

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 importers¹ 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.

These are NHTSA's recommended best importer practices:

- Fully Understand the Importer's Obligations under Motor Vehicle Safety Statutes and Regulations
 - Certification of Motor Vehicles and Equipment to the Federal Motor Vehicle Safety Standards
 - NHTSA Compliance Program
 - NHTSA Defect Investigations
 - Duty to Notify NHTSA of a Noncompliance with an FMVSS or a Safety-Related Defect
 - Duty to Notify Owners and Dealers and Provide a Remedy for a Noncompliance or a Safety-Related Defect
 - Importer's Recall Obligations
 - Compliance Needed to Import Motor Vehicles and Equipment
 - Procedural Requirements for Fabricating Manufacturers
 - Record Keeping for Manufacturers
 - Penalties
- Exercise Great Care in Selecting Foreign Fabricating Manufacturers
 - Establishing a Business Plan
 - Minimizing Risks
 - Product Design Considerations
 - Product Design Records and Traceability
- Inspect Foreign Manufacturing Facilities
 - Evaluating the Manufacturer's Company, Factory, and Staff

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

- Assuring Quality Control
- Protecting Intellectual Property, Trademarks, Copyrights, Patents, and Trade Secrets
- Reaching Agreement on Whether Products are Substandard, Nonconforming, or Defective
- Contract Considerations
- Monitoring Compliance with Contract Requirements

- Inspect Goods Either Before They Are Exported to or Distributed in the United States
 - Monitoring Production Outputs
 - Sampling, Inspecting, and Testing Products
 - Post Production Quality Control

- Identify the Product
 - Identify the Product's Country of Origin
 - Identify the Product's Manufacturer
 - Identify the Product's Date or Lot Codes
 - Industry Recommended Practices or Standards for Product Markings

- Establish a Consumer Service Program
 - Consumer Education
 - Product Service
 - Recordkeeping
 - Safety Recall Plan
 - Intervention
 - Notification
 - Business Process Monitoring

- Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, Defect Issues, and Regulations

- Know How to Obtain General Assistance with Other Federal Regulations

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.²

Certification of Motor Vehicles and Equipment to the Federal Motor Vehicle Safety Standards

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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
- 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
- compressed natural gas containers

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

Type approval³ 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 fabricating manufacturer to certify the vehicle or equipment item as complying with the applicable FMVSS. Self-certification reduces the cost and time associated with lengthy, government-mandated testing that is required under type approval.

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

Self-certification also reduces regulatory costs and facilitates international trade because it allows fabricating manufacturers to quickly bring to market vehicles and equipment items that incorporate safety and technology advancements.

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

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 fabricating manufacturer’s certification that the vehicle or equipment item complies with the relevant FMVSS and regulations, 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.

NHTSA Defect Investigations

In addition to conducting tests and inspections to determine whether 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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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 motor vehicle manufacturers that meet certain production thresholds, tire manufacturers that produce more than a certain number of tires by tire line, and all manufacturers of child restraint systems. Manufacturers of light vehicles, motorcycles, trailers, and medium-heavy vehicles (except buses and emergency vehicles) that produced, imported, offered for sale, or sold 5,000 or more vehicles of a category annually in the United States are required to furnish NHTSA with comprehensive reports every calendar quarter. Emergency vehicle manufacturers must report if they produced, imported, offered for sale, or sold 500 or more vehicles annually, and bus manufacturers must report if they produced, imported or offered for sale, or sold 100 or more buses annually in the United States. Manufacturers of passenger car, light truck, and motorcycle tires are also required to provide comprehensive quarterly reports if they produced, imported, offered for sale, or sold 15,000 or more tires in a tire line. This group of 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 comprises all other manufacturers of motor vehicles and motor vehicle equipment (i.e., vehicle manufacturers that produce, import, or sell annually in the United States fewer than 5,000 light vehicles, motorcycles, trailers, and medium-heavy vehicles (excluding emergency vehicles and buses); manufacturers that produce, import, or sell annually in the United States fewer than 500 emergency vehicles; manufacturers that produce, import, or sell annually in the United States fewer than 100 buses; 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 are encouraged to contact NHTSA at 202-366-4238 or review the agency's web site for more comprehensive EWR information. See <http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm>.

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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.⁴ 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.

Duty to Notify NHTSA of a Noncompliance with an FMVSS or a Safety-Related Defect

Notwithstanding its certification of a product, a fabricating 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).

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.⁵ See 49 CFR part 556. The notification and remedy process is commonly referred to as a "safety recall campaign" or more simply 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.

Importer's Recall Obligations

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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 fabricating manufacturer's 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.

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 originally manufactured to comply with all applicable FMVSS and bear a label certifying such compliance that is permanently affixed by the vehicle's fabricating manufacturer. To be lawfully imported, a new or used item of motor vehicle equipment that is subject to an FMVSS must, as originally manufactured, conform to the standard and be so certified by its fabricating manufacturer. In most instances, the fabricating manufacturer's certification of compliance with the applicable FMVSS for regulated safety equipment is evidenced by the symbol "DOT" either inscribed on the equipment item in a prescribed location, or placed on the outside of the container in which the equipment item is shipped. See 49 U.S.C. §§ 30112 and 30115.

Procedural Requirements for Fabricating Manufacturers

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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*).⁶ 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.⁷

Record Keeping 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 part 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.⁸

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.

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

manufacturer.⁹ 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.

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.

Exercise Great Care in Selecting Foreign Fabricating Manufacturers

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?

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

- 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.

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.¹⁰

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/>. 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.¹¹

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.¹²

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:

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

- Properly identify themselves and their products to NHTSA (49 CFR part 566)
- 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)
- Furnish NHTSA with VIN-deciphering information (if they manufacture “motor vehicles”) (49 CFR part 565) and
- Certify their products as complying with all applicable FMVSS and so label their products (49 U.S.C. 30115)

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.¹³ 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,¹⁴ 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.¹⁵ To find applicable standards, importers and

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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)¹⁶ 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.¹⁷

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.¹⁸

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 traceability¹⁹ 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.²⁰

Inspect Foreign Manufacturing Facilities

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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 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 company²¹ and whether the importer has recourse against the parent company if the subsidiary defaults on its obligations.

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)²² and submitted to the ISO for approval and publication.²³ ISO/TS16949 applies to the design and development, production, and, as relevant, the installation and servicing of automotive-related products.

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.²⁴ Importers should be aware that many Federal departments and agencies are working with industry to stop the proliferation of counterfeit products.²⁵ For example, importers should be aware that the International Trade Administration of the U.S. Department of Commerce, has posted on its website 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.²⁶ Also assisting in these efforts are many independent organizations such as the U.S. Chamber of Commerce, which represents more than three million businesses.²⁷

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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.

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.²⁸ 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 manufacturer to deal directly with the importer's customers.²⁹

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

use technology to certain foreign countries. U.S. statutes prohibit transfer of some sensitive technologies without a license. See <http://www.bis.doc.gov/>.

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.

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.³⁰

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

Monitoring Production Outputs

Different products, designs, and fabrication processes will require various levels of precision and accuracy of manufacturing equipment and tooling.³¹ 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.

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.

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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.³² 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.³³

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.

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 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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

wise to provide them with current and adequate assembly and test instructions and the importer may wish to ensure that these instructions are followed.³⁴

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.³⁵ 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.³⁶ 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.³⁷

Identify the Product

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.

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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.³⁸

Identify the Product's Manufacturer

As noted above, items of motor vehicle equipment that are subject to the FMVSS are required to be marked with the fabricating manufacturer's certification of compliance with the applicable standards, generally as 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. 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.

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.

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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.

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.³⁹ When such guidance is available, the agency believes that importers and fabricating manufacturers should give it serious consideration.

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:

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.

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.

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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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.

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.⁴⁰ 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.

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.

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.⁴¹ 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*.

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.

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

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
<i>General Importation Information</i>	http://www.nhtsa.gov/cars/rules/import/	
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
<i>Information to Assist New Manufacturers</i>	http://www.nhtsa.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
<i>Federal motor vehicle safety standards (FMVSS)</i>	http://www.nhtsa.gov/cars/rules/	
<i>NHTSA's Manufacturer Databases</i>	www.nhtsa.gov/cars/rules/manufacture	
<i>Government Vehicle Safety Information</i>	http://www.safercar.gov/	

Office of Defects Investigation		
Topic	NHTSA Office/Internet	Telephone No./Link

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

Questions about Early Warning Reporting (EWR)	Early Warning Division	(202) 366-4238
<i>Early Warning Reporting</i>		http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm
Questions about Defects and Recalls	Office of Defects Investigation	(202) 366-5210
<i>Defects Investigations</i>		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.
<i>NHTSA Chief Counsel interpretive letters</i>	http://isearch.nhtsa.gov/	
<i>NHTSA Statutory Authorities</i>	http://www.nhtsa.gov/nhtsa/Cfc_title49/index.html	
<i>NHTSA Regulations</i>	http://www.nhtsa.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
<i>Suggested Designation of Agent for Service of Process 49 CFR Part 551, Subpart D</i>	http://www.nhtsa.gov/cars/rules/manufacture/agent/customer.html	

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 website provides a point of contact at each agency to answer specific questions.⁴² See: <http://www.sba.gov/>. 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/linkhandler/cgov/newsroom/publications/trade/ius.ctt/ius.pdf>.

Endnotes

¹ 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

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

Parts 591-594 covering the registration, duties, and responsibilities of these importers, who are referred to as “Registered Importers.”

² 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.

³ 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.

⁴ See 49 U.S.C. 30118(b) and 49 CFR part 554.

⁵ 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*.

⁶ NHTSA maintains a list of these manufacturers on its web site. See <<http://www.nhtsa.dot.gov/cars/rules/manufacture>>

⁷ 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.

⁸ 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.

⁹ 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*).

¹⁰ 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/semaorhome.aspx?id=58637>>.

¹¹ Ibid, p. 5.

¹² Ibid, p. 7.

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

¹³ 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.

¹⁴ Ibid, p. 10.

¹⁵ Ibid, p. 26.

¹⁶ 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>>.

¹⁷ CPSC *Handbook*, p. 10.

¹⁸ Ibid, p. 10.

¹⁹ Ibid, p. 25.

²⁰ Ibid, p. 24.

²¹ 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).

²² 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).

²³ See: <www.iso.org/iso/catalogue_detail?csnumber=36155>.

²⁴ 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>.

²⁵ 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: <www.stopfakes.gov> or call 1-866-999-HALT.

²⁶ Ibid, p. 12. See also: <www.stopfakes.gov>.

²⁷ The U.S. Chamber of Commerce sponsors the Coalition Against Counterfeiting and Piracy. See: <<http://www.thetruecosts.org/>>.

²⁸ CPSC *Handbook*, p. 28.

²⁹ Blakeslee Sourcing Your Products, pp. 6-9.

³⁰ CPSC *Handbook*, p. 10.

³¹ Ibid, p. 28.

³² Ibid, p. 35.

³³ Ibid, p. 36.

³⁴ Ibid, p. 40.

³⁵ Ibid, p. 45.

³⁶ U.S. DOC *Essential Advice*.

Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

³⁷ Ibid.

³⁸ 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).

³⁹ See: <www.sae.org/standardsdev/>.

⁴⁰ CPSC *Handbook*, p. 42.

⁴¹ Ibid, p. 45.

⁴² 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.