



October 18, 2010

The Honorable David Strickland, Administrator  
National Highway Traffic Safety Administration  
U.S. Department of Transportation  
West Building, Ground Floor Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Re: Notice of Proposed Rulemaking regarding Motorcoach Definition and Occupant Protection,  
Docket Number NHTSA-2010-0112

Dear Administrator Strickland:

The American Bus Association (ABA) appreciates the opportunity to comment upon the National Highway Traffic Safety Administration's (NHTSA) proposal to define the term "motorcoach" and to update Federal Motor Vehicle Safety Standard (FMVSS) 208 to mandate seat belts in new motorcoaches. ABA also appreciates the opportunity to provide input into the suitability of mandating the retrofit of in-use motorcoaches with seat belts.

ABA supports NHTSA's proposal to define "motorcoach" and to mandate three point belts in new motorcoaches. Below ABA presents proposed modifications to the "motorcoach" definition intended to better distinguish between motorcoaches and transit buses. ABA also supports the concept of allowing motorcoach manufacturers to certify either to the FMVSS provisions set forth in the proposal or to the relevant European standards, ECE R. 14 and R. 80. Especially in light of the relatively small volume of new motorcoaches produced and sold each year and the global nature of the motorcoach industry, facilitating harmonization through compliance options serves to promote safety by both upgrading vehicles and promoting quicker replacement of older motorcoaches with new vehicles.

ABA remains concerned about the suggestion of a separate proposal to mandate seat belts for in-use motorcoaches. First, the Motor Carrier Safety Improvement Act of 1999 contains retrofit authority with regard to readily attachable in-use equipment and components, but does not support a retroactive performance-based requirement applicable to the vehicle as a whole. Second, the Vehicle Safety Act obligates manufacturers and distributors to certify that their vehicles and/or equipment complies with all applicable Federal Motor Vehicle Safety Standards (FMVSS). No such requirement is applicable to motor vehicle operators. Finally, a retroactive performance-based manufacturing requirement is both technically and economically impracticable. These points are explored in more detail below.

While safety is paramount, it must also be recognized that the vast majority of motorcoach operators are small businesses.<sup>1</sup> A new motorcoach also represents a substantial capital investment of approximately \$450,000-\$500,000. Small motorcoach operators cannot afford to replace their fleets with new motorcoaches. Nor can they absorb the cost of retrofitting their vehicles. NHTSA's proposal estimates the cost of reinforcing the vehicles and installing seat belts to be between \$6,000 (for vehicles that are already lap-belt ready) and \$34,000 per vehicle for lap belts and \$40,000 for three point belts. See 75 Fed. Reg. 50958, 50979. A retroactive standard would drive many carriers out of business and force others to shrink their services.

## **I. General Principles**

Since the inception of NHTSA's Motor Coach Safety Plan, ABA has endorsed the agency's efforts. ABA and its members have ensured the availability of equipment and have provided technical input on the record. ABA looks forward to working with NHTSA and the Federal Motor Carrier Safety Administration (FMCSA) in developing appropriate programs and regulations as the agencies proceed with the remainder of the Motorcoach Safety Plan. Enhancing safety must include not only improvements to the vehicles, but also strengthening enforcement and making the safety record of carriers available to consumers. A comprehensive motorcoach safety effort must include the following elements:

**A. Enhanced Enforcement and Inspection Procedures:** ABA applauds the Department for its focus on increased enforcement activity in the field.<sup>2</sup> Expediting the initial inspection process, and increased insurance requirements, are essential to ensuring that new carriers meet all of the requisite requirements to safely operate motorcoaches in the United States. Enhanced enforcement on the highways is also essential to ensure that previously licensed operators continue to meet all requirements and that motorcoaches are well-maintained.

**B. Maximizing the Safety Investment:** Regulatory policy should endorse the maximum gains in safety. While a more significant investment, the purchase of a new motorcoach represents a better investment in safety than simply retrofitting older vehicles with

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<sup>1</sup> To qualify as a small business under the Charter Bus Industry NAICS Code (485510), a concern would have less than \$7 million in annual receipts (i.e. revenue) averaged over its last three completed fiscal years.

<sup>2</sup> As the agency is aware, many of the fatal crashes have involved unfit drivers or lack of appropriate attention to safety requirements and/or to hours of service compliance or driving the motorcoach on inappropriate roadways. In the 1999 New Orleans crash, the driver was found to have been medically unfit and the operator to have had deficient safety management. The roof structure failure in the Turrell, Arkansas crash was at least in part the result of poor repair work and the operator was determined also to have deficient safety management. The NTSB noted the probable cause of the crash as driver fatigue. The Mexican Hat, Utah crash occurred on a roadway that was not recommended for commercial traffic. The Sherman, Texas crash occurred due to a steering axle tire blow out on a coach operated by an unlicensed carrier, and the driver of the bus was found to have illegal drugs in his system. While upgrading motorcoach crashworthiness remains important, critical to the effort to avert further fatalities are activities to enhance federal oversight of motor carriers and to enforce motor carrier regulations.

seat belts. The purchase of a new motorcoach has the advantage that the vehicle would come not only with seat belts, but also with additional safety features such as electronic stability control, ABS brakes, front crash protection, tire pressure monitoring and front crash protection. To the extent that a retrofit requirement will divert capital and delay investment in new motorcoach purchases, such a requirement would not promote safety to the fullest possible extent.<sup>3</sup>

**C. A Holistic Approach to Vehicle Regulations:** NHTSA's motorcoach safety plan includes a variety of potential vehicle-based regulations necessitating modifications in vehicle design and construction. These include roof crush, flammability and evacuation. In addition, the agency may also consider crash avoidance technologies and the inclusion of electronic data recorders and/or other electronic control strategies. Regulation of greenhouse gas emissions and fuel economy will also challenge the ability to add safety features while reducing mass and enhancing safety.

The incremental promulgation of these regulations, while perhaps necessary administratively, places additional challenges on motorcoach engineers who must not only design to a newly issued regulation but also towards as yet unspecified requirements known to be under consideration. These new requirements also affect the gross vehicle weight of the vehicles, potentially challenging the weight limits imposed by federal and state law. This task is particularly difficult in the motorcoach arena, where the volume of new motorcoaches produced and sold in the United States each year, currently about 1600, is small and without significant flexibility to continuously accommodate new design and engineering requirements.

The remaining features of NHTSA's Motorcoach Safety Plan may entail substantial additional changes in vehicle structure, which may in turn require further changes in the way seat belts, which are already being incorporated, are ultimately integrated into the vehicle. Ideally, since vehicles are now and will into the future be sold with seat belts installed, addressing other facets of the Motorcoach Safety Plan may have been a more cost-effective approach to incorporating all of the potential new requirements. Nonetheless, ABA and its members will continue to work with the agency on the remainder of the Motorcoach Safety Plan and to adapt as necessary. The agency, in turn, should consider the potential necessities of additional rulemakings, in particular those requiring yet further modification of vehicle structures, when issuing each incremental regulation.

**D. Harmonization:** ABA recognizes the necessity of addressing the particular circumstances in the United States when developing new safety regulations. Especially in light

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<sup>3</sup> A retrofit standard also assumes that all carriers would comply with the retroactive requirements. As noted above, many of the fatal motorcoach crashes have involved carriers and vehicles that were not compliant with then current operating and/or safety requirements. Compliant small business without the financial ability to rebuild their vehicles may go out of business or substantially reduce service, while non-compliant carriers may flourish. This scenario may challenge even the substantially enhanced level of enforcement currently underway.

of the panoply of new regulations that may be adopted, the considerable costs involved, the relatively small volume of new motorcoaches sold each year and the global nature of the industry, compliance options permitting harmonization will enhance flexibility, reduce costs and promote the overall turnover of the fleet towards newer motorcoaches. ABA strongly endorses consideration, not only for this rulemaking but for the regulatory plan as a whole, of flexibility to allow compliance with European standards as an alternative to FMVSS based requirements.

**E. Seat Belt Use:** While ABA endorses the proposal for seat belts on new motorcoaches, the provision of seat belts is immaterial unless passengers use them. This rulemaking must be followed and supported by a strong DOT effort to encourage motorcoach seat belt use, including incentives or sanctions to states to enforce seat belt use rules. DOT should support such efforts in reauthorization.

## **II. The Definition of “Motorcoach”**

The definition of “motorcoach” is particularly important because the definition will apply not only to the current rulemaking but also to the remainder of the agency’s regulatory activity. ABA appreciates NHTSA’s efforts to frame a definition (i) which covers many of the crashes of concern, (ii) the foundation of which is based primarily in visible attributes and characteristics rather than use, and (iii) includes buses primarily involved in longer distance and intercity travel and excludes transit buses operating in urban areas.

The proposal would define a “motorcoach” as “a bus with a gross vehicle weight rating (GVWR) of 11,793 kg (26,000 lbs) or greater, 16 or more designated seating positions (including the driver), and at least 2 rows of passenger seats, rearward of the driver’s seating positions, that are forward facing or can convert to forward facing without the use of tools. Motorcoach includes buses sold for intercity, tour, and commuter bus service, but does not include a school bus, or an urban transit bus sold for operation as a common carrier in urban transportation along a fixed route with frequent stops.” 75 Fed. Reg. 50958, 50982.<sup>4</sup>

While ABA appreciates the agency’s effort to design a definition to capture vehicles involved in prior crashes, the definition must be applied in the field. The definition must clearly distinguish between vehicles that are likely to travel on roadways at higher speeds and those that operate as transit buses exclusively within urban areas.<sup>5</sup> To facilitate this distinction, ABA recommends

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<sup>4</sup> We note that, to the extent the proposed definition may be broader than and include more vehicles than those traditionally considered to be motorcoaches, the number of vehicles subject to the regulation and the overall cost of the regulation will be higher than that based on a motorcoach fleet of approximately 2000 vehicles or the more current annual market of approximately 1600 vehicles.

<sup>5</sup> FMCSA’s regulations generally define a “commercial motor vehicle” as one with certain passenger carrying attributes which transports passengers “for compensation.” See 49 CFR Part 390.5. ABA does not believe it appropriate to incorporate the concept of “compensation” for transportation into the definition because the definition should also cover privately owned buses, such as those owned by community or religious organizations, that

that the exclusion for transit buses include a reference that motorcoaches are generally “over-the-road buses” and that transit buses are generally low-floor buses.<sup>6</sup> The definition should additionally exclude low-floor buses that are used exclusively within urban areas, such as intra-city double-decker sightseeing buses.

The concept of an “over the road” bus as being in contrast to a public transit bus is incorporated directly into SAFETEA-LU. SAFETEA-LU contains a temporary exemption from the highway axle weight requirements for “over-the-road buses” and separately for “public transit vehicles.” See 23 U.S.C. § 127, which specifies a temporary exemption for “any over-the-road bus (as defined in section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181).” The ADA, in turn, defines an “over-the-road” bus as “a bus characterized by an elevated passenger deck located over a baggage compartment.” See 42 U.S.C. § 12181(5). The ADA definition is consistent with the general physical distinction between low-floor buses -- typically used as transit buses -- and motorcoaches -- typically used for “intercity, tour and commuter bus service.”

In addition, ABA recognizes that there are also low-floor sightseeing buses operated exclusively within urban areas and in a manner similar to government operated transit buses. The PRIA refers to the exclusion for transit buses as one applicable to transit buses “designed for an ‘urban area’ as defined in 49 U.S.C. Section 5301(16).” That provision defines “urban area” as “an area that includes a municipality or other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.” 49 U.S.C. § 5302(16). Because intra-city touring buses operate similarly at low speeds and with frequent stops as public transit buses, it would be consistent with the agency’s intent to include them within the transit bus exclusion.

Similarly, since the term “charter” is defined separately from “tour” in FTA regulations, it would be appropriate to include “charter” within the description of motorcoach use. See 49 U.S.C. § 5302. “Charter” service operates similarly to “tour” service.

Finally, motorcoaches tend to have a higher center of gravity than transit buses. The definition of motorcoach could benefit further through a reference to the center of gravity. ABA will work with NHTSA towards defining such a reference if the agency agrees.

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transport people in the same manner as commercial operators. Significantly, however, the authority to impose a retrofit requirement applies only to “commercial motor vehicles,” Pub. Law 106-159, § 113(f), and would not apply to vehicles that are privately owned and which do not offer transportation “for compensation.”

<sup>6</sup> The proposed modifications are each in line with NHTSA’s stated intent to cover buses serving longer-distance travel. Since, as the agency sets forth, the definition of “over-the-road bus” does not, standing alone, cover all of the buses intended to be covered, ABA’s recommendation is not to use the reference in the basic “motorcoach” definition, but rather to use the reference to help distinguish between “intercity, tour and commuter bus service,” and “transit” buses.

ABA's recommendations would modify the definition of "motorcoach" as follows:

"Motorcoach" means "a bus with a gross vehicle weight rating (GVWR) of 11,793 kg (26,000 lbs) or greater, 16 or more designated seating positions (including the driver), and at least 2 rows of passenger seats, rearward of the driver's seating positions, that are forward facing or can convert to forward facing without the use of tools. Motorcoach includes buses as defined by 42 U.S.C. § 12181(5) sold for intercity, tour, charter and commuter bus service, but does not include a school bus, or a low-floor urban transit bus sold for operation as a common carrier in urban transportation as a common carrier along a fixed route with frequent stops or a bus sold for urban sightseeing transportation with frequent stops.

### **III. The Proposed Performance Requirements**

The proposed performance requirements accurately reflect the scientific results of the agency's motorcoach crash and sled testing. The agency's assessment that subjecting passenger seating to FMVSS 210 reasonably matches the forces and loads in NHTSA's test results.

The agency seeks comments on whether to consider the European standards, and in particular ECE R. 14, in lieu of FMVSS 210, while nonetheless raising concerns about whether the European testing would create sufficient rearward loading as compared to the strength requirements of FMVSS 210. ECE R. 14 and FMVSS 210 present different loading conditions with regard to the velocity of load increase and the time the vehicle has to sustain the maximum load. However, when ECE R. 14 is combined with ECE R. 80, both FMVSS 210 and the European standards present stringent and beneficial occupant protection. FMVSS 210 allows a loading ramp up to 30 seconds and then the vehicle must sustain the load for 10 seconds. ECE R. 14, on the other hand, requires a faster loading ramp – the load must be increased as fast as possible – and the vehicle must sustain the load for at least 0.2 seconds.<sup>7</sup> The European standards also provide alternative energy absorption benefits for occupants who remain unbelted.

ECE R. 14 and R. 80 have been successfully in place and have proven practicable in manufacture, commercialization and consumer acceptance. The European experience has not given rise to any concerns over occupant protection. Both the European approach and the FMVSS approach appear to be sufficient to contain occupants in the event of a catastrophic event, to maintain the structural integrity of the vehicle and not to cause injury to occupants in the event of less severe collisions. Especially in light of the relatively small volumes and the global nature of the industry, NHTSA should strongly consider an approach of offering compliance with the three point belt requirements of ECE R. 14 and R. 80 as a compliance and certification option.

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<sup>7</sup> See Klaus Hessenberger, "Strength Analysis of Seat Belt Anchorage According to ECE R14 and FMVSS," 4<sup>th</sup> European LS-DYNA Users Conference, Crash/Automotive Applications II.

#### **IV. Retrofit Considerations**

While not proposed in the current NPRM, the agency has raised the question of retrofit. The retroactive application of performance based vehicle requirements cannot, standing alone, resolve concerns over in-use vehicles. Addressing those concerns would instead require a comprehensive program including federal inspection and certification of the vehicles. Such a program would also need to provide financial assistance for small business carriers who would otherwise be forced out of business. For those operators not forced out of business, many would be required to invest in rebuilding their existing vehicles, thereby delaying their ability to purchase new motorcoaches.

In addition, the mere installation of seat belts without ensuring that the vehicle structure and the seating system will withstand requisite crash forces and restrain occupants could in fact give rise to adverse safety consequences by failing to hold occupants in place during a crash. A simple mandate to install 2 or 3 point seat belts meeting FMVSS 209 without the specification of a performance requirement would fail to meet the need for motor vehicles safety, as required by the Vehicle Safety Act, 49 U.S.C. § 30111(a). Consideration of a retrofit requirement therefore includes not only the installation of the seat belts, but also structural reinforcement necessary to ensure that in-use motorcoaches are made to comply with a vehicle performance-based requirement.<sup>8</sup>

In more recent years numerous motorcoaches have been sold equipped with seat belts – and, in many cases, seat belts integrated into vehicle designs built to meet the ECE requirements. Consistent with the harmonization principles stated above, any retrofit consideration should be focused on vehicles not originally sold with seat belts. Vehicles originally sold with seat belts supply the primary protection giving rise to this rulemaking, containing occupants, and should not be forced into renewed construction to meet different performance requirements than those to which they were originally built.

##### **A. NHTSA Cannot Impose Retroactive, Vehicle-Based Performance Standards.**

The Motor Carrier Safety Improvement Act of 1999 grants the Secretary the authority “to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial

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<sup>8</sup> In previous comments filed to the docket, ABA and others endorsed the concept of voluntary retrofitting of existing buses that would allow operators with buses that are seat-belt ready to retrofit their vehicles with seat belts built to fit those motorcoaches. ABA noted the same difficulties with applying a retrofit standard to individual motorcoaches and that the cost of a retrofit standard could drive many operators out of business. As ABA noted, the voluntary retrofit of existing buses, possibly supported by a voluntary retrofit standard permitting use of either 2 or 3 point belts, would allow operators capable of doing so (including larger operators) to apply a retrofit in accordance with a government sponsored specification while not imposing an economically prohibitive and technically infeasible requirement on smaller businesses.

manufacture.”<sup>9</sup> See Pub. L. 106-159, Sec. 101(f). The statute confers authority “to promulgate safety standards for commercial motor vehicles,” and also as confers authority “to promulgate safety standards for . . . equipment subsequent to initial manufacture.” As described below, this construction of the statute is fully consistent with the intent evident throughout the legislative history to ensure that new equipment standards are made applicable to in-use commercial motor vehicles.<sup>10</sup>

The legislative history makes clear that the phrase “subsequent to initial manufacture” was intended to apply to its immediate antecedent and to modify the word “equipment.” While the term “equipment” can be broadly construed, it cannot apply to standards for commercial motor vehicles requiring substantial vehicle restructuring and requiring an individual, case-by-case determination with regard to the actions necessary to reach compliance. Such a standard would be neither “practicable” nor “stated in objective terms.”<sup>11</sup>

The authority to promulgate equipment standards for motor carriers dates back to the Motor Carrier Act, 1935 (PL 74-255, 49 Stat. 543), which amended the Interstate Commerce Act by adding a new Part II. Section 204(a)(3) of that Act lists as one of the duties of the Interstate Commerce Commission the following:

To establish for private carriers of property by motor vehicle, if need therefore is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and *standards of equipment*. In the event such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of section 204(d) and (e); 205; 220; 221; 222(a), (b), (d), (f), and (g); and 224.

(emphasis added). This authority was then transferred to the Federal Highway Administrator

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<sup>9</sup> The Secretary delegated this responsibility to either FMCSA or to NHTSA, depending on whether the retrofit requirement is based upon or similar to a FMVSS issued by NHTSA. See 49 CFR part 1.73(g)(FMCSA) and 1.50(n)(NHTSA).

<sup>10</sup> NHTSA appears instead to be reading the provision as conferring the authority “to promulgate safety standards for commercial motor vehicles . . . subsequent to initial manufacture.” While this reading would appear at first blush to allow the retroactive application of any safety standard, even were the agency to adopt this interpretation, a standard premised on a FMVSS would still need to be “practicable” and “stated in objective terms” pursuant to 49 U.S.C. § 30111.

<sup>11</sup> The Federal Motor Vehicle Safety Act requires that any motor vehicle or motor vehicle equipment introduced into interstate commerce meet all applicable requirements effective as of the date the vehicle or equipment was manufactured. 49 U.S.C. § 30112(a). The Motor Carrier Safety Act of 1999, when applied properly, modifies that provision only as applied to the type of in-use equipment previously regulated by the Office of Motor Carriers and which can be regulated and enforced through roadside inspections of the FMCSRs. These new FMCSR requirements, when based on a FMVSS, remain subject to the requirements that they be “practicable, meet the need for motor vehicle safety, and be stated in objective terms.” 49 U.S.C. § 30111(a).

within the Department of Transportation under P.L. 89-670, 80 Stat. 931, the Department of Transportation Act, which was enacted in 1966. (Section 6(e)(6)(C) and section 6(f)(3)(B)).

That the retrofit provision was intended to transfer to NHTSA the pre-existing authority of the OMC to promulgate in-use equipment standards, rather than to create wholly new authority to promulgate retroactive manufacturing standards, is evident from the legislative history.<sup>12</sup> Advocates of the retrofit provision repeatedly made reference to the provision as one necessary to ensure that the requirements for in-use equipment be consistent with the requirements applicable to the same equipment in new motor vehicles as required by NHTSA:

- Kenneth Mead, DOT Inspector General: “Currently the National Highway Traffic Safety Administration (NHTSA) is responsible for establishing safety standards for the manufacture of commercial motor vehicles. FHWA is responsible for establishing standards for in-service commercial motor vehicles. But this split responsibility can result in inconsistent rulemaking requirements. As an example, Congress directed the Secretary to adopt methods for making commercial motor vehicles more visible to motorists. NHTSA issued its rulemaking for safety standards of new equipment on December 10, 1992. FHWA’s rulemaking for in-service equipment was completed in March 1999. *S. 1501 provides for NHTSA to have the responsibility for rulemaking for both new and in-service equipment.*”
- Joan Claybrook, Board Member of Advocates for Highway and Auto Safety. Oral testimony: “With regard to the legislation, we very much support the transfer of the in-service vehicle rulemaking to the National Highway Traffic Safety Administration. Generally, this rulemaking done by OMC is to make sure that the rules issued by the National Highway Traffic Safety Administration for new trucks are kept up to date on the trucks on the road. And so it is very much an extension of what NHTSA already does. Rarely does the Office of Motor Carriers require a retrofit of old trucks that have never had these *devices* on them.” Written comments: “Let me first state that the best fundamental reform of motor carrier safety is to transfer all of the safety regulation and enforcement responsibilities currently housed in FHWA to NHTSA. . . . At the top of the list is the duty for issuing regulations addressing the motor vehicle standards, maintenance, and safety performance of *key components and equipment* of commercial motor vehicles already in service.”
- Jennifer Mooney Tierney, Citizens for Reliable and Safe Highways: “S. 1501 transfers additional regulatory authority from the Office of Motor Carriers (OMC) to the National Highway Traffic Safety Administration (NHTSA).”

Critical to understanding the scope of this authority is acknowledging that NHTSA both promulgates manufacturing standards, compliance with which is dependent on vehicle design

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<sup>12</sup> Two NHTSA rulemakings were of particular concern. First was OMC’s delay in applying NHTSA’s regulation on retro-reflective tape to commercial motor vehicles in the field. Second was the need to apply NHTSA’s regulation on under-ride guards. Both regulations relate to the type of in-use equipment discussed throughout the legislative history that can be applied to field vehicles without the need for substantial re-manufacturing.

and built into vehicle structure (e.g. FMVSS 208 and 216), and promulgates standards applicable to components and equipment (e.g., FMVSS 209 and 124). Long before NHTSA came into existence, with the 1935 statute, the federal government promulgated equipment standards to ensure the continued maintenance and safe operation of commercial motor vehicles. That authority extended to requiring that when new equipment-based standards were issued, or standards applicable to particular components (rather than to the vehicle as a whole), those new requirements should also apply to vehicles in-use.

The transfer of this authority to NHTSA was deemed appropriate because NHTSA generally promulgated the underlying equipment standard for new vehicles and it was thought that NHTSA could simultaneously make such standards, when appropriate, applicable to in-use vehicles as well. The Secretary, therefore, delegated to NHTSA the authority under the retrofit provision when a new equipment standard was premised on an underlying FMVSS, and to FMCSA when the standard was not the result of a FMVSS.

While many of the Federal Motor Carrier Safety Regulations (FMCSRs) incorporate by reference the manufacturing-based FMVSS crashworthiness standards, enforcement of those particular FMCSRs can be achieved through ensuring that the vehicle contains the requisite certification that it complied with all applicable FMVSS applicable at the time it was made. Many of the FMCSRs, however, address requirements applicable to the continued maintenance and operation of the vehicles, such as those applicable to controls and displays, rearview mirrors and under-ride guards. Shortcomings with regard to the operation of these types of components and systems can be identified and remedied through the replacement or upgrading of readily attachable or new equipment. As evidenced in the legislative history by the references to in-use equipment and the OMC standards, it was these types of equipment standards that Congress intended be applied through the retrofit provision to commercial vehicles in the field, not the underlying performance-based manufacturing standards.

**B. Certification Responsibility Applies Only To Manufacturers and Distributors.**

The Vehicle Safety Act implicitly recognizes that many FMVSS, especially those engaging the vehicle structure, must be prospectively applied. The certification requirement attaches to motor vehicles or equipment produced as of the effective date of an applicable FMVSS. 49 U.S.C. § 30112, 30115.

While NHTSA can, consistent with the retrofit provision of the Motor Carrier Safety Act of 1999, make new FMVSS requirements applicable to newly manufactured equipment which can be readily attached or installed on in-use vehicles, and FMCSA can make that equipment applicable to commercial motor vehicles through the FMCSRs, there is no legal provision which allows new standards imposing a performance test on the motor vehicles themselves to be applied to in-use vehicles on the road. Indeed, the certification requirements of the Federal Motor Vehicle Safety Act apply only to “a manufacturer or distributor of a motor vehicle or motor vehicle

equipment,” 49 U.S.C. § 30115, which is a person “(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale,” 49 U.S.C. § 30102(5).

The Federal Motor Vehicle Safety Act confers no authority to mandate that motor carriers, who are not “manufacturers or distributors,” certify that the motor vehicles in their fleet meet new FMVSS requirements taking effect after the date upon which their vehicles were manufactured. As noted above, the retrofit provision instead simply allows NHTSA to mandate that new FMVSS requirements be made applicable to new commercial motor vehicle equipment when it is manufactured and for FMCSA to require that new equipment be installed on in-use vehicles. While the authority could potentially extend to a requirement to mandate installation of FMVSS 209 compliant seat belts, it cannot extend to mandating that, when installed, the vehicle meet certain performance-based criteria.

This limitation on certification responsibility does not impede a retrofit requirement applicable to in-use equipment, as originally contemplated by the Motor Carrier Safety Improvement Act. Equipment manufacturers are required to certify that their products produced as of the effective date of a new FMVSS requirement comply with that requirement. Motor carriers can be required through a new FMCSR to attach that equipment to their buses and can rely on the equipment manufacturer’s certification to ensure compliance with their requirement.

This system, however, does not work applied to a retroactive, vehicle-based performance requirement. While motor carriers can purchase FMVSS 209 compliant seat belts, the certification provided by the equipment manufacturer does not extend to a guaranty that, when those seat belts are installed, the vehicle will meet FMVSS 208 and 210. There is no manufacturer to provide the FMVSS certification and to ensure compliance with the mandate.

**C. Applying a Performance-Based Requirement to In-Use Motorcoaches is Both Technically and Economically Impracticable.**

Retrofitting preexisting motorcoaches with seat belts and ensuring that, as installed, the structural integrity of the vehicle will be sufficient to withstand specified forces or loads will require detailed knowledge of the original vehicle design, as well as analysis of the vehicle’s in-use condition and technical expertise on how to upgrade the vehicle structure. Although the fundamental structure of a motorcoach as a large motor vehicle with a passenger compartment over a luggage area has remained consistent throughout the years, the materials, dimensions, structural underpinnings and features have evolved. Differing design and construction elements may have been incorporated depending on the original intended use of the motorcoach, the regulations in place at the time of manufacture and the market for which the basic vehicle architecture was initially designed.

No single private source can determine the extent to which a particular motorcoach may require structural upgrades. Motorcoach operators will be largely or entirely dependent on motorcoach manufacturers to supply information relating to initial manufacture. But, while the manufacturer

may be able to supply retrofit kits to enable attachment of seat belts to the coach, because the manufacturer cannot know the use, maintenance or wear history of the vehicle, no manufacturer can warrant that the vehicle will be capable of meeting a particular performance requirement once a seat belt retrofit kit is applied.<sup>13</sup> Indeed, the only way to ensure consistency in the evaluation and upgrading of in-use motorcoaches to a retroactive manufacturing standard is to establish federal specifications and a federal inspection and evaluation program.

Nor do small business operators have the ability to test their vehicles once retrofitted to ensure compliance with a performance requirement.<sup>14</sup> Small business operators lack the testing facilities to conduct testing and cannot remove their vehicles from service and send them cross-country to a contracting facility for evaluation and testing. Only through a testing and certification program sponsored and implemented by the federal government would small business operators be able to assure post-repair compliance with a retroactive vehicle-based performance requirement.

The technical challenges to imposing a performance based retrofit standard highlight the potential economic challenges as well. The vast majority of motorcoach operators, almost 80%, are small businesses with less than 10 employees and operating fewer than 7 motorcoaches. Approximately 1,600 new motorcoaches are currently sold by motorcoach manufacturers to operators in the United States each year. Purchasing a new motorcoach represents substantial capital investment for motorcoach operators of \$450,000-\$500,000.

If faced with a performance-based retrofit requirement, smaller motorcoach operators will face the need either to (i) invest in new motorcoaches if they have the resources to do so, knowing however that additional new safety requirements are likely to be imposed under the continuing aspects of DOT's safety plan; (ii) invest in modifications to their existing motorcoaches, thereby diverting their financial resources and delaying their ability to purchase new motorcoaches; or (iii) place their older vehicles out of service, reduce the services provided and, in doing so, reduce their revenues and again delay investment in new motorcoaches. Given the technical challenges involved in ensuring compliance with performance-based requirements, most smaller operators would face either purchasing new vehicles, or eliminating or reducing services.<sup>15</sup>

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<sup>13</sup> Significantly, since the vehicles were not originally built towards the new requirements, even if manufacturers can supply retrofit kits to attach seat belts, they have no test data upon which to base a warranty or certification that the vehicle would have met the performance requirements when initially manufactured.

<sup>14</sup> This fundamental problem does not hinder the application of readily attachable equipment to existing vehicles because those components themselves are certified by the equipment manufacturer to the new requirements and then sold and attached to vehicles. The purchaser of the equipment can rely on the equipment manufacturer's certification and the vehicle's original certification to ensure that the vehicle meets all necessary equipment based requirements. For seat belts, in contrast, the certification must include the belt, seat and anchorage as an integrated unit.

<sup>15</sup> An additional consideration is the weight limits imposed on commercial vehicles on the public highways. In

Indeed, the difficulties faced by small business operators are well documented in the comments of Discovery Charters, a motorcoach operator in Orlando Florida and the President of the Florida Motorcoach Association. Prior to the economic downturn, Discovery Charters was a growing business investing in new motorcoaches. Due to the recession, the company was forced to sell two of its buses and to work out payment arrangements with its leasing company to keep its remaining motorcoaches in operation. Discovery Charters notes that retrofitting its coaches to meet new performance standards “would require the complete replacement of the seats on any coach and the possible replacement and reinforcement of the flooring. The cost estimates range from a low of \$39,000 to a high of around \$65,000 per coach. Where would these funds come from? Without outright grants there is no possible way for companies in our position to get the financing to make these upgrades. In short, the enactment of this regulation will force many small charter companies out of business.” See also comment of Doug Anderson who notes that retrofitting the 43 buses in his fleet would cost \$2.58 million, exceeding the gross profits of his business over the past 7 years combined.

The adverse impact on small businesses such as Discovery Charters and Anderson Coach & Travel, as well as regional economies, is potentially devastating. The motorcoach industry employed 118,000 in 2007. While larger carriers employ more, even the smallest operators employ on average 11 people. According to statistics from “The Economic Impacts and Social Benefits of the U.S. Motorcoach Industry,” analyzed by Nathan Associates, Inc. (2008), which studied the value of goods and services sold directly to visitors, motorcoach industry services purchased by visitors generated \$55 billion in sales and supported 792,700 jobs.<sup>16</sup> Indeed, Motorcoach vitality is especially important in regions that have been abandoned or seen substantial reductions in service by other economic modes, especially regional air transport. Increasingly, motorcoach operations have stepped in to service transportation needs no longer

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recognition of the fact that motorcoaches use the least amount of energy and produce the lowest carbon dioxide emissions per passenger mile of any transportation mode, motorcoaches currently enjoy a limited temporary exemption from highway axle weight limits pursuant to 23 USC § 127. However, that exemption will be subject to further renewal during the upcoming transportation reauthorization. Without a continued exemption, additional weight added through modification of the vehicle structure to support the installation of seat belts may preclude in-use motorcoaches from being able to stay within highway axle weight limits. While new motorcoaches may incorporate lightweight materials and redesigns to allow them to meet upcoming fuel economy and new safety requirements, in-use vehicles that are re-manufactured with additional weight to meet new safety requirements may not be able to meet the highway axle weight requirements should they become applicable. Allowing investment to be put towards new motorcoaches rather than the re-manufacturing of existing motorcoaches further enhances the ability of the motorcoach fleet as a whole to stay within or close to the axle weight limits defined by the Federal Highway Administration.

<sup>16</sup> Several industry researchers have collaborated in producing a number of economic impact studies looking at the local and regional impacts of motorcoach travel in recent years. For example, in West Virginia, \$40.3 million of spending, 1300 jobs and \$4 million in state and local tax revenues were attributable to motorcoach charter and tour visitors in 2006. In Southwestern Pennsylvania, \$39.2 million of spending, 1030 jobs and \$4.2 million in taxes were due to motorcoach carrier and tour visitors in 2006.

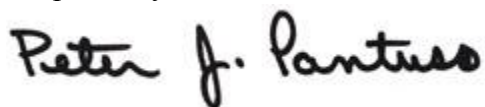
being met by other modes. In the absence of motorcoach service, these areas will be forced to individual light duty vehicle based transportation, which poses higher exposure to crashes and more likelihood of injury and death.

In sum, the statute does not support the retroactive application of performance-based vehicle standards. Nor does the Vehicle Safety Act impose a responsibility on motor carriers to certify compliance with the FMVSS. Moreover, while ABA understands the concerns over the in-use motorcoach fleet, neither a retrofit seat belt regulation nor a retroactive performance-based standard can resolve these concerns. A simple attachment of seat belts pursuant to a retrofit standard cannot guaranty that the vehicle will in fact contain and protect passengers in the event of a catastrophic crash and/or rollover. And combining a retrofit seat belt requirement with a vehicle performance requirement retroactively applied to vehicles that have been subject to substantial use and wear is neither technically nor economically practicable.

An effective federal program to upgrade in-use motorcoaches would require a federally sponsored and implemented inspection (to evaluate each vehicle's capacity for being upgraded), federal specifications, federal funding for operators designated as small and/or disadvantaged businesses to either be used to upgrade their vehicles or applied to the purchase of a new motorcoach, and a federal testing and certification procedure to address the lack of such facilities in the field and the lack of any legal authority to impose certification responsibility on motorcoach operators.

ABA looks forward to continuing to work with the agency as NHTSA proceeds to a final rule and implements the remaining elements of the Motorcoach Safety Plan. While ABA cannot endorse a stand-alone regulation to mandate seat belt retrofits and retroactive performance requirements, ABA will work with the Administration and Congress to define the necessary elements of a comprehensive program involving in-use motorcoaches.

Respectfully Submitted,

A handwritten signature in black ink that reads "Peter J. Pantuso". The signature is written in a cursive, slightly slanted style.

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Attachments: Responses to NHTSA Questions on Retrofit