Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0011; Notice 2]

Daimler Trucks North America, 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: Daimler Trucks North America, LLC (DTNA), has determined that certain model year (MY) 2016-2017 Freightliner trucks do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. DTNA filed a noncompliance report dated January 19, 2017, and amended it on January 25, 2017. DTNA also petitioned NHTSA on January 20, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

ADDRESSES: For further information on this decision contact Stu Seigel, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5287, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Daimler Trucks North America (DTNA), has determined that certain model year (MY) 2016-2017 Freightliner trucks do not fully comply with Table 2 of Federal Motor Vehicle Safety

Standard (FMVSS) No. 101, *Controls and Displays*. DTNA filed a noncompliance report dated January 19, 2017, and amended it on January 25, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA also petitioned NHTSA on January 20, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, 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.

Notice of receipt of the petition was published with a 30-day public comment period, on April 7, 2017, in the Federal Register (82 FR 17069). 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-2017-0011."

II. Vehicles Involved: Affected are approximately 81,641 MY 2016-2017 versions of the following trucks, manufactured between March 2, 2015 and September 8, 2016:

- Freightliner 108SD
- Freightliner Business Class M2
- Freightliner Cascadia
- Freightliner 114SD

III. Noncompliance: DTNA explains that the noncompliance is that the Low Brake Air Pressure telltale for air brake systems displays the word "BRAKE" and a message on an adjacent display screen says "LOW AIR", rather than the words "BRAKE AIR," as specified in Table 2 of FMVSS No. 101. DTNA states that the telltale is accompanied by an audible alert and pressure gauges.

IV. Rule Text: Paragraph S5 of FMVSS No. 101 provides: "Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of this standard for the location, identification, color, and illumination of that control, telltale or indicator."

Paragraph S5.2.1 of FMVSS No. 101 provides, in pertinent part: "... each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2."

Table 2 appears as follows:

Table 2
Identifiers for
Controls, Telltales and Indicators with
No Color or Illumination Requirements

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	—	Throttle
Engine Start Control	—	Engine Start[1]
Manual Choke Control	—	Choke
Odometer	—	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required. [2]
Horn		Horn
Master Lighting Switch	 [3]	Lights
Headlamps and Taillamps Control	—	— [4,5]
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	—	Brake Air
Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

Notes:

1. Use when engine control is separate from the key locking system.
2. Any combination of upper- or lowercase letters may be used.
3. Framed areas may be filled.
4. If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.
5. Separate identification not required if function is combined with Master Lighting Switch.

V. Summary of DTNA's Petition: DTNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, DTNA submitted the following reasoning:

a) DTNA notes that the purpose of the low brake air pressure telltale is to alert the driver to a low air condition, consistent with the requirements of FMVSS No. 121, S5.1.5 (warning signal). The word "BRAKE" instead of "BRAKE AIR," together with a message on the display screen saying "LOW AIR!" and an audible alert that occurs in the subject vehicles would alert the driver to an air issue with the brake system. Once alerted, the driver can check the actual air pressure by reading the primary and secondary air gauges and seeing the contrasting color on the gauges indicating low pressure.

b) NHTSA stated in a 2005 FMVSS No. 101 rulemaking that the reason for including vehicles over 10,000 pounds in the requirements of FMVSS No. 101 is that there is a need for drivers of heavier vehicles to see and identify their displays, just as there is for drivers of lighter vehicles. See 70 FR 48295, 48298 (Aug. 17, 2005). The telltale in the subject vehicles saying "BRAKE" and the message on the display screen that says "LOW AIR!" would allow the driver to see and identify the improper functioning system as was the intent of the rule, thus serving the purpose of the FMVSS No. 101 requirement.

c) Drivers of commercial vehicles would conduct daily pre-trip inspections of their vehicles paying particular attention

to the warning signs and gauges to ensure correct functionality of their vehicles braking system, before driving the vehicle. Drivers therefore would be very familiar with the telltales and other warnings, and their meaning, in the event a low air warning was to occur while the vehicle was driven.

d) There are two scenarios when a low brake air pressure condition would exist: a parked vehicle and a moving vehicle. Each of these are discussed separately below; in each scenario, there is ample warning provided to the driver of low brake air pressure.

1. Parked Vehicle

   The driver of an air-braked vehicle must ensure that the vehicle has enough brake air pressure to operate safely. At startup, the vehicle will likely be in a low air condition. When in a low air condition the following warnings would occur, conditioning the driver over time as to the purpose of the telltale, message and audible alerts and under what conditions they are activated.

   - Red contrasting color of the telltale saying “BRAKE”
   - Message on the display screen that says “LOW AIR!”

- Audible alert to the driver as long as the vehicle has low air
- Air gauges for the primary and secondary air tanks clearly showing the air pressure in the system
- Red contrasting color on the air gauges indicating when the pressure is low
- Difficulty/inability of releasing the parking brakes with low air
- Reduced drivability if the driver attempts to drive with the parking brakes applied

2. Moving Vehicle

   If a low brake air pressure situation occurs while driving, the function of the service brakes may be reduced or lost and, eventually if the pressure gets low enough, the parking brakes will engage. The driver must pull to the side of the road and apply the parking brakes as soon as possible. A loss of brake air pressure while driving represents a malfunctioning brake system and requires immediate action from the driver. Drivers recognize that a telltale illuminated in red represents a malfunction which needs to be remedied.

The following warning would occur if a low air condition occurred while driving.

- Red contrasting color of the telltale saying "BRAKE"
- Message on the display screen that says "LOW AIR!"
- Audible alert to the driver as long as the vehicle has low air
- Air gauges for the primary and secondary air tanks clearly showing the air pressure in the system
- Red contrasting color on the air gauges indicating when the pressure is low.

e) The functionality of both the parking brake system and the service brake system remains unaffected by the "BRAKE" telltale used in the subject vehicles.

f) NHTSA Precedents – DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for similar brake telltale issues. See Docket No. NHTSA-2012-0004, 78 Fed. Reg. 69931 (November 21, 2013)(grant of petition for Ford Motor Company) and Docket No. NHTSA-2014-0046, 79 Fed. Reg. 78559 (December 30, 2014 (grant of petition for Chrysler Group, LLC). In both of these instances, the vehicles at issue did not have the exact wording as required under FMVSS No. 101. The available warnings were deemed sufficient to provide the

necessary driver warning. DTNA respectfully suggest that the same is true for the subject vehicles: the red "BRAKE" telltale and the "LOW AIR!" pop-up message, together with other warnings and alerts, are fully sufficient to warn the driver of a low brake air pressure situation.

DTNA concluded by expressing the belief 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.

NHTSA'S DECISION:

NHTSA's Analysis: NHTSA has reviewed DTNA's analyses that the subject noncompliance is inconsequential to motor vehicle safety. Specifically, the telltale marking for low brake air pressure says "Brake" instead of "Brake Air" as required in table 2 of FMVSS No. 101 and FMVSS No. 121. We believe that this incomplete labeling poses no risk to motor vehicle safety because multiple sources of information, as discussed below, are simultaneously activated to properly warn the driver of the low air condition.

1. When a low air pressure situation exists, for both a parked or moving vehicle, the "Brake" telltale will activate in red letters with a black background. There are

no requirements in FMVSS No. 101 or 121 for the color of the telltale, but DTNA's use of red, which is an accepted color representing an urgent condition, provides a definitive indication of a situation that needs attention.

2. Activation of the "Brake" telltale is accompanied by illumination on the instrument cluster message display screen with the words "LOW AIR!" in white, upper case lettering with a green background. The height of the lettering appears greater than that of the surrounding telltales and is followed by an exclamation point for increased importance. In a follow-up telephone conversation with DTNA after notice of receipt of petition was published, DTNA confirmed that the lettering height was one quarter inch. Although there is no lettering height requirement for "Brake Air," and the specification is only that the warning be visible, for reference, a common minimum height for many FMVSS visual indicators is one-eighth inch. This combined with the green rectangular background, which also is comparatively large, is readily visible to the operator and is unlikely to be overlooked. Both the "BRAKE" telltale and the "LOW AIR!" message are in clear view of the driver and when activated will alert the driver of a brake system malfunction.

3. Simultaneous to illumination of both the “Brake” telltale and “LOW AIR!” in the message center, is activation of an audible alert, further notifying the operator that a malfunction exists requiring corrective action. Although the alert would not in and of itself identify the problem, a driver would be prompted by the warning tone to heed the telltales and warning messages activated in the instrument cluster (i.e. “Brake” and “LOW AIR!”).
4. In a low pressure situation, the operator is provided additional feedback by the primary and secondary instrument cluster air gauges which are marked with PSI numerical values along with red-delineated ranges where the needle pointers would be positioned during a low pressure condition.
5. NHTSA agrees with DTNA that for a vehicle that is parked, if a low air condition were present, along with the operator feedback described above, there would be difficulty or an inability to release the parking brake and/or reduced drivability, as sufficient air in the system is required to release the parking brake.
6. Further, NHTSA agrees with DTNA’s contention that the functionality of the parking brake system and the braking performance of the service brake system remains unaffected

by use of the telltale word “Brake” instead of “Brake Air” on the subject vehicles.

7. Lastly, NHTSA believes that, as these affected trucks are predominately used as commercial vehicles with professional drivers, operators will monitor their vehicle’s condition and take note of any warning signs and gauge readings to ensure proper functionality of all systems. As DTNA states, and we agree, drivers will be familiar with the meaning of telltales and other warnings and the feedback provided to the driver in these vehicles if a low brake pressure condition exists would be well understood.

NHTSA concludes that simultaneous activation of red “Brake” telltale with a black contrasting background, message center wording “LOW AIR! in large white letters on a substantially sized green contrasting background, and an audible alert for a low air pressure condition, along with the primary and secondary air gauge indicators, and the reduced drivability of the vehicles under a low air pressure condition, provides adequate notification to the operator that a brake malfunction exists. NHTSA further concludes that the discrepancy with the labeling requirement is unlikely to lead to any misunderstanding since other sources of correct information beyond the “Brake” telltale, are always provided.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that DTNA has met its burden of persuasion that the FMVSS No. 101 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, DTNA's petition is hereby granted and DTNA is consequently exempted from the obligation to provide notification of, and remedy for, the subject noncompliance in the affected vehicles 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 vehicles that DTNA 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 vehicles under their control after DTNA 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)

Jeffrey M. Giuseppe,

Director,

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