

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:)
)
Harbor Freight Tools USA, Inc.)
NHTSA Recall No. 15E-019)
_____)

CONSENT ORDER

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, to resolve, mitigate, and control risks of harm, and promote safety. This Consent Order sets forth the penalties, requirements, and performance obligations agreed to by Harbor Freight Tools USA, Inc., and all of its subsidiary companies (collectively, “Harbor Freight”), in connection with Harbor Freight’s violations of the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. § 30101, *et seq.*, and applicable regulations thereunder, as detailed herein.

I. NATURE OF THE ACTION

1. The Safety Act provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1).

2. The Safety Act and applicable regulations impose certain obligations on manufacturers of motor vehicles and motor vehicle equipment to provide timely notice to NHTSA in particular circumstances where the manufacturer has determined in good faith that its motor vehicles or items of equipment contain a defect related to motor vehicle safety or do not

comply with a Federal Motor Vehicle Safety Standard (“FMVSS”). *See* 49 U.S.C. § 30118(c); 49 C.F.R. § 573.3(e)(f); 49 C.F.R. § 573.6(a). Such notice, in the form of a Defect Information Report (Part 573 Report), is required not more than five working days after the manufacturer knew or should have known of a potential defect in its motor vehicle or motor vehicle equipment that poses an unreasonable risk to safety, or a noncompliance in its vehicles or equipment. *See* 49 C.F.R. § 573.6(a); *see also United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987); *United States v. General Motors Corp.*, 574 F. Supp. 1047, 1049-50 (D.D.C. 1983).

3. The Safety Act and applicable regulations impose certain obligations on manufacturers to notify owners, purchasers, and dealers when the manufacturer determines that its motor vehicles or items of equipment contain a defect related to motor vehicle safety or do not comply with an applicable FMVSS. 49 U.S.C. §§ 30118-30119. The notification to owners must be sent no later than 60 days from the date the manufacturer files its Part 573 Report with NHTSA. 49 U.S.C. § 30118(c); 49 C.F.R. § 577.7(a)(1). A manufacturer must submit a copy of its proposed owner notification to NHTSA’s Recall Management Division no fewer than five Federal Government business days before it intends to begin mailing it to owners. 49 C.F.R. § 577.5(a). Manufacturers are required to submit representative copies of their notices to owners, purchasers, and dealers, along with any bulletins or other communications related to the recall, to NHTSA. 49 U.S.C. § 30166(f); 49 C.F.R. §§ 573.6(c)(10), 577.5(a), 577.7(c)(1).

4. The Safety Act and applicable regulations impose certain obligations on a manufacturer conducting a recall to remedy a defect or noncompliance to submit a report to NHTSA containing information about the manufacturer’s progress in completing the recall “for each of six consecutive quarters beginning with the quarter in which the campaign was initiated .

.. or [until] corrective action has been completed on all defective or noncomplying vehicles.” 49 C.F.R. § 573.7.

5. A person who violates the requirements of the Safety Act, or a regulation thereunder, is currently liable to the United States Government for a civil penalty of not more than \$7,000 for each violation, subject to a limit of \$35,000,000 for a related series of violations. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each item of motor vehicle equipment and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a).

6. Harbor Freight is a manufacturer of motor vehicle equipment within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(5) and (a)(7), and a person within the meaning of 49 U.S.C. § 30165.

7. On February 26, 2015, Harbor Freight submitted a Part 573 Report to NHTSA for certain items of motor vehicle equipment because they failed to comply with FMVSS No. 108, *Lamps, reflective devices, and associated equipment*. This recall was assigned NHTSA Recall No. 15E-019.

II. LEGAL AUTHORITY

8. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. § 30101, *et seq.*, as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2(a)(1), including, among other things, its authority to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); ensure that motor vehicle equipment complies with all applicable FMVSS, 49 U.S.C. § 30112(a); and ensure that defective and noncompliant equipment is recalled, 49 U.S.C. §§ 30118-30119. In consideration of Harbor Freight’s entry

into this Consent Order and its commitments outlined below, it is AGREED by Harbor Freight and ORDERED by NHTSA as follows:

III. TERMS AND CONDITIONS OF CONSENT ORDER

Safety Act Admissions

9. Harbor Freight admits it violated the Safety Act by failing to submit the required Part 573 Report to NHTSA within 5 working days after it knew or should have known that a noncompliance existed in motor vehicle equipment imported by Harbor Freight, as required by 49 C.F.R. § 573.6(b).

10. Harbor Freight admits it violated the Safety Act by filing an untimely quarterly report and by issuing untimely owner notifications, as required by 49 C.F.R. §§ 573.7 and 577.7.

Civil Penalty

11. Subject to the terms in the remainder of this Paragraph 11, Harbor Freight shall pay a civil penalty in the sum of one million dollars (\$1,000,000) (“Total Civil Penalty”) in connection with the matters addressed in this Consent Order. Of the Total Civil Penalty, the sum of four hundred thousand dollars (\$400,000) shall be paid in accordance with the instructions provided in Paragraph 13 below (the “Non-Deferred Amount”). The payment of the sum of six hundred thousand dollars (\$600,000) shall be deferred and held in abeyance pending Harbor Freight’s satisfactory completion, as determined by NHTSA, of the requirements of this Consent Order as described in Paragraphs 14-26 below (the “Deferred Amount”).

12. Harbor Freight admits that it owes a debt in the amount of one million dollars (\$1,000,000), as provided for in Paragraph 11, arising from activities under the jurisdiction of the U.S. Department of Transportation, due and owing to the United States under the Federal Claims

Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the “Claims Collection Act”).

13. Harbor Freight shall pay the Non-Deferred Amount in two equal installments by electronic funds transfer to the U.S. Treasury, in accordance with the instructions provided by NHTSA, with the first such installment payable no later than 180 calendar days after the execution of this Consent Order. The second installment shall be due no later than 360 calendar days after the execution of this Consent Order.

14. If NHTSA determines that Harbor Freight has violated the Safety Act, regulations thereunder, or the terms of this Consent Order, and Harbor Freight has not corrected the violation within ten (10) calendar days of written notification by NHTSA to Harbor Freight, a lump-sum payment of one hundred thousand dollars (\$100,000) from the Deferred Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA. Upon a second determination by NHTSA that Harbor Freight has violated the Safety Act, regulations thereunder, or the terms of this Consent Order, and failure of Harbor Freight to correct the violation within ten (10) calendar days of written notification by NHTSA to Harbor Freight, an additional lump-sum payment of two hundred thousand dollars (\$200,000) from the Deferred Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA. Upon a third determination by NHTSA that Harbor Freight has violated the Safety Act, regulations thereunder, or the terms of this Consent Order, and failure of Harbor Freight to correct the violation within ten (10) calendar days of written notification by NHTSA to Harbor Freight, the remaining three hundred thousand dollars (\$300,000) of the Deferred Amount will

become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA.

15. If Harbor Freight fails to make the payment of the Non-Deferred Amount set forth in Paragraphs 11 and 13 above, or any payments of the Deferred Amount set forth in Paragraph 11, as may be imposed in accordance with Paragraph 14, on or before their respective due dates following the notice and opportunity to cure set forth above, Harbor Freight shall be in default of this Consent Order and the balance of the Total Civil Penalty shall become immediately due and owing. In that event: (i) Harbor Freight agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to the Claims Collection Act and the U.S. Department of Transportation's regulations, 49 C.F.R. § 89, either administratively or in any court, and (ii) Harbor Freight affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding. In addition, in such a proceeding, Harbor Freight shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses.

16. In determining the appropriate amount of the civil penalty to be imposed, the agency has taken into consideration the purpose and objectives of the Safety Act (including the relevant factors set forth at 49 U.S.C. § 30165(c)), as well as the actions and commitments of Harbor Freight.

Harbor Freight Performance Obligations

17. This Consent Order requires Harbor Freight to execute certain performance obligations, the objectives of which are to mitigate the risks of harm and promote safety by, among other things, improving Harbor Freight's processes and procedures for ensuring it imports and sells products that comply with applicable FMVSS, complying with reporting requirements,

making determinations of safety-related defects or noncompliances, reporting defects and noncompliances to NHTSA in a timely manner, and notifying owners of safety-related defects and noncompliances. The performance obligations will be satisfied through the activities described in this Consent Order.

18. No later than 30 calendar days after the execution of this Consent Order, Harbor Freight shall, at its sole cost and expense, submit to NHTSA the name of an independent third-party consultant (“Independent Third-Party Consultant”) with expertise in motor vehicle safety and the requirements of the Safety Act. Harbor Freight shall retain the Independent Third-Party Consultant for the term of this Consent Order. For good cause shown, NHTSA may extend for an additional 30 calendar days the period to propose the Independent Third-Party Consultant. Such extension shall not be unreasonably withheld and, if granted, does not alter any other due dates contained in this Consent Order. Failure to retain the Independent Third-Party Consultant shall not relieve Harbor Freight of any obligation under this Consent Order.

19. The approval of the Independent Third Party Consultant shall be in NHTSA’s sole discretion. Within 15 business days of NHTSA’s approval, Harbor Freight shall retain the Independent Third-Party Consultant and report to NHTSA regarding the date upon which the Independent Third-Party Consultant was officially retained.

20. The Independent Third-Party Consultant shall advise and assist Harbor Freight in developing a compliance program that will include:

A. Internal guidelines and procedures for Safety Act compliance such as (i) making determinations of safety-related defects or noncompliances and reporting to NHTSA in a timely manner; (ii) notifying owners and purchasers of safety-related defects or noncompliances under 49 C.F.R. Part 577; and (iii) providing required submissions to NHTSA, such as proposed

owner notification letters, copies of communications, and quarterly reports, in the time required by regulations.

B. Internal procedures to ensure that the fabricating manufacturer of motor vehicle equipment imported or sold by Harbor Freight has a reasonable basis for certification to all applicable FMVSS and has complied with all regulatory requirements, which shall include, for new or changed motor vehicle equipment for which there is an applicable FMVSS: (i) Harbor Freight knowing the identity of the fabricating manufacturer and ensuring that the fabricating manufacturer complies with 49 C.F.R. Part 551, Subpart D (for foreign fabricating manufacturers), and 49 C.F.R. Part 566; (ii) prior to importation, Harbor Freight will require the fabricating manufacturer to perform compliance testing and that written results and documentation for all compliance testing performed (regardless of whether there was a pass or fail result) are submitted to Harbor Freight; (iii) upon importation, Harbor Freight will conduct its own compliance testing at a reputable U.S. laboratory, receiving written results and documentation for all compliance testing performed (regardless of whether there was a pass or fail result).

C. A maintenance testing program to ensure continuing compliance of motor vehicle equipment imported, sold, or offered for sale by Harbor Freight with all applicable FMVSS.

21. No later than 180 calendar days after the execution of this Consent Order, Harbor Freight shall submit a written report detailing the compliance program as set forth in Paragraph 20 above (“Compliance Program”). If NHTSA reasonably determines that any changes to the Compliance Program are warranted and notifies Harbor Freight within 21 calendar days of receipt, Harbor Freight shall revise its Compliance Program to incorporate NHTSA’s feedback.

Harbor Freight shall provide a revised copy of the Compliance Program to NHTSA no later than 30 calendar days after receiving any such feedback from NHTSA. Harbor Freight agrees that the Compliance Program report required by this Paragraph shall be publicly available. Harbor Freight shall not claim any portion of the Compliance Program is (i) subject to attorney-client privilege or attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

22. No later than 300 calendar days after the execution of this Consent Order, Harbor Freight shall submit a written report detailing its efforts to implement the Compliance Program.

23. Harbor Freight shall provide NHTSA with access to and copies of any and all compliance test reports, in English, as requested by NHTSA.

24. Harbor Freight authorizes NHTSA to communicate directly with test laboratories designated by Harbor Freight that will conduct compliance tests on motor vehicle equipment imported, sold, or offered for sale by Harbor Freight during the term of this Consent Order.

25. Harbor Freight will ensure that it does not delay holding any meeting to decide whether or not to recommend or conduct a recall relating to motor vehicle equipment because Harbor Freight has not identified the precise cause of a safety-related defect or noncompliance, a remedy for a safety-related defect or noncompliance, or prepared a plan for implementing a remedy for a safety-related defect or noncompliance.

26. Harbor Freight shall develop and implement a plan ensuring that, in safety-related litigation regarding motor vehicle equipment, Harbor Freight uses its best efforts to include in any protective order, settlement agreement, or equivalent, a provision that explicitly allows Harbor Freight to provide information and documents to NHTSA.

Cooperation with NHTSA

27. On a recurring semi-annual basis during the term of this Consent Order, Harbor Freight shall meet with NHTSA (in person) to discuss the actions it has taken to satisfy the terms of this Consent Order. The first meeting shall take place no later than 120 calendar days after the execution of this Consent Order, and subsequent meetings shall occur at least every 180 days thereafter.

28. Harbor Freight shall comply with its obligations under the Safety Act, and regulations thereunder, to take all actions necessary to comply with this Consent Order and to cooperate with NHTSA in carrying out the requirements of this Consent Order. Harbor Freight's reasonable best efforts shall include, but shall not be limited to: (i) providing prompt notice to NHTSA in the event any requirement of this Consent Order cannot be met or timely met; and (ii) ensuring that employees involved with implementation of the performance requirements of this Consent Order are kept well-informed and are allocated sufficient time during their working hours to enable them to thoroughly and effectively perform actions to carry out or implement the performance requirements of this Consent Order.

IV. TERM OF CONSENT ORDER

29. Unless otherwise specified, the term of this Consent Order and Harbor Freight's performance obligations herein is two years from the date of execution.

IV. AMENDMENT

30. This Consent Order cannot be modified, amended or waived except by an instrument in writing signed by all parties.

V. MISCELLANEOUS

31. **Notice.** Harbor Freight shall provide written notice of each required submission under this Consent Order by electronic mail to Director of NHTSA's Office of Vehicle Safety Compliance (currently Jeffrey Giuseppe at Jeffrey.Giuseppe@dot.gov), and with copies to NHTSA's Associate Administrator for Enforcement (currently Frank Borris at Frank.Borris@dot.gov) and NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Timothy H. Goodman at Tim.Goodman@dot.gov). For any matter requiring notice by NHTSA to Harbor Freight under this Consent Order, such notice shall be by electronic mail to Marc Friedman, General Counsel for Harbor Freight, at MFriedman@harborfreight.com, and to Tammy Stafford, Associate General Counsel for Harbor Freight, at TStafford@harborfreight.com. The parties shall provide notice if the individuals holding these positions or their e-mail addresses change.

32. **Application of Federal Law.** Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

33. **Release.**

A. Upon the expiration of this Consent Order, the Secretary of Transportation, by and through the Administrator of NHTSA, will be deemed to have released Harbor Freight, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for civil penalties pursuant to 49 U.S.C. § 30165, in connection with any and all violations of Harbor Freight's Safety Act obligations related to the specified recall identified in the caption of this Consent Order from the inception of the Safety Act through the execution date of this Consent Order.

B. This Consent Order does not release Harbor Freight from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity, other than as described in this Consent Order.

34. **Breach.** In the event of Harbor Freight's breach of, or failure to perform, any term of this Consent Order, NHTSA reserves the right to pursue any and all appropriate remedies, including, but not limited to, actions compelling specific performance of the terms of this Consent Order, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Consent Order in any United States District Court. Harbor Freight agrees that, in any such enforcement action, it will not raise any objection as to venue. Harbor Freight expressly waives any and all defenses, at law or in equity, and agrees not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the Civil Penalty Amount, or of any other penalty amounts required by this Consent Order, if applicable, was made to NHTSA as set forth herein, and (ii) that Harbor Freight has substantially complied with the terms of this Consent Order.

35. **Attorney's Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 15 above.

36. **Authority.** The parties who are the signatories to this Consent Order have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

37. **Tax Deduction/Credit.** Harbor Freight agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any fine or civil penalty paid pursuant to this Consent Order.

38. **Corporate Change.** This Consent Order shall be binding upon, and inure to the benefit of, Harbor Freight and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. Harbor Freight agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between Harbor Freight and any of its parents, subsidiaries, or affiliates.

39. **Severability.** Should any condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Consent Order and shall in no way affect, impair or invalidate any other provision of this Consent Order.

40. **Third Parties.** This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Order.

41. **Counterparts.** This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

42. **Effective Date.** This Consent Order shall be effective upon its full execution.

43. **Integration.** This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Consent Order sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order.

[SIGNATURES ON NEXT PAGE]

APPROVED AND SO ORDERED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: December 8, 2015

By: // ORIGINAL SIGNED BY //

Mark R. Rosekind, Ph.D.
Administrator

Dated: December 8, 2015

By: 

Paul A. Hemmersbaugh
Chief Counsel

Dated: December 8, 2015

By: 

Timothy H. Goodman
Assistant Chief Counsel
for Litigation and Enforcement

Dated: December 8, 2015

By: 

Sarah E. Sorg
Senior Trial Attorney

Dated: December 8, 2015

By: 

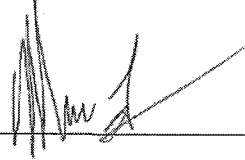
Justine S. Casselle
Trial Attorney

AGREED:

HARBOR FREIGHT TOOLS USA, INC.

Dated: December 8, 2015

By: _____

A handwritten signature in black ink, appearing to be 'Marc Friedman', written over a horizontal line.

Marc Friedman
Corporate Secretary