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April 1, 2024

VIA ELECTRONIC MAIL AND U.S. POSTAL SERVICE

Ms. Sophie Shulman
Deputy Administrator
National Highway Traffic Safety Administration
U.S. Department of Transportation
Washington, D.C. 20590

Re: Request for Renewal of Exemption from Three-Point Seat Belts at Side-Facing Seats on Entertainer Motorcoaches; EX 21-13

Dear Deputy Administrator Shulman:

This is a request by Ultra Coach, Inc. for renewal of a temporary exemption from the requirements in FMVSS No. 208 (S4.4.5.1.2(c)) for Type 2 seat belts at side-facing seating positions in “entertainer-type” motorcoaches as imposed in a final rule published by the National Highway Traffic Safety Administration (“NHTSA”) at 78 Fed. Reg. 70416 (November 25, 2013).

NHTSA granted the current two-year exemption at 87 Fed. Reg. 33299 (June 1, 2022). The current exemption is effective for petitioner’s motorcoaches manufactured through June 1, 2024.

All of the facts and arguments set out in the initial petition for exemption in this matter are still effective. *See* Docket NHTSA-2020-0075.

Petitioner. Ultra Coach, Inc. is a corporation located at 1015 NW 52nd Street, Fort Lauderdale, Florida 33309. It is organized under the laws of the State of Florida. Petitioner is a final-stage manufacturer of entertainer-type motorcoaches and is responsible to ensure that the completed coach meets the Federal Motor Vehicle Safety Standards. The company typically receives a bus shell from an original manufacturer and customizes the Over-the-Road Bus (“OTRB”) to meet the needs of entertainers, politicians, musicians, celebrities and other specialized customers who use motorcoaches as a necessity for their businesses.

The bus shell received from the original manufacturer generally contains the following components: exterior frame; driver’s seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signal lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

Petitioner then builds out the complete interior of the vehicle, including: roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, inverter and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

The Rulemaking. The Notice of Proposed Rulemaking on occupant crash protection leading to this requirement, 75 Fed. Reg. 50958 (August 18, 2010), proposed to apply the seat belt requirements to a “motorcoach” defined as a vehicle having at least two rows of passenger seats, rearward of the driver’s position, and forward facing (or can be converted to face forward without the use of tools). See 78 Fed. Reg. at 70427. This would have excluded from the requirements many entertainer-type buses, which generally have seating positions around the perimeter of the vehicle.

For side-facing seating positions, the NPRM provided manufacturers with the option of installing either a lap (Type 1) or a lap/shoulder (Type 2) belt. *Id.* at 70447. NHTSA stated this option was consistent with FMVSS No. 208 (S4.4.5.6), which allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. The agency proposed to permit lap belts in side-facing seats because it was “unaware of any demonstrable increase in associated risk.” *Id.* See also, the agency’s analysis and decision in granting this exemption: “NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risk of lap belts compared to lap and shoulder belts on side-facing seats. That is, the agency believed that lap belts were not less protective than lap and shoulder belts on side-facing seats.” 84 Fed. Reg. at 61968.

The proposed rule also noted that a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real world data, “it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.” *Id.* at note 106, citing http://ec.europa.eu/enterprise/automotive/projects/safety_considerations.pdf.

Several commenters to the proposed rule questioned the need for requiring either type of belt for side-facing seats, or recommended mandating belts only on forward-facing seats. In the final rule, NHTSA noted that these commenters believed that mixing forward-facing seating with rear-facing or side-facing seating “can result in unbelted passengers colliding with belted passengers during a crash.” *Id.* Additionally, comments from American Seating claimed that shoulder belts “may cause serious neck injuries when applied to side-facing passenger seating positions.” *Id.*

On July 6, 2012, however, the President signed into law the Motorcoach Enhanced Safety Act, Title II, Subtitle G of MAP-21, Pub. L. No. 112-141. Section 32703 of MAP-21 provided, “Not later than 1 year after the date of enactment, the Secretary shall prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.” The term “safety belts” means lap/shoulder belts (see section 32702(12) of the Act) and

“motorcoach” was defined to mean “over-the-road bus” (with certain vehicles excepted). Thus, the Motorcoach Enhanced Safety Act required over-the-road buses to have lap/shoulder belts at each designated seating position, which includes side-facing seats.

Because the statute extended the requirement for seat belts to all motorcoaches and at each designated seating position, the final rule dropped the proposed definition of motorcoach and “require[d] all designated seating positions on the over-the-road buses to have lap/shoulder belts regardless of the seating configuration of the bus or the vehicle GVWR.” 78 Fed. Reg. at 70420.

Basis for Renewal of the Exemption. Petitioner seeks renewal of this exemption because they are otherwise unable to sell a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of non-exempted motor vehicles. 49 C.F.R. §555.6(d). The only difference between the exempt vehicles and non-exempted vehicles is that the non-exempted vehicles have lap/shoulder belts at side-facing seating positions, while exempted vehicle would have lap belts at side-facing seating positions.

As stated in the notice granting this exemption, NHTSA “believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule.” 84 Fed. Reg. at 61968. The agency initially granted this exemption based on “the uncertainties about shoulder belts on side-facing seats, the few side-facing seats there are on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type . . .” *Id.*

These considerations and the conclusions drawn from them are still pertinent. First, as stated above, the agency did not even propose a requirement for lap/shoulder belts on side-facing seats for OTRBs until mandated to do so by statute. Further, Congress did not purposefully apply its statutory mandate for Type 2 belts to side-facing seats. There were no hearings, debate or consideration of the effect of the seat belt requirement on entertainer-type coaches. The legislative record shows no discussion of the application of seat belts to side-facing seats at all. This was not a considered, reasoned or intentional result; instead, Congress neglected to consider how its mandate would apply to entertainer coaches and required lap/shoulder belts on side-facing seats merely as a result of this oversight.

Second, NHTSA has not required lap/shoulder belts on side-facing seats vehicles other than OTRBs. See 49 C.F.R. § 571.208 (S4.4.5.1.2(a)(2)). In the 2013 final rule, the agency said, “There is not sufficient information that substantiates concerns about lap/shoulder belts on side-facing seats to a degree that would support prohibiting such belts. Yet, NHTSA acknowledges there have been concerns about the shoulder belt on side-facing seats, which it has weighed in past decisions not to require lap/shoulder belts on side-facing seats for any vehicle type of any weight.” 78 Fed. Reg. at 70448.

The agency noted that in its 2004 Anton’s Law final rule it specifically declined to require lap/shoulder belts on side-facing seats of light vehicles because NHTSA believed “the addition of a shoulder belt at this seat position is of limited value, given the paucity of data related to side facing seats.” *Id.*, n. 107, citing 59 Fed. Reg. 70907. The agency also declined

to prohibit lap/shoulder belts because NHTSA was “unaware of any demonstrable increase in associated risk.” *Id.* In the 2013 final rule, the agency said its view on this matter “has not changed,” and “[t]here is not enough information showing the effect, positive or negative, of the shoulder belt on side-facing seats.” *Id.*

Third, NHTSA has some concern that shoulder belts may cause serious neck injuries when applied to side-facing seats. The 2013 final rule states the agency is “aware of simulation data that are indicative of potential carotid artery injury when the neck is loaded by the shoulder belt.” *Id.*, and *n.* 108, citing Fildes, B., Diggs, K., “Occupant Protection in Far Side Crashes,” Monash University Accident Research Center, Report No. 294, April 2010, pg. 57.

In addition, NHTSA noted that the Australian Design Rule ADR 5/04, “Anchorages for Seatbelts” has specifically prohibited shoulder belts for side-facing seats since 1975. *Id.* This prohibition is now codified in ADR 5/05, 5.3, which states in part, “Side-facing seats must have anchorages for seatbelt assemblies that comply with the requirements for anchorages for seatbelt assemblies for forward-facing seats, except that upper torso anchorages for the seatbelt assemblies must not be provided . . .” (emphasis supplied).

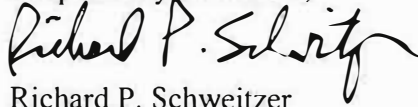
Fourth, fewer than 100 entertainer-type motorcoaches with side-facing seats are manufactured and enter the U.S. market each year. In the 2013 final rule, NHTSA recognized that there are very few entertainer-type OTRBs with side-facing seats in the market, “so the real-world implications of this issued might be narrow.” 78 Fed. Reg. at 70448. As one of the requirements for a petition claiming the petitioner is otherwise unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a non-exempted vehicle is a statement that no more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted, 49 C.F.R. § 555.6(d)(4), applicant are well below the quantity risk threshold. As noted above, Hemphill has completed and placed into service only seven vehicles with Type 1 seat belts at side-facing seats in almost two years under this exemption.

Finally, renewal of the exemption is in the public interest because it would allow petitioner the option to continue providing seat belts at side-facing seating positions that are equivalent to or exceed the safety performance of Type 2 belts under requirements in FMVSS No. 208 (S4.4.5.1.2(c)). *See* 87 Fed. Reg. at 33301: “NHTSA believes that granting the petitioners’ exemption request is consistent with the public interest. The exemption will enable the applicant to sell buses whose overall level of safety is at least equal to that of non-exempted vehicles.”

Additionally, in granting the exemption to petitioner and 12 other final stage manufacturers, the agency said, “Further, we believe that the petitioners are small entities. Thus, this temporary exemption not only permits the manufacturer to sell vehicles whose overall level of safety is at least equal to that of non-exempted vehicles, but provides relief to a small business by, as the petitioner notes, providing ‘an objective standard that is easy for manufacturers to understand and meet.’” *Id.*

Conclusion. For the reasons set out herein, petitioner requests renewal of its temporary exemption for an additional period of two years, subject to further renewal, from the requirement in FMVSS 208 (S4.4.5.1.2(c)) for Type 2 belts at side-facing seats in over-the-road buses. As the agency apparently still has no research, testing or analysis underway to justify the use of Type 2 belts in side-facing seats in over-the-road buses, petitioner expects it will seek to further renew this exemption if granted at the end of the exemption period.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard P. Schweitzer". The signature is fluid and cursive, with the first name "Richard" and last name "Schweitzer" being the most prominent parts.

Richard P. Schweitzer
Counsel for Petitioner