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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0093; Notice 1]

Gillig, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Gillig, LLC, (Gillig) has determined that certain model year (MY) 1998-2022 Gillig Low Floor buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. Gillig filed a noncompliance report dated July 6, 2022, and later amended the report on July 22, 2022. Gillig subsequently petitioned NHTSA (the "Agency") on July 21, 2022, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This document announces receipt of Gillig's petition.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.

- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at https://www.regulations.gov/. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at https://www.regulations.gov by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Jack Chern, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-0661.

SUPPLEMENTARY INFORMATION:

I. Overview: Gillig determined that certain MY 1998-2022 Gillig Low Floor buses do not fully comply with paragraph S6[1] of FMVSS No. 205, *Glazing Materials*, and ANSI/SAE Z26.1- l996, as referenced by FMVSS No. 205 (49 CFR 571.205).

Gillig filed a noncompliance report dated July 6, 2022, and later amended the report on July 22, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Gillig petitioned NHTSA on July, 21, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that these noncompliances are inconsequential as they relate to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Gillig's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Buses Involved: Gillig stated that an unknown number of MY 1998-2022 Gillig Low Floor buses, manufactured between May 28, 1998, and May 23, 2022, are potentially involved.

III. Noncompliance: Gillig explains that the noncompliance is that subject buses may be equipped with a polycarbonate barrier adjacent to the driver's designated seating position that does not meet the performance requirements to be certified as Item 4 glazing. Specifically, the interior partition installed in the subject buses do not meet the requirements of the abrasion, chemical resistance, and weathering tests. Within the population affected by this noncompliance, there are certain partitions that are also missing the required glazing certification marking required by Section 6 of FMVSS No. 205. In a separate vehicle population, Gillig explains that "modesty panels" were installed that are also missing the required glazing

[1] Gillig filed a Part 573 noncompliance report dated July 6, 2022, and later amended the report on July 22, 2022, indicating that it has violated the marking requirements as specified in S6 of FMVSS No. 205. However, in its July 21, 2022, petition to NHTSA for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety, Gillig stated that the noncompliance was with the Section 5.1.3 of FMVSS No. 205. The Agency would like to correct Gillig's mistake because it was, in fact, a violation of Section 6 of FMVSS No. 205, as stated in its original Part 573 report.

certification marking. The modesty panels are polycarbonate barriers installed in certain transit buses that are located in the passenger compartment of the bus.

IV. Rule Requirements: S6 of FMVSS No. 205 and ANSI/SAE Z26.1- l996, as referenced by FMVSS No. 205, include the requirements relevant to this petition.

V. Summary of Gillig's Petition: The following views and arguments presented in this section, "V. Summary of Gillig's Petition," are the views and arguments provided by Gillig. They have not been evaluated by the Agency and do not reflect the views of the Agency. Gillig describes the subject noncompliances and contends that the noncompliances are inconsequential as they relate to motor vehicle safety.

1. Glazing material noncompliance

Gillig believes that the noncompliance relating to the partitions is inconsequential because the subject partitions are not exposed to "elements or conditions that would affect the stability and robustness of the partition due to weathering, abrasion or chemical degradation." Therefore, Gillig contends that the performance requirements to certify Item 4 glazing "are not appropriate or necessary to maintain the safe performance of the partitions as installed in Gillig's transit bus applications."

Gillig states its belief that two of the functional purposes of the interior partitions installed in the subject buses are to create a "hygiene barrier" between the driver of the vehicles and the passengers that minimizes the driver's risk of exposure to airborne viruses and to protect the driver from passengers that may pose a security risk.

Gillig also believes that the overall purpose of the abrasion, chemical resistance, and weathering tests "is to ensure that driver visibility is adequately maintained through the glazing and that the Item 4 glazing material can withstand long term exposure to simulated weathering conditions, abrasion due to contact friction and resistance to certain chemicals that are likely to be used for cleaning purposes and that could lead to degradation of the glazing surface."

Gillig refers to an August 2020 interpretation by NHTSA, in which it says the Agency "took the position that rigid plexiglass installed to the right of the bus driver is installed in an area that is requisite for driving visibility and that NHTSA would consider such a barrier to be an 'interior partition.'"[2] Gillig lists the types of glazing that are allowed to be used for "an interior partition installed in an area requisite for driving visibility," which includes Item 4 glazing. Gillig says that while Item 4 glazing is allowed in this application, it is "typically used for glazing on or facing the exterior of the vehicle," and would therefore be exposed to weather and other elements.

However, Gillig states that because the subject partitions are installed inside of the vehicle compartment, they would not be exposed to such elements that the abrasion, chemical resistance, and weathering test requirements are intended to replicate. Thus, Gillig believes that those performance requirements are "not appropriate for generic partitions installed inside the vehicle compartment."

According to Gillig, the abrasion, chemical resistance, and weathering performance requirements "were intended for glazing used as windows, doors and other glazing that typically are or may be installed facing and exposed to the exterior of the vehicles." Therefore, Gillig believes that the application of these performance requirements "may be appropriate for exterior-mounted devices but is overinclusive and unnecessary for interior partitions like the Gillig partitions."

A. Abrasion Test

According to Gillig, "the risk of exposure to actual abrasion conditions in real-world operation similar to those specified by the standard is extremely low."

Gillig says that in a Notice of Proposed Rulemaking[3] the Agency "acknowledged that internal glazing requires significantly less cleaning compared to glazing mounted

[2] *See* Letter to Collingwood, August 20, 2020, 571.205 Plexiglass Barriers (002) | NHTSA.
[3] 77 FR 37477, June 21, 2012.

facing the exterior of the vehicle, which needs frequent cleaning to remove dirt and grime due to exposure to external elements." Gillig states that the Agency also recognized that different performance requirements for glass and glass faced plastic are based on the differing locations on the vehicle in which each type of glazing is installed. While Gillig acknowledges that an internal partition may be exposed to abrasion when passengers are "leaning and rubbing against the glazing surface," Gillig explains that the partition installed in the subject buses "is situated in an area of the passenger compartment where no standees are allowed and, therefore, this risk is considerably reduced."

B. Chemical Resistance Test

Gillig provides the ANSI Standard that states the purpose of the chemical resistance test:

"The purpose of the test is to determine whether non-stressed transparent plastic or glass-plastic glazing material have certain minimum resistance to the following chemicals which are likely to be used for cleaning purposes in motor vehicle service:

(1) One percent solution of nonabrasive soap in deionized water

(2) Kerosene No. K-1 or K-2

(3) Undiluted denatured alcohol (Formula SD No. 30)

(4) Gasoline

(5) An aqueous solution of isopropanol and glycol ether solvents in concentration no greater than 10% or less than 5% by weight each and ammonium hydroxide no greater than 5% or less than 1 % by weight each, simulating typical commercial windshield cleaner."

Gillig explains that the partitions installed in the subject buses were found to be noncompliant with the performance requirements pertaining to the gasoline immersion. Gillig says that the gasoline exposure test is "focused on extended exposure to gasoline where the glazing specimen is immersed in the substance" which Gillig believes is

unlikely to occur in real-world use. Gillig contends that in the event gasoline were to make contact with the partition, "it would not occur at a rate or level that is so frequent that it would have any impact on the performance of the partition." Furthermore, Gillig says it is not aware of any claims, information, or other data that suggests the partitions installed in the subject buses would be exposed to gasoline.

Gillig adds that the subject buses equipped with the noncompliant interior partitions are not gasoline powered, therefore the potential for the partitions to be exposed to gasoline is lowered. Furthermore, due to the location of the partition inside the subject buses adjacent to the driver's seat, Gillig contends that the probability that the partitions would be exposed to gasoline is "extremely low and most likely to be nonexistent."

C. Weathering Test

Gillig states that the purpose of the weathering test is "to determine whether the plastic or glass plastic material glazing will sufficiently withstand exposure to simulated weathering conditions over an extended period of time." To conduct this test, Gillig explains that a specimen is first exposed to a simulated source of radiation, after which the specimen's luminous transmittance is required to not be reduced by more than 5 percent, however, any increase in regular luminous transmittance is acceptable. The specimen may develop some discoloration but other defects should not develop. Additionally, the irradiated specimen shall develop no bubbles or other noticeable decomposition.

When testing the partitions installed in the subject buses, Gillig found that "segments of the coating peeled up and flaked off during the exposure and did not pass the abrasion test that followed the weathering procedure." However, Gillig believes that this weathering test does not reflect real-world use of the subject partition. Gillig explains that the light sources used to conduct the weathering test "simulate solar

maximum conditions, meaning global, noon sunlight at normal incidence on the summer solstice." Gillig says this is "the most severe condition met in outdoor service."

Gillig says that any type of glass that surrounds a partition located in the passenger compartment of a vehicle would act as a sunlight filter and would significantly reduce the energy of the damaging wavelengths. Thus, Gillig believes, the material deterioration due to UV weathering of subject partitions would be greatly reduced. Gillig further contends that "since automotive glass is thicker than common window glass, it provides an even superior filtering efficiency compared to common glass with the potential to filter out almost all of the damaging UV wavelengths."

2. Glazing marking noncompliance

In the same population of buses affected by the glazing material noncompliance, Gillig determined that certain buses are not marked with the "DOT AS4" glazing marking required by FMVSS No. 205 to indicate that it is certified as Item 4 glazing. Gillig also determined that a separate population of buses are equipped with modesty panels in the passenger compartment that are not marked with the required "AS4" glazing marking. Gillig says the modesty panel is not used for driver visibility but is used to "enhance privacy for passengers."

Gillig says, "The purpose of the glazing marking is so that appropriate equivalent glazing can be used in the event that the original glazing needs to be replaced." Gillig states its belief that the absence of the required glazing marking does not create an increased risk to motor vehicle safety because the subject buses are operated by personnel that are trained and knowledgeable of the appropriate Item of glazing that is allowed to be used in the interior of the bus. Despite the lack of the marking, Gillig says that the trained maintenance personnel would ensure that the subject glazing is replaced by the appropriate glazing. Furthermore, Gillig says that replacement parts need to be specifically ordered for the vehicle using a unique part number.

Gillig states production has been corrected and any of the subject glazing still in its possession have been removed from future service. Gillig says that the modesty panels meet all

other FMVSS No. 205 labeling and performance requirements and the interior partitions "meet all of the performance requirements that are necessary for the real-world use" of the subject partitions.

Gillig claims that the Agency has granted prior petitions in which the glazing was missing the required marking, such as the 2016 granting of a petition submitted by Supreme Corporation.[4]

Gillig concludes its petition by stating its belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety and its petition to be exempted from providing notification of the noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Gillig no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicles distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Gillig notified them that the subject noncompliances existed.

(**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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[4] *See* e.g., Grant of Petition of Supreme Corporation, 81 FR 72850, October 21, 2016.