



National Transportation Safety Board

Washington, D.C. 20594

Safety Recommendation

Date: December 29, 2009

In reply refer to: H-09-46 and -47

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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 recommendations in this letter. The NTSB is vitally interested in these recommendations because they are designed to prevent accidents and save lives.

These recommendations address passenger motor carriers discovered to be operating passenger-carrying commercial motor vehicles that do not comply with the *Federal Motor Vehicle Safety Standards* (FMVSSs). The recommendations are derived from the NTSB's investigation of the January 2, 2008, motorcoach accident that occurred near Victoria, Texas, and are 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, 2 of which are addressed to the Commercial Vehicle Safety Alliance (CVSA). Information supporting these recommendations 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 recommendations.

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.nts.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 National Transportation Safety Board 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* 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 illegally registered. The NTSB concludes that the lack of a requirement for U.S.-domiciled carriers to certify the use of FMVSS-compliant passenger vehicles in interstate commerce has created a gap in safety oversight, allowing non-FMVSS-compliant commercial passenger vehicles to be used by U.S.-domiciled carriers on U.S. highways.

The current Federal Motor Carrier Safety Administration (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 (OOS) order by the FMCSA.³ 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

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

³ Victoria, Texas, public hearing, October 7–8, 2008, Washington, D.C. (FMCSA testimony).

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 U.S. Customs and Border Protection Agency (CBP). The NTSB is therefore recommending that the FMCSA seek statutory authority to suspend, revoke, or withdraw a motor carrier's operating authority upon discovering the carrier is operating any non-FMVSS-compliant passenger-carrying commercial motor vehicles. To facilitate this process, the NTSB recommends that the CVSA revise the *North American Standard Out-of-Service Criteria* to include passenger motor carriers discovered to be violating their operating authority by operating non-FMVSS-compliant passenger-carrying commercial motor vehicles.

Currently, even if the 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 and that a process is implemented to periodically update this database. The NTSB also recommends that the FMCSA require that federal and state inspectors utilize the database during both roadside and compliance review inspections of passenger-carrying commercial motor vehicles to identify and place out of service non-FMVSS-compliant vehicles. In addition, the NTSB recommends that the CVSA work with the FMCSA to develop and provide training on a procedure for federal and state enforcement officials to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label.

As a result of the investigation, the NTSB makes the following recommendations to the Commercial Vehicle Safety Alliance:

Revise the *North American Standard Out-of-Service Criteria* to include passenger motor carriers discovered to be violating their operating authority by operating non-FMVSS-compliant passenger-carrying commercial motor vehicles. (H-09-46)

Work with the Federal Motor Carrier Safety Administration to develop and provide training on a procedure for federal and state enforcement officials to physically inspect passenger-carrying commercial motor vehicles for an FMVSS compliance label. (H-09-47)

The NTSB also issued safety recommendations to the U.S. Department of Transportation, NHTSA, the FMCSA, the CBP, the American Association of Motor Vehicle Administrators, and the International Registration Plan, Inc. 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-09-46 and -47. 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