

**Statement of Coleman Sachs, National Highway Traffic Safety Administration  
For the record of the  
October 7-8 Hearing of the National Transportation Safety Board  
Concerning the Victoria, Texas Bus Crash**

**The Federal Motor Vehicle Safety Standards (FMVSS)**

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 that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States. Many of the FMVSS apply to motor coaches including those relating to brakes, glazing, tires, and emergency exits. Appendix A contains a list of FMVSS that apply to motor coaches.

The Vehicle Safety Act imposes distinct duties on manufacturers of motor vehicles that are manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States. Specifically, the Vehicle Safety Act requires manufacturers to certify motor vehicles they produce for sale in the United States as complying with all applicable FMVSS. See 49 U.S.C. § 30115. Such certification is shown by a label that is permanently affixed by the vehicle's original (i.e. "fabricating") manufacturer. For vehicles other than motorcycles or trailers, the label must be affixed in the area of the driver's door. The certification label must meet the requirements of 49 CFR Part 567. Among other things, the label must identify the vehicle's manufacturer (i.e., the actual assembler of the vehicle), state the vehicle's date of manufacture (month and year), and contain the following statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above."

Under 49 U.S.C. § 30112(a), no person may import a motor vehicle manufactured after the date that an applicable FMVSS takes effect unless the vehicle complies with the standard and is covered by a manufacturer's certification issued under 49 U.S.C. § 30115. Under one of the exceptions to this prohibition, found at 49 U.S.C. § 30141, a nonconforming vehicle can be lawfully imported if 1) NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS and 2) the vehicle is imported by an importer specially registered with NHTSA (referred to as a "registered importer" or "RI") or by a person who has a contract with an RI to modify the vehicle so that it conforms to all applicable FMVSS following importation. A motor vehicle cannot be imported into the United States unless it is originally manufactured to conform to all applicable FMVSS and is so certified by its original manufacturer, or it is determined eligible for importation by NHTSA and is imported by an RI or by a person who has a contract with an RI to modify the vehicle so that it conforms to all applicable FMVSS. In addition to being subject to these prohibitions, the importer of a motor vehicle may also be required to conduct a safety recall campaign should the vehicle be found to contain a defect related to motor vehicle safety or to not comply with an applicable FMVSS.

**Determination of Manufacturer's Certification**

The presence of a manufacturer's certification label is the primary method for establishing that a vehicle was originally manufactured to comply with all applicable FMVSS. The manufacturer's records may also identify the standards to which a vehicle was built.

NHTSA implements approximately 60 motor vehicle and equipment standards covering subjects such as crashworthiness (air bags, side impact, roof crush, etc.) and crash avoidance (brakes, electronic stability control systems). NHTSA assures compliance by conducting spot testing of new vehicles and regulated equipment items sold in the U.S.

Each year NHTSA tests more than 100 vehicles and several hundred of items of equipment. Compliance testing generally is conducted by contract laboratories under detailed procedures. Also, NHTSA conducts field compliance inspections at industry trade shows on regulated equipment items imported into the U.S. All tests and inspections involve new vehicles and equipment. Manufacturers have a duty to recall noncompliant vehicles and equipment.

Also, NHTSA investigates to determine whether vehicles and equipment in use have safety defects. If so, the manufacturer has a duty to recall the defective vehicles and equipment.

### **Purpose of Vehicle Identification Number (VIN)**

Under NHTSA's regulations at 49 CFR Part 565, a motor vehicle manufacturer must assign to each motor vehicle manufactured for sale in the United States a 17-character VIN that uniquely identifies the vehicle. The VIN must be correctly formatted and include a check digit in the ninth position that is mathematically correct under a formula that is included in the regulations. The first three characters of the VIN constitute the World Manufacturer Identifier or "WMI," which uniquely identifies the manufacturer of the vehicle. NHTSA's contractor, the Society of Automotive Engineers (SAE), assigns WMIs to manufacturers that produce motor vehicles in the United States. The 10th through 17th positions of the VIN comprise the Vehicle Identifier Section or VIS. A manufacturer uses the VIS to identify individual vehicles.

NHTSA's regulation that established a fixed format for VINs was published on March 22, 1979. The agency stated that an efficient VIN system is necessary as a key vehicle identifier for use by motor vehicle administrators, manufacturers, insurance companies, law enforcement agencies, and NHTSA. We noted that the VIN system is the cornerstone of the safety defect and noncompliance recall program. We also observed that the VIN system is an important element in manufacturer quality control and vehicle theft recovery, and that the VIN is further used for analysis of accidents, safety research, and rulemaking. The agency's stated purpose for adopting a fixed VIN format was for VIN users to be able to discover at the earliest possible stage, certain types of transcription errors in VINs. For more information, please see 49 CFR Part 565 and the notice of final rule at 44 FR 17490.

Manufacturers intending to offer vehicles for sale in the United States must affix to their vehicles VINs that conform to the requirements of 49 CFR Part 565. A conforming VIN cannot be, with certainty, relied upon to confirm that the vehicle was manufactured to comply with all applicable FMVSS.

As a general rule, manufacturers that do not intend to offer their vehicles for sale in the United States do not affix to such vehicles conforming VINs. Therefore, a nonconforming VIN may be used as an indicator that the manufacturer did not intend to sell the vehicle in the United States.

### **Motor Vehicle Importation**

As part of its safety mandate, NHTSA works with U.S. Customs and Border Protection (CBP) to monitor motor vehicles that are imported into the United States for compliance with applicable FMVSS. NHTSA regulations include a requirement that the importer of a motor vehicle declare at the time of entry the vehicle's conformity status with regard to the FMVSS. Such a declaration is made on the DOT HS-7 Declaration form that is to be presented to CBP at the time of the vehicle's importation. This declaration is required by 49 CFR 591.5(a). A copy of the DOT HS-7 Declaration form was provided to the NTSB before this hearing and is included in Appendix B. In instances where an importer retains the services of a Customs House Broker to import a motor vehicle, the paper HS-7 Declaration form need not be used. The broker may instead file the information that must be submitted on the HS-7 Declaration form electronically through the Customs Automated Broker Interface or "ABI" system. Information filed in this manner is ultimately transmitted to NHTSA by CBP.

Under 49 U.S.C. § 30112(a), a person may not import into the United States a motor vehicle manufactured after the date that an applicable FMVSS takes effect unless the vehicle complies with the standard and is so certified by its original manufacturer. This prohibition applies to both new and used motor vehicles, but does not apply to motor vehicles that are at least 25 years old (based on the date that the vehicle was manufactured).

A manufacturer of motor vehicles that wishes to sell its products in the United States must also comply with certain procedural requirements under NHTSA regulations. Before offering a motor vehicle for sale in the United States, the fabricating manufacturer must: 1) designate a U.S. resident as its agent for service of process if the manufacturer is not located in the United States (49 CFR Part 551, Subpart D *Service of Process on Foreign Manufacturers and Importers*), 2) submit to NHTSA identifying information on itself and the products it manufactures to the FMVSS, not later than 30 days after the manufacturing process begins (49 CFR Part 566 *Manufacturer Identification*), and 3) submit to NHTSA information the agency will need to decipher the manufacturer's 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*).

If the vehicle is less than 25 years old and was **not originally manufactured to comply with all applicable FMVSS**, and/or was not so certified by its original manufacturer, it cannot be lawfully imported into the U.S. unless NHTSA determines the vehicle to be eligible for importation. The agency makes those determinations on its own initiative or the basis of a petition from an RI. These are business entities that are specifically approved by NHTSA to import nonconforming vehicles and to perform the necessary modifications on those vehicles so that they conform to all applicable FMVSS.

The petitions must specify that the vehicle is substantially similar to a vehicle that was certified by its original manufacturer as conforming to all applicable FMVSS and is capable of being readily altered to conform to those standards, or, if there is no substantially similar U.S.-certified vehicle, that the vehicle has safety features that comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or other evidence the agency deems adequate. Import eligibility decisions are made on a make, model, and model year basis.

An additional requirement for the lawful importation of a nonconforming vehicle is that it be imported by an RI or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable FMVSS. A bond in an amount equivalent to 150 percent of the declared value of the vehicle must be given at the time of importation to ensure that the necessary modifications are completed within 120 days of entry or the vehicle is exported from, or abandoned to, the United States.

Under 49 U.S.C. § 30114, motor vehicles may be imported into the United States on a temporary basis for certain specified purposes, including research or investigations. This includes such actions needed to determine

a vehicle's compliance with applicable standards. Implementing regulations at 49 CFR § 591.5(j)(1) require such vehicles to be imported under a declaration stating that the vehicle does not conform to all applicable FMVSS and bumper standards, but is being imported for one of the statutorily authorized purposes. Such vehicles are to be declared under Box 7 on the HS-7 Declaration form.

Motor vehicles may also be imported on a temporary basis and declared on the HS-7 Declaration form under Box 4 (covering vehicles that are imported for export only and are so labeled), Box 5 (covering vehicles imported by nonresidents for personal use), Box 6 (covering vehicles imported by diplomatic personnel on assignment in the United States), Box 12 (covering vehicles imported by foreign military personnel on assignment in the United States), and Box 13 (covering vehicles imported by RIs for the purpose of preparing an import eligibility petition); however, the importer may be required to obtain NHTSA approval in advance of the importation.

Volvo Buses De Mexico, S.A. DE C.V., the manufacturer of the motor coach involved in the crash under investigation, has not fulfilled any of the aforementioned procedural requirements. We assume this is so because the manufacturer had no intention of selling vehicles in the United States.

### **Surveillance of Nonconforming vehicles**

NHTSA has no field inspection force that could be deployed at the borders, but we do have an excellent relationship with CBP. That agency provides us, either on paper or electronically, HS-7 information on imported vehicles. When there are questions about particular vehicles and their compliance with the FMVSS, CBP agents contact us directly. When NHTSA receives information that an importer is entering vehicles in violation of the statutes and regulations that we administer, NHTSA notifies CBP headquarters and requests that the importer's entries be detained and fully inspected.

### **NHTSA Database of Compliant Commercial Vehicles**

NHTSA does not maintain a database of commercial vehicles that comply, as originally manufactured, with all applicable FMVSS. The agency does maintain a database of noncomplying motor vehicles that were imported under DOT conformance bonds by RIs and modified after importation to conform to all applicable FMVSS. NHTSA's database includes commercial vehicles; however, there is no record of the crash vehicle in our database.

The safety statutes and regulations administered by NHTSA generally do not address the titling, licensing, or operation of motor vehicles. Those activities are instead within the jurisdiction of the individual States. NHTSA, however, encourages all States to refuse to license vehicles for on-road use unless those vehicles are certified by their original manufacturer as complying with all applicable FMVSS or they are imported under bond by an RI and brought into conformity with all applicable FMVSS following importation. [See <http://isearch.nhtsa.gov/files/21708.ztv.html>.] Additionally, when NHTSA learns that a nonconforming vehicle has entered the United States in violation of our statutes and regulations, we will notify the Customs port of entry through which the vehicle was imported and request that the vehicle be redelivered to the port for export or be seized by Department of Homeland Security/ Immigration and Customs Enforcement agents.

## APPENDIX A

### **FMVSS Applicable to Motor Coaches**

Many of the FMVSS apply to motor coaches. They cover subjects such as air brakes, tires, glazing, headlamps and tail lamps, emergency exits, and seat belts for drivers. The complete list follows.

- FMVSS No. 101, Controls and Displays; controls must be operable by driver with seat belt fastened, requirements for telltales and indicators
- FMVSS No. 102, Vehicles equipped with automatic transmissions must have transmission braking at vehicle speeds below 40 km/h (25 mph)
- FMVSS No. 106, Air brake hoses must meet performance requirements
- FMVSS No. 108, Lamps, reflective devices and associated equipment must meet performance and location on vehicle requirements
- FMVSS No. 111, Rearview mirrors must have unit magnification of specified size, may have additional mirrors, i.e., convex
- FMVSS No. 119, Tires must meet performance and labeling requirements
- FMVSS No. 120, Sum of load ratings of tires must be equal to or greater than the gross axle weight ratings, to prevent vehicle overloading
- FMVSS No. 121, Air brake systems must meet stopping distance standard and vehicles must be equipped with an antilock brake system
- FMVSS No. 124, Accelerator control systems; removing force on accelerator requires return to idle in specified time
- FMVSS No. 205, Glazing materials, glazing must meet performance requirements
- FMVSS No. 207, Driver's seat must meet performance requirements
- FMVSS No. 208, Driver's seat must be equipped with Type 1 or Type 2 seat belt assembly
- FMVSS No. 209, Driver's belt must meet performance requirements
- FMVSS No. 210, Seat belt assembly anchorages, for driver's belt, must meet strength requirements
- FMVSS No. 217, Emergency exits and window retention, must have emergency exits meeting size and location requirements that meet performance and labeling requirements
- FMVSS No. 302, Flammability of interior materials, must meet burn resistance performance requirements

# APPENDIX B

## U.S. Department of Transportation HS-7 Declaration Form

<b>— DECLARATION —</b> Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards		OMB No. 2127-0002 Public Law 100—562, 49 USC Chap. 301	
PORT OF ENTRY	CUSTOMS PORT CODE	CUSTOMS ENTRY NO	ENTRY DATE
MAKE OF VEHICLE	MODEL	YEAR	VEHICLE IDENTIFICATION NUMBER (VIN)
REGISTERED IMPORTER NAME AND NHTSA REGISTRATION NUMBER <i>(Required when Box 3 is checked)</i>			VEHICLE ELIGIBILITY NO. <i>(Box 3)</i>
DESCRIPTION OF MERCHANDISE IF MOTOR VEHICLE EQUIPMENT			

1. The vehicle is 25 or more years old or the equipment item was manufactured on a date when no applicable Federal Motor Vehicle Safety Standard or Theft Prevention Standard was in effect.  
Date of manufacture: \_\_\_\_\_ [591.5(i)]
- 2A. The vehicle or equipment item conforms to all applicable Federal Motor Vehicle Safety Standards (or the vehicle does not conform solely because readily attachable equipment items that will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and Bumper and Theft Prevention Standards, and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle or affixed by the manufacturer to the equipment item or to its delivery container in accordance with applicable National Highway Traffic Safety Administration (NHTSA) regulations [591.5(b)].
- 2B. The vehicle was certified by its original manufacturer as conforming to all applicable Canadian motor vehicle safety standards and its original manufacturer confirms that the vehicle conforms to all applicable U.S. Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards (or that it conforms to all such standards except for the labeling requirements of Standards Nos. 101 and 110 or 120, and/or the specifications of Standard No. 108 relating to daytime running lamps), and the vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle, and I am importing it for personal use. [591.5(g)].  
**Attachment:** Copy of manufacturer's confirmation letter.
3. The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but does conform to applicable Federal Theft Prevention Standards, but I am eligible to import it because NHTSA has determined that the model and model year of the vehicle to be imported is eligible for importation into the United States, and the vehicle is not a salvage motor vehicle or a reconstructed motor vehicle, and I have furnished a bond, which is attached to this declaration, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury. If the Administrator of NHTSA determines that the vehicle has not been brought into conformity with all such standards within 120 days after importation, then I state that I will deliver such vehicle to the Secretary of Homeland Security for export, or abandon it to the United States [591.5], and that:
- a. I have registered with NHTSA pursuant to 49 CFR Part 592 and such registration is not suspended and has not been revoked, or
- b. I have executed a contract or other agreement, which is attached to this declaration, with an importer who has registered with NHTSA and whose registration is not suspended and has not been revoked. [591.5(f)]
- Attachments:** Copy of DOT Bond; and  
Copy of Contract with a Registered Importer, if applicable.
4. The vehicle or equipment does not conform to all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards, but is intended solely for export and is labeled for export on the vehicle or equipment item, and the outside of any container of the vehicle or equipment item bears a label or tag to that effect. [591.5(c)]
5. The vehicle or equipment does not conform to all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards, but I am eligible to import it because all of the following conditions exist:
- a. I am a nonresident of the United States and the vehicle is registered in a country other than the United States;
- b. I am temporarily importing the vehicle for personal use for a period not to exceed 1 year, and will not sell it during that time; and
- c. I will export it not later than the end of 1 year after entry, and the declaration contains my passport number and country of issue. [591.5(d)]
- d. Passport No. \_\_\_\_\_ Country of Issue \_\_\_\_\_
6. The vehicle does not conform to all applicable Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards, but I am eligible to import it because all of the following conditions exist:
- a. I am a member of a foreign government on assignment in the United States, or a member of the Secretariat of a public international organization as designated under the International Organizations Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State;
- b. I am importing the vehicle on a temporary basis for my personal use, and will register it through the Office of Foreign Missions of the Department of State;
- c. I will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph;
- d. I will obtain from the Office of Foreign Missions of the State Department, before departing the United States at the conclusion of a tour of duty, an ownership title to the vehicle good for export only; and
- e. I have attached a copy of my official orders. [591.5(h)(1)]
- Name of Embassy: \_\_\_\_\_
- Attachment:** Copy of Official Orders.
7. The vehicle or equipment does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but is being imported solely for the purpose of research, investigations, demonstrations or training, or competitive racing events, and I state that I will comply with the applicable restrictions on importers of such merchandise as specified in 49 CFR 591.7 and I will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States. [591.5(j)]
- Attachment:**
- a. Copy of NHTSA permission letter if the importer is not an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to conform to all applicable Federal Motor Vehicle Safety Standards (FMVSS). Use on the public roads must be authorized specifically [591.6(f)(1) or (2)].
- b. Importer's statement describing the use to be made of the vehicle or equipment item if the importer is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to conform to all applicable FMVSS. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose that makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported. [591.6(f)(3)]
8. The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards or the equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal Motor Vehicle Safety Standards. [591.5(a)]
- Attachment:** Importer's statement substantiating that the vehicle was not manufactured for use on the public roads, or that the equipment item was not manufactured for use on a motor vehicle or is not an item of motor vehicle equipment. [591.6(a)]
9. The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and any part of such vehicle that is required to be marked by the Theft Prevention Standard is marked in accordance with that standard. [591.5(e)]
- Attachment:** For a vehicle, a copy of the Incomplete Vehicle Document, issued by the incomplete vehicle manufacturer, providing guidance on completing the vehicle so that it conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS). For an equipment item, a statement issued by the item's manufacturer identifying the applicable FMVSS to which the item does not conform and describing the further manufacturing required for the item to perform its intended function. [591.6(b)].
10. The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards but is being imported solely for the purpose of show and display, and I state that I will comply with all applicable restrictions on importers of such vehicles as specified in 49 CFR 591.7. [591.5(j)]
- Attachment:** Copy of NHTSA Permission Letter.
11. The equipment item is subject to the Theft Prevention Standard and is marked in accordance with the requirements of 49 CFR Part 541. [591.5(k)]
12. The vehicle does not conform to all applicable Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards, but I am eligible to import it because all of the following conditions exist:
- a. I am a member of the armed forces of a foreign country on assignment in the United States;
- b. I am importing the vehicle on a temporary basis, and for my personal use;
- c. I will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this paragraph;
- d. I will export the vehicle upon departing the United States at the conclusion of my tour of duty; and
- e. I have attached a copy of my official orders. [591.5(h)(2)]
- Attachment:** Copy of Official Orders.
13. The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards, but does conform to applicable Federal Theft Prevention Standards, and I am eligible to import it because I am registered with NHTSA pursuant to 49 CFR Part 592 and such registration is not suspended and has not been revoked, I have informed NHTSA that I intend to petition, or I have petitioned, that agency to decide that the vehicle to be imported is eligible for importation, and NHTSA has granted me permission in writing to import the vehicle for that purpose. If the Administrator of NHTSA dismisses my petition, or decides that the vehicle is not eligible for importation, or if I withdraw my petition or I fail to submit a petition covering the vehicle within 180 days from the date of entry, then I state that I will deliver such vehicle, unless it is destroyed, to the Secretary of Homeland Security for export, or abandon it to the United States, within 30 days from the date of the dismissal, denial, or withdrawal of my petition, as appropriate, or within 210 days from the date of entry if I fail to submit a petition covering the vehicle. If the Administrator of NHTSA grants my petition, then I state that within 15 days from the date that I am notified of that decision, I will furnish a bond, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury, unless the vehicle is destroyed, to ensure that I will bring the vehicle into conformity with all applicable Federal Motor Vehicle Safety and Bumper standards within 120 days from the date the petition is granted, or will deliver the vehicle to the Secretary of Homeland Security for export, or abandon it to the United States. If the vehicle is destroyed, then I state that I will furnish NHTSA with documentary proof of that destruction within 15 days from the date that it occurs.
- Attachment:** Copy of NHTSA permission letter.

NAME OF IMPORTER <i>(Please type)</i>	IMPORTER'S ADDRESS <i>(Street, City, State, Zip Code)</i>	
NAME OF DECLARANT <i>(Please type)</i>	DECLARANT'S ADDRESS	
DECLARANT'S CAPACITY	DECLARANT'S SIGNATURE	DATE SIGNED

EPA Requirements: Importers of motor vehicles/engines and nonroad vehicles/engines/equipment must also submit EPA form 3520-1 or 3520-21 to U.S. Customs and Border Protection to identify the basis for importation into the United States and U.S. territories under the laws administered by the United States Environmental Protection Agency. For more information, please see [www.epa.gov/otaq/imports/index.htm](http://www.epa.gov/otaq/imports/index.htm).