



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0100; Notice 2]

Daimler Trucks North America, Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Notice of petition denial.

SUMMARY: Daimler Trucks North America (DTNA) has determined that certain model year (MY) 2011-2019 DTNA motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. DTNA filed a noncompliance report dated September 19, 2018. DTNA subsequently petitioned NHTSA on October 11, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces and explains the denial of DTNA's petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5304, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview:

DTNA has determined that certain MY 2011-2019 DTNA motor vehicles do not fully comply with paragraph S6.2 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). DTNA filed a noncompliance report dated September 19, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DTNA

subsequently petitioned NHTSA on October 11, 2018, 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 DTNA's petition was published with a 30-day public comment period on April 23, 2019, in the **Federal Register** (84 FR 16930). 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/>, and then follow the online search instructions to locate docket number "NHTSA-2018-0100."

II. Vehicles Involved:

Approximately 14,340 MY 2011-2019 Western Star 4700 and 4900, Freightliner Business Class M2, 114SD, 108SD, 122SD, and Coronado motor vehicles manufactured between May 4, 2010, and August 23, 2018, are potentially involved.

III. Noncompliance:

In its noncompliance report, DTNA stated that the noncompliance is that the brake lights in the subject vehicles illuminate with Automatic Traction Control (ATC) activation and, therefore, do not meet the requirements specified in S6.2.1 of FMVSS No. 108.

IV. Rule Requirements:

Paragraphs S6.2.1 and S7.3.5, Table I-a of FMVSS No. 108, include the requirements relevant to this petition. No additional lamp, reflective device, or other motor vehicle equipment is permitted to be installed that impairs the effectiveness of lighting equipment required by FMVSS No. 108. Stop lamps must be activated upon application of the service brakes. The stop lamps may also be activated by a device designed to retard the motion of the vehicle.

V. Summary of DTNA's Petition:

DTNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

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

1. ATC events occur during low traction conditions such as snow, ice, and mud. The duration of the event can be very short and may not even be noticed by the following driver. If brake light illumination for an ATC event is noticed, it would help to provide early warning of an adverse road condition ahead and encourage the following driver to slow down.

Below are several examples of ATC events:

- a. Taking off from a stop

ATC can be very helpful to a driver when taking off from a stop in low traction conditions. From time to time, a vehicle will park with one drive axle wheel end right over a patch of ice, and without ATC, it can be difficult to take off. This happens after the vehicle has been stopped and is trying to move. It seems unlikely that the activation of the brake lights during this ATC event would cause a safety concern to following drivers since the vehicle is stationary.

- b. Low speed

At low speed, hazard warning lights are commonly used to warn other drivers of adverse road conditions such as those that are in effect when an ATC event may occur. Since the hazard lights may already be applied in this case, the addition of momentary brake light activation is unlikely to cause confusion.

- c. High Speed

For an ATC event to occur at high speed, it would signify that road conditions have changed rapidly. One way it could happen is if the vehicle has been climbing a hill on dry roads in sub-freezing conditions and crosses a patch of ice. This causes a wheel to lose traction and the ATC applies brake force to that wheel end. The torque is transferred to other wheel ends causing a momentary brake light illumination. If it is a small ice patch, the event may be over and the vehicle may continue on its way. If the ice patch is large, it is imperative that the vehicle slows down to a safe speed under slick conditions and warns others of the impending slowdown. As soon as slick road conditions are noticed and wheels begin to slip, the driver would let up on the throttle.

Brakes are commonly applied causing the brake lights to illuminate when a driver sees or senses a change in road conditions such as an icy patch. Reducing vehicle speed in adverse conditions increases safety, so signaling changing road conditions to following drivers would improve safety and give them the opportunity to increase the following distance. DOT guidance supports this goal:

- NHTSA's Winter Driving Tips says: "Drive slowly. It's harder to control or stop your vehicle on a slick or snow-covered road. Increase your following distance enough so that you'll have plenty of time to stop for vehicles ahead of you."
- FMCSA released CMV Driving Tips; Tip #1 is: Reduce Your Driving Speed in Adverse Road and/or Weather Conditions. "You should reduce your speed by 1/3 on wet roads and by 1/2 or more on snow-packed roads (i.e., if you would normally be traveling at a speed of 60 mph on dry

pavement, then on a wet road you should reduce your speed to 40 mph, and on a snow-packed road you should reduce your speed to 30 mph).

When you come upon slick, icy roads you should drive slowly and cautiously and pull off the road if you can no longer safely control the vehicle.”

2. DTNA states that it is not aware of any accidents, injuries, owner complaints, or field reports for brake light illumination triggered by ATC events concerning the subject vehicles.

3. DTNA notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance with lighting requirements where there were technical noncompliances that did not create a negative impact on safety.

a. DTNA cites a petition for inconsequentiality submitted by General Motors (GM) which was granted by NHTSA. *See General Motors Corp.; Grant of Application for Decision of Inconsequential Noncompliance*, 66 FR 32871 (June 18, 2001).

This petition dealt with a situation in which certain vehicles could experience brief, unintended illumination of the center high-mounted stop lamp (CHMSL) if the hazard warning lamp switch was depressed to its limit of travel. NHTSA stated: “The intended use of a hazard warning lamp and the momentary activation of a CHMSL do not provide a conflicting message. The illumination of the CHMSL is intended to signify that the vehicle’s brakes are being applied and that the vehicle might be decelerating. Hazard warning lamps are intended as a more general message to nearby drivers that extra attention should be given to the vehicle. A brief illumination of the CHMSL while activating the hazard warning

lamps would not confuse the intended general message, nor would the brief illumination in the absence of the other brake lamps cause confusion that the brakes were unintentionally applied.”

DTNA believes that the same situation exists in the present case, with temporary illumination of the brake lamps during ATC activation. The temporary brake light illumination serves to emphasize the message to following drivers that adverse or unusual road conditions may exist and they should pay close attention.

- b. DTNA also cites another petition for inconsequentiality submitted by GM which was granted by NHTSA. *See General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance*, 83 FR 7847 (Feb. 2, 2018). This petition dealt with a situation in which, under certain conditions, the parking lamps on the subject vehicles failed to meet the requirement that parking lamps must be activated when headlamps are activated in a steady burning state.

NHTSA stated: “The Agency agrees with GM that in this case, this situation would have a low probability of occurrence and, if it should occur, it would neither be long-lasting nor likely to occur during a period when parking lamps are generally in use. Importantly, when the noncompliance does occur, other lamps remain functional. The combination of all of the factors, specific to this case, abate the risk to safety.”

DTNA concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety and asking 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, be granted.

DTNA's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov> and following the online search instructions to locate the docket number listed in the title of this notice.

VI. NHTSA's Analysis:

NHTSA has evaluated the merits of DTNA's petition for inconsequential noncompliance and has decided that it should be denied.

The purpose of FMVSS No. 108 is to reduce traffic accidents, and deaths and injuries resulting from traffic accidents, by providing adequate illumination of the roadway and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and darkness or other conditions of reduced visibility.

The noncompliance at issue here is that the stop lamps in the subject vehicles illuminate during a traction control event. Specifically, during a traction control event, the stop lamps are being activated by DTNA's ATC, which is not designed to retard the motion of the vehicle. This is a clear noncompliance with paragraphs S6.2.1 and S7.3.5, Table I-a of FMVSS No. 108. These paragraphs state that no additional lamp, reflective device, or other motor vehicle equipment is permitted to be installed that impairs the effectiveness of lighting equipment and that the stop lamps must be activated upon application of the service brake. The requirements also permit that the stop lamp may be activated by a device designed to retard the motion of the vehicle.

DTNA acknowledges that, in response to a request for interpretation from GM, the Agency stated that "activation of the stop lamps for a purpose other than to indicate stopping or

slowing will create confusion for the driver following as to the meaning of the signal, with the potential of causing that driver to apply the brakes in his or her vehicle inappropriately.”¹

NHTSA continues to adhere to the position that inappropriate and misleading activation of stop lamps is consequential to safety. As defined by S4 of FMVSS No. 108, stop lamps are lamps giving a steady light to the rear of a vehicle to indicate a vehicle is stopping or diminishing speed by braking. In contrast, a traction control event typically involves a vehicle that is trying to gain traction to accelerate or maintain its existing speed. The illumination of stop lamps during a traction control event would therefore impair the effectiveness of the stop lamps and create a potential safety risk by incorrectly signaling to a following driver that there is an intent to slow down.

DTNA cites a petition from GM that the Agency granted, relating to the temporary illumination of the center high mounted stop lamp (CHMSL).² The Agency has reviewed this prior decision and finds that it does not support a finding of inconsequential noncompliance in this case. The noncompliance at issue in that petition involved a brief illumination of the CHMSL upon activation of the hazard warning signal, which, the Agency concluded, did “not provide a conflicting message” and “would not confuse the intended general message.” *See General Motors Corp.*, 66 FR 32872. As previously explained, the illumination of a vehicle’s stop lamps in a traction control event sends a contradictory message.

Although the referenced GM decision issued by NHTSA stated that it was limited to the specific facts presented, DTNA also cites another petition submitted by GM that the Agency granted regarding the failure of the subject vehicles to meet the parking lamp requirements of

¹ Letter from F. Seales, Jr., NHTSA, to C. Terry, GM (May 26, 2000), <https://isearch.nhtsa.gov/files/21281.ztv.html>.

² 66 FR 32871, June 18, 2001

paragraph S7.8.5 of FMVSS No. 108.³ The Agency has reviewed this prior decision as well and finds that it does not support a finding of inconsequential noncompliance in this case. The noncompliance at issue in that petition involved a situation in which the front parking lamps could be turned off under the following circumstances:

- a. Operated during the daytime with the master lighting switch in “AUTO” mode.
- b. The transmission is not in “Park.”
- c. Three or more high-inrush current spikes that exceed the body control module (BCM) inrush current threshold occur on the parking lamp/daytime running lamp (DRL) circuit within a period of 0.625 seconds.

Under certain daytime conditions, a driver rapidly moving the headlamp switch between the “AUTO” and “Park” positions could generate these spikes that would turn the park lamps off. Although potentially contradictory and misleading lighting signals resulted from this noncompliance, NHTSA granted the petition because, among other things, the noncompliance would occur only in daytime when parking lamps are generally not in use, a fairly high degree of unusual user intervention was required, and the condition would correct itself during normal vehicle operation. *See General Motors, LLC*, 83 FR 7848. In contrast, the traction control event and the misleading activation of brake lights in the petition NHTSA is analyzing requires no unusual user intervention, can occur under normal driving conditions, and poses a risk both day and night.

Illumination of the stop lamps during a traction control event is an impairment of the stop lamp function. The safety risk occurs when the stop lamps are activated and other road users

³ 83 FR 7847, February 02, 2018

expect that the motion of the vehicle is being retarded, but the vehicle is not slowing, thereby potentially confusing or misleading road users by the introduction of a nonstandard signal.

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.⁴ Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA’s prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.⁵ In general, NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to 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.”⁶ “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”⁷

⁴ 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).

⁵ 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); *Osrham 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).

⁶ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁷ *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”).

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.⁸ Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.⁹ These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

VII. NHTSA's Decision:

In consideration of the foregoing, NHTSA has decided that DTNA has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety. Accordingly, DTNA's petition is hereby denied and DTNA 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)

Jeffrey Mark Giuseppe,

Associate Administrator for Enforcement.

Billing Code 4910-59-P

⁸ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

⁹ See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

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