National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: December 29, 2009

In reply refer to: H-09-44

Mr. Neil Schuster
President and Chief Executive Officer
American Association of Motor Vehicle Administrators
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Arlington, Virginia 22203

The National Transportation Safety Board (NTSB) is an independent federal agency charged by Congress with investigating transportation accidents, determining their probable cause, and making recommendations to prevent similar accidents from occurring. We are providing the following information to urge your organization to take action on the safety recommendation in this letter. The NTSB is vitally interested in this recommendation because it is designed to prevent accidents and save lives.

This recommendation addresses verifying the compliance of newly registered passenger-carrying commercial motor vehicles with the *Federal Motor Vehicle Safety Standards* (FMVSSs) during the registration and issuance of license plates within the International Registration Plan (IRP) program. The recommendation is derived from the NTSB's investigation of the January 2, 2008, motorcoach accident that occurred near Victoria, Texas, and is consistent with the evidence we found and the analysis that we performed.[1] As a result of this investigation, the NTSB has issued 19 safety recommendations, 1 of which is addressed to the American Association of Motor Vehicle Administrators (AAMVA). Information supporting this recommendation is discussed below. The NTSB would appreciate a response from you within 90 days addressing the actions you have taken or intend to take to implement our recommendation.

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, 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

[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.ntsb.gov/pubictn/2009/HAR0903.pdf.

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 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.

The Victoria, Texas, accident involved a foreign-manufactured Volvo motorcoach that was purchased and operated in interstate commerce by a U.S.-domiciled carrier. Under Title 49 *United States Code* §30112, §30115, and §30141, and Title 49 *Code of Federal Regulations* (CFR) Parts 567, 591, and 592, a U.S. motor carrier cannot import a vehicle manufactured in a foreign country for use in the United States unless (1) the original manufacturer certified, at the time of manufacture, that the vehicle complied with the applicable FMVSSs, or (2) a registered importer certified that the vehicle was modified to comply with applicable U.S. safety standards.[2] The accident motorcoach met neither of these conditions. This investigation further revealed that such vehicles have been and are still being purchased by U.S.-based carriers and brought into U.S. jurisdictions and registered.

The owner of Capricorn Bus Lines, Inc. (Capricorn), the company employing the driver involved in the Victoria accident, purchased the accident vehicle, drove it across the border from Mexico, and operated it in the United States outside of the commercial zone[3] with registration and license plates from Mexico. The accident vehicle was then registered through the California Department of Motor Vehicles under the IRP program using a California address (a requirement for registration) belonging to another bus company. Within 2 months of the vehicle's owner obtaining California registration and IRP-apportioned license plates, the vehicle was re-registered in Texas and obtained Texas (intrastate) license plates.

When the NTSB contacted the intermediary company that had assisted in registering the accident motorcoach, Green River Buses, LLC, its owner stated that he had registered the

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[2] As stated in the Federal Motor Carrier Safety Administration (FMCSA) and National Highway Traffic Safety Administration (NHTSA) withdrawals of proposed rulemaking regarding vehicle importation. For further information, see *Federal Register,* vol. 70, no. 165 (August 26, 2005), p. 50274.

[3] A *commercial zone* is an area in which passengers or property in interstate or foreign commerce may be transported, in interstate or foreign commerce, when not under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such zone, that is exempt from all provisions of 49 U.S.C. subtitle IV, part B. Commercial zones generally range from 3-20 miles outside the corporate limits of a municipality, depending upon the municipality's population. For more information on commercial zones, refer to 49 CFR 372.241.

vehicles in California as opposed to another state, such as Texas, because California requires only a few documents for registration and that he knew of an address in California where he could establish a paperwork business "base" for the accident motorcoach. He noted that he had helped about 20 other bus companies initially register their buses in California using the same process to obtain a U.S. jurisdictional license plate, eventually transferring them to Texas.

The California Division of Motor Vehicles defines a direct import vehicle as a vehicle that is not manufactured to meet the FMVSSs and is not intended by the manufacturer to be used or sold in the United States. Currently, an HS-7 form[4] is required to register a foreign import vehicle in California for a vehicle to be titled as intrastate. The HS-7 form confirms compliance with the FMVSSs when the vehicle is presented for import by the owner or importer to the U.S. Customs and Border Protection Agency (CBP) at the border crossing from Mexico into the United States. However, when the accident vehicle was registered, California did not require vehicles registered in the IRP to be titled in the state and, therefore, did not require the HS-7 form for the accident motorcoach. As a result of California's not requiring the HS-7 form, Capricorn's owner was able to obtain a California-based IRP registration and apportioned IRP license plates[5] without proof that the accident vehicle met FMVSSs, which it did not.

Although the state of Texas does inspect IRP vehicles for FMVSS compliance as part of verifying that a vehicle with a foreign title was imported properly, it did not physically inspect the accident motorcoach (or any of the other Capricorn vehicles) for FMVSS compliance because Texas accepted California's registration and IRP license plates. When asked during the public hearing about this policy, Texas officials answered that because the vehicle had already obtained registration and license plates in another U.S. jurisdiction, Texas assumed that the license plates had been issued based upon verification of the vehicle's compliance with the FMVSSs. However, that had not occurred because California does not physically inspect vehicles (as Texas does) for FMVSS compliance when a vehicle is registered for IRP-apportioned plates. The NTSB concluded that when Capricorn's owner failed to declare importation of the accident vehicle with the CBP upon entering the United States and subsequently obtained vehicle registration using a loophole in California's IRP program, he intentionally bypassed federal and state requirements for an imported vehicle to comply with the FMVSSs.

Interviews conducted during the Victoria accident investigation with Green River and other companies led to the discovery of more than 20 other non-FMVSS-compliant foreign-manufactured motorcoaches being used regularly in the United States that were registered the same way as Capricorn's buses. Many of these vehicles, such as the accident motorcoach, had been stopped and inspected by both state and FMCSA enforcement officials before the Victoria accident. However, once these vehicles obtained U.S. jurisdictional license plates, enforcement officials relied on the U.S. jurisdictions issuing the license plates to have

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[4] Form HS-7, "Declaration—Importation of Motor Vehicles and Motor Vehicle Equipment Subject to Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards," is required by NHTSA (49 CFR Part 591) and the CBP (19 CFR 12.80) <http://www.nhtsa.dot.gov/cars/rules/import/hs799short.pdf>.

[5] The registration paperwork included estimated miles for apportionment within the United States, not Mexico, based upon the actual mileage accumulated in the states where the vehicle had traveled during the same 6 months of the previous year. However, both International and Capricorn were based in Texas, and Capricorn's regular route, or line run, did not enter California at all—it operated strictly from Texas to Mexico and back.

verified FMVSS compliance. The NTSB concluded that because many non-FMVSS-compliant motorcoaches found during this investigation still display U.S. jurisdictional (state) registrations and license plates, inspectors and law enforcement personnel do not have cause to suspect such vehicles of not conforming with federal law.

Other inconsistencies among state registration processes were found during the Victoria accident investigation, as well. For instance, New Mexico's IRP program does not require physical examination for FMVSS compliance and California's program now requires physical examination only for newly registered and re-registered vehicles, not for currently registered vehicles or vehicle renewals.

The NTSB concludes that some states lack conformity when verifying FMVSS compliance during IRP-apportioned vehicle registrations, permitting U.S.-domiciled companies to operate non-FMVSS-compliant vehicles daily throughout the United States.

Therefore, as a result of the investigation, the NTSB makes the following recommendation to the American Association of Motor Vehicle Administrators:

> Assist the International Registration Plan, Inc., in developing and distributing to the states and the District of Columbia a model policy for verifying that newly registered passenger-carrying commercial motor vehicles are certified as having complied with the appropriate FMVSSs in effect at the time of manufacture, as referenced in Title 49 *Code of Federal Regulations* Part 567. (H-09-44)

The NTSB also issued safety recommendations to the U.S. Department of Transportation, NHTSA, the FMCSA, the CBP, the IRP, Inc., and the Commercial Vehicle Safety Alliance. The NTSB also reiterated two previously issued recommendations to the FMCSA.

In response to the recommendation in this letter, please refer to Safety Recommendation H-09-44. 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 this recommendation.

[Original Signed]

By: Deborah A.P. Hersman
Chairman