



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0042; Notice 2]

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

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

ACTION: Grant of petition.

SUMMARY: Gillig LLC, determined that certain model year (MY) 2013-2019 Gillig Low Floor buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*. Gillig filed a noncompliance report dated April 1, 2019, and later amended the report on April 23, 2019. Gillig subsequently petitioned NHTSA on May 8, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Gillig's petition.

FOR FURTHER INFORMATION CONTACT: Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366-7236.

SUPPLEMENTARY INFORMATION:

I. Overview: Gillig has determined that certain MY 2013-2019 Low Floor buses do not fully comply with paragraph S3.1.3 of FMVSS No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect* (49 CFR 571.102). Gillig filed a noncompliance report dated April 1, 2019, and later amended their report on April 23, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. and subsequently petitioned NHTSA on May 8, 2019, for an exemption from the notification and remedy requirement of 49 U.S.C Chapter 301 on the basis that this 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 Gillig's petition was published with a 30-day public comment period, on September 20, 2019, in the Federal Register (84 FR 49624). No comments were received. To view the petition 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 number "NHTSA-2019-0042."

II. Buses Involved: Approximately 925 MY 2013-2019 Gillig Low Floor buses, manufactured between December 23, 2013, and February 25, 2019, are potentially involved.

III. Noncompliance: Gillig explains that the noncompliance is that the subject buses are equipped with a starter interlock that allow starter operation while the transmission shift position is in a forward or reverse drive position and therefore, does not meet the requirements in paragraph S3.1.3 of FMVSS No. 102.

IV. Rule Requirements: Paragraph S3.1.3 of FMVSS No. 102 provides the requirements relevant to this petition. Except as provided in paragraphs S3.1.3.1 through S3.1.3.3, the engine starter shall be inoperative when the transmission shift position is in a forward or reverse drive position.

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 and do not reflect the views of the Agency. Gillig described the subject noncompliance and contended that the noncompliance is inconsequential as it relates to motor vehicle safety.

Gillig says that Allison Transmission Inc., (ATI) conducted an audit at Gillig's headquarters and discovered the noncompliance. In support of its petition, Gillig explains that "the potentially noncompliant condition occurs as follows: when the ignition switch is in the ON position, the engine is stopped, the shift selector is in the 'Forward' or 'Reverse' position, and the start button is depressed, the starter cranks the engine, but the transmission does not engage

because, according to ATI, the shifter is in an inhibited state.” Gillig describes the inhibited state, “in a condition with ignition on/engine off, even if the transmission gear selector is moved to Drive or Reverse, the transmission shifter does not broadcast anything but Neutral to the transmission control unit”. Gillig says that “with the engine running, the vehicle operator must perform four separate actions in a specific sequence to engage the transmission and move the vehicle under power, specifically: a) place foot on brake b) select neutral c) select a gear, and d) remove foot from foot brake.” Gillig says that “because the transmission controller defaults the transmission to neutral after an engine start, there is no risk of unintentional vehicle movement” and therefore the subject noncompliance is inconsequential to motor vehicle safety.

Gillig concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition 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: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.¹

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle

¹ Cf. *Gen. Motors Corporation: Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

² 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).

occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.³

In evaluating the merits of the petition for inconsequentiality by Gillig, NHTSA has determined that this noncompliance is inconsequential to motor vehicle safety. Paragraph S3.1.3 of FMVSS No. 102 requires that the engine starter shall be inoperative while the transmission is in a forward or reverse position. In the subject vehicles, the starter is operational when a forward or reverse position is selected, which is noncompliant. Gillig contends that the subject vehicles are equipped with a shift controller interlock which is active when the propulsion system is on and prevents the vehicle from moving without the driver first performing a series of actions. The interlock prevents the forward or reverse gears from engaging until the transmission is first returned to its neutral position. Gillig also noted that the subject vehicles do not have a park position on the transmission selector which means the vehicles are likely to be started in either a forward or reverse gear. NHTSA agrees that subject Gillig vehicles shift interlock provides sufficient assurance of preventing unintended forward or rearward movement. More specifically, NHTSA agrees that because the transmission controller defaults the transmission to neutral after an engine start, there is no risk of unintentional vehicle movement. Consequently, the interlock present here satisfies the intent of S3.1.3 of FMVSS No. 102, NHTSA finds that the noncompliance in the subject vehicles is inconsequential to safety.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Gillig has met its burden of persuasion that the subject FMVSS No. 102 noncompliance in the affected buses is inconsequential to motor vehicle safety. Accordingly, Gillig's petition is hereby granted and

³ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

Gillig is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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, this decision only applies to the subject buses that Gillig no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant buses under their control after Gillig notified them that the subject noncompliance 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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