



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: December 29, 2009

In reply refer to: H-09-30 and -31

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On January 2, 2008, about 4:13 a.m., a 2005 Volvo 47-passenger motorcoach, operated by a 42-year-old driver and carrying 47 passengers, was proceeding northbound on U.S. Highway 59 (U.S. 59) about 5 miles south of Victoria, Texas,¹ when the motorcoach driver partially drifted off the right edge of the roadway. The driver oversteered to the left to avoid leaving the roadway, resulting in the motorcoach coming back across both lanes, departing the left edge of the roadway, and partially entering an earthen median. The driver oversteered again to the right in an attempt to reenter the roadway and then oversteered to the left a second time upon realizing the motorcoach had gone too far right. As a result of the final oversteer, the motorcoach yawed to the left, rotated counterclockwise, and overturned onto its right side. The motorcoach's right rear struck a guardrail as the motorcoach slid on its right side approximately 112 feet before coming to rest across the roadway. Within 5 minutes, and before emergency responders arrived on scene, a 2001 Ford Ranger pickup truck also traveling northbound on U.S. 59 struck the underside of the motorcoach forward of the rear axle. As a result of the initial motorcoach rollover, 1 passenger was fatally injured, and 46 passengers and the driver received injuries ranging from minor to serious. The driver of the pickup truck sustained minor injuries when the pickup truck struck the undercarriage of the motorcoach.

The National Transportation Safety Board (NTSB) determines that the probable cause of this accident was the driver's falling asleep, which caused him to partially drift off the road, resulting in oversteer corrections when the driver regained awareness, and subsequent vehicle loss of control and overturn. Contributing to the severity of the unrestrained passengers' injuries was their striking objects and other passengers inside the motorcoach, as well as the partial ejections that occurred when the motorcoach overturned during the accident.

¹ See *Motorcoach Rollover on U.S. Highway 59 Near Victoria, Texas, January 2, 2008*, Highway Accident Report NTSB/HAR-09/03/SUM (Washington, DC: National Transportation Safety Board, 2009), which is available on the NTSB website at <http://www.nts.gov/pubictn/2009/HAR0903.pdf>.

Non-FMVSS-Compliant Motorcoaches

During the course of the Victoria investigation and public hearing,² the NTSB discovered that the Federal Motor Carrier Safety Administration (FMCSA) does not currently enforce the requirement for passenger-carrying commercial motor vehicles to display a label of certification documenting the vehicle's compliance with all applicable motor vehicle safety standards. Although FMCSA representatives stated during the NTSB's public hearing that the FMCSA could effectively ensure a motor carrier's compliance with applicable *Federal Motor Vehicle Safety Standards* (FMVSSs) through continued vigorous enforcement of the *Federal Motor Carrier Safety Regulations* (FMCSRs), the NTSB notes that the U.S. Government relies upon the criteria established by the FMVSSs to show that a vehicle meets minimum acceptable safety requirements during crash and other testing. Although proper maintenance helps to ensure that non-FMVSS-compliant components will not malfunction, it cannot be determined, unless independently tested or involved in a real-world crash, whether the components would meet FMVSS criteria for preventing unreasonable risk of injury or death to vehicle occupants.

Without FMVSS certification and vehicle inspections (an unlikely occurrence given the low numbers of roadside passenger commercial motor vehicle inspections performed at border crossings),³ no consistent or mutually supportive set of regulations or procedures ensures FMVSS compliance, which is incongruent with the intent of the Vehicle Safety Act. The Vehicle Safety Act's language is explicit in stating that preexisting motor carrier safety regulations should not differ in substance or impose any lesser standard of performance than manufacturing standards.⁴ In its 2005 notice of proposed rulemaking (NPRM) withdrawal,⁵ the FMCSA concluded that FMVSS certification labels were not needed and that the enforcement of the FMCSRs would ensure compliance with the FMVSSs with which they were cross-referenced. However, according to the National Highway Traffic Safety Administration (NHTSA) in its public hearing testimony, an inspection cannot determine the dynamic capabilities of certain FMVSSs, and it would be very difficult to determine compliance with certain FMVSSs unless an inspector specifically looked for the certification label found inside the vehicle, which would definitively establish that the vehicle was originally manufactured to meet applicable FMVSSs. The NTSB therefore concludes that the FMCSA's policy of not enforcing the requirement for passenger-carrying commercial motor vehicles to display a label of certification documenting the vehicle's compliance with all applicable motor vehicle safety standards and its failure to help identify and place out of service non-FMVSS-compliant vehicles undermine NHTSA's efforts as a partner safety agency. The NTSB further concludes that current U.S. Department of Transportation (DOT) policy allowing the FMCSA to cross-reference the FMVSSs during a vehicle's inspection and, if the vehicle is not placed out of service, accept that as evidence of

² Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C.

³ Only 7.4 percent of motorcoaches entering the United States were stopped in 2007 for inspection, with only 1.2 percent of those motorcoaches receiving an inspection sufficient to detect potential problems with FMCSR items that cross-reference the FMVSSs.

⁴ M. Schmidt and R. Havelaar, *Review of Canadian/Mexican Commercial Motor Vehicle Compliance With FMVSS: Final Report*, Texas Transportation Institute, Texas A&M University System submission to the FMCSA (April 30, 2006), p. 71.

⁵ For further information, see *Federal Register*, vol. 70, no. 165 (August 26, 2005), pp. 50269–50290, docket nos. FMCSA-01-10886 and NHTSA-2005-22197.

adherence to FMVSS performance standards, is faulty based on the FMCSRs' lack of performance testing during a vehicle inspection.

By granting a "passing grade" to non-FMVSS-compliant motorcoaches inspected roadside at the border or during annual or periodic inspections when they do not meet the FMVSSs (easily identifiable by the lack of a certification label), such as was the case with the accident bus, the FMCSA is tacitly permitting any non-FMVSS-compliant vehicle to operate on U.S. roads. During its investigation, the NTSB discovered numerous passenger-carrying vehicles operating in commercial interstate commerce that were not manufactured to FMVSS criteria; however, they were based, registered, and operated in the United States by domestic carriers, which appears contradictory to 49 *United States Code* 30112, which states:

A person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import in to the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification...

Vehicles entering the United States from Mexico present specific difficulties in safety oversight for both the states and the FMCSA. Although the U.S. Customs and Border Protection Agency (CBP) inspects every vehicle for contraband, spending approximately 30 minutes per vehicle, the FMCSA does not conduct a roadside inspection of every vehicle to determine whether it complies with the FMCSRs, which are the regulations that establish safe operating and maintenance requirements for vehicles and their equipment. This practice leaves an enormous gap in a system meant to improve the safety of commercial vehicles and reduce crashes, injuries, and fatalities.

The CBP does not initiate an importation process for vehicles until an owner or importer declares a vehicle for importation. The regulations pertaining to imported vehicles state that they must either be FMVSS compliant or be brought in through the Registered Importer Program. Although some motorcoaches are currently being operated outside of the commercial zone (during cross-border line runs) by foreign-domiciled carriers under the instrument of international traffic (IIT) provisions, this IIT exemption has created a regulatory situation that is being exploited by U.S.-domiciled carriers. NHTSA stated at the NTSB's public hearing that it can work with the CBP, U.S. Immigration and Customs Enforcement, and U.S. Environmental Protection Agency when it learns of vehicles being brought into the United States permanently without being declared and that do not have labels certifying compliance with applicable FMVSSs affixed by the original manufacturer. In the past, NHTSA's Import and Certification Division has taken action upon learning that imported, noncompliant motorcoaches were being operated in the United States, including seizing noncompliant motorcoaches.

Well-established law and regulation⁶ require that all vehicles, including motorcoaches, operate in the United States only with appropriate certification provided by their original or

⁶ Title 49 *Code of Federal Regulations* Parts 591-593, 49 U.S.C 30112A and 30115, and Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Section 4139(c). NHTSA's 2002 NPRM on FMVSS certification (*Federal Register*, vol. 67, no. 53 [March 19, 2002], pp. 12789-12797) stated: "Neither the statute nor any agency regulation exempts commercial vehicles domiciled in Canada or Mexico from the

final-stage manufacturers or by their importers. Given the low likelihood of a full vehicle inspection at the U.S.–Mexico border crossings, there is no guarantee of adherence to the FMVSSs or of disincentives for not doing so, such as penalties. The NTSB recommends that the DOT direct NHTSA and the FMCSA to work in conjunction with the CBP to develop and implement a process to detect motor carriers that are currently operating non-FMVSS-compliant motorcoaches or other passenger-carrying commercial motor vehicles, other than exempted vehicles, in the United States (outside of the commercial zone), and when such vehicles are detected, to ensure that the FMCSA has the authority to place such vehicles out of service and require that these motor carriers cease operating those vehicles in commercial interstate passenger service or face revocation of their operating authority. The NTSB also recommends that the CBP assist the DOT in developing a process to detect and report to the DOT information on motor carriers identified during its border crossing inspections of passenger-carrying commercial motor vehicles to be currently operating non-FMVSS-compliant passenger-carrying commercial motor vehicles, other than exempted vehicles, in the United States (outside of the commercial zone), and assist the Department in ensuring such vehicles are placed out of service and requiring these motor carriers cease operating those vehicles in commercial interstate passenger service.

Need for FMVSS Verification Process

U.S. Department of Commerce statistics show that a yearly average of 5,500 motorcoaches were declared for import into the United States from 2004–2008. The majority were declared by their importers as vehicles manufactured to comply with all applicable FMVSSs and certified as such by the original manufacturer.⁷ NHTSA regulations include a requirement that the importer of a motor vehicle (such as the owner) report the vehicle's FMVSS conformity status on a DOT HS-7 declaration form to be presented to the CBP at the time of importation (49 CFR 591.5). During the NTSB's public hearing, NHTSA stated it did not know the number of non-FMVSS-compliant commercial motor vehicles operating on U.S. highways, either as part of a charter and tour or a regular route operation, from Mexico or Canada. In addition, NHTSA does not have statistics reflecting how many non-FMVSS-compliant vehicles have been brought into the United States by U.S.-domiciled companies after having been purchased in another country, driven across the border, and permanently domiciled (without being declared for import) in the United States for use in interstate commerce.

During the NTSB's public hearing, the CBP reported that the accident motorcoach had entered the United States 28 times between September and December 2007 as part of interstate commercial passenger service (line runs averaging 2 roundtrips per week over 16 weeks) without filing a formal HS-7 declaration form. Further, during its investigation, NTSB staff traveled to the Lincoln-Juarez Bridge crossing and saw motorcoaches with no visible label bearing a statement certifying FMVSS compliance entering the United States. These motorcoaches, which had both Mexico and Texas license plates, were observed undergoing an FMCSA inspection in

requirement that the vehicles must have been manufactured to meet the FMVSSs in order to be imported into the United States.”

⁷ In addition, a few vehicles were imported on a temporary basis for purposes such as research, investigations, demonstrations, training, or competitive racing events. According to a NHTSA posthearing submission, in the last 6 years, the agency has investigated 1,200 vehicles, resulting in the vehicles (nonspecified vehicle type) being denied entry, ordered delivered to ports of entry for exportation, or seized.

conjunction with the Texas Department of Public Safety, and, upon passing the inspection, continuing to Houston, Texas, which is outside of the commercial zone.⁸ The FMCSA does not have the statutory authority to prohibit such vehicles (non-FMVSS-compliant) from entering or operating in the United States.

The current FMCSA vehicle inspection program was not developed, nor does it operate with a component part, for determining FMVSS compliance; therefore, a non-FMVSS-compliant vehicle operating outside of the commercial zone in a line run or scheduled service by a U.S.-domiciled motor carrier with state registration and license plates, such as the accident motorcoach, would not be issued an out-of-service order by the FMCSA.⁹ However, the FMVSSs explicitly establish a minimum level of motor vehicle safety in the United States, as explained by 49 CFR Part 571, which states that the FMVSSs “protect the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and include non-operational safety of a motor vehicle.” Therefore, the NTSB concludes that current federal safety oversight programs and importation regulations pertaining to passenger commercial motor vehicles are flawed because improperly imported (that is, not declared for importation) non-FMVSS-compliant motorcoaches operated by U.S.-domiciled motor carriers on U.S. highways in commercial passenger service are not being identified, placed out of service, and subjected to current laws by the agencies responsible for the oversight of safety and importation: the FMCSA, NHTSA, and the CBP.

Currently, even if states put in place a process for checking FMVSS compliance, no method exists to perform that verification, short of also requiring a physical examination of each vehicle for a proper certification label (49 CFR Part 567). In addition, no processes are currently performed during roadside vehicle inspections to verify compliance with these rules, absent checking a label. Although the certification label assures 100 percent FMVSS-compliance, there are vehicles permitted to be imported that do not have a certification label. Such vehicles may be imported solely for the purposes of research, investigations, demonstrations, training, or competitive racing events, and would not have a certification label. In addition, some vehicles purchased outside the United States for temporary use in the United States may not have a certification label. For example, the vehicle would be eligible for import if the owner was a member of the armed forces of a foreign country on assignment in the United States and the vehicle was being imported for temporary and personal use only. The NTSB concludes that not having an electronic FMVSS verification process available to federal, state, and local law enforcement personnel to use during roadside vehicle inspections makes it difficult to verify whether passenger-carrying commercial motor vehicles meet the FMVSSs. Therefore, the NTSB recommends that NHTSA develop, in conjunction with the FMCSA, a Web-based database of FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States. The NTSB also recommends that NHTSA implement a process to periodically update this database. The NTSB further

⁸ August 26–29, 2008, at the Laredo, Texas, border crossing, Lincoln-Juarez Bridge facility.

⁹ Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C. (FMCSA testimony).

recommends that the FMCSA assist NHTSA in developing and implementing this database. The NTSB also recommends that, when the database requested in Safety Recommendation H-09-30 is completed, NHTSA make it known and accessible to state vehicle registration agencies and to federal, state, and local enforcement inspection personnel for their use during roadside inspections and compliance reviews to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles.

As a result of the investigation, the NTSB makes the following recommendations to the National Highway Traffic Safety Administration:

Develop, in conjunction with the Federal Motor Carrier Safety Administration, a Web-based database of FMVSS-compliant passenger-carrying commercial motor vehicles that can be utilized by federal, state, and local enforcement inspection personnel to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles so that these vehicles (other than exempted vehicles) are placed out of service and cease operating in the United States. Implement a process to periodically update this database. (H-09-30)

When the database requested in Safety Recommendation H-09-30 is completed, make the database known and accessible to state vehicle registration agencies and to federal, state, and local enforcement inspection personnel for their use during roadside inspections and compliance reviews to identify non-FMVSS-compliant passenger-carrying commercial motor vehicles. (H-09-31)

The NTSB also issued safety recommendations to DOT, the FMCSA, the CBP, the American Association of Motor Vehicle Administrators, the International Registration Plan, Inc., and the Commercial Vehicle Safety Alliance. The NTSB also reiterated two previously issued recommendations to the FMCSA.

In response to the recommendations in this letter, please refer to Safety Recommendations H-09-30 and -31. If you would like to submit your response electronically rather than in hard copy, you may send it to the following e-mail address: correspondence@ntsb.gov. If your response includes attachments that exceed 5 megabytes, please e-mail us asking for instructions on how to use our secure mailbox. To avoid confusion, please use only one method of submission (that is, do not submit both an electronic copy and a hard copy of the same response letter).

Chairman HERSMAN, Vice Chairman HART, and Member SUMWALT concurred in these recommendations.

[Original Signed]

By: Deborah A.P. Hersman
Chairman