Issued on: December 19, 2008.

David Kelly,

Acting Administrator.

[FR Doc. E8–30701 Filed 12–19–08; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2008–0113 Notice 2]

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: Final Notice.

SUMMARY: This notice provides guidance 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.

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:

Table of Contents

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 and child safety seats sold in this country.

Under the Vehicle Safety Act, fabricating manufacturers (i.e., the actual assemblers) and importers of motor vehicles and motor vehicle equipment are responsible for the safety of their products that they manufacture for sale in or import into the United States. NHTSA has a standard setting and oversight/enforcement role and may issue guidance that provides valuable information to affected industries. U.S. consumers provide valuable feedback to manufacturers and to NHTSA, which has a hotline, 1–888-DASH–2-DOT (1–888–327–4236), for consumers to report safety-related problems with motor vehicles and motor vehicle equipment.[1]

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 best 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 (DOT), 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.[2] The Strategic Framework promotes a cost-effective, risk-based

[1] Consumers may also file an online complaint concerning a motor vehicle, child seat, tire, or motor vehicle equipment item. See *http://www.safercar.gov*.

[2] Interagency Working Group on Import Safety, *''Protecting American Consumers Every Step of the Way: A strategic framework for continual improvement in import safety''* (Washington, DC, September 2007) *http://www.importsafety.gov/report/report.pdf*.

approach to achieve this objective, and contains the following key principles:

(i) 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;

(ii) 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

(iii) 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'').[3] The Action Plan 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 presented 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 identified the cross-cutting building blocks that departments and agencies should use to guide their import safety programs. Building Block Number 2, 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.''[4] 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 manufacturers 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 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 recommended best importer practices that are the subject of this notice are specifically intended for importers of a particular product category, i.e., motor vehicles and motor vehicle equipment, the products that are regulated by NHTSA.

NHTSA published in the **Federal Register** on July 8, 2008 (73 FR 39078) a notice requesting public comments on the agency's recommended best importer practices. In today's notice, NHTSA issues in final form, with some changes, the suggested best practices for importers of motor vehicles and motor vehicle equipment that were the subject of the July 8 notice. As stated by the agency in the July 8 notice, 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 scope 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.

Consistent with the approach identified in the July 8 notice, we are issuing this final notice for informative purposes. We will also post these best importer practices on the agency's Web site for easy reference.

III. Comments and Recommendations Requested

The agency specifically asked in the July 8 notice for members of the public, the importing community, and both foreign and domestic fabricating manufacturers of motor vehicles and motor vehicle equipment to provide comments and recommendations addressing the agency's initial thoughts on the suggested guidance regarding best importer practices. The comments that the agency received are described below, along with the action the agency has taken in response to each one.

IV. Comments Received

NHTSA received comments from North American Lighting, Inc. (NAL) of Farmington Hills, Michigan; the Motor and Equipment Manufacturers Association (MEMA) of Research Triangle Park, North Carolina[5]; the Truck-Lite Company, Inc. (TLC) of

[3] 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.*

[4] *The Action Plan,* Recommendation 3.1, pp. 20–21.

[5] MEMA states that it represents almost 700 companies that manufacture motor vehicle parts for use in the light vehicle and heavy duty original equipment and aftermarket industries. MEMA represents its members through three market segment associations: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), and Original Equipment Suppliers Association (OESA). MEMA states its comments are also submitted on behalf of the Transportation Safety Equipment Institute (TSEI) and the Motor Vehicle Lighting Council (MVLC)—both independent groups managed by MEMA.

Falconer, New York; the Specialty Equipment Market Association (SEMA) of Washington, DC [6]; and the Ford Motor Company (Ford) of Dearborn, Michigan.

(a) Support for NHTSA Guidance

The five commenters expressed support for NHTSA's efforts to draft guidance and recommended best importer practices to enhance the safety of imported motor vehicles and motor vehicle equipment. NAL stated, ''[w]e support the efforts of [NHTSA] in designing a set of Best Importer Practices to ensure the quality of imported lighting products brought into the United States.'' [7] MEMA wrote that the proposed guidance, ''[i]s a significant and positive step toward improving the safety of imported products'' and the ''[g]uidance is well-crafted and covers many elements that our industry agrees are integral to a comprehensive and understandable set of best practices for importers.'' MEMA added that it ''[s]upports the action by NHTSA to issue this proposed guidance'' and believes that ''[i]ssuing guidance on best practices sends the right message to the automotive and equipment industry—to practice due diligence, be responsible, and be compliant.'' [8] The TLC stated, ''[w]e appreciate the agency's efforts to provide best practices guidance on imported products.'' [9] SEMA stated that it ''[s]upports the coordinated initiative by [NHTSA] and other federal government agencies to recommend 'best practices' for importers.'' [10] Ford stated the company, ''[a]pplauds the agency for its initiative to enhance the safety of imported motor vehicles and motor vehicle equipment by providing guidance to importers and supports the recommendations contained in the notice.'' [11]

(b) Voluntary Product Marking

The five commenters addressed common themes, one of which is that safety is enhanced when those who manufacture and import motor vehicles and items of motor vehicle equipment are accountable. However, accountability cannot be assured when products have no markings that identify their fabricating manufacturers or importers. The commenters observed that when unmarked products are noncompliant, or have a safety-related defect, it becomes difficult for NHTSA to trace the products' origins or identify the party responsible for remedying those conditions.

The commenters suggested that accountability would be enhanced if manufacturers voluntarily marked their products with certain information. For example, MEMA stated that it ''[b]elieves that voluntary product marking should be widely encouraged for all imported aftermarket equipment—particularly products critical to safety.'' MEMA stated that markings should include the name or trademark of the fabricating manufacturer or importer, the date or date range of manufacture, and any marks specified in industry recommended practices or standards.[12]

SEMA furnished with its comments an article entitled ''Sourcing Your Products from China without Losing Your Shirt, Your Intellectual Property, or Your Customers.'' The article was written by Merritt R. Blakeslee and published as a two-part series in the December 2007 and February 2008 editions of the ''SEMA News'' magazine.[13] To emphasize the need for voluntarily marking products, Mr. Blakeslee provides what he describes as a ''Nightmare Scenario'' in which a company that imports wheels from an overseas manufacturer is sued for product liability following a fatal crash that was caused by a defective wheel. The company suspects that the wheel involved in the crash was produced without its authorization, but cannot prove this because the company does not mark its products in a way that would permit it to identify counterfeits. The company ultimately must defend against a product liability suit and conduct an expensive product recall, prompting the author to assert: ''It is essential that you ensure that your products are carefully marked—by individual serial number or at least by lot number—so that when you find suspect products in the marketplace, you can immediately determine whether they are products whose manufacture you authorized.'' [14]

TLC commented that accountability is ''[t]he start of any good product and the finish of any good product.'' The company stated that without ''[a] manufacturer identification system, any of the changes offered [by NHTSA's guidance] will not be effective in improving the overall safety of imported product.'' TLC notes that to allow for traceability and accountability of its own products, the company voluntarily labels its lighting products in accordance with the Society of Automotive Engineers (SAE) Recommended Practice J759 ''Lighting Identification Code,'' which the company states ''[p]rovides guidelines on identifying product function, manufacturer's identification, model number (or part number), class designation, application and even ampere load rating (where required).'' TLC contends that manufacturer identification is one of the most important features in assuring the ongoing quality of the product and that with such identification, ''[f]ewer risks will be taken by importers on questionable products if they know that they can be caught.'' [15]

MEMA also endorses the voluntary labeling of products in accordance with SAE J759. The organization notes that most lighting and conspicuity product manufacturers that belong to MEMA, the Transportation Safety Equipment Institute, and the Motor Vehicle Lighting Council already voluntarily mark such products with the manufacturer's name and a date.[16]

The agency agrees with the commenters that traceability is enhanced when fabricating manufacturers and/or importers voluntarily mark their products with their companies' names, date or lot codes, and industry recommended information such as that listed in SAE J759, which applies to lighting equipment. The described markings

[6] SEMA states it represents the $38.1 billion specialty equipment automotive industry. SEMA describes itself as a nonprofit trade association comprising nearly 7,500 companies, including manufacturers, distributors, installers and retailers.

[7] North American Lighting, Inc. (NAL) ''Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment'' Docket No. NHTSA 2008–0113, (August 2008), p. 1.

[8] Motor and Equipment Manufacturers Association (MEMA) ''Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment'' Docket No. NHTSA 2008–0113, (August 2008), pp. 1–2 and 8.

[9] Truck-Lite Co., Inc. (TLC), ''Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment'' Docket No. NHTSA 2008–0113, (August 2008), p. 2.

[10] Specialty Equipment Market Association (SEMA), ''Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment'' Docket No. NHTSA 2008–0113, (August 2008), p. 1.

[11] Ford Motor Company (Ford), ''Comments on Guidance and Recommended Best Importer Practices to Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment'' Docket No. NHTSA 2008–0113, (August 2008), p. 1.

[12] MEMA Comments, pp. 4–5.

[13] *http://sema.org/main/semaorghome.aspx?id=58637*.

[14] Merritt R. Blakeslee, ''Sourcing Your Products from China without Losing Your Shirt, Your Intellectual Property, or Your Customers—Parts I and II'' (Washington, DC, December 2007 and February 2008), p. 1, *http://sema.org/main/semaorghome.aspx?id=58637*.

[15] TLC Comments, p. 2.

[16] MEMA Comments, p. 4.

would enhance the ability of a fabricating manufacturer or importer to ensure that product recalls are initiated when noncompliances or safety defects are identified. Such markings that are voluntarily applied would also benefit fabricating manufacturers and importers by allowing them to accurately identify their products and limit the scope of recalls to only those products that contain the noncompliance or safety-related defect. For these reasons, we have included a recommendation for voluntary markings in our final guidance document under a new heading entitled ''Identify the Product,'' which replaces ''Product's Country of Origin.''

(c) Records Maintenance

Several commenters observed that an essential element of accountability is the maintenance of records. Ford commented that NHTSA should include as part of its recommended guidance document a reference to 49 CFR part 576, an agency regulation that requires manufacturers to retain for a period of five years reports and other materials and documents that contain information concerning malfunctions that may be related to motor vehicle safety.[17] MEMA stated that documentation of a product's design, its testing, and the process used to manufacture the product should be diligently maintained. The organization contends that this documentation allows a fabricating manufacturer to readily produce, if necessary, the appropriate records to demonstrate compliance with mandated FMVSS performance requirements, or with voluntary industry standards and recommended practices. MEMA observes that such records can become particularly important in the event of changes to a product—whether the change be in material components, the manufacturing process, or test procedures.[18] NAL stated that importers should have to prove they can meet the necessary requirements for their products in a way that is similar to what U.S. manufacturers have to do when they build products for the European or Chinese markets.[19] NAL stated that in order to manufacture for other markets, the company has had to perform witness testing and demonstrate process checks. NAL also stated that the company has allowed government officials to inspect its manufacturing plants and has shipped its products to outside test houses to verify compliance with applicable standards. NAL contends that all manufacturers of lighting equipment destined for the United States likewise should be required to have documented proof that the manufacturing plants have passed inspection and that their products comply with the FMVSS.[20]

The agency generally agrees with many of the points these commenters have raised. However, to the extent the comments recommend that NHTSA require certain records to be kept, those comments are beyond the scope of this notice, which is intended only to offer recommendations. If the agency sought to impose any new requirements, it would only do so by initiating rulemaking to establish appropriate regulations on the subject. In the July 8 notice, we stated why we believe it is important to create and/or maintain, at a minimum, records of a product's: (1) Certification data; (2) design changes or changes in the production process; (3) supporting technical documentation; (4) test reports; (5) serial number, model, and date of manufacture; (6) location while in the distribution system; (7) retail purchasers; (8) accompanying instructions; and 9) manufacturing process including work orders, operation sheets, inspection logs, repair logs, and test procedure checklists. The final recommended best practices include under the heading ''Record Keeping for Manufacturers,'' a discussion of certain records that manufacturers must maintain under 49 CFR part 576, as well as parts 574 and 588. The final notice also encourages importers to inquire whether their manufacturing partners comply with these regulations.

(d) Methodologies for Product Management and Development

In its comments, MEMA suggests that NHTSA add to its guidance document a reference to ISO/TS16949, which MEMA describes as a quality management system that provides for continual improvement, and that emphasizes defect prevention and the reduction of variation and waste in the supply chain. MEMA recommends that the approach be used to review records regarding the development of products, the quality planning methodology, and the method to improve the ongoing quality and performance of the products being manufactured.[21] The agency is aware that ISO/TS16949 is an internationally recognized Quality Management System specification for the Automotive Industry that was jointly developed by the International Automotive Task Force (IATF). As such, we believe it is important to include a reference to ISO/TS16949 in our guidance under the heading, ''Inspect Foreign Manufacturing Facilities.''

MEMA commented that it supports a ''design to conform'' methodology for product development, which the organization describes as including a number of steps necessary to originate, plan, create, develop, verify, and manufacture products that, in good faith, consistently meet established requirements when properly installed and applied. Essentially, this methodology serves as a ''process map'' from design to production and from certification to application. Under product design, MEMA states it is wise to consider: (1) the technical description of the product's function; (2) the tolerances of parts; (3) material specifications; (4) test requirements and test reports; and (5) certification reports including clear documentation and summaries of test results. For manufacturing specifications, MEMA states that the following factors should be considered: (1) Process sheets showing complete details; (2) process control plans detailing statistical process controls (i.e., part selection criteria, test requirements, and plans to address nonconformances); and (3) recovery plans (i.e., the steps to be taken once nonconforming product is identified).[22] Although the ''design to conform'' methodology, as described by MEMA, appears to have merit, the agency has not incorporated the methodology into this final guidance document because its level of specificity far exceeds the scope of the general recommendations contained in the document.

In the July 8 notice, the agency observed that fabricating manufacturers use systematic analysis tools such as Failure Modes and Effects Analysis (FMEA) to identify potential safety hazards and to improve their products over time by reducing or eliminating failures. TLC commented that there are related product development and control systems that can be used to verify product compliance and consistency, including Design Failure Mode and Effect Analysis (DFMEA),

[17] Ford Comments, p. 1.

[18] MEMA Comments, p. 7.

[19] NAL describes the type approval process that is required by most European countries, but is not required for motor vehicles and motor vehicle equipment offered for sale or 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.

[20] NAL Comments, pp. 1–2.

[21] MEMA Comments, p. 7.

[22] Ibid, p. 7.

Design Verification Plan and Report (DVP&R), Process Failure Mode and Effect Analysis (PFMEA), Manufacturing Process Plan, and Control Plans. Because FMEA was cited in the July 8 notice, for illustrative purposes alone, as one example of the systematic analysis tools that are used to identify potential safety hazards, little purpose could be served by including the many other examples that TLC has identified.

(e) Report Submitted

MEMA also appended to its comments a special report published by the Automotive Aftermarket Suppliers Association entitled ''Direct Importing: Do the Risks Outweigh the Reward?'' [23] MEMA states that this report was published in October 2007 to educate association members on the costs and risks associated with direct importing as a result of a growing concern about the safety of imported products.[24] While the agency recognizes that much of the information in the special report (such as that pertaining to profit erosion, industry image, and product liability) is of value to importers, we believe the report either corroborates information we are already presenting or offers new information on issues unrelated to the agency's jurisdiction.

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 and 12866, and by 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 one of the cited Executive Orders.

The document the agency is publishing today contains no guidance that meets any of the four stated criteria to be deemed ''significant.'' Therefore, this document is not subject to E.O. 13422, E.O. 12866, or to OMB Bulletin 07–02. Nevertheless, because we anticipated some level of public interest and were eager to obtain input from other sources, we solicited public comments in our July 8 notice.

In consideration of the foregoing, NHTSA offers the following recommended best practices for importers of motor vehicles and motor vehicle equipment:

VI. 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. Fabricating manufacturers (i.e., the actual assemblers) and importers of motor vehicles and motor vehicle equipment have duties as manufacturers under the Vehicle Safety Act. Companies that import these products must ensure that the products comply with applicable 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, which, by statute, includes the importer, must furnish owners with notification of, and a remedy for, the noncompliance or defect. Obviously, it is best if the motor vehicle or equipment complies with applicable FMVSS and does not manifest defects. To reduce the likelihood of noncompliances and defects, we recommend that fabricating manufacturers and importers [25] become familiar with the best practices suggested here and adapt them to their specific needs. NHTSA is also willing to work with fabricating manufacturers and importers to explain our standards, reporting requirements, regulatory program, and enforcement process.

In the paragraphs below, we present the recommended best importer practices first in outline form, and then provide a more detailed discussion of those recommendations.

Outline

[23] Ibid, Attachment to MEMA Comments. Also see: *http://www.mema.org/publications/index.php*.

[24] The October 2007 Report examines the trend for off-shore opportunities and direct importing and takes a closer look at possible pitfalls and additional costs that may offset the savings on acquisition process. Topics include: quality control, product liability, intellectual property protection, recall responsibility, etc. The publication's conclusion states that the only real solution is to weigh all the associated costs and then decide whether direct importing is cost effective.

[25] Our recommended best importer practices are not intended to address importers specially registered with NHTSA to import motor vehicles not originally manufactured to comply with all applicable FMVSS and to perform the necessary modifications on those vehicles so that they conform to all applicable FMVSS. Instead, NHTSA has established regulations under 49 CFR Parts 591–594 covering the registration, duties, and responsibilities of these importers, who are referred to as ''Registered Importers.''

(iv) Reaching Agreement on Whether Products are Substandard, Nonconforming, or Defective
(v) Contract Considerations
(vi) Monitoring Compliance with Contract Requirements
(d) Inspect Goods Either Before They Are Exported to or Distributed in the United States
(i) Monitoring Production Outputs
(ii) Sampling, Inspecting, and Testing Products
(iii) Post Production Quality Control
(e) Identify the Product
(i) Identify the Product's Country of Origin
(ii) Identify the Product's Manufacturer
(iii) Identify the Product's Date or Lot Codes
(iv) Industry Recommended Practices or Standards for Product Markings
(f) Establish a Consumer Service Program
(i) Consumer Education
(ii) Product Service
(iii) Recordkeeping
(iv) Safety Recall Plan
(v) Intervention
(vi) Notification
(vii) Business Process Monitoring
(g) Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, Defect Issues, and Regulations
(h) Know How To Obtain General Assistance With Other Federal Regulations

Recommended Best Practices

(a) 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 NHTSA administers.[26]

(i) 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 and manufactured primarily for use on public roads. Typically, motor vehicles have the following type classifications:

- Passenger cars;
- Multipurpose passenger vehicles;
- Trucks;
- Buses;
- Motorcycles;
- Trailers; and
- Low speed vehicles.

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 that motor vehicles and regulated items of motor vehicle equipment produced for sale in the United States be certified to 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[27] is not required for motor vehicles and motor vehicle 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, in accordance with 49 U.S.C. 30115, we have in place a ''self-certification'' process, which imposes responsibility on the 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 exercise of ''reasonable care'' in issuing a certification of compliance with safety standards. See 49 U.S.C. 30115. To this end, NHTSA encourages manufacturers to conduct tests as specified in certain of the FMVSS. See 49 CFR part 571.

(ii) NHTSA Compliance Program

NHTSA's primary mission is to save lives, prevent injuries, and reduce economic costs due to road traffic crashes. The agency's enforcement activities, which are directed at vehicles and equipment items, are structured so that they will have the greatest impact on safety. Consistent with this approach, each year the agency purchases more than 100 vehicles and conducts more than 500 crashworthiness and crash avoidance performance tests on those vehicles, and more than 1,200 performance tests on regulated equipment items to assure compliance with all applicable standards. As part of its enforcement program, NHTSA's Office of Vehicle Safety Compliance (OVSC) also inspects regulated equipment items at industry trade shows and conducts ''spot checks'' of vehicles and equipment items at retailers to assure compliance with all applicable FMVSS. In the event of a test failure, OVSC conducts an investigation to determine whether a noncompliance exists. NHTSA will ask the fabricating manufacturer and/or importer to provide the basis for the certification that the vehicle or equipment item complies with applicable FMVSS, and the agency may perform additional testing. If NHTSA concludes that a product does not comply with an applicable FMVSS the fabricating manufacturer and/or importer must furnish owners or dealers with notification of, and a remedy for, the noncompliance, usually without charge.

(iii) NHTSA Defect Investigations

In addition to conducting tests and inspections to determine whether

[26] It is wise for manufacturers and importers to become familiar with other laws not administered by NHTSA, such as the pertinent environmental laws administered by the Environmental Protection Agency, which could impact the decision to sell products in the United States.

[27] 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.'' For example, the Vehicle Certification Agency, an Executive Agency of the United Kingdom Department for Transport, administers type approval in the U.K. See: *http://www.vca.gov.uk/index.asp*. 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.

selected motor vehicles and motor vehicle equipment comply with the FMVSS, NHTSA through its Office of Defects Investigation, investigates potential safety-related defects in motor vehicles and motor vehicle equipment items. 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 an 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.

Before initiating an investigation of a suspected safety-related defect, NHTSA reviews information and data from several sources, including consumers and manufacturers to determine whether a defect trend may exist. Consumers submit complaints related to issues or problems in particular makes and models of vehicles and equipment. Manufacturers submit quarterly reports to NHTSA pursuant to the agency's Early Warning Reporting (EWR) regulations that implement 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 equipment item used in the United States. See 49 CFR part 579, subpart C. The regulations divide manufacturers of motor vehicles and motor vehicle equipment into two groups with different responsibilities for reporting information that could indicate the existence of potential safety-related defects.

The first group comprises larger volume manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires. In general, the larger volume vehicle manufacturers must report separately on four categories of vehicles (if they produced, imported, offered for sale, or sold 500 or more of a category annually in the United States): (1) Light vehicles, (2) medium-heavy vehicles and all buses, (3) trailers, and (4) motorcycles. These larger volume vehicle, child restraint, and tire manufacturers must generally report to NHTSA production-related information, incidents related to a death or injury, consumer complaints, warranty claims (warranty adjustments for tires), property damage claims, and field reports.

The second group of manufacturers comprises all other manufacturers of motor vehicles and motor vehicle equipment, *i.e.*, vehicle manufacturers that produce, import, or sell in the United States fewer than 500 light vehicles, medium-heavy vehicles (including buses), motorcycles, or trailers annually; manufacturers of original motor vehicle equipment; and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires. These manufacturers must submit a report if they receive a claim or notice related to an incident involving a death, but are not required to report any other information under the EWR rule. Manufacturers and importers are encouraged to review the agency's Web site for more comprehensive EWR information. See *http://www-odi.nhtsa.dot.gov.*

Under other NHTSA regulations at 49 CFR 579.5 and 579.6, all vehicle and equipment manufacturers in both groups must provide copies of all documents sent or made available to more than one dealer, distributor, owner, purchaser, lessor or lessee, in the United States concerning customer satisfaction campaigns, consumer advisories, recalls, or other activities involving the repair or replacement of vehicles or equipment. A manufacturer must also report safety recalls and other safety campaigns it conducts in a foreign country that cover a motor vehicle, an item of motor vehicle equipment, or a tire that is identical or substantially similar to such a product offered for sale or sold in the United States. See 49 CFR part 579, subpart B.

After reviewing all the relevant information, the agency may open an investigation to determine the existence of a safety-related defect. At the conclusion of the agency's investigation, if the agency determines that a safety-related defect exists, but the manufacturer refuses to conduct a recall, the agency will hold a public hearing. After the public hearing, NHTSA may order the manufacturer to conduct a recall.[28] If the manufacturer fails to obey such an order, NHTSA may bring an action in Federal court to compel the recall.

NHTSA, through its Recall Management Division, maintains the administrative records for all safety recalls, and monitors these recalls to ensure that the scope is appropriate, and that the recall completion rate and remedy are adequate. NHTSA's monitoring of recall performance may lead to the opening of a recall investigation if the facts appear to indicate a problem with the adequacy or execution of the recall. A recall investigation may result in expanding the scope of a previously announced recall or in the adjustment of an existing recall remedy.

(iv) Duty To Notify NHTSA of a Noncompliance With an FMVSS or a Safety-Related Defect

Notwithstanding its certification of a product, a manufacturer may subsequently determine that a noncompliance with an FMVSS or a safety-related defect 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 noncompliance or a safety-related defect. See 49 CFR 573.6. Alternately, as discussed above, NHTSA may determine the existence of a noncompliance or a safety-related defect in a particular motor vehicle or motor vehicle equipment item and order the responsible manufacturer to recall the product. See 49 U.S.C. 30118(b).

(v) Duty to Notify Owners and Dealers and Provide a Remedy for a Noncompliance or a Safety-Related Defect

Regardless of whether the noncompliance with an FMVSS or a safety-related defect is determined to exist by the manufacturer or by NHTSA, the manufacturer must provide owners and dealers of the affected products with notification of the noncompliance or defect and must remedy the noncompliance or defect, usually without charge. See 49 CFR part 577. There is a limited exception under which a manufacturer that has reported a noncompliance or safety-related defect to NHTSA may petition the agency for a determination that the noncompliance or defect is inconsequential as it relates to motor vehicle safety.[29] See 49 CFR part 556. The notification and remedy process is commonly referred to as a ''safety recall campaign'' or more simply

[28] See 49 U.S.C. 30118(b) and 49 CFR part 554.

[29] The Vehicle Safety Act gives NHTSA the authority to exempt manufacturers from the requirement to provide notification and remedy for noncompliances or safety-related defects if the agency determines that the noncompliance or defect 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.

as a ''recall.'' 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 fabricating manufacturer and/or importer of the products found to contain the noncompliance or defect. See 49 U.S.C. 30118–30120.

(vi) Importer's Recall Obligations

An importer's primary obligation is to assure that the motor vehicle or item of motor vehicle equipment subject to the FMVSS that it imports into the United States contains the required certification of compliance with those standards. 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 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. This is because under the Vehicle Safety Act, importers of motor vehicles and motor vehicle equipment for resale are considered ''manufacturers'' for the purposes of notification and remedy. See 49 U.S.C. 30102(a)(5). Where the fabricating manufacturer or importer finds a noncompliance or safety defect in a motor vehicle or equipment item imported into the United States, compliance with notification and recall responsibilities by either the manufacturer or the importer of the vehicle or equipment item is considered to be compliance by both. See 49 CFR 573.3(b).

Importers must therefore 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 does not comply with an applicable FMVSS or contains a defect related to motor vehicle safety, it must provide NHTSA, as well as owners and dealers of the affected vehicles or equipment, with notification of the noncompliance or defect and must remedy the noncompliance or defect, usually without charge to the consumer. An importer also has notification and remedy responsibility if NHTSA determines the existence of the noncompliance or defect and orders it to undertake a notification and remedy campaign. Importers should be fully familiar with all of the recall-related provisions of 49 CFR parts 573 and 577.

(vii) 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 and regulations. To be imported free of restriction, a motor vehicle less than 25 years old must be manufactured to comply with all applicable FMVSS and bear a label certifying such compliance that is permanently affixed by the vehicle's 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. In most instances, 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. See 49 U.S.C. 30112 and 30115.

(viii) 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) Comply with the requirements to designate a permanent resident of the United States as its agent for service of process if the fabricating 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 comply with the FMVSS, not later than 30 days after the manufacturing process begins (49 CFR part 566 *Manufacturer Identification*).[30] 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 (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 fabricating 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.[31]

(ix) Recordkeeping for Manufacturers

A new tire manufacturer is required by NHTSA regulations to permanently mold into each tire intended for use on a motor vehicle a ''tire identification number'' or ''TIN.'' See 49 CFR 574.5. Tire distributors and dealers that are owned or controlled by tire manufacturers are required to send to the tire manufacturers, records of any new tires they sell, including the TINs of the tires and the name and address of the tire purchasers. Independent tire distributors or dealers are required to furnish tire registration forms that identify the TIN and the tire distributor or dealer's name and address to the purchasers of new tires, who may then mail the forms to the tire manufacturer. Instead of furnishing the tire purchaser with a registration form, independent tire distributors or dealers may electronically transmit tire purchaser and tire registration information to the tire manufacturer by secure means, as identified or authorized by the manufacturer.[32]

Tire manufacturers must maintain information from the registration forms for a period of not less than 5 years from the date on which the information is recorded. Motor vehicle manufacturers are required to maintain records of the TINs for the tires installed on their vehicles and the name and address of the first purchasers of their vehicles for 5 years from the date that the vehicles are sold. These requirements are intended to ensure that purchasers receive proper notification in the event that a tire is recalled to remedy a noncompliance or safety-related defect. See 49 CFR part 574.

In like manner, the manufacturer of a child restraint system (i.e., a child safety seat), other than one installed on a vehicle as newly manufactured, must furnish a registration form to be completed by the owners of those seats and retain information from the form for a period of not less than 6 years to ensure that the owners receive proper notification during a recall campaign. See 49 CFR part 588.

[30] NHTSA maintains a list of these manufacturers on its Web site. See *http://www.nhtsa.dot/cars/rules/manufacture*.

[31] 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.

[32] NHTSA amended regulations at 49 CFR part 574 to accommodate and facilitate Internet and other electronic registration of tires, including voluntary registration of tires by independent dealers. The amendments are effective January 27, 2009; however, optional compliance with these amendments was permitted as of November 28, 2008. See 73 FR 72358.

NHTSA regulations also require manufacturers of motor vehicles and motor vehicle equipment to retain claims, complaints, reports, and other records concerning alleged and proven defects and malfunctions that may be related to motor vehicle safety for a period of five calendar years from the date on which they were generated or acquired by the manufacturer.[33] See 49 CFR part 576. Under section 576.8 of this regulation, ''malfunctions that may be related to motor vehicle safety'' are defined as including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causative factor in, or aggravate, a crash or an injury to a person. Section 576.6 describes the records that manufacturers must maintain, including all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. The section describes such records as including, but not being limited to, reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under warranties; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically. Importers may wish to consider purchasing products from fabricating manufacturers that comply with this regulation.

(x) Penalties

Fabricating 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. For example, the failure of a fabricating manufacturer or importer to furnish notification of a noncompliance or defect to owners or to NHTSA may subject the fabricating manufacturer or importer to substantial civil penalties.

(b) Exercise Great Care in Selecting Foreign Fabricating Manufacturers

(i) Establishing a Business Plan

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 at the time of manufacture is only a part of these considerations. Motor vehicles and equipment operate in harsh conditions over many miles and some abuse must be assumed; therefore, avoidance of safety-related defects that may develop during use of the product is critical.

(ii) Minimizing Risks

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 fabricating manufacturer's reputation using readily available public source information (such as the Internet) or, if possible, by interviewing other customers of the fabricating manufacturer. It is advisable for a prospective importer to check many references and not to limit its inquiries to references that the prospective manufacturer identifies. If the country in which a fabricating 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 fabricating manufacturer's catalogs and sample products for evaluation.

It may be wise to look for a fabricating manufacturer that has prior experience with exporting to the United States. By selecting such a fabricating manufacturer, the importer has some assurance that the manufacturer understands the supply-chain and logistics issues associated with supplying a foreign purchaser and that it has some experience in meeting the demands of a U.S. customer.[34]

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.* When considering doing business in China, it may be advisable to know that organizations such as the U.S.-China Business Council, the American Chambers of Commerce in China, and the Department of Commerce's Foreign Commercial Service assist U.S. companies and they may be a good starting point for selecting a reliable Chinese fabricating manufacturer.[35]

Importers may wish to consider selecting more than one foreign fabricating manufacturer to manufacture their products. By doing so, an importer's operations may remain viable when one of its fabricating manufacturer's products is found to contain a noncompliance or safety defect and a recall becomes necessary.[36]

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 fabricating manufacturers who:

1. Properly identify themselves and their products to NHTSA (49 CFR part 566);

[33] Under 49 CFR 576.5(c), manufacturers need not retain copies of documents transmitted to NHTSA pursuant to 49 CFR part 573 (notification to NHTSA of safety-related defects and noncompliances with FMVSS); 49 CFR part 577 (notifications of defects or noncompliances with FMVSS made to owners, dealers, and distributors); and 49 CFR part 579 (EWR reporting to NHTSA).

[34] Merritt R. Blakeslee, ''Sourcing Your Products from China without Losing Your Shirt, Your Intellectual Property, or Your Customers—Parts I and II'' (Washington, DC, December 2007 and February 2008), p. 5, *http://sema.org/main/semaorghome.aspx?id=58637.*

[35] Ibid, p. 5.

[36] Ibid, p. 7.

2. Comply with the requirements to designate a permanent resident of the United States as its agent for service of process if the fabricating manufacturer is not located in the United States (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).

(iii) Product Design Considerations

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 fabricating 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 fabricating 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 fabricating 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.[37] 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,[38] 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.

Because products may contain safety defects even if they comply with all applicable FMVSS, or when no FMVSS applies, 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.[39] To find applicable standards, importers and fabricating 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 fabricating manufacturers use other systematic analysis tools such as a Failure Modes and Effects Analysis (FMEA)[40] 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.[41]

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 fabricating manufacturers that do not have in-house expertise may consider using an accredited test laboratory to evaluate the safety of a product.[42]

(iv) Product Design Records and Traceability

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[43] 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 repair; as well as operating handbooks, and to remove from use obsolete documents and data.[44]

(c) Inspect Foreign Manufacturing Facilities

(i) Evaluating the Manufacturer's Company, Factory, and Staff

Before entering into a written contract, we believe it is prudent for the importer to personally visit the fabricating manufacturer's facility and to determine whether the manufacturer is properly licensed by the appropriate government agencies. 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. 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 fabricating manufacturer and to avoid dealing with

[37] 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.

[38] Ibid, p. 10.

[39] Ibid, p. 26.

[40] 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.*

[41] CPSC Handbook, p. 10.

[42] Ibid, p. 10.

[43] Ibid, p. 25.

[44] Ibid, p. 24.

representatives (such as trade groups) that claim to represent a manufacturer. When dealing with a business partner of the fabricating manufacturer, it is generally advisable to determine whether the partner is a subsidiary of a larger company [45] and whether the importer has recourse against the parent company if the subsidiary defaults on its obligations.

(ii) Assuring Quality Control

While visiting a fabricating 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. The importer should also be aware that other quality management systems are used such as ISO/TS16949, which was jointly developed by the International Automotive Task Force (IATF) [46] and submitted to the ISO for approval and publication. [47] ISO/TS16949 applies to the design and development, production, and, as relevant, the installation and servicing of automotive-related products.

(iii) Protecting Intellectual Property, Trademarks, Copyrights, Patents, and Trade Secrets

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. We believe that it is in the best interest of an importer to consider protecting its intellectual property, trademarks, copyrights, patents, and trade secrets. 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, we believe it is prudent for importers to avoid business dealings with known or suspected counterfeiters because evidence of counterfeiting activities demonstrates the company's disdain for compliance with accepted norms, which may extend to safety standards. [48] Importers should be aware that many Federal departments and agencies are working with industry to stop the proliferation of counterfeit products. [49] For example, importers should be aware that the International Trade Administration of the U.S. Department of Commerce, has posted on its Web site an ''IPR Toolkit—Intellectual Property Rights in China'' that describes how to develop an intellectual property strategy plan, including what is involved in registering intellectual property in China. [50] Also assisting in these efforts are many independent organizations such as the U.S. Chamber of Commerce, which represents more than three million businesses. [51]

(iv) Reaching Agreement on Whether Products are Substandard, Nonconforming, or Defective

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

(v) Contract Considerations

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.[52] 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 fabricating manufacturer 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.

An agency's enforcement activities and the importer's legal duties may be complicated when the overseas fabricating manufacturer begins selling the importer's product to customers that have previously been buying directly from the importer. In the event of a product noncompliance, the agency must investigate the product importations by many, rather than just one importer. We therefore believe it is prudent for an importer to consider having contract language that prohibits the fabricating manufacturer from selling the importer's product (either with or without the importer's markings) to anyone except the importer. Without such assurances from the fabricating manufacturer, an importer may find that the manufacturer is performing the unauthorized manufacture (so-called ''midnight runs'') of the importer's products after business hours, which the manufacturer subsequently sells in the gray market. The importer may also consider not disclosing its customer lists to the manufacturer and not having the manufacturer drop-ship the importer's products to its customers because this provides an opportunity for the

[45] 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).

[46] IATF members include the following vehicle manufacturers: BMW Group, Chrysler LLC, Daimler AG, Fiat Group Automobiles, Ford Motor Company, General Motors Corporation (including Opel Vauxhall), PSA Peugeot-Citroen, Renault, Volkswagen AG and the vehicle manufacturers' respective trade associations—AIAG (U.S.), ANFIA (Italy), FIEV (France), SMMT (U.K.) and VDA (Germany).

[47] See: *http://www.iso.org/iso/catalogue_detail?csnumber=36155.*

[48] Importers should be aware that the U.S. Department of Homeland Security recently announced The National Intellectual Property Rights Coordination Center (IPR Center) to keep unsafe products out of the United States. See ''DHS Announces New Center to Target Unsafe Products'' (Washington, DC, July 11, 2008) *http://www.cbp.gov/xp/cgov/newsroom/highlights/target_center.xml.*

[49] 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.

[50] Ibid, p. 12. See also: *http://www.stopfakes.gov.*

[51] The U.S. Chamber of Commerce sponsors the Coalition Against Counterfeiting and Piracy. See: *http://www.thetruecosts.org/.*

[52] CPSC Handbook, p. 28.

manufacturer to deal directly with the importer's customers.[53]

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.*

While the contract between the importer and the fabricating manufacturer may clarify responsibilities between these entities, it does not modify the Vehicle Safety Act and has no bearing on NHTSA. The importer retains the obligations of a manufacturer for notification and recall under the Vehicle Safety Act and NHTSA regulations.

(vi) Monitoring Compliance With Contract Requirements

It may be imprudent to assume that the overseas operations will run by themselves. Visits to the foreign fabricating 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 fabricating 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 fabricating manufacturer when circumstances necessitate such action.[54]

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

(i) Monitoring Production Outputs

Different products, designs, and fabrication processes will require various levels of precision and accuracy of manufacturing equipment and tooling.[55] 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. Fabricating manufacturers of quality products use mathematical models for calibrating production 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.

(ii) Sampling, Inspecting, and Testing Products

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 assure 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.[56] Fabricating 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. More information relating to statistically valid sampling plans is available on Web sites such as that of the American Society for Quality. See *http://www.asq.org/index.html.* Test programs that are based on statistically valid 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 fabricating 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 fabricating manufacturer. After the initial production run, the importer and fabricating 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 fabricating 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.[57]

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.

(iii) Post-Production Quality Control

From the moment products leave the fabricating 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

[53] Blakeslee Sourcing Your Products, pp. 6–9.

[54] CPSC Handbook, p. 10.

[55] Ibid, p. 28.

[56] Ibid, p. 35.

[57] Ibid, p. 36.

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.[58]

When quality control problems are encountered, it may be useful to determine what has caused the problem and to collaborate with the fabricating 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 fabricating manufacturers want to be apprised of problems and will work for compliance with the importer's requirements and applicable government standards.

To prevent potentially dangerous products from being delivered to consumers, it may be desirable for importers and fabricating 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.[59] 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 may consider providing the overseas partner with training and technical assistance to assure product quality.[60] 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.[61]

(e) Identify the Product

(i) 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, which is administered by CBP, 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 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.[62]

(ii) Identify the Product's Manufacturer

As noted above, items of motor vehicle equipment that are subject to the FMVSS must, as originally manufactured, conform to the applicable standard and be so certified. In most instances, 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. See 49 U.S.C. 30112 and 30115. 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.

However, motor vehicle equipment items that are not covered by an equipment standard are not required by NHTSA regulations to be marked. NHTSA's enforcement efforts are complicated when unmarked products are noncompliant or have safety-related defects because it becomes more difficult to trace the products' origins and to request or order the fabricating manufacturer or importer to conduct a safety recall campaign. It is generally assumed that safety is enhanced when those who manufacture and import motor vehicles and items of motor vehicle equipment are accountable and that accountability may be compromised when products have no markings that identify their fabricating manufacturers or importers.

The agency is aware that many fabricating manufacturers voluntarily mark their products with information that identifies the manufacturer. When a fabricating manufacturer does not mark its products, it becomes difficult to discern whether those products were produced by the manufacturer in accordance with a legitimate business relationship or were counterfeited by an unscrupulous manufacturer. An all-too-real possibility is that the fabricating manufacturer or importer may have to initiate a recall for the counterfeit products and incur costs that it otherwise would not have had to pay if the legitimate products were easily identifiable with their markings.

The agency therefore believes it is in the best interests of importers and fabricating manufacturers to ensure that the legitimate manufacturer (and where feasible, the importer) is clearly identified on the product or its packaging. Readily apparent markings on the item itself are preferable, because after the item is in service, its packaging will usually not be available for reference purposes. It is important to keep in mind that such identification may limit a fabricating manufacturer or importer's recall liability to only those products that were actually manufactured or imported by those entities.

(iii) Identify the Product's Date or Lot Codes

The agency also believes it is reasonable for importers and fabricating manufacturers to consider marking products with ''production date codes'' or ''lot codes.'' As noted above, by doing so items that do not comply with standards or that contain safety defects can be traced back to the point at which the manufacturing process was changed or to other changes that were made, such as purchases of raw materials from different suppliers. By doing so, a recall may be limited to an identified ''lot'' of products or to products manufactured in a specific date range, thereby reducing the overall cost of the recall.

[58] Ibid, p. 40.

[59] Ibid, p. 45.

[60] U.S. DOC Essential Advice.

[61] Ibid.

[62] 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).

(iv) Industry Recommended Practices or Standards for Product Markings

The agency is aware that many fabricating manufacturers also voluntarily mark their products in accordance with industry guidance to show that the products conform to established standards or recommended practices. Industry guidance is typically derived from broadly accepted specifications for a product. As an example, SAE Recommended Practice J759 entitled ''Lighting Identification Code,'' provides guidelines to manufacturers of lighting products that specify permanent markings that identify the product's manufacturer, the function for which it was designed, the model or part number, the class designation, and the product's application.[63] When such guidance is available, the agency believes that importers and fabricating manufacturers should give it serious consideration.

(f) 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:

(i) Consumer Education

An effective consumer service program will inform consumers through 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.

(ii) 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.

(iii) 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, dealers, and distributors of products when a safety recall is announced.

(iv) 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 noncompliances with the FMVSS or safety defects that are determined to exist in a product.[64] The recall plan should also establish procedures for notifying NHTSA about noncompliances with the FMVSS or safety-related defects as required by agency regulations. The recall plan should be periodically evaluated and amended as necessary.

(v) 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.

(vi) 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 ordinarily 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.[65] Where it is a requirement to maintain records identifying retail purchasers of a product, such as is the case for tires, child restraint systems, and 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* and 49 CFR part 588 *Child Restraint Systems Recordkeeping Requirements.*

(vii) Business Process Monitoring

Other than complaints received directly from the importer's consumer service program, information that could assist in identifying noncompliances with the FMVSS or safety-related defects 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.

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

Enhanced product safety for imported motor vehicles and equipment will result from a collaborative effort between the importer community, fabricating 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:	*http://www.nhtsa.dot.gov/cars/rules/import/*	

[63] See: www.sae.org/standardsdev/.

[64] CPSC Handbook, p. 42.

[65] Ibid, p. 45.

OFFICE OF VEHICLE SAFETY COMPLIANCE—Continued

Topic	NHTSA Office/Internet	Telephone No.
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
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:	*http://www.nhtsa.dot.gov/cars/rules/maninfo/*	
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):	*http://www.nhtsa.dot.gov/cars/rules/*	
NHTSA's Manufacturer Databases:	*http://www.nhtsa.dot.gov/cars/rules/manufacture*	
Government Vehicle Safety Information:	*http://www.safercar.gov/*	

OFFICE OF DEFECTS INVESTIGATION

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

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:	*http://isearch.nhtsa.gov/*	
NHTSA Statutory Authorities:	*http://www.nhtsa.dot.gov/nhtsa/Cfc_title49/index.html*	
NHTSA Regulations:	*http://www.nhtsa.dot.gov/cars/rules/*	
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:	*http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html*	

(h) Know How To Obtain General Assistance With Other 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 fabricating manufacturers and importers to understand Federal regulations, including those administered by NHTSA. This Web site provides a point of contact at each agency to answer specific questions.[66] 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.

David Kelly,

Acting Administrator.

[FR Doc. E8–30603 Filed 12–23–08; 8:45 am]

BILLING CODE 4910–59–P

[66] 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.

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved