



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0109 and NHTSA-2018-0074; Notice 2]

Consolidated Glass & Mirror, LLC, Denial of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petitions.

SUMMARY: Consolidated Glass & Mirror, LLC (CGM), a subsidiary of Guardian Industries Corporation (Guardian), has determined that certain laminated glass parts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. CGM filed two separate noncompliance reports dated December 14, 2018, and April 15, 2020, and petitioned NHTSA on December 20, 2018 and May 23, 2018, respectively, for decisions that the subject noncompliances are inconsequential as it relates to motor vehicle safety. This document announces the denial of the petitions.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366-0661, Jack.Chern@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

CGM determined that certain laminated glass parts do not fully comply with paragraph S6 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205). On May 23, 2018, CGM petitioned NHTSA for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that the noncompliance is inconsequential as it relates 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*, without initially filing a noncompliance report.

NHTSA prompted CGM to file the required noncompliance report and Guardian, on behalf of CGM, did so on April 15, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

Guardian, on behalf of CGM, also filed a noncompliance report on December 14, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. CGM petitioned NHTSA on December 20, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that the noncompliance is inconsequential as it relates 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*.

Notice of receipt of CGM's petitions was published with a 30-day public comment period, on November 10, 2020, in the **Federal Register** (85 FR 71712). No comments were received. To view the petitions and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket numbers "NHTSA-2018-0109" and "NHTSA-2018-0074."

II. Equipment Involved

Approximately 223 laminated windshields manufactured on March 8, 2018, and shipped to IC Corp Tulsa Bus Plant for installation into Navistar buses are potentially involved with the noncompliance report dated December 14, 2018.

Approximately 1,390 bus door windowpanes, manufactured between November 1, 2017, and March 29, 2018, are potentially involved with the noncompliant report dated April 15, 2020. The windowpanes were sold to Vapor Bus for use in the fabrication of bus doors. Vapor Bus subsequently shipped the bus doors to Nova Bus for installation in their buses.

III. Noncompliance

Guardian explained that the noncompliance is that the markings on the subject laminated glass panes do not fully meet the requirements specified in paragraph S6 of FMVSS No. 205. Specifically, the laminated windshields shipped to IC Corp Tulsa Bus Plant were marked AS-2,

when they should have been marked AS-1, and the laminated bus door windowpanes sold to Nova Bus were marked AS-S, when they should have been marked AS-2.

IV. Rule Requirements

Paragraph S6 of FMVSS No. 205 includes the requirements relevant to these petitions. A manufacturer or distributor who cuts a section of glazing material, to which FMVSS No. 205 applies, for use in a motor vehicle or camper, must correctly mark that material in accordance with section 7 of ANSI/SAE Z26.1-1996.

V. Summary of CGM's Petitions

The following views and arguments presented in this section, "V. Summary of CGM's Petitions," are the views and arguments provided by CGM and do not reflect the views of the Agency. The petitioner describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petitions, CGM submits the following reasoning:

1. CGM explains that the laminated glass parts are affixed with the Guardian trademark, the correct DOT manufacturer's code mark that NHTSA assigned to the manufacturer, and the model number that was assigned by the manufacturer of the safety glazing material. The manufacturer can use the model number to identify the type of construction of the glazing material.
2. CGM claims that although the laminated glass parts are affixed with the misprinted AS numbers, the glass construction from which the laminated glass parts were fabricated is in full compliance with the technical requirements that 49 CFR 571.205 as it currently applies to laminated glass for use in a motor vehicle. CGM believes the misprinted AS numbers do not affect the safety of the laminated glass parts.
3. Despite the misprinted AS numbers being affixed to the laminated glass parts, CGM states that the correct parts were sold and shipped to Navistar and Nova Bus for use as windscreens and door windows.

4. CGM believes that the subject noncompliance could not result in the wrong part being used in an OEM application, given that the part would be ordered by its unique part number and not the model number. Furthermore, CGM says the parts are also easily traceable back to Guardian via their unique DOT manufacturer's code mark.

Guardian concluded by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

1. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory FMVSS, pursuant to 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. 49 CFR 1.95.

NHTSA adopts an FMVSS only after the Agency has determined that the performance requirements are objective, practicable, and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with an FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with an FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be “inconsequential” to motor vehicle safety. It, therefore, established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its

notification and remedy (i.e., recall) obligations. 49 U.S.C. 30118(d) and 30120(h). The Agency's regulations governing the filing and consideration of petitions for inconsequential exemptions are set forth in 49 CFR part 556.

Under the Safety Act and part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after notice in the Federal Register and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the Agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition.

Neither the Safety Act nor part 556 defines the term "inconsequential." The Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.¹ NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to motor vehicle safety. "Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future."²

2. NHTSA's Response to the Petitioner's Arguments

The purpose of FMVSS No. 205 is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver

¹ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

² *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

NHTSA has reviewed documentation provided by Guardian, on which Guardian bases its certification of the affected laminated windshields and laminated door windowpanes. This documentation shows the product met the safety performance requirements of the standard based on the intended design of the product. NHTSA also analyzed whether the documentation shows that the product met the safety performance requirements of the affected windshields and door windowpanes based on how they are labeled and used.

There is a safety-related purpose for every required marking on motor vehicles or items of motor vehicle equipment. The Agency also has a long-standing position that an incorrect marking reduces the safety effectiveness. The required markings are an assuring indication to the Agency and to consumers, including secondhand vehicle owners, that the item of equipment is certified to the applicable Federal requirements and provides the required minimum level of safety protection. *See* 49 CFR 571.205, S6. The vehicle owners (including firsthand and secondhand vehicle owners) might go to the original vehicle manufacturer and glazing supplier to obtain replacement parts when the affected glazing needs to be replaced. However, it is also likely that many vehicle owners will instead purchase replacement parts from aftermarket suppliers and rely on the marking suggested on the glazing, which will trigger safety-related concerns if the vehicle owners replace the glazing solely based on the incorrect marking suggested on the glazing. The Agency believes it is important to inform all vehicle owners, including firsthand and secondhand vehicle owners, what the proper specifications are for replacement products.

Guardian stated that the laminated windshields shipped to IC Corp Tulsa Bus Plant were marked as AS-2 when they should have been marked as AS-1. Because the affected windshield is marked as AS-2, consumers might replace the windshield according to the suggested AS-2 marking. Importantly, AS-2 laminated glazing is not permitted to be installed as a vehicle

windshield because the test requirements for AS-2 are not as comprehensive as for AS-1. For example, the test requirements for certifying AS-1 laminated glazing require additional tests relating to deviation, distortion, and penetration resistance of the glazing, which are not required for certifying AS-2 laminated glazing. Therefore, the potential consequence to vehicle owners, especially for secondhand vehicle owners, to replace the windshield with an AS-2 laminated glazing is high and unsafe.

Guardian also stated that the laminated bus door windowpanes sold to Nova Bus were marked as AS-S when they should have been marked as AS-2. There is no “AS-S” marking as specified in the FMVSS No. 205 standard. Vehicle owners, especially secondhand vehicle owners, will be confused as to which AS-marked glazing they need as a replacement part when they need to replace their windowpane.

Moreover, it is highly possible for consumers to mis-read the “AS-S” marking as an “AS-5” marking because of the physical similarity of the printed characters “S” and “5.” Replacing an AS-2 windowpane with an AS-5 glazing is not permitted because AS-5 glazing should only be used for installation in locations at levels not requisite for driving visibility. Conversely, an AS-2 marked glazing is required in locations at levels requisite for driving visibility. Consequently, using an AS-5 glazing as a replacement part poses a risk to motor vehicle safety because it would impair the bus driver’s ability to see clearly.

In summary, the petitioner’s noncompliant markings are not inconsequential to motor vehicle safety due to the possibility that vehicle owners may purchase incorrect and unsafe replacement parts for their vehicles.

VII. NHTSA’s Decision

In consideration of the foregoing, NHTSA has decided that Guardian has not met its burden of persuasion that the subject FMVSS No. 205 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Guardian’s petitions are hereby denied,

and Guardian is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

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

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024-00391 Filed: 1/11/2024 8:45 am; Publication Date: 1/12/2024]