control will be undertaken?
- How will manufacturing quality control be maintained?
- How often will products be tested to ensure continued compliance with the FMVSS?
- What documentation will be generated?
- What documentation will be maintained?
- Who will maintain the documentation?
- Who will check the documentation?

Compliance with FMVSS is only a part of the considerations. Motor vehicles operate in harsh conditions over many miles and some abuse must be assumed; therefore, avoidance of safety-related defects is critical.

Selecting a capable and responsible overseas business partner is one of the best ways to minimize risks. Before selecting a business partner in another country, it is wise to investigate the

<sup>7</sup> See 49 CFR 571.106, paragraph S5.2.2(b), relating to brake hoses; 49 CFR 571.205, paragraph S6.2, relating to glazing; and 49 CFR 574.5, relating to tires.

supplier's reputation using readily available public source information (such as the Internet) or, if possible, by interviewing other customers of the supplier. It is advisable for a prospective importer to check many references and not to limit its inquiries to references that the prospective supplier identifies. If the country in which a manufacturer is located has an established government agency to oversee product safety, that agency's public records may contain useful information on the company's history of recalls and regulatory compliance. Importers may also wish to consider requesting the potential supplier's catalogs and sample products for evaluation. The U.S. Department of Commerce also offers an *International Company Profile Report* that may assist importers in evaluating potential foreign partners. This report summarizes the financial strength of a company and provides useful information gleaned from the local press, industry contacts, and other sources. More information about this service is available on the Department of Commerce Web site. See <http://www.export.gov/salesandmarketing/ICP.asp>.

At a minimum, it is prudent for importers to use existing sources of information to ensure that they will purchase, import, distribute, and sell motor vehicles and motor vehicle equipment items subject to the FMVSS that are produced by foreign manufacturers who:

1. Properly identify themselves and their products to NHTSA (49 CFR part 566);
2. designate a U.S. resident as their agent for service of process (49 CFR part 551, subpart D);
3. furnish NHTSA with VIN-deciphering information (if they manufacture "motor vehicles") (49 CFR part 565); and
4. certify their products as complying with all applicable FMVSS and so label their products (49 U.S.C. 30115).

It would be advisable for the importer to focus on the specifications for and design of the product and the requirements of all applicable FMVSS covering the product that it wishes to import before beginning negotiations with a prospective overseas business partner. The importer should be well informed about U.S. import regulations and any FMVSS requirements that cover the products the importer intends to import. Before discussions take place with a prospective manufacturer, it may be worthwhile for the importer to have translated into the language used by that manufacturer the FMVSS that are applicable to the product and the

agency regulations pertaining to manufacturers located outside the United States. It is reasonable to discuss with the prospective manufacturer at the outset the need for incorporating the requirements of the applicable FMVSS into the product's design because it is far less expensive to change the product's design in the planning stage than after the product is manufactured, when tooling must be changed or an expensive safety recall conducted. If the importer intends to have the manufacturer produce a replacement part for a motor vehicle, the part installed as original equipment may be used as a reference, keeping in mind the need to avoid infringing on any applicable patent.

The importer and manufacturer may wish to consider conducting a review of the product's design (a "design review") that involves examining the product's configuration, the materials used in its fabrication, and its labeling and packaging.<sup>8</sup> Importers without staff expertise and experience in design review may consider hiring a qualified consultant. It may be worthwhile for the design review to include a foreseeable use analysis,<sup>9</sup> which involves integrating safety into the product's design. An effective foreseeable use analysis may reveal substantial safety hazards that involve risks of injury or impairment of health that are related to the product's characteristics or deficiencies.

Apart from FMVSS, if any, that apply to the product, the importer may wish to measure the product's design against a known set of objectives for the product and compare the product's design to that of similar products produced by other manufacturers. When no FMVSS apply, it may also be sensible to measure the product's design against accepted product standards such as a set of voluntary industry standards, should one exist.<sup>10</sup> To find applicable standards, importers and manufacturers may wish to check the Web sites of standard-setting bodies for products of the type at issue, such as the Underwriters Laboratories Inc. (UL), American National Standards Institute (ANSI), American Welding Society (AWS), ASTM International (originally the American Society for Testing and

Materials or ASTM), and the Society of Automotive Engineers, International. See: <http://www.sae.org>. Manufacturers of certain automotive replacement parts such as lighting equipment may wish to visit the Web site of the Certified Automotive Parts Association (CAPA) for more information about that organization's certification program. See <http://www.capacertified.org/home.asp>. These examples are not intended to be all-inclusive. It may be desirable for an importer to contact other standard-setting and certification organizations associated with the type of products it wishes to have manufactured, should such organizations exist.

Some manufacturers use other systematic analysis tools such as a Failure Modes and Effects Analysis (FMEA)<sup>11</sup> to identify potential safety hazards and to improve their products over time by reducing or eliminating failures. Using FMEA, failures can be prioritized according to how serious their consequences are, how frequently they may occur, and how easily they can be detected.<sup>12</sup>

It may be advisable to have parties with expertise in standards and regulations compliance, in-use durability, quality assurance, and customer service examine the results of the importer's product design review. Importers and manufacturers that do not have in-house expertise may consider using an accredited test laboratory to evaluate the safety of a product.<sup>13</sup>

Importers should consider creating records that identify changes in the product's design or in the production process and to incorporate changes that affect the product's use into the documents that accompany the product when sold. When changes are made to the product's design or to the production process, importers should obtain additional test data to assure the product continues to comply with stated technical specifications and with all applicable FMVSS. For traceability<sup>14</sup> or recall reasons, changed products can be identified by being marked or stamped with "date" or "lot" codes, or in another manner that distinguishes new products from old. It makes good sense to use current versions of the supporting technical documentation such as drawings; replacement parts data; instructions for the product's production, inspection, testing, and

<sup>8</sup> U.S. Consumer Product Safety Commission (CPSC), "Handbook For Manufacturing Safer Consumer Products" (Washington, DC, July 2006), p. 9. <http://www.cpsc.gov/businfo/intl/handbookenglishaug05.pdf>. Note: many of our suggestions are based on CPSC's Handbook, which provides a wealth of helpful ideas that are generally applicable to various types of manufacturing processes.

<sup>9</sup> Ibid, p. 10.

<sup>10</sup> Ibid, p. 26.

<sup>11</sup> The FMEA process was originally developed by the U.S. military in the 1940s. See: American Society for Quality, <http://www.asq.org/learn-about-quality/process-analysis-tools/overview/fmea.html>.

<sup>12</sup> CPSC, *Handbook*, p. 10.

<sup>13</sup> Ibid, p. 10.

<sup>14</sup> Ibid, p. 25.

repair; as well as operating handbooks, and to remove from use obsolete documents and data.<sup>15</sup>

### (3) Inspect Foreign Manufacturing Facilities

Before entering into a written contract, we believe it is prudent for the U.S. importer to personally visit the supplier's facility and to determine whether the manufacturer is properly licensed by the appropriate government agencies. Several trips may be necessary to conduct an objective evaluation of the company, its factory, and its management. To reduce the potential for fraud, it is preferable to deal directly with the manufacturer and to avoid dealing with representatives (such as trade groups) that claim to represent a manufacturer. When dealing with a business partner of the manufacturer, it is generally advisable to determine whether the partner is a subsidiary of a larger company<sup>16</sup> and whether the importer has recourse against the parent company if the subsidiary defaults on its obligations. It may also be reasonable to hire a consultant if the importer has limited knowledge of, or experience with, the culture and trade practices of a foreign country.

While visiting a manufacturer's foreign facilities, the importer may consider asking the manufacturer's production managers to identify the quality control mechanisms that are in place (e.g., ISO 9000 series quality assurance compliance) and it may be helpful to observe whether there is evidence of good quality workmanship.

During the on-site visit, the importer should look for counterfeit commodities or evidence of trademark or copyright violations such as fraudulent seals made to look like those produced by certification organizations. While NHTSA does not have authority to enforce statutes that prohibit counterfeit products from being imported and the agency is aware that in some situations counterfeit products may, in fact, comply with applicable FMVSS, importers should avoid business dealings with known or suspected counterfeiters. Importers should be aware that many Federal departments and agencies are working with industry to stop the proliferation of counterfeit products.<sup>17</sup> Also assisting in these

efforts are many independent organizations such as the U.S. Chamber of Commerce, which represents more than three million businesses.<sup>18</sup>

It is advisable to reach agreement with a prospective supplier on what constitutes substandard or defective products, and on who will be responsible for conducting recalls of products that have a safety-related defect or a noncompliance with a FMVSS. Of particular importance in this context are the importer's obligations under the Vehicle Safety Act to make determinations as to whether a product contains a safety-related defect or does not comply with a FMVSS. The importer should make clear to the foreign fabricating manufacturer that the importer makes the determination of a safety-related defect or noncompliance under U.S. law regardless of the fabricating manufacturer's views. The importer must recognize that its liability to conduct a recall when the facts so warrant under the Vehicle Safety Act is joint and several and the willingness of the foreign fabricating manufacturer to pay for all or some of the costs of the recall is not relevant. Nonetheless, the importer may wish to include provisions in the contract with the foreign fabricating manufacturer that covers contingencies, including recalls.

All aspects of the product's design and the production process may be considered for inclusion in the written contract, such as inspection and testing procedures and any documentation the importer requires, including work orders, operation sheets, inspection logs, repair logs, and test procedure checklists.<sup>19</sup> The contract may also specify under what circumstances the product's design may be changed (if at all), what equipment must be used for particular manufacturing operations, product traceability measures to be employed, and the types of forms to be used for recording quantitative data such as test readings. It is useful for the contract to specify exact terms of payment, performance standards, and timelines for deliveries and payments. Other arrangements that are reached between the importer and supplier should also be made in writing, such as those covering the importer's rights to visit the production facility in order to

provide guidance and conduct product inspections.

The importer should obtain sound legal guidance before entering into an agreement. Following execution of the contract, it is wise to adhere to the contract provisions or risk the costs of a legal dispute in a foreign country. The importer should obey all laws and regulations of the foreign country and be wary of any offer by the partner to ignore or avoid those laws. Also, the importer may wish to become familiar with U.S. Department of Commerce, Bureau of Industry and Security (BIS) regulations relating to the transfer of dual use technology to certain foreign countries. U.S. statutes prohibit transfer of some sensitive technologies without a license. See <http://www.bis.doc.gov/2>.

It may be imprudent to assume that the overseas operations will run by themselves and visits to the foreign manufacturer on a frequent basis may be needed to evaluate the state of affairs. During these visits, the importer should, if possible, talk to employees to learn of any substitutions of materials, modifications of the product's design, and manufacturing problems that were encountered. The importer should verify that the manufacturer is complying with contractual requirements by inspecting the facilities, production operations, inspection and test records, supplies, and audit results. The importer should also ensure the product's continued compliance with the standards by having performed ongoing FMVSS compliance tests. This inspection and testing will provide feedback into the nature of the operation and is part of the importer's oversight of the operation and its quality assurance/quality control. The importer should not delay taking corrective action with the manufacturer when circumstances necessitate such action.<sup>20</sup>

### (4) Inspect Goods Either Before They Are Exported to or Distributed in the United States

Different products, designs, and fabrication processes will require various levels of precision and accuracy of manufacturing equipment and tooling.<sup>21</sup> In all manufacturing processes, there is a need to monitor how well the products meet given specifications because products will deviate from specifications for reasons such as new tooling, aging machinery, and human error. Manufacturers of quality products use mathematical models for calibrating production

<sup>15</sup> Ibid, p. 24.

<sup>16</sup> For example, see U.S. Department of Commerce (DOC), "Essential China Advice" (Washington, DC, 2001–2008) <http://www.buyusa.gov/china/en/chinabiztips.html> (February 22, 2008).

<sup>17</sup> The Office of the U.S. Trade Representative and the Departments of Commerce, State, Justice, and Homeland Security lead a government-wide initiative, the Strategy Targeting Organized Piracy

(STOP!), to fight billions of dollars in global trade in pirated and counterfeit goods that cheat American innovators and manufacturers, hurt the U.S. economy and endanger consumers worldwide. See: <http://www.stopfakes.gov> or call 1-866-999-HALT.

<sup>18</sup> The U.S. Chamber of Commerce sponsors the Coalition Against Counterfeiting and Piracy. See <http://www.thetruecosts.org/>.

<sup>19</sup> CPSC, *Handbook*, p. 28.

<sup>20</sup> Ibid, p. 10.

<sup>21</sup> Ibid, p. 28.



equipment, controlling the output of the manufacturing process, and auditing production processes to attain improvements. Therefore, importers may wish to carefully consider instituting a quality control program at the outset.

It would be wise for an importer to bear in mind that even though a product appears to be well manufactured, this does not necessarily mean that it also complies with applicable FMVSS and will not prove to be defective in actual use. While it is important to produce quality products, it is crucial that manufacturers test, on a continuing basis, their products to verify compliance with the FMVSS. To better shoulder the costs of any testing needed to assure compliance, smaller importers may wish to consider consortium purchasing, which would allow them to pool their resources.

To ensure that product requirements are within tolerances, it is sensible to collect product samples at predetermined intervals and inspect them for compliance with any specifications that are identified in advance. The purpose of the inspection is to ensure that the products safely perform their intended functions. Inspection procedures may include a visual examination, testing with appropriate instruments, measuring, or other forms of evaluation.<sup>22</sup> Manufacturers collect production samples for inspection based on mathematical models, which are beyond the scope of this notice, but that are critical to ensuring the quality of the end products. Test programs that are based on statistically sound sampling techniques will increase the probability that problems will be quickly identified and remedied before the products are shipped. Obviously, it is preferable from a cost perspective for nonconforming or substandard products to be discovered by the manufacturer before shipping costs are incurred.

It is generally expected that quality control issues will be greater within the first batch of products made by the new manufacturer. After the initial production run, the importer and manufacturer may want to conduct an inspection to determine whether the initial products function as intended, whether their dimensions are within tolerances, and whether their appearance is satisfactory. The importer and manufacturer may consider conducting comprehensive tests of representative products to ensure compliance with design specifications.

It is desirable to have an inspection plan to specify exactly what is to be inspected, how an inspection will be conducted and how often, and the types of gauges, tools, or instruments that will be used. If inspections are particularly critical to product safety, the inspection plan may require that they be performed by designated specialized or certified personnel.<sup>23</sup> It would be advisable to include inspection procedures in the contract and any changes should be mutually agreed upon so that a record of changes is maintained. We also suggest that the contract clearly state how the costs of quality control inspection and any need to redesign a product or process based on such inspections will be apportioned.

From the moment products leave the manufacturer until they are acquired by consumers, they are exposed to numerous contingencies that can affect their safety or usability. For these reasons, it is best not to terminate quality control measures at the port and the prudent importer might consider instituting quality control measures at storage locations and throughout the domestic distribution process. Distribution practices directly influence the safety of consumer products so it is wise to exercise control over packaging and shipping operations. This control includes the selection of adequate packaging materials, design of methods of packaging that preclude damage in shipment, and selection of shipping methods consistent with the physical properties of the product. Packaging and shipping techniques may need to be revised as experience dictates. In those instances where distributors are involved in assembly or test operations before delivery to the consumer it is wise to provide them with current and adequate assembly and test instructions and the importer may wish to ensure that these instructions are followed.<sup>24</sup>

When quality control problems are encountered, it may be useful to determine what has caused the problem and to collaborate with the manufacturer and participants in the distribution process to remediate the cause and prevent similar future problems. We believe it is wise to keep in mind that reputable manufacturers want to be apprised of problems and will work for compliance with the importer's requirements.

Developing and nurturing personal relationships with the business partner may be helpful and may pay dividends if problems are encountered.<sup>25</sup> To

prevent potentially dangerous products from being delivered to consumers, it may be desirable for importers and manufacturers to discuss the need for prompt corrective actions and to agree on those in advance. These actions may include determining what caused the problem, how to prevent future problems, and the removal of problem products from the production and distribution channels before they reach consumers.<sup>26</sup> Locating products within the production and distribution system is crucial to preventing hazardous products from being delivered to consumers after safety-defects become apparent.

The importer might consider being prepared to provide the overseas partner with training and technical assistance to assure product quality.<sup>27</sup> This commitment to quality control may minimize defect costs and maintain profits by ensuring the end user's satisfaction, thereby enhancing the prospect for repeat business. On the other hand, neglecting oversight may result in compromised product quality and could possibly lead to legal consequences at home and abroad. It is worth noting that the foreign country's court system may not be relied on to offer a legal settlement consistent with U.S. practice.<sup>28</sup>

#### (5) Identify the Product's Country of Origin

It is generally required that an imported product be properly marked with its country of origin. The pertinent statute requires that, unless excepted, every article of foreign origin (or its container) imported into the United States must be marked with the article's country of origin. See section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). The purpose of the marking requirement is to inform the ultimate purchaser in the United States of the country in which the imported article was produced.

Articles that are not marked at the time of importation with the English name of their country of origin may be subject to additional duties unless they are properly marked after importation, or are exported or destroyed under CBP supervision. CBP allows importers, where administratively practicable, to mark goods that are not marked at the time of importation, prior to their release from CBP's control or custody. This rule does not apply to an importer that has repeatedly violated the country of origin marking requirements after

<sup>23</sup> Ibid, p. 36.

<sup>24</sup> Ibid, p. 40.

<sup>25</sup> U.S. DOC, *Essential Advice*.

<sup>26</sup> CPSC, *Handbook*, p. 45.

<sup>27</sup> U.S. DOC, *Essential Advice*.

<sup>28</sup> Ibid.

<sup>22</sup> Ibid, p. 35.

receiving written notification from CBP that the goods are required to be marked prior to importation.

It is also important to keep in mind that any person who removes, destroys, alters, covers, or obliterates, with the intent of concealing, the country of origin marking on an imported article could be subject to criminal prosecution.<sup>29</sup>

(6) Establish a Consumer Service Program

It is wise for importers to establish and maintain an effective consumer service program because good service leads to satisfied customers and repeat business. An effective consumer service program may also assist the importer in quickly identifying quality control and safety-related problems and allow the importer to remedy those problems before they become widespread. Importers should consider establishing a consumer service program that includes the following elements:

(a) Consumer Education

An effective consumer service program will inform consumers using product manuals or instructions on how products are to be assembled, installed, and operated to prevent safety hazards. For example, NHTSA recommends that consumers read the instruction manual provided with a newly purchased child safety seat as well as the seat belt and child seat installation section of their vehicle owner's manual before attempting to install and use a child safety seat.

(b) Product Service

An effective consumer service program will make it easy for consumers to obtain replacement parts and will inform consumers how and where to take the product for servicing, particularly for deficiencies or malfunctions that are potential causes of safety hazards. Importers may consider providing a U.S. telephone number with

the product for consumers to call if they have questions regarding the product.

(c) Recordkeeping

An effective consumer service program will include a records system that identifies a product by serial number, model, and date of manufacture and that identifies its location in the distribution system and after sale to a consumer. Importers should be aware that recordkeeping becomes very important for notifying consumers, retailers, and distributors of products when a safety recall is announced.

(d) Safety Recall Plan

An effective consumer service program will include a plan for the rapid recall of imported products from consumers, distributors, and dealers. The plan should include procedures to inform consumers how the importer will respond to safety defects or noncompliances with the FMVSS that are determined to exist in a product.<sup>30</sup> The recall plan should also establish procedures for notifying NHTSA about safety-related defects or noncompliances with the FMVSS, as required by agency regulations. The recall plan should be periodically evaluated and amended as necessary.

(e) Intervention

If a noncompliance or safety-related defect becomes apparent, an effective consumer service program will assist an importer in locating products within the production and distribution system and help to prevent problem products from being delivered to consumers.

(f) Notification

In the event of a recall, the most important factor is the ability to inform as many owners, dealers, retailers, and distributors of the product as possible. Notifying owners will be the importer's responsibility. While it may be impractical to maintain records

identifying all retail purchasers of a particular consumer product, the importer may wish to make a reasonable effort in that direction by requesting distributors, dealers or retailers to maintain such records or by including with products self-addressed mailing cards for consumers to use, if they so choose, to register their ownership of the product.<sup>31</sup> Where it is a requirement to maintain records identifying retail purchasers of a product, such as is the case for tires and for motor vehicles, the importer must ensure that distributors, dealers, and retailers understand their obligations under existing regulations. For example, see 49 CFR part 574 *Tire Identification and Recordkeeping*.

(g) Business Process Monitoring

Other than complaints received directly from the importer's consumer service program, information that could assist in identifying safety-related defects or noncompliances with the FMVSS includes insurance claims, lawsuits, product return data from business partners, the results of ongoing quality assurance testing, and information about products that share common parts or platforms. The importer should also pay close attention to the EWR data it submits to NHTSA because that information may be very useful in identifying safety-related problems early in the product's history.

(7) Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, and Defect Issues

Enhanced product safety for imported motor vehicles and equipment will result from a collaborative effort between the importer community, manufacturers, and NHTSA. To this end, we offer the following agency contact numbers and Internet resources to help answer questions about these recommended best importer practices.

Office of Vehicle Safety Compliance

Topic	NHTSA Office/Internet	Telephone No.
General questions about importing vehicles and equipment items .....	Import and Certification Division .....	(202) 366-5291
General Importation Information .....	<a href="http://www.nhtsa.dot.gov/cars/rules/import/">http://www.nhtsa.dot.gov/cars/rules/import/</a>	
Questions about how a manufacturer informs NHTSA about its company and the products it manufactures.	Import and Certification Division .....	(202) 366-5291
Questions about how to provide NHTSA with the manufacturer's vehicle identification number deciphering information.	Import and Certification Division .....	(202) 366-5291

<sup>29</sup> U.S. Customs and Border Protection (CBP), "Marking of Country of Origin" (Washington, DC, December 2004) Publication # 0000-0539 <http://www.cbp.gov/xp/cgov/toolbox/publications/trade/> (February 22, 2008).

<sup>30</sup> CPSC, *Handbook*, p. 42.

<sup>31</sup> *Ibid*, p. 45.

Office of Vehicle Safety Compliance

Topic	NHTSA Office/Internet	Telephone No.
Questions about NHTSA ID numbers that are assigned to equipment manufacturers of brake hoses, glazing (glass), and tires.	Equipment Division .....	(202) 366-5322
Information to Assist New Manufacturers .....	<a href="http://www.nhtsa.dot.gov/cars/rules/maninfo/">http://www.nhtsa.dot.gov/cars/rules/maninfo/</a>	
Questions about FMVSS as they relate to equipment items (i.e., tires, rims, brake hoses, brake fluid, seat belt assemblies, lighting equipment, glazing (automotive glass and plastics), motorcycle helmets, child restraint systems (child safety seats), platform lift systems for the mobility impaired, rear impact guards for trailers, triangular reflective warning devices, and compressed natural gas containers).	Equipment Division .....	(202) 366-5322
Federal motor vehicle safety standards (FMVSS) .....	<a href="http://www.nhtsa.dot.gov/cars/rules/">http://www.nhtsa.dot.gov/cars/rules/</a>	
NHTSA's Manufacturer Databases .....	<a href="http://www.nhtsa.dot.gov/cars/rules/manufacture">www.nhtsa.dot.gov/cars/rules/manufacture</a>	
Government Vehicle Safety Information .....	<a href="http://www.safercar.gov/">http://www.safercar.gov/</a>	

Office of Defects Investigation

Topic	NHTSA Office/Internet	Telephone No.
Questions about Early Warning Reporting (EWR) .....	Early Warning Division .....	(202) 366-4238
Early Warning Reporting .....	<a href="http://www.odi.nhtsa.dot.gov/ewr/ewr.cfm">http://www.odi.nhtsa.dot.gov/ewr/ewr.cfm</a>	
Questions about Defects and Recalls .....	Office of Defects Investigation .....	(202) 366-5210
Defects Investigations .....	<a href="http://www.odi.nhtsa.dot.gov/">http://www.odi.nhtsa.dot.gov/</a>	

Office of Chief Counsel

Topic	NHTSA Office/Internet	Telephone No.
Questions about how the statutes and regulations administered by NHTSA are interpreted.	Office of Chief Counsel .....	Requests for interpretations should be made in writing.
NHTSA Chief Counsel interpretive letters .....	<a href="http://isearch.nhtsa.gov/">http://isearch.nhtsa.gov/</a>	
NHTSA Statutory Authorities .....	<a href="http://www.nhtsa.dot.gov/nhtsa/Cfc_title49/index.html">http://www.nhtsa.dot.gov/nhtsa/Cfc_title49/index.html</a>	
NHTSA Regulations .....	<a href="http://www.nhtsa.dot.gov/cars/rules/">http://www.nhtsa.dot.gov/cars/rules/</a>	
Questions about how to designate a U.S. resident as an agent for service of process.	Office of Chief Counsel .....	(202) 366-1834.
Suggested Designation of Agent for Service of Process 49 CFR Part 551, Subpart D.	<a href="http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html">http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html</a>	

(8) General Assistance with Federal Regulations

The Office of Management and Budget, in conjunction with the U.S. Small Business Administration, publishes a one-stop Internet resource to make it easier for importers to understand Federal regulations, including those administered by NHTSA. The Web site provides a point of contact at each agency to answer specific questions.<sup>32</sup> See: <http://www.business.gov/contacts/federal/>.

U.S. Customs and Border Protection (CBP), an agency of the U.S. Department of Homeland Security, has also published "Importing into the United States: A Guide for Commercial Importers," which provides wide-ranging information about the importing process and import requirements. See: <http://www.cbp.gov/xp/cgov/toolbox/publications/trade/>.

Authority: E.O. 13439, 72 FR 40051.

<sup>32</sup>The Small Business Paperwork Relief Act of 2002 (SBPRA) requires each Federal agency to establish a point of contact to act as a liaison between the agency and small businesses. In addition, SBPRA requires the Office of Management and Budget (OMB), in conjunction with the Small Business Administration, to publish on the Internet

a list of compliance assistance resources available at Federal agencies for small businesses.

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**Daniel C. Smith,**  
Associate Administrator for Enforcement.  
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**DEPARTMENT OF THE TREASURY**

**Open Meeting of the Advisory Committee on the Auditing Profession**

**AGENCY:** Office of the Undersecretary for Domestic Finance, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of the Treasury's Advisory Committee on the Auditing Profession will convene a