



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0039; Notice 2]

Motor Coach Industries, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Motor Coach Industries, Inc. (MCI), MCI has determined that certain model year (MY) 1988-2022 MCI coaches do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials*. MCI filed an original noncompliance report dated March 22, 2022, and amended the report on April 14, 2022. MCI petitioned NHTSA on April 14, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety and submitted supplemental information on September 2, 2022. This document announces the denial of MCI's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Safety Compliance Engineer, Office of Vehicle Safety Compliance, NHTSA, (325) 655-0547.

SUPPLEMENTARY INFORMATION:

I. Overview: MCI determined that certain MCI motor vehicles do not fully comply with paragraph S5.1 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205).

MCI filed an original noncompliance report dated March 22, 2022, and amended the report on April 14, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. MCI petitioned NHTSA on April 14, 2022, for an exemption from the notification and remedy requirements 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 MCI's petition was published with a 30-day public comment period, on February 21, 2023, in the **Federal Register** (88 FR 10640). 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-2022-0039."

II. Vehicles Involved: Approximately 15,454 of the following coaches, manufactured between January 4, 1988, and January 14, 2022, were reported by the manufacturer:

1. MY 2001-2021 MCI J4500
2. MY 1998-2013 MCI E4500
3. MY 2017-2021 MCI J3500
4. MY 2005-2021 MCI D4005
5. MY 2005-2022 MCI D4505
6. MY 2000-2007 MCI D4000
7. MY 2001-2020 MCI D4500
8. MY 1988-2001 MCI 102D3
9. MY 1988-2001 MCI 102DL3
10. MY 2001-2022 MCI D4000ISTV
11. MY 2000-2001 MCI 102D3ISTV
12. MY 1995-1999 MCI MC12PTV

III. Noncompliance: MCI explains that the subject vehicles were manufactured with a curb view window to the immediate right of the driver that has glazing rated AS-5 instead of AS-1 or AS-2, or one of the bullet resistant variations of glazing that are specified in ANSI/SAE Z26. 1-1996, and therefore, do not comply with FMVSS No. 205.

IV. Rule Requirements: Paragraph S5.1 of FMVSS No. 205 includes the requirements relevant to this petition. Glazing materials for use in motor vehicles must conform to ANSI/SAE Z26.1-1996 (incorporated by reference, see § 571.5), unless FMVSS No. 205 provides otherwise. SAE Recommended Practice J673 (1993) (incorporated by reference, see § 571.5) is referenced in ANSI/SAE Z26.1-1996.

V. Summary of MCI's Petition: The following views and arguments presented in this section, are the views and arguments provided by MCI. They do not reflect the views of NHTSA. MCI describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

On April 14, 2022, MCI petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety on the grounds that the lower curb view window is sufficiently transparent to allow the coach driver to see people or objects outside the coach and is equivalent to the transparency of compliant glazing.

MCI explains that FMVSS No. 205 and ANSI/SAE Z26.1-1996 do not permit AS-5 rated glazing to be installed at locations requisite for driving visibility. MCI says that NHTSA considers “requisite for driving visibility” to mean “every item of glazing that is to the immediate left and right of the driver, as well as windshields.”

MCI's petition includes a schematic showing the exact location of the AS-5 rated curb view window on the subject coaches. MCI further explains that AS-5 rated glazing “is not required to meet certain performance requirements that are applicable to AS-2 glazing.” However, in their first petition, MCI contended that the AS-5 rated glazing installed in the curb view window of the subject coaches complies with the 70 percent light transmittance requirement described in Test 2 of ANSI/SAE Z26.1-1996.

MCI believes that the subject noncompliance is inconsequential to motor vehicle safety and argues that “the actual field performance of the small curb view window has met the intent of the substantive requirements of FMVSS 205 for glazing requisite for driving visibility.” MCI

states “there is no reasonable possibility that any vehicle occupant would impact that window in a collision. Moreover, there is no reasonable possibility that any person would be ejected through the curb view window in a collision, given its location and small size.” For these reasons, MCI focused its analysis on a need to ensure a necessary degree of transparency in motor vehicle windows for driver visibility. In its April 2022 submission, MCI makes three claims in support of their contention that the curb view windows achieve this safety need pertaining to driver visibility.

First, MCI states that the curb view window in which the AS-5 rated glazing is installed, “is not requisite for driving in the forward and reverse gears” but may be used to assist with parking. MCI claims that “the value of the small curb view window even for parking is very limited – essentially just to identify the location of the curb to the driver or identify a person or object between the coach and the curb.”

Second, MCI states that the glazing used in the curb view window meets the requirements for 70 percent light transmissibility, even though that is not required for AS-5 glazing. Thus, MCI claims, “the need to ensure a necessary degree of transparency through the glazing is achieved.”

Third, MCI states that while AS-5 glazing is not required to meet certain abrasion resistance requirements of ANSI/SAE Z26.1-1996, “the small curb view window has not unreasonably degraded its transmissibility through abrasion or other environmental exposures in actual field usage.” MCI provided photos of a sample of the affected coaches with its petition to demonstrate that “the small curb view window has retained good visibility, notwithstanding many years of service in challenging environmental conditions.” Furthermore, MCI claims that the glazing used in the curb view window “has not abraded excessively over time and remains safe for use.”

MCI further states that it has not received any customer complaints over the last 10 years but acknowledges that NHTSA does not consider an absence of complaints relevant when

determining whether an instance of noncompliance is inconsequential to motor vehicle safety. MCI states that the safety risk of the subject noncompliance “is the potentially reduced visibility through glazing that degrades from environmental exposure.” However, MCI claims it has effectively demonstrated that “the glazing in this particular location has remained adequately transparent even after years of service in harsh environmental conditions.” Therefore, MCI believes; “in this case, the absence of complaints supports the photographic evidence accompanying this petition.”

At the time of its initial file of petition on April 14, 2022, MCI expressed its belief that it would be able to document that the AS-5 rated glazing on the subject coaches permits 70% light transmittance. This belief was based on inspections of actual coaches and observations that the visibility through the lower curb view window was comparable to visibility through the upper window with AS-2 rated glazing. Photographs of the visibility of individuals and objects through the lower curb view window from the vantage of the coach driver were included with the petition.

MCI filed a supplemental petition on September 2, 2022, after it undertook testing of the subject glazing in an effort to quantify the light transmittance through the glazing under the procedures specified by ANSI Z26.1-1996. After its testing, MCI disclosed that the lower curb view window in the subject coaches does not permit 70% light transmittance. The light transmittance when measured under the procedures specified by ANSI Z26.1-1996 was approximately 20%. However, MCI continues to believe that, due to the relative darkness of the stairwell area inside the coach when compared with the relative brightness of the ambient environment outside the coach under most, if not all, conditions, the lower curb window provides the coach driver with a view of the exterior of the coach that is essentially equivalent to compliant glazing. In other words, the coach driver will see mainly the light from outside, which makes the individuals or objects outside the coach visible to the driver.

MCI concludes by stating its belief that the noncompliance is inconsequential to motor vehicle safety and 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.

VII. NHTSA's Analysis:

In determining the 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.¹ 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 occupants have not experienced a safety issue, nor does it mean there will not be safety issues in the future.²

The subject MCI coaches were manufactured with a curb view window in the lower portion of the front door of the coach. The curb view window glazing material is rated AS-5, as defined in ANSI/SAE Z26.1-1996. FMVSS No. 205 incorporates by reference the American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways-Safety Standard ANSI/SAE Z26.1-1996 (ANSI Z26.1). FMVSS No. 205 therefore specifies performance requirements for various types of glazing and specifies the locations in vehicles in which each item of glazing may be used.

First, NHTSA is not persuaded by MCI's claim that the lower curb window is not requisite for driving visibility. The petitioner states instead that one of the purposes of the window is to facilitate parking along a curb. Parking involves driving in the forward and/or

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 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").

reverse gears, so visibility needed for parking is visibility needed for driving. Furthermore, NHTSA has two interpretations discussed in more detail, below, which involve glazing of similar design/purpose that NHTSA found to be requisite for driving visibility.

In 2008, California Highway Patrol (CHP) inspected the right-front, swing-open, entry door and lower curb-side view glazing on a 2008 MCI motor coach and noted that the curb-side view window was labeled AS-5. CHP asked NHTSA for an interpretation of whether AS-5 glazing is permitted in the lower curb-side view glazing on buses. The Agency explained in the 2009 interpretation letter³ in response to Mr. Cris Morgan of CHP that lower curb-side view glazing on doors to the right or left of the driver are considered windows that are requisite for driving visibility. Therefore, AS-5 glazing is not permitted on buses in windows to the immediate right or left of the driver.

On an April 23, 2001, the agency issued an interpretation letter⁴ to Mr. Thomas F. Brown concerning peep windows in Mack Trucks. The peep window was a small, separate fixed window located below the passenger door's main window, near the bottom of the door, which could be used to analyze and react to traffic situations near the passenger door of a medium or heavy-duty truck. NHTSA determined that the peep window was at a level requisite for driving visibility.

The lower curb-side view window on the 2008 MCI motor coach and the peep window on the Mack Truck are in a similar location and provide similar visibility to the curb view window on the MCI motor coaches at issue here.

NHTSA agrees with the petitioner that one of the safety considerations in evaluating this petition should be that the curb view window helps a driver safely operate the vehicle by, among other things, allowing visibility of the curb, a person, or an object that might be located between the coach and the curb.

³ See <https://www.nhtsa.gov/interpretations/08-004149-19-nov-08-sa>

⁴ See <https://www.regulations.gov/document/NHTSA-2001-9605-0001>

NHTSA is not persuaded by the petitioner's arguments that failing to meet the light transmittance and abrasion resistance for this glazing is inconsequential to safety. MCI stated in its supplemental petition that the lower curb view window in the subject coaches does not permit 70% light transmittance. The light transmittance when measured under the procedures specified by ANSI Z26.1-1996 was approximately 20%. The Agency is not persuaded by MCI's argument that the relative darkness of the stairwell inside the coach when compared with the relative brightness of the ambient environment outside the coach will provide the coach driver with a clear view of the exterior of the coach in most if not all conditions. NHTSA can foresee that in evening hours or poor weather conditions the visibility through the affected window may be impacted due to the use of AS-5 glazing, which is more prone to abrasion and has reduced light transmittance. This could prove especially consequential to safety if a small child or animal is standing outside the small curb view window in hours of reduced ambient light.

In addition, AS-5 glazing is not required to meet other performance requirements that are applicable to AS-2 glazing and this may potentially further degrade its ability to provide a minimum level of safety in this application. NHTSA does not accept MCI's assertion that it is not reasonably possible for an occupant to impact the curb view window in a collision. After making this claim, MCI's analysis focuses on only one of the performance requirements for AS-2 glazing – Test no. 2: Luminous Transmittance. In fact, there are several performance requirements that AS-5 glazing is not required to meet but are applicable to AS-2 glazing. Specifically, AS-5 glazing is not required to meet Tests no. 1: Light Stability; no. 2: Luminous Transmittance; no. 6: Impact, Ball, 3.05 m (10 ft.); no. 7: Fracture Test; no. 8: Impact, Shot Bag, 2.44 m (8 ft.); and, no. 18: Abrasion Resistance, each of which AS-2 tempered glazing must meet. The required tests under AS-5 glazing are for the rigid plastic glazing but not for the tempered glass. The petition ignores the other performance requirements inapplicable to AS-5 glazing without providing sufficient analysis or evidence to explain why these other requirements are irrelevant in this instance.

In summary, the curb view window in this petition is similar to the glazing described in the interpretations discussed above and is requisite for driving visibility. The Agency's findings in its evaluation of this petition are consistent with the Agency's interpretations letters of 2009 to Mr. Cris Morgan and of 2001 to Mr. Thomas F. Brown which indicate that AS-5 glazing is not permitted in windows to the immediate right or left of the driver. Further, MCI provided insufficient evidence that the other performance requirements outlined in FMVSS No. 205 are irrelevant to the safety analysis.

VII. NHTSA's Decision:

In consideration of the foregoing, NHTSA has decided that MCI has not met its burden of persuasion that the subject FMVSS No. 205 noncompliance is inconsequential to motor vehicle safety. Accordingly, MCI's petition is hereby denied and MCI 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.

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