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GRAY MARKET VEHICLE PROGRAM

Extension Warranted, but Improvements in Vehicle Identification Are Needed

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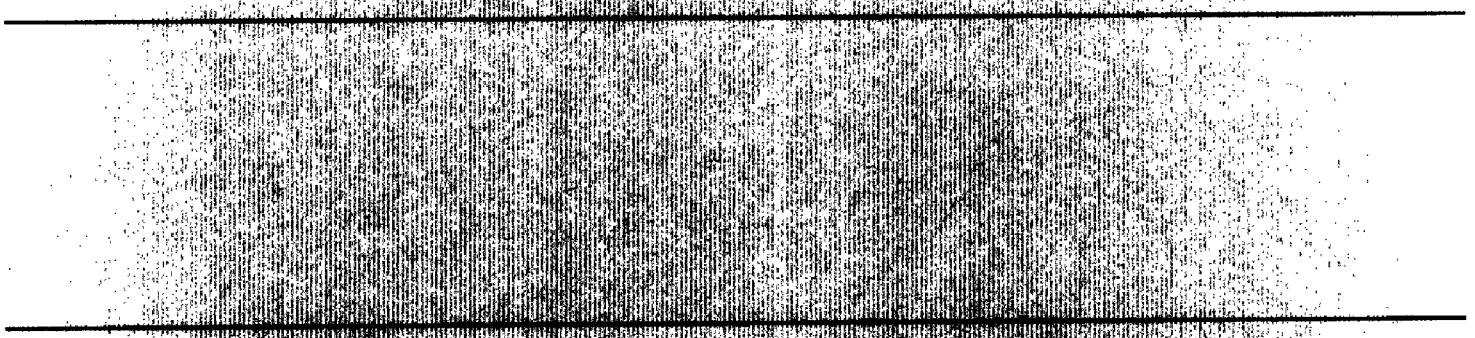

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Resources, Community, and
Economic Development Division

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The Honorable John D. Dingell
Chairman
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Ranking Minority Member
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This report evaluates the program established by the Imported Vehicle Safety Compliance Act of 1988 (P.L. 100-562). The purpose of the act is to ensure compliance with applicable U.S. vehicle safety requirements for all vehicles imported into the United States—including noncomplying vehicles imported by persons other than the original manufacturers, commonly referred to as "gray market" vehicles.[1] In general, the act requires gray market vehicles that are permanently imported to be converted to meet U.S. safety standards. Temporary gray market imports are excluded from the conversion requirement so long as they are eventually exported. The Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) is principally responsible for administering and enforcing the gray market program.

As directed by the act, we reviewed NHTSA's administration and enforcement of the gray market program. We focused particular attention on (1) the extent to which the program ensures that permanent gray market vehicles are brought into full compliance with applicable federal motor vehicle safety standards, (2) whether adequate controls exist for identifying and enforcing requirements for temporary gray market vehicles, and (3) whether safety considerations warrant continuation of the program.

[1]Gray market vehicles are built to comply with the safety standards of the country in which they are originally sold, and those later imported into the United States must be modified to meet U.S. standards, such as those relating to door strength, lighting, fuel system integrity, and passive restraints.

Background

The 1988 act replaced an earlier NHTSA gray market program that was ineffective. Our 1986 report showed that the earlier program lacked sufficient controls to ensure that gray market vehicles were modified to meet U.S. safety standards.[2] The current program's key features include the following:

- Individuals permanently importing a gray market vehicle into this country must sign a contract with a "registered importer" to bring the vehicle into compliance with applicable vehicle safety standards and post a bond equal to 150 percent of the vehicle's dutiable value to ensure compliance; otherwise the vehicle is to be exported from or abandoned to the United States.[3]
- Registered importers are responsible for recalling vehicles they modified if manufacturers recall similar vehicles because of safety defects.
- DOT was to establish user fees to cover the costs of the registered importer program.

The U.S. Customs Service (Customs), Department of the Treasury, has program responsibility for identifying gray market vehicles at the borders and providing NHTSA with data on permanent and temporary imports. Permanent imports of nonconforming vehicles generally must be converted to meet U.S. safety standards. Temporary imports do not have to be converted because of their expected short-term stay in this country. Examples of temporary imports include (1) vehicles brought to this country by nonresident aliens and foreign diplomats for personal use and (2) vehicles imported solely for research, studies, demonstrations, or competitive racing events. The act provides that temporary imports should not be resold and should eventually be exported from or abandoned to the United States.

Results in Brief

NHTSA does a good job of verifying that vehicles Customs identifies as permanent gray market imports have been modified to meet U.S. safety standards. Compared to the earlier program, the new program provides NHTSA with more control over both the vehicles and the registered importers who modify them. NHTSA now approves registered importers on the basis of their qualifications and performance. NHTSA can also withhold the release of bonds posted on vehicles identified as permanent gray

[2]Auto Safety and Emissions: No Assurance That Imported Gray Market Vehicles Meet Federal Standards (GAO/RCED-87-29, Dec. 11, 1986).

[3]Until October 31, 1992, importers meeting certain conditions were exempt from the requirement of using one of the registered importers to perform the modifications.

market imports until it is satisfied that appropriate modifications have been made. We found, however, that some of the 1988 act's requirements are not being met: NHTSA has not established user fees to cover the cost of the registered importer program, and registered importers have not recalled gray market vehicles when similar vehicles have been recalled by manufacturers.

More significantly, NHTSA's program still does not ensure that gray market vehicles identified by Customs as temporary imports ultimately either leave this country or are converted to meet U.S. standards. For example, NHTSA does not know how many of the 3,000 temporary imports on which it has entry documentation have been exported or remain in the United States. Furthermore, because Customs generally does not document vehicles that are temporarily driven into the United States across the Canadian and Mexican borders, no records are maintained on them. We found that some vehicles that entered the United States on a temporary basis have been registered with state motor vehicle departments. A NHTSA official agreed that this indicates that the vehicles are being kept in the United States for extended periods.

In spite of these limitations, safety considerations favor the program's being continued. The program is needed to carry out the act's purpose of having gray market vehicles comply with U.S. safety requirements. While NHTSA's records indicate that relatively few permanent gray market vehicles are currently being imported—fewer than 300 in 1992—this figure probably understates the actual number of such imports, since it may not include temporary vehicles that remain in this country. Furthermore, exchange rates and other financial incentives could change in the future, making it more attractive to import gray market vehicles into the United States.

Several options exist for improving controls over temporary imports and other vehicles that, by avoiding identification, bypass the gray market vehicle program. New tools for identifying gray market vehicles and increased federal-state cooperation can help bring about such improvements. For example, the Secretary of Transportation could (1) evaluate the merits of modifying the federal vehicle identification number (VIN) coding provisions to require a uniform VIN code to identify whether vehicles were originally built to conform to U.S. safety standards and (2) improve cooperation among state and federal agencies to better identify and control gray market vehicles.

NHTSA's Program Improves Control Over Permanent Imports, but Some Problems Remain

The current registered importer program is an improvement over NHTSA's program of the 1980s because it provides NHTSA with better control over firms that convert imported vehicles to U.S. safety standards. NHTSA now approves the capabilities of the firms selected to be registered importers and makes site inspections of the firms. In the earlier program, NHTSA had no control over converters.

Under the new program, registered importers are responsible for converting gray market vehicles. NHTSA's data show that, under the current program, about 1,200 gray market vehicles were permanently imported into the United States between 1990 and 1992. Most of these vehicles were not handled by the registered importers because they were purchased before October 1988 and met other conditions spelled out in the act. However, the "grandfather clause," which allowed some vehicles to be converted by firms other than registered importers, expired on October 31, 1992. All future permanent gray market imports are to go through registered importers.

As required by the 1988 act, NHTSA has also published (1) a list of gray market vehicles determined to be substantially similar to U.S.-market vehicles and capable of being modified to meet U.S. safety standards and (2) a petition process for adding other vehicles to the list. Vehicles other than those listed by NHTSA are not eligible to be permanently imported. This process provides improved NHTSA control over the types of gray market vehicles imported and some degree of assurance that the vehicles can be adequately modified to meet U.S. standards.

We found the compliance files submitted to NHTSA for gray market vehicles converted to U.S. safety standards to be generally complete in their descriptions of the vehicle modifications made to comply with the standards. Compliance is relatively easy to assess for some standards, such as the requirement to have a center-mounted rear stoplight. However, other standards, such as those for fuel system integrity, passive restraint system performance, and side door strength, technically require dynamic, destructive testing in order to verify compliance. NHTSA staff generally use engineering judgment to evaluate compliance for such standards rather than require the destructive tests.

The current program also requires importers of vehicles identified by Customs as permanent gray market imports to post a bond when the vehicles enter the country to ensure that they are either converted to meet U.S. safety standards or exported. The bond is equal to 150 percent of the

value of the vehicle being imported. We found that the bonding requirement has provided NHTSA with effective power to require exportation of vehicles that were not being modified. NHTSA and Customs officials told us that the program, including the bonding requirement, acts as a deterrent to some potential importers of noncomplying vehicles.

In several areas, however, the program is not meeting the 1988 act's requirements or its effectiveness is being reduced as a result of administrative problems. These areas include the following: (1) Defective gray market vehicles are not being recalled; (2) fees do not cover the cost of the registered importer program; (3) Canadian gray market vehicles are not being handled consistently; and (4) accurate data are not being maintained on the number and status of gray market vehicles.

Defective Gray Market Vehicles Are Not Being Recalled

Vehicle manufacturers are generally responsible for recalling vehicles with safety defects. Although NHTSA announces recalls, the manufacturers are responsible for actually performing the recalls—from notifying the owners of the problems to paying the dealers to correct the defects. However, the 1988 act shifted the recall responsibilities normally assigned to the manufacturers for manufacturer-imported vehicles to the registered importers of noncomplying gray market vehicles. The registered importers are responsible for recalling the vehicles they have modified if safety-related defects are identified in those vehicles. The registered importers are responsible for the recalls, even if the original manufacturers of the vehicles actually built or installed the defective components.[4] To ensure that all imported vehicles maintain the same level of safety, the act required that gray market vehicles be treated as having the same defect or failure as U.S.-market vehicles, unless the manufacturer or registered importer demonstrates otherwise.

Between 1990 and 1992, NHTSA announced 148 recalls involving over 7 million imported vehicles, but none included gray market vehicles.[5] Reasons for these recalls of imported vehicles included (1) safety belts that do not latch correctly, (2) faulty wires and/or hoses that could cause fires, (3) electrical problems that could unexpectedly turn off headlights at night, (4) suspension defects that may produce a loss of steering control, (5) brake components that can fall apart, and (6) cruise controls that fail

[4]Registered importers' responsibility to make repairs or replace defective components continues for a period of 8 years.

[5]For comparison, domestic vehicles were involved in 473 recalls during the same period, including about 18.6 million vehicles.

to disengage. The recalled vehicles have included many of the same makes and models that enter the United States as gray market vehicles, including Mercedes Benz, BMW, and Porsche.

According to NHTSA officials, one reason why no gray market vehicles have been recalled is that relatively few have been imported recently. A second reason is that NHTSA's data base shows that registered importers were associated with only about 20 percent of the gray market vehicles identified as permanently entering the country between 1990 and 1992.[6] As a result, most gray market vehicles imported during the first 3 years of the new program were not associated with any registered importer that might be responsible for defect recalls.

Although the act requires that gray market vehicles be treated as having the same defect or failure as substantially similar U.S.-market vehicles unless the manufacturer or registered importer demonstrates otherwise, NHTSA's recall program does not work that way. NHTSA has notified the registered importers about several of the recalls of manufacturer-imported vehicles, and NHTSA staff have independently determined that other recalls were irrelevant to the gray market vehicle population. However, no recalls were actually performed, and the registered importers did not demonstrate that their gray market vehicles did not have the same safety defects as those found in similar recalled U.S.-market vehicles. We identified some gray market vehicles modified by the registered importers that were the same year, make, and model as recalled U.S.-market vehicles, but NHTSA had no information in its files indicating that the vehicles were recalled or that they were excused because the registered importer showed that they were not defective.

In addition, NHTSA does not screen gray market vehicles entering the United States to determine whether similar vehicles imported by the manufacturers have been subject to prior recalls. Since gray market vehicles are frequently several years old when they enter the United States, many may have the same defects as vehicles imported and recalled earlier by the vehicle manufacturers.

In its comments on a draft of this report, DOT said that NHTSA has rechecked its data base and plans to obtain additional documentation to ensure that appropriate actions were taken on prior recalls. DOT also described other planned changes to NHTSA's program, and while the

[6]This percentage would be much lower if temporary imports were included.

changes generally appear to be responsive to the problems we found, one of the changes still appears to conflict with the statute. (See app. VII.)

The Program Has Not Covered Its Costs

The 1988 act anticipated that the fees charged by NHTSA's registered importer program would cover its costs, but that has not been the case. Program fees during fiscal year 1992 were $255 for importer registration, $4.75 for processing each bond, plus a fee for each vehicle imported. The fee for each vehicle ranged from $156 for a vehicle already on NHTSA's list of approved vehicles to $1,133 for a petition for a vehicle not on the list and requiring an inspection.

According to NHTSA officials' estimates, the program's 1991 and 1992 incremental costs pertinent to the registered importers were about $75,000 each year.[7] However, the fees established by NHTSA generated about $25,000 each year, creating an annual shortfall of about $50,000 in both 1991 and 1992. Furthermore, NHTSA officials told us that their estimates of incremental costs included none of the approximately $250,000 in annual contractor costs and only a small fraction of the agency's personnel and other costs resulting from the overall operation of the gray market program. The officials believe that only the incremental costs specifically resulting from the registered importer aspects of the program must be covered by the program fees. Even so, NHTSA's own calculations show that the fees have covered just one-third of those incremental costs.

NHTSA has several options for making the registered importer program pay for itself. For example, NHTSA could increase the fees it has established. NHTSA tried higher fees in 1990, but for 1991 it substantially reduced its fees for determining vehicle eligibility. The reductions were based, in part, on comments from the registered importers. Much of the incremental cost of the registered importer program is caused by the initial petition process, whereby NHTSA determines whether a given vehicle model is capable of being modified to comply with U.S. standards. However, the small number of vehicles currently being imported under the program makes it difficult to recover these costs. If more of the same model vehicles were officially imported, the additional income received for each vehicle imported would help offset the initial petition costs.

NHTSA is also planning to implement a "blanket" approval for most Mercedes Benz, BMW, and Porsche cars built before the 1990 model year. Since NHTSA loses money on each petition and the blanket approval would

[7]The officials were unable to provide estimates for 1990.

reduce the number of petitions, NHTSA's losses would be reduced. In addition, NHTSA is working with the operating staff who process the petitions in an attempt to reduce administrative processing time and costs. NHTSA staff also plan to propose a new schedule of fees for 1994.

Canadian Gray Market Vehicles Are Handled Inconsistently

The 1988 act did not provide for any special treatment for Canadian vehicles, even though many Canadian safety standards are similar to U.S. standards. Despite the similarities, other requirements, such as labeling of controls, marking of weight capacities, and marking for theft deterrence, differ. More importantly, many Canadian vehicles do not have passive restraints required by U.S. standards (airbags or passive belt systems meeting specific dynamic testing requirements) or the U.S.-required center high-mounted brake lights. In implementing the 1988 act, NHTSA issued regulations that generally accepted Canadian vehicles as eligible for conversion by the registered importers to meet U.S. standards, and some Canadian vehicles have been modified using these procedures. NHTSA has also established an informal process, not included in agency regulations, of allowing Canadian vehicles to be imported into the United States without using the registered importers. If an owner obtains a letter from the original manufacturer stating compliance with U.S. standards except for labeling requirements, NHTSA allows the vehicle to enter the United States as a complying vehicle.

We reviewed selected records for Canadian vehicles imported using this informal process and found problems. Although most of the records had supporting letters from the manufacturers, some did not. In addition, the manufacturers' letters were typically not specific about which U.S. standards were met or not met. Also, the VIN coding for some vehicles indicated that they did not have U.S.-required passive restraints. NHTSA staff had not verified that passive restraints or the center-mounted brake lights were installed on these vehicles before they allowed importation. In response to our report, NHTSA checked with manufacturers' representatives and found some noncompliance. In addition, each individual importer of these vehicles is legally responsible for recalling these vehicles, but NHTSA does not have the same control over these importers to recall defective vehicles that it has over the original manufacturers or the registered importers. Thus, NHTSA's informal process for allowing importation of Canadian vehicles provides less assurance of compliance with U.S. safety requirements than the registered importer process provides. (See app. IV for additional details.)

NHTSA's Gray Market Data Base Is Inaccurate and Incomplete

We found several problems with the information in NHTSA's gray market vehicle data base that reduce the value of the data NHTSA (1) uses to manage the program and (2) includes in its annual reports to the Congress. As discussed in appendix II, the data base does not include many of the gray market vehicles that are being brought into the United States. NHTSA's data base also lacks information on whether gray market vehicles have been exported or converted to meet U.S. standards. As a result, it is not possible to identify how many gray market imports (1) are still in the United States, (2) have been modified to meet U.S. safety standards, or (3) were exported rather than modified.

NHTSA Lacks Control Over Temporary Imports

An unknown number of gray market vehicles enter the United States on a temporary basis, and NHTSA does not know how many of them remain here permanently. There are two categories of temporary imports. The first consists of vehicles that are documented by Customs at the point of entry, which can be any one of 340 seaports or border crossings. According to NHTSA's records, about 3,000 documented temporary vehicles entered the United States between 1990 and 1992, compared to 1,200 permanent imports in the same period. The second category of temporary imports includes the many vehicles that are driven across the borders into the United States but are not recorded as imports by Customs—for example, vehicles driven by tourists or commuters. Both of these groups present different problems for Customs and NHTSA, respectively, in terms of (1) distinguishing between temporary and permanent imports at the point of entry and (2) controlling gray market imports that do not meet U.S. vehicle safety standards.

NHTSA's Control Over Gray Market Vehicles Depends on Customs' Identification

Customs officials at points of entry attempt to identify gray market vehicles. Owners, importers, or drivers bringing such vehicles into the United States who do not declare themselves and their vehicles as short-term visitors (that is, tourists or commuters) are supposed to fill out the HS-7 form, developed by DOT, declaring imported vehicles. (App. V shows the HS-7 form.) On the form, the importer or other declarant checks 1 of 12 classifications which state that the vehicle conforms with all applicable federal vehicle safety standards, does not conform but will be modified, or does not conform but is eligible to enter the United States temporarily under one of the exceptions (for example, the importer is a foreign diplomat). Customs forwards the completed HS-7 form to

NHTSA, where it provides the primary means by which gray market vehicles are identified.

However, we found that Customs does not always verify the accuracy of the information provided on the HS-7 forms. While some Customs officials told us that they attempt to verify the information, others said that they ensure only that the forms are filled out completely. Because verification of the information on the form is not always made, declarants can choose from several classifications of temporary gray market imports and thus avoid NHTSA's controls for permanent imports. In addition, an importer could declare on the HS-7 form that the vehicle does conform to U.S. safety standards, and unless Customs demonstrated that this declaration was untrue, NHTSA's records would show that the vehicle is not a candidate for conversion to meet safety standards.

The second category of temporary vehicles involves those that are driven across U.S. borders by short-term visitors—tourists or commuters. No record of entry is made of these vehicles; no HS-7 form is completed. Some of these temporary vehicles may ultimately remain in the United States, but no one knows how many because no documentation is developed on these vehicles as they enter or leave the country. Since NHTSA has no documentation, it has no means of tracing these vehicles or monitoring their status.

To determine the effectiveness of the current program to identify imported gray market vehicles that require modification, we used data from several sources (see app. VI). Our review of state registration data identified 27 model years 1990 and 1991 gray market Mercedes Benz cars. After verifying gray market vehicle identification with the manufacturer's representatives, we found that none of those state-registered vehicles were identified in NHTSA's system as permanent imports. Furthermore, NHTSA had no record of 16 of the 27 vehicles. Of the remaining 11 vehicles that were documented, all had been in the United States between 18 and 35 months as of December 1992, but NHTSA had no record that any had been either converted to meet U.S. standards or exported. We also talked with officials from several state motor vehicle agencies who said that they have identified some vehicles that escaped Customs' identification. For example, between January and June 1992, North Carolina identified 1,487 gray market vehicles. Thus, the state identified more gray market vehicles attempting to register in the state in 6 months than NHTSA's system identified for the entire country during the whole year. In addition, our

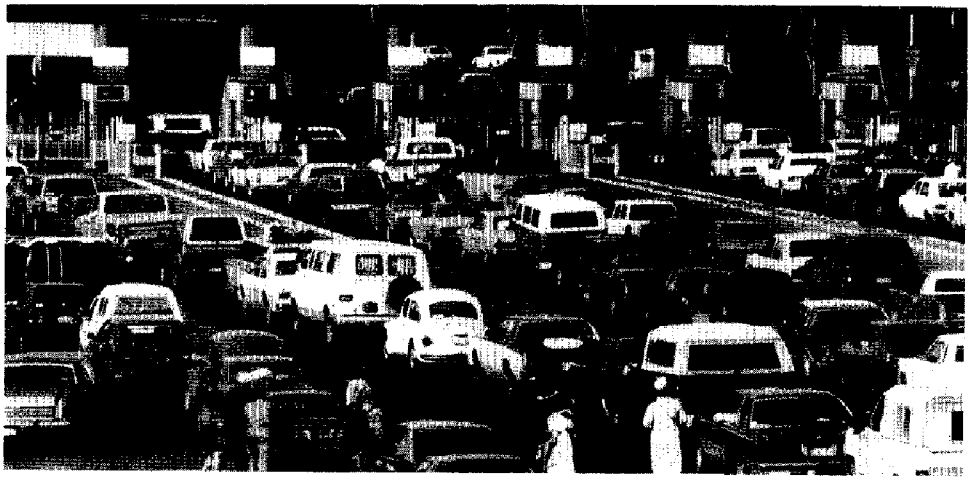
prior work on Customs' identification of other imports disclosed that many were not properly identified.

Problems Exist in Identifying Gray Market Vehicles

Customs does not properly identify all gray market vehicles for several reasons. For example, Customs officials said that tourism treaties tend to limit Customs' enforcement options. Customs depends primarily on the statements of the vehicle's occupants in order to distinguish permanent imports from those vehicles that will be used in the United States temporarily and then driven back across the border.

Additionally, large numbers of vehicles cross U.S. land borders, and Customs officials said they cannot unreasonably delay the flow of traffic. For example, at one Customs district we visited, over 27 million private vehicles and over 600,000 trucks and buses entered the United States from Mexico in fiscal year 1992. Customs officials said that they have to be selective in what they look for with each vehicle in order to keep the traffic moving. Customs has placed a higher priority on reducing the volume of drugs and other contraband entering the United States than on vehicles that may not meet U.S. safety standards. Figure 1 shows traffic lined up awaiting Customs inspection at several of the 24 inspection lanes at one of the Mexican border crossings we visited. A Customs official told us that the waiting lines at this location sometimes are 2 to 3 miles long.

Figure 1: Vehicles Awaiting Customs Inspection



Source: U.S. Customs Service.

Customs officials told us that any increased emphasis on gray market vehicle identification would reduce the resources Customs can use to focus on other priority efforts, such as detecting drugs. NHTSA officials told us that they understand the inherent difficulty in identifying permanent imports at the borders, but unless Customs identifies gray market vehicles as permanent imports at the borders, there is little NHTSA can do about them. In fact, although NHTSA has the authority to levy a civil penalty of up to $1,000 per violation for temporary imports staying too long, NHTSA officials said that the agency has not attempted to fine gray market program violators, because they believe that the Department of Justice will not pursue individual cases if the violators fail to pay the penalties. Even for those vehicles that are documented as temporary imports, NHTSA contends that it does not have the power to ensure that they are eventually either modified to meet U.S. standards or exported. Agency officials have not determined what level of fines might be sufficient or attempted to obtain additional enforcement authority.

Safety Considerations Favor Continuing the Program

Although the current program has improved NHTSA's control over only a small portion of all gray market vehicles—those identified as permanent imports—safety considerations favor the program's being continued and strengthened while NHTSA investigates alternative methods of identifying and controlling gray market vehicles. The program is needed to carry out the act's purpose of having gray market vehicles comply with U.S. safety requirements. Although relatively few permanent gray market vehicles are now being imported, the true volume may be much higher than NHTSA's records indicate.

NHTSA's data show that permanent gray market imports peaked at more than 65,000 in 1985 and dropped to fewer than 300 by 1992. However, as described in appendix II, these amounts do not accurately reflect the total number of gray market vehicles imported since the current program was implemented. For example, the figures do not include vehicles that originally enter the United States on a temporary basis but that never leave.

Furthermore, exchange rates and other financial incentives could change in the future, making it more attractive to import gray market vehicles. According to NHTSA and industry officials, the primary reason for the decrease in imports of gray market vehicles has been the change in the exchange rate of U.S. dollars for foreign currency, particularly for German Deutschmarks. For example, in 1985 1 U.S. dollar was exchangeable for

more than 3 German Deutschmarks. In contrast, the August 1993 exchange rate was 1.7 Deutschmarks for 1 U.S. dollar. If this trend is reversed in the future, the gray market program's importance will increase.

As discussed above, the current program has improved NHTSA's control over those vehicles identified by Customs as permanent imports and ultimately converted to meet U.S. safety standards. The program also acts as a deterrent to potential gray market importers. Although several problems have reduced the gray market program's effectiveness, the most serious is that temporary and other vehicles avoid identification and thus bypass the program. Two options with potential for addressing the problem are (1) improvements in vehicle identification and (2) better federal-state coordination.

Opportunity for Improving Vehicle Identification

While identifying permanent gray market imports at the borders is difficult, NHTSA could provide Customs with greater assistance in carrying out this task by modifying its existing regulations on vehicle identification numbers. One problem Customs has with vehicles driven across the borders is rapidly distinguishing gray market vehicles from those built for the U.S. market. NHTSA has established specific VIN requirements that all vehicles manufactured for sale in the United States must meet. A VIN is required to be 17 characters long, follow a specified format, and be visible through the vehicle windshield on the driver's side—where Customs could use the VIN for identification purposes. However, the VIN contains no code that specifies that a vehicle was originally built for the U.S. market; as a result, Customs cannot currently use VINs for gray market vehicle identification. We discussed with Customs officials the possibility of incorporating such a code into the NHTSA-specified VIN and, for fast reading, the possibility of also showing the VIN in a bar code format, as several manufacturers have done. The Customs officials said that such changes would be very useful for gray market vehicle identification and might also help Customs and others identify stolen vehicles. NHTSA officials said, however, that the volume of gray market vehicles currently entering the United States is not sufficient to warrant any changes to the VIN requirements.

Reducing the number of vehicles that avoid identification and bypass the program would also help address other administrative problems we found with the program. For example, better identification of permanent gray market imports would result in a more accurate count of such vehicles and bring more of them into the federal control system and to the

registered importers. Once the vehicles are in the system, the registered importers would be responsible for (1) conversion to meet U.S. safety standards and (2) recalls for safety defects. Also, as more of the gray market vehicles enter the country using NHTSA's program, the program's costs would be spread over a larger number of vehicles.

Although VIN changes would help Customs identify gray market vehicles, such changes are not a short-term solution to the problems with identifying and controlling these vehicles at the federal level. For example, such changes would take several years to implement for new vehicles, and even more time would elapse before most vehicles crossing the borders would be so equipped. In addition, the program would still be limited by NHTSA's inability to (1) identify temporary imports that overstay their temporary status and (2) require their conversion or exportation. Improved federal-state coordination could reduce these limitations because the states control vehicle registration. The VIN changes discussed above would help the states identify gray market vehicles.

Opportunity for Improving Federal-State Coordination

In some ways, the states are in a better position to control gray market vehicles than federal agencies. Although the states are hampered by the same difficulty as Customs in distinguishing gray market vehicles from U.S.-market imported vehicles (see app. III), the states have continuing control over the vehicles and their owners through the states' vehicle registration and driver licensing responsibilities. Since registration and licensing are related to residency in the states, the states are more likely than federal agencies to know when a temporary visit becomes permanent. In addition, the states have a relatively direct means of controlling vehicle use through revocation or nonrenewal of registrations and/or licenses. Although denying vehicle registration does not carry the force of exportation, it limits the opportunity for vehicle use in this country. Such a limitation addresses the safety concerns of the act.

Despite the ability of the states to identify and control the use of gray market vehicles, we found little federal-state coordination on these issues. NHTSA officials said that because the states use vehicle registration primarily as a source of revenue, the states are not inclined to deny registration for gray market vehicles, which would reduce the states' revenues. State officials told us, however, that they do deny registration to owners of gray market vehicles. They said that NHTSA could help them identify gray market vehicles by requiring a code in the VIN to distinguish gray market vehicles from other imports built for the U.S. market.

Although states are involved in identifying and controlling the use of gray market vehicles, the 1988 act did not provide for any role for the states.

The Congress recently enacted legislation designed to get federal and state agencies working together on vehicle registration issues, although not specifically on gray market vehicles. In October 1992, the Congress passed the Anti Car Theft Act of 1992 (P.L. 102-519), which may ultimately improve federal-state coordination and reduce the number of questionable vehicles registered in the states. Although the act did not mention gray market vehicles, it provided, among other things, for (1) the Secretary of Transportation, the Secretary of the Treasury, the Attorney General, state motor vehicle agencies, vehicle manufacturers, and others to study state titling and registration issues as they affect used vehicles, including the possible adoption of a title "brand"—a title marked "rebuilt," "reconstructed," or "flood" (to indicate prior vehicle damage by collision, water, or other means); (2) the establishment of a national vehicle information data base; and (3) state checks of the national data base before a state issues a certificate of title. The anticipated federal-state cooperation, title branding, and the national vehicle data base could eventually lead to more effective ways of addressing the problems involving state registration of noncomplying gray market vehicles. A report from the study group is due by mid-1994.

Conclusions

In spite of its current limitations, safety considerations warrant extending and strengthening the gray market program. The current gray market program works reasonably well for vehicles identified at the borders as permanent imports. However, vehicles, such as those carrying tourists, can come across the borders on a temporary basis, and they may avoid NHTSA's program if they remain in this country and are registered within a state. NHTSA has no effective way to identify these vehicles and ensure that they either meet U.S. requirements or are exported.

One way to address the identification problem would be for NHTSA to modify the VIN requirements that it has established for vehicles sold in the United States. If VINs could be used to distinguish gray market from U.S.-market vehicles, Customs could more easily identify the vehicles at the borders, the states could identify the vehicles at the time of title transfer or registration, and others could better evaluate the effectiveness of the program. However, in its comments on a draft of this report, DOT told us that gray market vehicles are not now being imported in sufficient volume to warrant such VIN changes. Of course, absent an ability to

identify the vehicles, the actual volume of gray market importation and the extent of NHTSA's problems will remain unknown.

Even if NHTSA could identify these vehicles, agency officials said that the agency is unable to ensure that the vehicles ultimately either are converted to meet U.S. safety standards or are exported. After the vehicles enter the United States, NHTSA has limited ability to track their ownership or control their use. The agency is also limited to a fine of $1,000 per violation when vehicle owners fail to comply with export requirements, and must rely on the Department of Justice for enforcement actions. Agency officials have not attempted to obtain additional authority, but in its comments on our draft report, DOT said that it is now evaluating the merits of seeking additional authority. (See app. VII.)

Improved coordination between NHTSA and the states could help address these problems. In contrast to the federal program, states routinely track vehicle ownership and can administratively control the use of gray market vehicles through the vehicle registration process. The Anti Car Theft Act of 1992 requires the Secretary of Transportation and others to study how state vehicle titling and registration could help control certain problem vehicles. Although the act did not include gray market vehicles as a category to be studied, their inclusion in the study would seem appropriate, given the potential advantages of federal-state cooperation on this issue. In commenting on a draft of this report, DOT said that it is now working with the American Association of Motor Vehicle Administrators (AAMVA) to survey the states to determine state policies and procedures on the titling and registration of gray market vehicles.

Several other aspects of the gray market program also need improvement: (1) The user fees NHTSA has established do not cover the registered importer program's cost, as anticipated by the 1988 act; (2) NHTSA has not pursued the recall of gray market vehicles when similar vehicles have been recalled by manufacturers; (3) NHTSA has allowed some Canadian vehicles to avoid requirements that others must meet; and (4) the data that NHTSA uses to track gray market vehicles are incomplete.

Recommendations

In order to more effectively achieve the goals of the Imported Vehicle Safety Compliance Act of 1988, we recommend that the Secretary of Transportation improve gray market vehicle identification and federal-state coordination on gray market issues. As part of these activities, the Secretary should

- evaluate the merits (including benefits, costs, and potential alternatives) of modifying the federal VIN coding provisions to require a uniform VIN code to identify whether each vehicle was originally built to conform to U.S. safety standards;
- work with the study group mandated by the Anti Car Theft Act of 1992 and the AAMVA to facilitate cooperation among state and federal agencies to better identify and control the registration of gray market vehicles; and
- determine whether NHTSA should seek authority to require the exportation of noncomplying vehicles and whether the level of fines for such vehicles should be increased.

In addition to improvements in vehicle identification and federal-state cooperation, the Secretary should take action to (1) establish user fees sufficient to cover the registered importer program's cost; (2) ensure that all imported vehicles (U.S.-market, gray market, and Canadian) meet the same degree of compliance with safety standards and recalls for the correction of safety defects; and (3) improve the accuracy of the federal data base for tracking gray market vehicles.

Agency Comments

DOT agreed with our recommendations for improving NHTSA's administrative procedures for establishing user fees that cover the registered importer program's costs, ensuring uniform compliance with safety standards and correction of safety defects, and improving the accuracy of the gray market vehicle data base. Also as we recommended, NHTSA is evaluating the merits of seeking additional enforcement authority and higher fines for noncompliance. (App. VII provides DOT's comments and our responses.)

DOT did not concur with our recommendation relating to modifying the federal VIN coding provisions to help identify gray market vehicles. We recommended that the Secretary evaluate the merits of changing the VIN provisions, but DOT's comments indicate that the Department has already decided that no VIN changes are necessary. Although DOT agreed that a simple method of identifying gray market vehicles is desirable, DOT stated that the volume of gray market vehicles currently entering the United States is not sufficient to warrant changes to the VIN. As explained in the report, however, while thousands of noncomplying vehicles are driven into the United States each day, DOT does not have a reliable way to identify them and accurately determine the number of those vehicles staying here. Thus, DOT does not yet have sufficient data to know the extent of the problem.

DOT also indicated that it could have a problem enforcing a unique U.S.-market VIN code if manufacturers chose to use the same code on vehicles they build for other markets. DOT argued that it has no direct authority over those non-U.S.-market vehicles. However, we believe that the manufacturers would comply if misuse of the U.S.-only VIN code (that is, using a U.S. VIN code on non-U.S.-market vehicles) would cause their U.S.-market vehicles to be out of compliance.

DOT did not include in its comments any concerns about the potential cost or feasibility of changing its VIN requirements so that one of the existing 17 characters would indicate compliance with U.S. safety standards. If there are any cost or technical problems associated with such VIN modifications, NHTSA should weigh them against the benefits of being able to identify gray market vehicles using the VIN. Likewise, if there are other alternatives at the federal or state level for improving identification of gray market vehicles, NHTSA should analyze those alternatives.

On the basis of DOT's comments, we believe that DOT has not yet performed an adequate evaluation of vehicle identification issues. Therefore, we have amplified on our recommendation to indicate that DOT's evaluation should include an analysis of the benefits, costs, and potential alternatives for better identification of gray market vehicles. Since the VIN is the basic tool now used to identify and control vehicles, we believe DOT should thoroughly evaluate the feasibility of using it to improve the identification of and control over gray market vehicles. If DOT identifies other alternatives that are potentially more effective and/or efficient, DOT should also evaluate those options.

DOT did not concur with our proposed recommendation to include, in a study mandated by the Anti Car Theft Act of 1992, a discussion of ways to facilitate cooperation among federal and state agencies for better identification of and control over gray market vehicles. DOT said gray market vehicles were outside the act's mandate. Instead, DOT suggested that the agency could achieve the objectives of this recommendation through an alternative study. Since DOT's alternative, if expanded, has the potential to improve federal-state coordination, we have modified our recommendation to accommodate this alternative means of achieving the goal.

We had proposed using the study mandated by the 1992 act because it provides an opportunity to comprehensively consider state titling and registration of gray market vehicles with other problem vehicles specified

by the act, such as vehicles seriously damaged by floods or collisions. We note that the task force established by the act is composed of representatives of the Departments of Transportation and Treasury, the Attorney General, state motor vehicle departments, vehicle manufacturers, and others who are members of organizations that now share responsibility for gray market vehicle identification and enforcement. The essential purpose of the proposal in our draft report was to include gray market vehicles in the ongoing study so that the issue could be addressed in a cooperative, efficient, and timely manner and that gray market vehicles could be considered along with other problem vehicles.

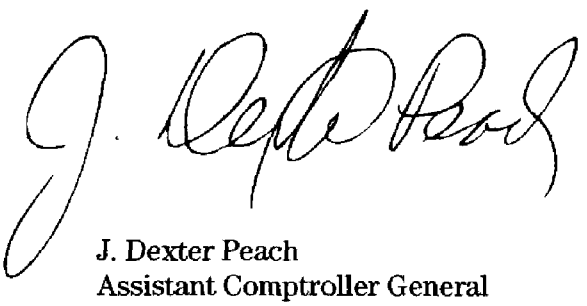
DOT said that NHTSA is moving to achieve the objective of this recommendation by working with the American Association of Motor Vehicle Administrators to determine policies and procedures used by the state motor vehicle departments to title and register gray market vehicles. According to DOT, the AAMVA has already surveyed 15 states and NHTSA is reviewing the state procedures so that the agency can recommend improvements to the state procedures. While this survey may provide useful information, we believe DOT will need to expand its efforts if it wants to use this alternative to achieve effective federal-state coordination. First, we believe DOT would need to involve all 50 states in the process in order to develop a more comprehensive and unified approach. Second, DOT should expand its analysis to include the activities of other federal agencies that have various responsibilities for identifying and controlling gray market vehicles. Third, to avoid duplication, DOT should coordinate with the study group established in response to the 1992 act, because that group is also considering ways to control problem vehicles through the state titling and registration process.

We also provided an opportunity for Customs officials who have responsibility for gray market vehicles to comment on the report draft. The officials had relatively few comments because the report focuses on DOT's program. However, they agreed with (1) our overall conclusion that the gray market program should be extended and strengthened and (2) our recommendations to modify the VIN coding requirements and improve federal-state coordination. They said that while the VIN identifier we recommend would help Customs, it would probably be of greater assistance to the states for identifying these vehicles because state agencies are in the best position to distinguish permanent gray market vehicle imports from those vehicles temporarily in the United States. Customs officials expressed the hope for better coordination between federal and state agencies because improved gray market vehicle

detection is important not only for safety, but also for collecting import duties, "gas guzzler" taxes, and luxury taxes and for ensuring compliance with federal vehicle emissions standards.

Our review was conducted between June 1992 and April 1993, in accordance with generally accepted government auditing standards. Appendix I contains details of our scope and methodology.

We are providing copies of this report to the Secretary of Transportation; the Administrator, NHTSA; and other interested parties. We will also make copies available on request. This work was done under the direction of Kenneth M. Mead, Director, Transportation Issues, who may be contacted at (202) 512-2834. Major contributors to this report are listed in appendix VIII.



J. Dexter Peach
Assistant Comptroller General

Contents

Abbreviations

AAMVA	American Association of Motor Vehicle Administrators
DOT	Department of Transportation
EPA	Environmental Protection Agency
FY	fiscal year
GAO	General Accounting Office
NATB	National Automobile Theft Bureau
NHTSA	National Highway Traffic Safety Administration
RI	registered importers
VIN	vehicle identification number

Scope and Methodology

In conducting our review, we talked with officials of the National Highway Traffic Safety Administration (NHTSA), the U.S. Customs Service, and the Environmental Protection Agency (EPA) in Washington, D.C.; Canadian transport officials; 3 of the 10 registered importers; state motor vehicle department officials in North Carolina, California, and Michigan; and Customs officials in or near those states. We selected North Carolina because we saw indications in NHTSA's records that representatives from the state had made numerous requests for information about gray market vehicles. We selected California because of the high-volume Mexican border traffic and the state's need to identify gray market vehicles in order to enforce its stringent emissions standards. We chose North Carolina and California because they have large military facilities, and we believed that military people returning from overseas might be bringing foreign cars back with them to those states. We selected Michigan because of the high volume of traffic at the Canadian border and for geographic diversity.

We also interviewed representatives from the Mercedes Benz, General Motors, Ford, and Chrysler automobile companies. Additionally, we talked to representatives from auto importing organizations and from the Insurance Institute for Highway Safety, USAA, State Farm, and GEICO insurance companies.

In addition to our discussions with officials from the organizations noted above, we analyzed NHTSA documents and records pertaining to the gray market program, we examined gray market vehicle inquiries from the public to NHTSA, and we inspected compliance packages sent to NHTSA by registered importers. We also obtained and analyzed NHTSA's data base of gray market vehicles imported during 1990, 1991, and 1992 under the revised program, and we reviewed NHTSA's rules and public comments on proposed rules. Additionally, we obtained and analyzed vehicle registration and identification data from R.L. Polk and Mercedes Benz, as described in appendix VI.

As required by the act, we focused our review on the safety aspects of gray market vehicles, not emissions issues. EPA operates a separate program to require gray market vehicles to meet U.S. vehicle emissions standards. EPA's program is similar to the Department of Transportation's program in that it relies heavily on Customs to identify gray market vehicles entering the United States.

Number of Gray Market Vehicles Is Unknown

No reliable estimates exist of the total number of gray market vehicles entering the United States. NHTSA's data do not accurately reflect the total number of gray market vehicles imported since the new program was implemented in 1990. Not included are vehicles that originally enter the United States on a temporary basis but never leave, and other vehicles.

Many additional vehicles enter the United States on a temporary basis, although it is not known how many of these additional vehicles stay permanently. According to NHTSA's count, temporary gray market imports under the new program have totaled about 3,000 vehicles—nearly three times the number of permanent imports. According to NHTSA staff, the agency generally does not know if or when these temporary imports leave the United States, nor does the agency have the power to enforce their departure.

Another reason for an unrealistically low count of gray market vehicles is that NHTSA has made errors in counting the number of such vehicles entering the United States. Importers of multiple vehicles often complete one DOT entry form for each shipment and attach a list of vehicle identification numbers (VIN) to identify each vehicle in the shipment. We found that NHTSA often counted the number of forms rather than the number of vehicles. This occurred for permanent as well as temporary imports. We identified about 7,500 vehicles in NHTSA's data base that NHTSA had not identified separately and included in its counts of gray market vehicles.[1]

When we brought the 7,500-vehicle error to NHTSA's attention, agency officials told us that many of the vehicles were probably misclassified by the importers; the importers should have perhaps checked box 8 rather than box 7 on the HS-7 forms (see app. V). However, NHTSA staff did not identify such classification errors when they entered the data into their system, and the overall vehicle count was incorrect, regardless of the classification.

We also found that some vehicles are misclassified as U.S.-certified when they are actually nonconforming vehicles. Some Customs officials told us that they do not verify the information provided by the importers on DOT's imported vehicle entry form; therefore, when importers state that the

[1]NHTSA apparently made the same type of error in counting imported vehicles that conform to U.S. standards. NHTSA's count was less than 200,000 vehicles per year, while the actual count should have been closer to 3 or 4 million vehicles annually. We also found several hundred cases in which NHTSA had counted tires and vehicle equipment as vehicles. However, compared to the other errors in the gray market vehicle count, this problem was relatively minor.

vehicles meet U.S. standards, the vehicles enter the United States as conforming vehicles. State officials verified that they identify some of these vehicles misclassified at the borders.

Some Canadian vehicles that do not meet U.S. labeling requirements are permanently allowed into the United States, but they are not included in NHTSA's counts of gray market vehicles. NHTSA has allowed Canadian vehicles to be imported as complying vehicles if a letter is provided from the vehicle manufacturers stating that the vehicles are in substantial compliance with U.S. safety standards except for labeling requirements. Owners of such vehicles are supposed to receive a permission letter from NHTSA. NHTSA sent 444 such letters during the last few months of 1992, some of which have covered multiple vehicles.[2]

In addition to these problems with reported data, many vehicles enter the United States without any official record of entry. Customs generally does not maintain any identifying records of the vehicles driven across the borders by Canadian or Mexican tourists or commuters; therefore, no one knows how many such vehicles are here or if they ever leave the United States. Thousands of these vehicles enter the United States every day.

Customs officials also said that vehicles sometimes illegally enter the United States in shipping containers. They said that they occasionally "stumble across" undocumented vehicles concealed in containers, when looking for other illegal imports. Many containers enter the United States, and relatively few are unpacked and inspected by Customs. For example, officials at one Customs location we visited said that their port receives between 90,000 and 125,000 containers every month, and they inspect only about 5 percent of them.

[2]For added perspective on the number of Canadian vehicles imported using this process, we compared the number of these vehicles to the number of vehicles associated with registered importers that were entered into NHTSA's gray market vehicle data base during the same period. For each vehicle entering the United States through the established gray market process, NHTSA allowed about 25 Canadian vehicles into the country.

Gray Market Vehicle Identification Is Difficult

Representatives from a variety of organizations, including NHTSA, state motor vehicle departments, and insurance companies, told us that it is difficult to distinguish gray market vehicles from vehicles originally manufactured for the U.S. market. NHTSA has attempted to address the problem of identifying U.S.-certified vehicles through the certification label requirements. Manufacturers are required by law to attach to each vehicle a label containing a statement certifying that the vehicle conforms to all applicable U.S. federal motor vehicle safety standards in effect on the date of manufacture.[3] A major limitation of the usefulness of this label is that a physical inspection of the label is necessary. Such an inspection is not always performed. Representatives of the states we visited told us that they title and register vehicles without performing any inspection of vehicle certification labels.

NHTSA, states, insurers, and others generally use VINs for vehicle identification, control, and analysis purposes. NHTSA's gray market data base, for example, is based on VINs. State representatives we visited told us that they use R.L. Polk's "VIN Edit" computer program as a basis for identifying gray market vehicles.[4] North Carolina officials said that, in addition to the VIN Edit program, they depend on the experience of their staff to identify gray market vehicles and that developing such experience can take years. Michigan officials said that they have added some information from the vehicle manufacturers to the VIN Edit program. They cautioned, however, that the program distinguishes only between North American and non-North American cars and will not distinguish between North American vehicles, such as those built for the Canadian versus those built for the U.S. market. California officials said that they use Polk's program, but they frequently have to call the vehicle manufacturers for clarification or confirmation.

NHTSA has established certain requirements for VIN length, format, and visibility through the windshield, but no character or code is required to indicate whether a particular vehicle was built for the U.S. market and meets U.S. safety standards.[5] Generally, the first character of the 17-digit VIN indicates the "nation of origin." Another character indicates the assembly plant, thus providing more specific information than the first digit. The regulations provide general guidelines that manufacturers are to

[3]See 49 CFR Part 567.

[4]A representative from R.L. Polk told us that 39 states, 70 insurance companies, and 7 Canadian provinces are licensed to use the Polk VIN Edit program.

[5]See 49 CFR Part 565 and section 571.115.

use in describing the vehicles' model, style, and type, and they provide specific requirements for a check digit.[6] However, the regulations do not require any character in the VIN to indicate the country for which the vehicle was built—that is, which country's safety standards, if any, the vehicle conforms to.

We were told by several NHTSA officials that the VIN check digit could be used to distinguish U.S.-certified vehicles from gray market vehicles. To test this hypothesis, we computed the check digits for those vehicles in NHTSA's data base of gray market vehicles that entered the U.S. as "box 3" vehicles; that is, the importers declared the vehicles to be nonconforming, they agreed to have the vehicles converted to U.S. standards, and they posted the required bond (see app. V). We found that about 40 percent of the VINs of those noncomplying vehicles passed the check digit test—they appeared to be valid U.S.-vehicle VINs. We also tested several VINs of noncomplying, off-road competition motorcycles that were not intended to be licensed, and we found those VINs also had valid check digits. We concluded that the check digit is not a reliable indicator for identifying gray market vehicles.

One of the VIN characters included by the manufacturers can be helpful for identifying some gray market vehicles, but it is not uniform or conclusive. Most manufacturers provide a code for type of restraint system, but it is of limited value in identifying vehicles that meet U.S. safety standards. We used the 1992 Passenger Vehicle Identification Manual from the National Automobile Theft Bureau (NATB) to identify the codings for vehicles without passive restraints.[7] New cars with codes for manual (or active) restraints are not U.S.-market vehicles. Table III.1 shows the codes for passenger cars.[8]

[6]The check digit helps ensure the integrity of a vehicle's 17-character VIN. It is a unique number that is inserted into the VIN that results from a mathematical equation being performed on the other 16 characters in the VIN. A change to any of the 17 VIN characters will produce an incorrect check digit.

[7]Although NHTSA established the basic standard for VINs, NHTSA staff referred us to the 214-page 1992 NATB manual for information about the actual VIN formats and codes used by the manufacturers.

[8]Multipurpose passenger vehicles and light trucks follow other VIN formats and are not yet required to have passive restraints.

Table III.1: Manufacturers' VIN Codings for Manual Safety Belts

Manufacturer	Code[a]	VIN Position
Chrysler	B	4
Ford	B	4
GM	1	7
Audi	0	6
BMW	0	8
Hyundai	1	7
Jaguar	V	5
Porsche	0	6
Rolls Royce	A	8
Subaru	1	8
Volkswagen	0	6
Volvo	X	5
Yugo	1	8

[a]These are the most recent codes shown. However, the codes used by the manufacturers are not necessarily consistent from one year to the next.

Source: NATB Manual

Some manufacturers, including Acura, Daihatsu, Honda, Saab, Sterling, Suzuki, and Toyota combine restraint system and other elements into one character code. If the indicated manual belt code appears in the designated position, the vehicle was not built for the U.S. market. However, if it has another code, it still might not be a conforming U.S. car; some Canadian cars, for example, have passive restraints but do not meet other U.S. standards. On the other hand, we were told that General Motors codes some safety belts as "manual" in Canadian cars but codes identical belts in U.S.-market cars as "passive." As a result, we could not identify a way of using the VINs to consistently and reliably distinguish U.S.-market cars from other cars.

NHTSA, the states, insurers, and others use VINs to identify and control the ownership and use of gray market and other vehicles. Neither the "nation of origin" code or the other VIN codes distinguish between vehicles built for the U.S. market and those built for other markets. The certification label indicates the intended market, but the people who need the information generally have access to the VINs but not to the certification labels on the vehicles. Officials from NHTSA and the states we spoke with said that a VIN code to show whether vehicles were built for the U.S. market would help them identify gray market vehicles. California officials

agreed that such a VIN code would be helpful but that a VIN code would be even more helpful if it also indicated whether the vehicles were built to comply with the more stringent California emissions standards. California has had its own gray market problem with the identification of vehicles not built to comply with the state's emissions standards. Other states are considering the use of California standards in an effort to comply with federal air quality mandates, but one of the problems is vehicle identification—making sure a "gray market" situation does not develop among the states.

During our review, we noticed an added feature on some VIN plates that could be of value to federal and/or state agencies. In addition to printed characters, some manufacturers (including General Motors) also show the VIN in bar code format. Since the VIN bar codes are visible through the windshield on the driver's side, bar code readers might be useful to Customs and others for quick, easy, and accurate identification of gray market vehicles (assuming a market indicator code is added), and perhaps stolen vehicles as well. Customs officials we spoke with during our review said that a market indicator code in the VIN and a VIN bar code could be very helpful to them. If NHTSA considers making changes to VIN requirements, the agency might obtain useful input from Customs and other law enforcement agencies on the desirability of adding a standardized VIN bar code requirement.

Canadian Gray Market Vehicles Are Handled Inconsistently

Canadian vehicles enter the United States officially or unofficially in a variety of ways. Some are identified as permanent imports by Customs and converted to U.S. standards by the registered importers. Others are allowed to obtain letters from the original manufacturers stating substantial compliance with U.S. standards except for labeling requirements, and NHTSA allows them to enter the United States as complying vehicles. Some are simply driven across the border and registered in a state. Some importers are discouraged from entering the United States because they are told of the costly and time-consuming federal petition and conversion process.

Although some Canadian vehicles have gone through the registered importers for conversion to U.S. standards, it is not possible to identify how many, primarily because of the difficulty in identifying the original market for which particular vehicles were built; the VINs do not distinguish the Canadian vehicles. However, we identified some apparent Canadian vehicles in NHTSA's gray market vehicle data base by using the general vehicle description, information on the port of entry, and the registered importer coding. One registered importer we visited told us that modifications to Canadian vehicles are relatively minor compared with those to European vehicles. Generally, labeling changes must be made, but some vehicles require the addition of passive restraints and changes to the lighting systems, such as the addition of a center, high-mounted brake light required by U.S. standards but not by Canada.

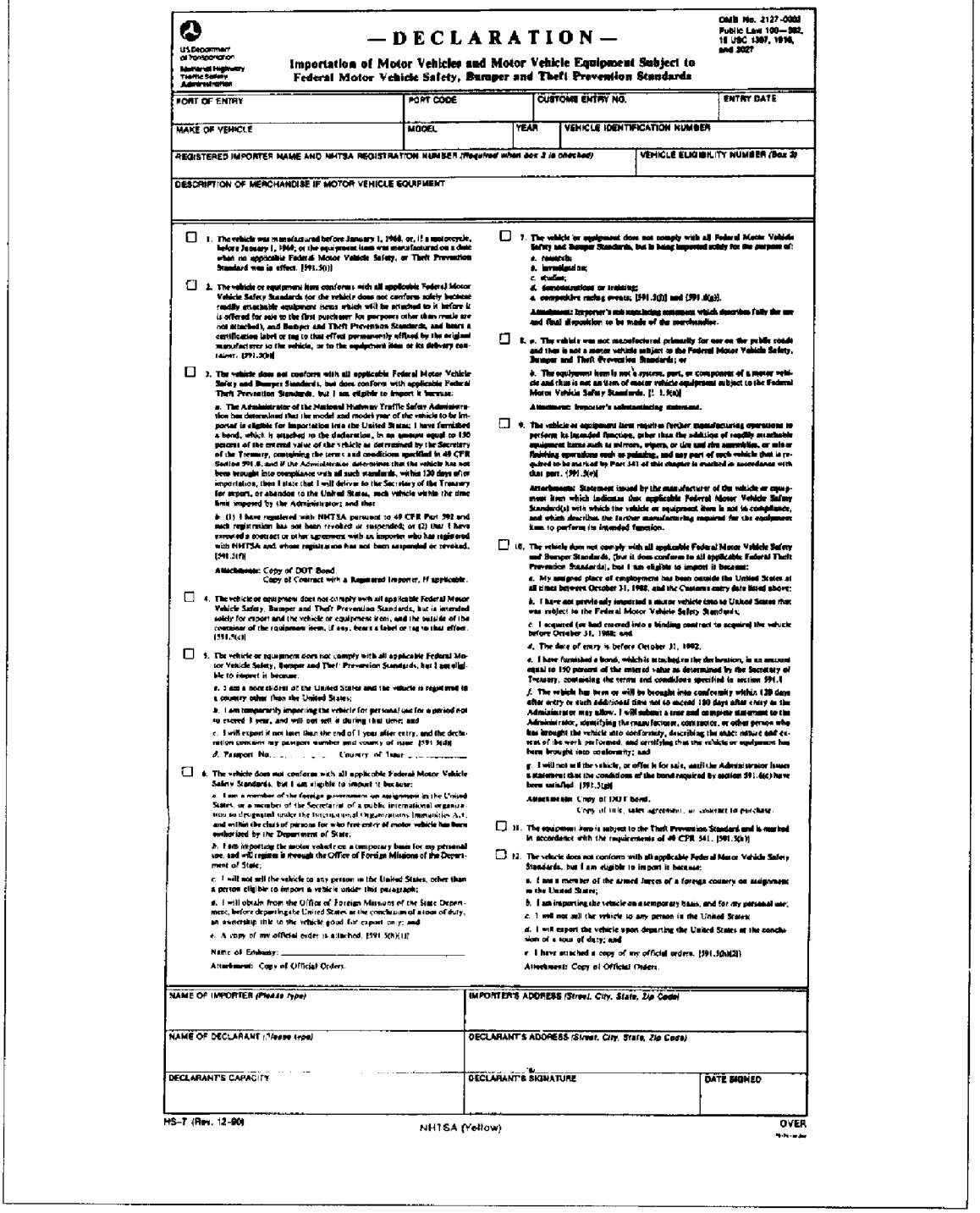
NHTSA allows some Canadian vehicles to enter the United States if the owners obtain (1) a letter from the original manufacturer stating that the vehicles substantially meet U.S. standards and (2) a letter of permission from NHTSA. NHTSA's letter states that NHTSA does not have the authority to issue any waivers or exemptions to U.S. vehicle safety standards but that NHTSA does not object to vehicles with minor labeling deviations entering the United States as complying vehicles. Between October 23, 1992, and December 31, 1992, NHTSA recorded sending 444 approval letters, some of which covered multiple vehicles. A NHTSA official said that this import procedure is available only to individuals and not dealers and that the agency has not made this procedure widely known because NHTSA does not want to "open the floodgates" to Canadian vehicles. NHTSA has published no regulations on this procedure. In our review of selected agency files on vehicles entering the country under this procedure, we found manufacturers' letters supporting most, but not all, of the letters we reviewed. However, we also found indications that safety standards, including those for passive restraints and lighting, were not being met on

some vehicles. We brought this to the attention of NHTSA officials, who checked vehicle status with manufacturer representatives. This confirmed the nonconformity of some vehicles allowed to enter under the waiver process. We believe that this procedure provides less assurance that imported vehicles comply with U.S. standards than does the registered importer procedure.

As discussed earlier, many Canadian vehicles are driven across the border either by tourists or as temporary imports, and some of the vehicles may end up staying in the United States. A registered importer in Florida told us that Canadians have no problem registering noncomplying vehicles in the state and that many Canadians simply drive in and register their noncomplying vehicles. Since there is no reliable way to identify these vehicles using VINs, and tourists' vehicles are not recorded as crossing the border (either into or out of the United States), the volume of these gray market vehicles is unknown.

Officials of another registered importer we visited said that they tend to discourage Canadians from importing their vehicles. They said that when they get inquiries about Canadian vehicles, they explain NHTSA's petition process and the costs involved in converting the vehicles to US standards. Although they said they could use the Canadian business, the vehicles are rarely converted because of the time and costs involved.

NHTSA's HS-7 Form for Declaring Imported Vehicles



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

—DECLARATION—

Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards

OMB No. 2127-0001
Public Law 100—562, 15 USC 1397, 1916, and 2027

PORT OF ENTRY	PORT CODE	CUSTOMS ENTRY NO.	ENTRY DATE

MAKE OF VEHICLE	MODEL	YEAR	VEHICLE IDENTIFICATION NUMBER

REGISTERED IMPORTER NAME AND NHTSA REGISTRATION NUMBER *(Required when box 3 is checked)* | VEHICLE ELIGIBILITY NUMBER *(Box 3)*

DESCRIPTION OF MERCHANDISE IF MOTOR VEHICLE EQUIPMENT

☐ 1. The vehicle was manufactured before January 1, 1968, or, if a motorcycle, before January 1, 1969, or the equipment item was manufactured on a date when no applicable Federal Motor Vehicle Safety, or Theft Prevention Standard was in effect. [591.5(i)]

☐ 2. The vehicle or equipment item conforms with all applicable Federal Motor Vehicle Safety Standards (or the vehicle does not conform solely because readily attachable equipment items which 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 to the equipment item or its delivery container. [591.5(b)]

☐ 3. The vehicle does not conform with all applicable Federal Motor Vehicle Safety and Bumper Standards, but does conform with applicable Federal Theft Prevention Standards, but I am eligible to import it because:

a. The Administrator of the National Highway Traffic Safety Administration has determined that the model and model year of the vehicle to be imported is eligible for importation into the United States; I have furnished a bond, which is attached to the declaration, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury, containing the terms and conditions specified in 49 CFR Section 591.8, and if the Administrator determines that the vehicle has not been brought into compliance with all such standards, within 120 days after importation, then I state that I will deliver to the Secretary of the Treasury for export, or abandon to the United States, such vehicle within the time limit imposed by the Administrator; and that

b. (1) I have registered with NHTSA pursuant to 49 CFR Part 592 and such registration has not been revoked or suspended; or (2) that I have executed a contract or other agreement with an importer who has registered with NHTSA and whose registration has not been suspended or revoked. [591.5(f)]

Attachments: Copy of DOT Bond.
Copy of Contract with a Registered Importer, if applicable.

☐ 4. The vehicle or equipment does not comply with all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards, but is intended solely for export and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect. [591.5(c)]

☐ 5. The vehicle or equipment does not comply with all applicable Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards, but I am eligible to import it because:

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 with all applicable Federal Motor Vehicle Safety Standards, but I am eligible to import it because:

a. I am a member of the foreign government on assignment in the United States, or a member of the Secretariat of a public international organization so 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 motor 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. A copy of my official order is attached. [591.5(h)(1)]

Name of Embassy: _____

Attachment: Copy of Official Orders.

☐ 7. The vehicle or equipment does not comply with all Federal Motor Vehicle Safety and Bumper Standards, but is being imported solely for the purpose of:

a. research;
b. investigation;
c. studies;
d. demonstrations or training;
e. competitive racing events; [591.5(j)] and [591.6(a)].

Attachment: Importer's nonconforming statement which describes fully the use and final disposition to be made of the merchandise.

☐ 8. *a.* 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

b. 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. [§ 1.4(a)]

Attachment: Importer's substantiating statement.

☐ 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 Part 541 of this chapter is marked in accordance with that part. (591.5(e))

Attachments: Statement issued by the manufacturer of the vehicle or equipment item which indicates that applicable Federal Motor Vehicle Safety Standard(s) with which the vehicle or equipment item is not in compliance, and which describes the further manufacturing required for the equipment item to perform its intended function.

☐ 10. The vehicle does not comply with all applicable Federal Motor Vehicle Safety and Bumper Standards, (but it does conform to all applicable Federal Theft Prevention Standards), but I am eligible to import it because:

a. My assigned place of employment has been outside the United States at all times between October 31, 1988, and the Customs entry date listed above;

b. I have not previously imported a motor vehicle into the United States that was subject to the Federal Motor Vehicle Safety Standards;

c. I acquired (or had entered into a binding contract to acquire) the vehicle before October 31, 1988; and

d. The date of entry is before October 31, 1992.

e. I have furnished a bond, which is attached to the declaration, in an amount equal to 150 percent of the entered value as determined by the Secretary of Treasury, containing the terms and conditions specified in section 591.8

f. The vehicle has been or will be brought into conformity within 120 days after entry or such additional time not to exceed 180 days after entry as the Administrator may allow. I will submit a true and complete statement to the Administrator, identifying the manufacturer, contractor, or other person who has brought the vehicle into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment has been brought into conformity; and

g. I will not sell the vehicle, or offer it for sale, until the Administrator issues a statement that the conditions of the bond required by section 591.6(c) have been satisfied. [591.5(g)]

Attachments: Copy of DOT Bond.
Copy of title, sales agreement, or contract to purchase.

☐ 11. The equipment item is subject to the Theft Prevention Standard and is marked in accordance with the requirements of 49 CFR 541. [591.5(k)]

☐ 12. The vehicle does not conform with all applicable Federal Motor Vehicle Safety Standards, but I am eligible to import it because:

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;

d. I will export the vehicle upon departing the United States at the conclusion of a tour of duty; and

e. I have attached a copy of my official orders. [591.5(h)(2)]

Attachment: Copy of Official Orders.

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

HS-7 (Rev. 12-90) NHTSA (Yellow) OVER

Tests of Customs' and NHTSA's Control of Vehicles

We used several methods to evaluate the effectiveness of the current program to identify and modify imported gray market vehicles. Although the available documentation is sparse, we believe that Customs may be identifying only a small portion of the gray market vehicles entering the United States that could actually be considered as permanent imports.[9]

In one test, we compared the vehicles that had been identified by Customs and included in NHTSA's data base to a comparable gray market vehicle population actually registered with state motor vehicle departments. To do this, we obtained from R.L. Polk and Co.[10] VINs for 895 possible gray market 1990 and 1991 Mercedes Benz vehicles.[11] The VIN data furnished by Polk would seem to provide a logical basis for identifying vehicles permanently imported into the country during those years because state registration implies residency and some degree of permanence. Thus, this methodology would tend to exclude vehicles driven into the country for a temporary visit. We chose to compare populations of Mercedes Benz vehicles because Mercedes Benz has been the most popular make of gray market import.

We asked representatives of Mercedes Benz to identify the VINs that were actually gray market vehicles from the Polk-generated population. This process identified 27 gray market 1990 and 1991 Mercedes Benz cars. We then compared these confirmed gray market VINs to the 71 VINs of 1990 and 1991 Mercedes Benz cars that had been identified by Customs as either permanent or temporary imports and been entered into NHTSA's data base of gray market vehicles. In comparing these two groups of VINs, we found that NHTSA had no record of 16 (about 60 percent) of the gray market vehicles registered in the states. Eleven of the 27 vehicles (about 40 percent) identified using the Polk-Mercedes Benz process were also identified by the Customs-NHTSA program. However, none of the 11 vehicles registered by the states entered into the United States as permanent imports. In fact, 8 of the 11 were not supposed to be registered by the states. Five of the vehicles were originally owned by nonresidents

[9]Documentation is sparse for several reasons. As discussed in appendix III, gray market vehicles are difficult to identify. The VIN format specified by NHTSA does not facilitate distinctions between U.S.-market and gray market vehicles. Also, those who illegally import vehicles are likely to keep a low profile in order to minimize their chances of being identified.

[10]R.L. Polk and Co. collects auto data from all state motor vehicle departments.

[11]These were the latest model years available at the time of our analysis. We did not include earlier model year data because those vehicles could have been imported under NHTSA's old gray market procedures that we know were ineffective. However, many older models are still being imported. In fact, NHTSA's data indicate that about 90 percent of the Mercedes Benz vehicles imported under the new program have been earlier models.

of the United States, were to be registered outside the United States, and were supposed to be here less than 1 year. Three of the vehicles were originally owned by diplomats and were supposed to be registered by the Department of State, not with the individual states. As of December 1992, all 11 vehicles had been in the United States between 18 and 35 months, and NHTSA had no record that any had been converted to U.S. standards or had left the United States. According to NHTSA officials, because the agency has no effective power to require exportation of such "temporary" imports, they saw little value in expending resources to identify these types of vehicles or their owners. Thus, every one of the gray market 1990 and 1991 Mercedes Benz cars we identified had apparently circumvented the federal control system.

We also contacted officials from three states to determine to what extent they identify gray market vehicles that are bypassing Customs. Officials from North Carolina told us that they have identified about 2,000 gray market vehicles annually since 1989; about half of them are new arrivals into the United States and half are re-registrations of vehicles that were previously registered somewhere in the United States. Between January and June 1992, North Carolina identified 1,487 gray market vehicles. Thus, the state identified more gray market vehicles attempting to register in the state in 6 months than NHTSA's system identified for the entire country during the whole year. In contrast, Michigan officials we spoke with said that they had seen only about 14 gray market vehicles between October 1991 and September 1992. Michigan officials also told us that they will register any gray market vehicle if the vehicle has already been registered in another state.

California officials told us that the headquarters office typically identifies 20 to 25 vehicles per month that avoid Customs' identification, and more may be identified by the 170 local offices. They cited one example of a shipment of 16 vehicles that did not meet U.S. safety standards—the initial delivery of a total of 500 experimental electric vehicles coming into the state. They said that they identified these as gray market vehicles because the vehicles did not have 17-character VINs as required by federal standards. (The methods used by states and others to identify gray market vehicles are discussed in app. III.)

In addition, although not specifically related to motor vehicles, a recent GAO report on the Customs Service's control over imports concluded that the Customs screening process has failed to properly identify many

imports.[12] The report stated that Customs was identifying less than a quarter of the estimated trade violations entering the country and that Customs cannot ensure that it is protecting the public from unsafe goods.

[12]Customs Service: Trade Enforcement Activities Impaired by Management Problems (GAO/GGD-92-123, Sept. 24, 1992).

Comments From the Department of Transportation

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Transportation

Assistant Secretary for Administration

400 Seventh St., S.W.
Washington, D.C. 20590

September 24, 1993

Mr. Kenneth Mead
Director, Transportation Issues
U.S. General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Mead:

Enclosed are two copies of the Department of Transportation's comments concerning the U.S. General Accounting Office draft report titled, "Motor Vehicle Safety: Federal Gray Market Program Needs Improvement," RCED-93-180.

Thank you for the opportunity to review this report. If you have any questions concerning our reply, please contact Martin Gertel on 366-5145.

Sincerely,

for Paul Wais
Jon H. Seymour

Enclosures

DEPARTMENT OF TRANSPORTATION REPLY

TO

GENERAL ACCOUNTING OFFICE (GAO) DRAFT REPORT

ON

"MOTOR VEHICLE SAFETY:

FEDERAL GRAY MARKET PROGRAM

NEEDS IMPROVEMENT"

RCED-93-180

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

The GAO draft report found that the National Highway Traffic Safety Administration's (NHTSA) revised gray market vehicle program provides better controls over gray market imported vehicles than the program that existed prior to adoption of the Imported Vehicle Safety Compliance Act of 1988 (the Act). Further, NHTSA does a good job of verifying that vehicles the U.S. Customs Service (Customs) identifies as permanent gray market imports have been modified to meet U.S. safety standards. However, the draft report maintains that at the current level of imports of about 300 per year, user fees do not fully cover program costs. In addition, the draft report calls for improvements in the areas of identifying and tracking imported gray market vehicles, especially temporary imports.

The draft report recommends that the Secretary of Transportation:

- evaluate the merits of modifying the Federal Vehicle Identification Number (VIN) coding provisions to require a uniform VIN code to identify whether each vehicle was originally built to conform to U.S. safety standards;
- include in the study mandated by the Anti Car Theft Act of 1992 a discussion of ways to facilitate cooperation among state and Federal agencies to better identify and control the registration of gray market vehicles;
- determine whether NHTSA should seek authority to require exportation of noncomplying vehicles and whether the level of fines for such vehicles should be increased;
- establish user fees sufficient to cover the registered importer program's cost;
- ensure that all imported vehicles meet the same degree of compliance with safety standards and recall for correction of safety defects; and

- improve the accuracy of the Federal database for tracking gray market vehicles.

SUMMARY OF THE DEPARTMENT OF TRANSPORTATION POSITION

Overall, the Department maintains that NHTSA is properly ensuring that gray market vehicles imported into the U.S. by Registered Importers (RI) are brought into compliance with Federal standards. The Act provided NHTSA with greater control in administering and enforcing the gray market program. NHTSA now approves firms that are qualified to act as RI based on an evaluation of facilities, staff, and knowledge of the modifications necessary to bring vehicles into compliance. Firms that act as RIs must obtain the necessary insurance policies to cover potential defect and noncompliance notification and remedy recall campaigns.

The GAO draft report highlighted a number of areas in which NHTSA has established initiatives to further improve the gray market program. The user fee structure is being revised in an attempt to cover the costs associated with administering the importer registration program even at the very low level of gray market vehicles currently being imported. NHTSA has revised the forms Customs uses to better track imported vehicles from Canada that are in substantial compliance with U.S. standards. NHTSA and Customs are developing a paperless documentation entry system to make record movement between the agencies more efficient and effective. NHTSA is also working closely with the American Association of Motor Vehicle Administrators (AAMVA) to identify methods to work more effectively with the states on issues regarding gray market vehicle registration. Finally, NHTSA is modifying its tracking system to more easily cross reference recalls potentially relating to gray market vehicles. Several general and technical comments are included in Appendix I.

DETAILS OF THE DEPARTMENT OF TRANSPORTATION POSITION

User Fees are Intended to Cover Program Costs

The user fee structure is intended to cover the direct incremental costs associated with administering the vehicles import program. The Act provides that fees paid by RIs are to cover the cost of administering the RI program, processing the required Customs bond, and making determinations of import eligibility. While the existing fee structure does not cover the program cost at the current low levels of gray market vehicle imports, the fee schedule will be reviewed at least every two years and adjusted as appropriate. NHTSA has proposed a revised fee structure for fiscal year (FY) 1994.

When NHTSA proposed its initial fee structure in 1989, it was based on a single fee structure covering an estimated 2100 gray market vehicles per year. Under these conditions, the proposed fees were designed to cover costs for administering the revised

See comment 1.

gray market program. The GAO draft report's assertion that NHTSA tried higher fees in 1990, but reduced them at the request of importers is not accurate. Rather, the RIs disagreed with the single eligibility determination fee concept. They did not request reduced fees, only a revised fee structure. Based in part on the RIs' comments, NHTSA revised its fee structure.

The revised fee structure proposed for FY 94, coupled with planned improvements in petition processing and additional blanket eligibility to reduce the number of required petitions, is intended to resolve the funding shortfall. The processing time for reviewing and acting upon petitions, which was a major cost element in the program, has been reduced. A blanket eligibility covering a broad range of Porsche, BMW, and Mercedes Benz passenger cars has been published. These actions will greatly reduce the administrative and economic burden on both the private and public sectors by accelerating the process and eliminating the need for RIs to petition for many commonly imported vehicles.

See comment 2.

While NHTSA will continue to endeavor to ensure that program fees cover the program's direct incremental cost, certain indirect and overhead costs identified in the GAO draft report are not appropriate elements of the fee structure. Specifically, the GAO expressed concern that only a small fraction of the agency's personnel and other costs related to overall gray market program operation, and none of the $250,000 annual contractor costs, were included in the estimates of the program's incremental costs. The funding associated with contractor services covers additional aspects of the congressionally-mandated program, including database development and maintaining records for Canadian, temporary, and manufacturer imports. These databases also support other uses not directly related to the program.

NHTSA Controls Over Gray Market Imports

Since the October 1992 expiration of the grandfather provision, which allowed some gray market vehicles to be converted by firms other than RIs, all permanent imports must be processed through RIs. We agree with the GAO draft report's conclusion that the current program is an improvement over the past program because the agency now has greater control over firms that convert vehicles. Prior to registering a firm as an RI, NHTSA evaluates the facilities, staff, and understanding of the modifications necessary to bring vehicles into compliance. The firms are registered based on these factors and their record keeping ability. Such firms must also obtain the necessary insurance policies to cover potential notification and remedy campaigns.

NHTSA's system and procedures for tracking gray market vehicle imports and conversions is intended to provide an effective and comprehensive means for ensuring that these vehicles are properly converted to U.S. standards. NHTSA maintains databases which presently contain entries related to almost 94,000 of these

See comment 3.

vehicles. Examining data from other sources, the GAO draft report asserts that 11 vehicles were identified for which NHTSA had no conversion record in its database. After working with the GAO, we determined that these 11 vehicles were nonresident and diplomatic vehicles which do not require conversion. The GAO identified another 16 vehicles for which there was no record in the database. Although NHTSA makes every effort to ensure that the database is accurate and comprehensive, we recognize the potential for omissions in a nationwide system which obtains input from more than 300 sources outside the agency. In order to address this potential, NHTSA has been planning to implement a nationwide electronic entry system to improve the quantity and quality of records and better assure their entry into NHTSA's database.

See comment 4.

The draft report states that the database does not include many of the gray market vehicles that are brought into the U.S. on a temporary basis and lacks information on whether gray market vehicles have been exported or converted to U.S. standards. Of the roughly 3,000 documented temporary imports cited by the GAO draft report, approximately 2,000 of these were imported by vehicle manufacturers for testing or research and development purposes. Manufacturers do notify NHTSA when these vehicles are exported. The remaining 1,000 were for individuals bringing their vehicles into the country on a temporary basis. While it is difficult to control the export process, attempts to register nonconforming vehicles can also be detected by state motor vehicle departments.

Federal and State Coordination Helps to Ensure Effective Oversight of Temporary Imports

See comment 5.

The GAO draft report identifies several concerns regarding the number of vehicles that enter the country as temporary imports that ultimately may not leave the country. Vehicles are temporarily imported into this country for a number of reasons. These include vehicles owned by foreign diplomatic and military personnel, research vehicles, and those brought over the borders by foreign tourists. The Act provides that temporary imports should not be resold and should eventually be exported. This applies to vehicles imported by foreign diplomats and military personnel that are covered by section 108(h). There is no statutory directive that vehicles imported "for research, studies, demonstrations or competitive racing events," which is authorized by section 108(j), be temporary, or that vehicles imported under that section not be sold. NHTSA specifically recognizes that such vehicles may remain in the U.S. for a period longer than 5 years [49 CFR 591.7(b)]. However, NHTSA has imposed a no-sale restriction on these vehicles to close a possible loophole in the Act.

The Department is aware of the concerns raised by the GAO draft report regarding the potential for temporary imports to remain in the country. However, Federal actions to control temporary

See comment 6.

See comment 7.

See comment 8.

See comment 9.

imports are constrained by the need to ensure that such actions are consistent with international obligations and effective at controlling the entry and exit of foreign vehicles in a manner that is cost effective and appropriate for the level of risk posed by these vehicles. The U.S. is party to international treaties permitting free access to roadways for a period of one year. In an effort to control the disposal of these vehicles, NHTSA requires this category of importer to declare that the vehicle will not be sold in the U.S. In addition, NHTSA has developed close ties with the State Department's Office of Foreign Missions, Military Customs, and the Army with regard to the control of temporary importations. Written notification is required for modification of the status of vehicles imported by diplomats, foreign service personnel, and military advisors from temporary to permanent.

Beyond this first level of controls imposed by the Federal Government, the states, as the government entities controlling vehicle registration, can provide a highly effective second level of controls to ensure that temporary imports are not improperly registered in this country. We maintain that requiring a NHTSA letter indicating compliance with the Act prior to registering a vehicle, such as North Carolina presently does, can provide a highly effective means of ensuring that temporary imports do not slip through the cracks. In this way, the Federal Government and the states working together in a coordinated effort can provide an effective set of controls to ensure the appropriate conversion of temporary imports.

Improving Response to U.S. Safety Recalls

The GAO draft report notes that the Act makes RIs responsible for recalls of the gray market vehicles that they import and/or modify. GAO also noted that the Act requires gray market vehicles to be treated as having the same defect or noncompliance as substantially similar U.S. market vehicles, unless the manufacturer or RI demonstrates otherwise. RIs have insurance to cover the cost of such recalls so there should be no reluctance on their part to do so, especially in light of the small number of vehicles involved.

NHTSA has several initiatives underway to ensure that gray market vehicles imported through RIs fully comply with recall requirements. After rechecking the database, we determined that additional documentation is required for a limited number of vehicles. NHTSA is going to contact the RIs to ensure that appropriate actions were taken in response to the recall notices for these vehicles. In addition, future recall analyses will focus on the make and model year information provided, as opposed to VIN coding, and rely on the RIs to make a determination whether the vehicle they modified or plan to modify must be remedied. NHTSA also plans to modify its database to cross-reference vehicles that might be subject to recalls. Finally, to ensure that gray market imports of older vehicles have

See comment 10.

accommodated any previous recall notices, future RI certification to NHTSA of compliance will include a statement that it has reviewed pertinent campaigns and determined either that there was no defect or noncompliance, or that it has been remedied.

Canadian Imports Meet Most Vehicle Safety Standards

The GAO draft report expressed concern regarding NHTSA's process for handling imported vehicles from Canada outside the RI process. Under this process, if an owner obtains a letter from the original manufacturer stating substantial compliance with U.S. standards, NHTSA allows the vehicle to enter the U.S. as a complying vehicle. NHTSA is advised by manufacturers that the vehicles are generally in compliance with all the standards except minor labeling variations. These variations include, in some instances, the load capacity of the vehicle in kilograms rather than pounds and the speedometer indicating speeds in kilometers and miles per hour but with the kilometers highlighted. The vehicles are, in all cases, identical in terms of the vehicle and occupant protection standards. NHTSA maintains that the labeling differences are not significant enough to justify requiring importers of these vehicles to pay the substantial expense of using an RI.

Aside from labeling requirements, the primary safety requirement differences that GAO found between the Canadian imports and their U.S. counterparts were the lack of a center high-mounted stop light and the passive restraint code in the VIN. The center high-mounted stop light has been a requirement in Canada since January 1, 1987. Canadian vehicles do not require a VIN code to identify passive restraints since passive restraints are not required in Canada. Despite the lack of VIN coding, many of the manufacturers building automobiles for the Canadian market construct the vehicles with the same restraint systems as their U.S. counterparts. Any Canadian vehicle that does not have passive restraints would be expected to be imported through an RI so that an appropriate passive restraint system can be added.

NHTSA has also made several system improvements with regard to Canadian gray market vehicle imports. The tracking of vehicles imported with manufacturers' compliance letters will be improved by adding another declaration statement to be designated box 2B on the declaration form with its next revision, which is currently in process. Although there were initially some difficulties experienced with the manufacturers' compliance letters regarding the installation of passive restraints, this has subsequently been resolved.

Any files that lacked a manufacturer's compliance letter for a Canadian vehicle were likely related to vehicles that were not imported into the U.S. The GAO reviewed selected NHTSA records for Canadian vehicles and found that some of the records did not have supporting letters from the manufacturers. Some parties interested in importing personal vehicles from Canada write to

NHTSA for information. Supporting letters from manufacturers are not attached because the people do not know about this requirement when they write. NHTSA would naturally deny an unsupported request for pre-approval.

Finally, the GAO draft report indicated that NHTSA officials were uncertain about who would be legally responsible for recalling Canadian market vehicles that were not imported by the manufacturers or modified by RIs. The individual importers are legally responsible for their vehicles. Most U.S. manufacturers automatically add vehicles imported in this fashion to their database for recall purposes.

RESPONSE TO GAO DRAFT REPORT RECOMMENDATIONS

Recommendation: Evaluate the merits of modifying the Federal VIN coding provisions to require a uniform VIN code to identify whether each vehicle was originally built to conform to U.S. safety standards.

See comment 11.

Response: Nonconcur. Although we agree that a simple method of identifying gray market vehicles is desirable, there is an insufficient volume of gray market vehicles currently entering the U.S. to warrant changes to the VIN requirement. In addition it would be difficult to enforce conformity with these requirements by foreign manufacturers. While VIN coding requirements on foreign manufacturers could be enforced for vehicles manufactured for the U.S. market, the U.S. would not be able to enforce such requirements on foreign manufacturers' vehicles that are not intended for the U.S. market.

Recommendation: Include in the study mandated by the Anti Car Theft Act of 1992 a discussion of ways to facilitate cooperation among state and Federal agencies to better identify and control the registration of gray market vehicles.

See comment 12.

Response: Nonconcur. The task force mandated by the Anti Car Theft Act of 1992 to study problems relating to motor vehicle titling, registration, and controls over motor vehicle salvage which may affect motor vehicle theft problems was established in April 1993. Actions by the task force on ways to better identify and control the registration of gray market vehicles are outside the Act's mandate. Nevertheless, NHTSA is moving to achieve the objective of this recommendation by working with the AAMVA to determine policies and procedures used by the state motor vehicle departments to title and register gray market vehicles. AAMVA is conducting a survey of the states regarding these procedures. Thus far, a random sampling of 15 states has been received and is under review by NHTSA. The agency will continue working with AAMVA to study and make recommendations to improve these procedures.

Recommendation: Determine whether NHTSA should seek authority to require exportation of noncomplying vehicles and whether the level of fines for such vehicles should be increased.

Response: Concur-in-part. NHTSA currently has the authority to recommend export to Customs, but does not have seizure authority to enforce provisions of the Act. The agency is evaluating the merits of seeking this authority. Penalties have not provided a deterrent to avoiding compliance in the past without seizure authority. However, a possible increase in penalties will also be considered.

Recommendation: Establish user fees sufficient to cover the RI program's cost.

Response: Concur. NHTSA will revise the fee structure for FY 1994 to cover the direct incremental program costs.

Recommendation: Ensure that all imported vehicles meet the same degree of compliance with safety standards and are recalled for correction of safety defects.

Response: Concur. Action has already commenced to comply with this recommendation.

Recommendation: Improve the accuracy of the Federal database for tracking gray market vehicles.

Response: Concur. As described in this reply, NHTSA has already initiated a number of actions to improve the accuracy of the Federal database for tracking gray market vehicles. In addition, a study program has been initiated with Customs that should improve the ability for tracking gray market vehicles. This program is scheduled to apply to all ports of entry in early 1994.

See comment 13.

See comment 14.

Appendix I

General and Technical Comments

1. The draft report states that NHTSA has not established user fees to cover the program's cost. This is incorrect. A better phrasing, reflecting GAO's actual concern would be, "The user fees that NHTSA has established are not sufficient to cover the program's cost at the current low level of gray market imports."

2. On page 11, line 2, the GAO draft report mentions markings for theft deterrence as a difference between U.S. and Canadian safety regulations. This item should be deleted as these are required by a statute outside the Act's coverage, and are not covered by safety regulations.

GAO's Comments

1. Rather than fee reductions, DOT has characterized the changes in fees it made in 1991 as a revised fee structure. While the registration fees for the registered importers did not change between 1990 and 1991, fees charged to registered importers for determinations of vehicle eligibility were substantially reduced, as shown in table VII.1.

Table VII.1: Selected Fees During Fiscal Years 1990 and 1991

	FY 1990	FY 1991
Petition for substantially similar vehicle	$1,560 paid when petition is filed($2,110 when inspection is requested)	$100 paid when petition is filed ($650 when inspection is requested) plus $83 by importers of each covered vehicle
Petition for vehicle capable of being modified	$2,150 paid when petition is filed($2,700 when inspection is requested)	$500 paid when petition is filed ($1,050 when inspection is requested) plus $83 by importers of each covered vehicle
Administrator's initiative	$1,560 or $2,150 as shown above for similar vehicle or one capable of being modified; paid by registered importer of first covered vehicle	$156 paid with registered importer's certification of each covered vehicle

We have clarified the discussion in the report to indicate that the reduction in fees was for eligibility determination and that the change was made, in part, because of comments from the registered importers.

2. We are not taking issue with DOT's position that the program fees provided for in the 1988 act must cover only the incremental costs of the program changes created by the act. We are simply pointing out that the total user fees assessed on gray market vehicles do not come close to paying NHTSA's total costs for the gray market vehicle program.

3. This test, discussed in appendix VI, included only model years 1990 and 1991 Mercedes Benz cars that were registered in the states. As such, we did not expect to identify a large number of vehicles. However, since state registration implies residency and importation on a relatively permanent basis, we expected that NHTSA's program would have identified at least some of these vehicles as permanent imports. Instead, we found that NHTSA's program identified none of the state-registered vehicles as permanent imports. Most (60 percent) were not identified by NHTSA's

program at all. The few vehicles that had been recorded in NHTSA's data base were classified as temporary imports, and most of them were not supposed to be registered in the states, according to the importation documentation recorded by NHTSA. The results of this test, considered together with other information we found during our review, led us to conclude that importers are able to bypass NHTSA's program.

We are encouraged that NHTSA recognizes the potential for omissions and is "planning to implement a nationwide electronic entry system to improve the quantity and quality of records and better assure their entry into NHTSA's data base." However, NHTSA needs to focus on the quantity and quality aspects of such a system; simply obtaining faster electronic transmission of the same sort of incomplete and inaccurate information that the agency is currently using will not address the problems we found in the program.

4. The temporary import problem is much larger than the 1,000 vehicles documented in NHTSA's data base as being imported by individuals. The agency also has no control over the thousands of vehicles that are driven across the borders daily by tourists and commuters. DOT also stated that "...attempts to register nonconforming vehicles can also be detected by state motor vehicle departments." However, DOT has done little to assist the states in these efforts. We believe the states are in the best position to identify permanent imports and that NHTSA could help the states by facilitating gray market vehicle identification and working more cooperatively with the states.

5. DOT correctly states, as did our draft reviewed by the agency, that vehicles commonly considered to be temporary imports actually fall into a variety of categories. Some vehicles are limited to 1 year in the United States before exportation is supposed to occur. For other vehicles imported for research, studies, demonstrations, or competitive racing events, DOT regulations (49 CFR 591.7) limit the time allowed in the United States to 3 years or 5 years, depending on conditions described in the regulations, and provide that the 5-year limit can be exceeded if written permission is obtained from the NHTSA Administrator. Despite these differences in categories and time periods, one factor that remains constant is that DOT has no effective means for ensuring that the restrictions are enforced. Thus, the vehicles may be able to remain in the United States indefinitely.

DOT said that "NHTSA has imposed a no-sale restriction on these vehicles to close a possible loophole in the Act." NHTSA, however, does not have the power to realistically enforce such a restriction; it could attempt to assess a fine of up to $1,000 per violation (assuming that the agency (1) would eventually find out that a vehicle had been sold and (2) could find the violator), but agency officials do not believe that the Department of Justice would pursue such individual cases anyway. In contrast, states' issuance of nontransferable titles for those vehicles would provide real control over vehicle sales. This is an example of why we have stressed the importance of DOT's working with the states to achieve better control over gray market vehicles.

6. DOT commented on the need to comply with international obligations and treaties and on the coordination and notifications among federal agencies that it uses in an attempt to identify temporary imports that become permanent. However, as Customs officials said in commenting on a draft of this report, state motor vehicle agencies are generally the first, and perhaps the only, government agency to know when a short-term visit becomes a long-term stay. As a result, federal agency coordination and communication, while helpful, is unlikely to identify the vehicles being registered in the states. We believe that NHTSA would have a more effective program if it worked more closely with state motor vehicle agencies.

7. We fully agree with DOT's statements in this paragraph, including the need for federal and state agencies to work together in a coordinated effort. Unfortunately, we saw little evidence of a coordinated effort during our review. We observed that several states, including North Carolina, routinely requested information from NHTSA about gray market vehicles they had identified, but most states made few such requests. The only indication we saw of coordinated efforts between NHTSA and the states involved NHTSA's responding to individual state requests for information about individual vehicles. NHTSA staff were unaware of specific state procedures for controlling gray market vehicles. On the contrary, they said that the states tend to register all gray market vehicles in order to maximize their vehicle registration revenues. Although DOT's comments stress the importance of a NHTSA letter as evidence of compliance with DOT's standards, NHTSA has apparently not yet made that message sufficiently clear to the states. For example, one of the states we visited was inappropriately using a Customs entry form developed by EPA as evidence of compliance with DOT's standards. We believe that NHTSA can

better achieve the objectives of the 1988 act by working more closely with the states.

8. The cost and ease of obtaining insurance is generally related to claims experience. While the registered importers may incur no immediate costs when recalling defective vehicles, such costs are likely to be ultimately passed from the insurers to the registered importers in the form of increased premiums. Thus, there may be incentives for registered importers to avoid recalls. Despite any reluctance or costs involved in recalls, however, defective vehicles must be fixed, and the registered importers are responsible for recalling vehicles they have converted that are substantially similar to any recalled U.S.-market vehicles, unless they or the manufacturers demonstrate that the defect(s) do not exist in those vehicles.

9. Commenting on our analysis of the problems with the registered importer recalls, DOT stated that it plans several improvements in the registered importer (RI) recall procedure. While the proposed changes generally appear to be responsive to the problems we found in the program, we are concerned about one aspect. Specifically, DOT said that NHTSA will "rely on the RIs to make a determination whether the vehicle they modified or plan to modify must be remedied." This proposed solution, though an improvement, still does not appear to fully comply with the statute. When a recall notice is issued for a foreign manufactured vehicle, registered importers must carry out a recall on modified gray market vehicles of the same make, model, and year covered in the recall. To be excused from the recall responsibility, registered importers must demonstrate to NHTSA that the vehicles they modified do not share the defect with U.S.-market vehicles of the same make, model, and year. The statute does not appear to permit NHTSA to shift this responsibility to registered importers, as implied in DOT's comments.

10. Although DOT's comments indicate that some improvements have been and will be made in NHTSA's informal process for allowing Canadian vehicles to be imported, the process still provides less assurance of compliance with U.S. safety requirements than that provided by the registered importer process established by the 1988 act. NHTSA characterized the permitted noncompliance with labeling requirements as "not significant," but this raises fairness issues because gray market vehicles converted by the registered importers and vehicles built for the

U.S. market must comply with all U.S. safety requirements. In addition to the labeling deviations that NHTSA has permitted for some Canadian vehicles, agency officials confirmed that NHTSA has inadvertently given import permission for vehicles that did not meet U.S. safety standards, such as those for passive restraints. Also, DOT is assuming that NHTSA's import permission letters that lacked supporting manufacturer compliance letters were "likely" related to vehicles that were not imported; however, another possible reason for the missing documentation is simply poor NHTSA control under this informal process.

We have revised our report to reflect DOT's decision that the individual importers are personally responsible for correcting the safety defects in the vehicles they have imported. However, unlike manufacturers and registered importers over which NHTSA has some control, NHTSA has little or no power to require that these private individuals correct safety defects. DOT stated its belief that "most U.S. manufacturers" would include these vehicles in their data bases for recall purposes, but the individual importers may still have to arrange and pay for the repairs to correct the safety defects. We believe these vehicles are less likely than other imported vehicles to have safety defects corrected, particularly if the individual importers have sold the vehicles.

11. DOT did not concur with our recommendation on modifying the federal VIN code provisions to help identify gray market vehicles. We recommended that the Secretary evaluate the merits of changing the VIN provisions, but DOT's comments indicate that the Department has already decided that no VIN changes are necessary. Although DOT agreed that a simple method of identifying gray market vehicles is desirable, DOT stated that the volume of gray market vehicles currently entering the United States is not sufficient to warrant changes to the VIN. As explained in the report, however, while thousands of noncomplying vehicles are driven into the United States each day, DOT does not have a reliable way to identify them and accurately determine the number of those vehicles staying here. Thus, DOT does not yet have sufficient data to know the extent of the problem.

DOT also indicated that it could have a problem enforcing a unique U.S.-market VIN code if manufacturers chose to use the same code on vehicles they build for other markets. DOT argued that it has no direct authority over those non-U.S vehicles. However, we believe it is likely that

the manufacturers would comply voluntarily. If the regulatory requirement were that U.S.-market vehicles be identified with a unique VIN code, then U.S.-market vehicles would be out of compliance if that code was used on vehicles not built in compliance with U.S. standards. This would also provide enforcement leverage. In addition, we believe that foreign manufacturers want to continue selling their vehicles in the United States and would likely be responsive to new U.S. requirements.

DOT did not include in its comments any concerns about the potential cost or feasibility of changing its VIN requirements so that one of the existing 17 characters would indicate compliance with U.S. safety standards. If there are any cost or technical problems with such VIN modifications, NHTSA should weigh them against the benefits of being able to identify gray market vehicles using the VIN. Likewise, if there are other alternatives at the federal or state level for improving identification of gray market vehicles, NHTSA should analyze those alternatives.

On the basis of DOT's comments, we believe that DOT has not yet performed an adequate evaluation of vehicle identification issues. Therefore, we have amplified on our recommendation to indicate that DOT's evaluation should include an analysis of the benefits, costs, and potential alternatives for better identification of gray market vehicles. Since the VIN is the basic tool now used to identify and control vehicles, we believe DOT should thoroughly evaluate the feasibility of using it to improve identification of and control over gray market vehicles. If DOT identifies other alternatives that are potentially more effective and/or efficient, DOT should also evaluate those options.

12. DOT did not concur with our proposed recommendation to include, in a study mandated by the Anti Car Theft Act of 1992, a discussion of ways to facilitate cooperation among federal and state agencies for better identification of and control over gray market vehicles. DOT said gray market vehicles were outside the act's mandate. Instead, DOT suggested that the agency could achieve the objectives of this recommendation through an alternative study. Since DOT's alternative, if expanded, has the potential to improve federal-state coordination, we have modified our recommendation to accommodate this alternative means of achieving the goal.

We had proposed using the study mandated by the 1992 act because it provides an opportunity to comprehensively consider state titling and registration of gray market vehicles with other problem vehicles specified by the act, such as vehicles seriously damaged by floods or collisions. We note that the task force established by the act is composed of representatives of the Departments of Transportation and Treasury, the Attorney General, state motor vehicle departments, vehicle manufacturers, and others who are members of organizations that now share responsibility for gray market vehicle identification and enforcement. The essential purpose of the proposal in our draft report was to include gray market vehicles in the ongoing study so that the issue could be addressed in a cooperative, efficient, and timely manner and gray market vehicles could be considered along with other problem vehicles.

DOT said that NHTSA is moving to achieve the objective of this recommendation by working with the American Association of Motor Vehicle Administrators (AAMVA) to determine policies and procedures used by the state motor vehicle departments to title and register gray market vehicles. According to DOT, AAMVA has already surveyed 15 states, and NHTSA is reviewing the states' procedures so that the agency can recommend improvements to the states. While this survey may provide useful information, we believe DOT will need to expand its efforts if it wants to use this alternative to achieve effective federal-state coordination. First, we believe DOT would need to involve all 50 states in the process in order to develop a more comprehensive and unified approach. Second, DOT should expand its analysis to include the activities of other federal agencies that have various responsibilities for identifying and controlling gray market vehicles. Third, to avoid duplication, DOT should coordinate with the study group established in response to the 1992 act, because that group is also considering ways to control problem vehicles through the state titling and registration process.

13. The objective of the fees is to cover the registered importer program's costs. We acknowledge that NHTSA must consider the number of vehicles when establishing the fees so that the costs are covered. Changes in the number of gray market vehicles imported and various program decisions can affect NHTSA's ability to cover costs. For example, NHTSA's decision to establish an informal means of allowing some Canadian vehicles to be permanently imported into the United States without using the registered importers has eliminated the collection of fees that would have

accompanied those vehicles if they had been handled by the registered importers.

14. While we recognize that the Federal Motor Vehicle Theft Prevention Standard is based on a different statute, we believe that it is appropriate to mention that standard in our report as another difference between U.S. and Canadian vehicles. Most of the makes and models covered by that standard are imported vehicles. Although DOT correctly commented that the standard is outside the gray market act's coverage, regulations published for the theft prevention standard (49 CFR 541.5(a)) require that gray market vehicles also comply with that standard.

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