



National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0084; Notice 1]

Daimler Coaches North America, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Daimler Coaches North America, LLC (DCNA), a subsidiary of Daimler AG, has determined that certain model year (MY) 2012–2019 Setra S407 and MY 2009–2020 Setra S417 buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. DCNA filed a noncompliance report dated July 16, 2020. DCNA subsequently petitioned NHTSA on August 4, 2020, and later amended it on October 1, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of DCNA’s petition.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal holidays.

- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at https://www.regulations.gov by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: DCNA has determined that certain MY 2012–2019 Setra S407 and 2009–2020 Setra S417 buses do not fully comply with the requirements of paragraphs S.5.3.2.1 and S5.3.2.2 of Table 1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). DCNA filed a noncompliance report dated July 16, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DCNA subsequently petitioned NHTSA on August 4, 2020, and later amended its petition on October 1, 2020, 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*.

This notice of receipt of DCNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Buses Involved: Approximately 538 MY 2012–2019 Setra S407 and MY 2009–2020 Setra S417 motorcoach buses manufactured between May 19, 2009, and December 18, 2019, are potentially involved.

III. Noncompliance: DCNA explains that the noncompliance is that the windshield defogging/defrosting and the hazard warning signal indicators in the subject buses do not meet the brightness of illumination requirements provided in paragraphs S5.3.2.1 and S5.3.2.2(a) of FMVSS No. 101. Specifically, the brightness of the windshield defogging/defrosting indicator cannot be adjusted and the hazard warning signal indicator does not illuminate.

IV. Rule Requirements: Paragraphs S.5.3.2.1 and S.5.3.2.2(a) of FMVSS No. 101 include the requirements relevant to this petition. Means must be provided for illuminating the indicators, identification of indicators, and identifications of controls listed in Table 1 to make them visible to the driver under daylight and nighttime driving conditions. The means of providing the

visibility required by paragraph S5.3.2.1 must be adjustable to provide at least two levels of brightness.

V. Summary of DCNA's Petition: The following views and arguments presented in this section, "V. Summary of DCNA's Petition," are the views and arguments provided by DCNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. DCNA described the subject noncompliance and contended that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, which is attached in full to the docket, DCNA submitted the following reasoning:

1. DCNA explained its understanding of FMVSS No. 101 and described its opinion that the specified noncompliance does not increase risk to motor vehicle safety: FMVSS No. 101, *Controls and Displays*, is premised on ensuring the various controls, telltales, and indicators can easily be recognized in order to facilitate the driver's selection under day and nighttime conditions, to prevent the mistaken selection of controls and to reduce potential safety hazards when the driver's attention is diverted from the driving task. FMVSS No. 101 sets requirements for the location (S5.1), identification (S5.2), and illumination (S5.3) of various controls and displays, and Table 1 of the standard sets out those controls, telltales, and indicators with illumination and color requirements. At S5.3.1(b), the controls listed in Table 1 of the standard, including those for the hazard and windshield defrost/defog control, are required to be illuminated whenever the headlamps are activated, and the brightness of the control is to be adjustable to at least two levels.

DCNA believes that the lack of illumination on the hazard warning lamp symbol included on the control and inability to adjust the brightness of the defrost/defog control does not present an increased risk to motor vehicle safety.

DCNA states that each of the controls is fully operable, and their function is not affected by the lack of illumination or ability to adjust the brightness of the individual control or identifier.

2. DCNA described the operation and design of the hazard warning lamp control for the subject vehicle and DCNA's assessment of risk: The hazard warning lamp is controlled by a large red plastic toggle switch that is 19 mm across by 40 mm high. The switch is activated by pressing the bottom half of the switch downward with one finger until a clicking noise occurs. When the hazard warning lamp is activated, even without illumination the operation of the hazard function is confirmed because the hazard lamp itself will flash on and off and both the right and left turn signal indicators in the instrument cluster will flash on and off and in unison with the hazard warning lamps on the exterior of the vehicle. Thus, there is no question that the driver would not be able to confirm that the hazard warning lamp is operational.

The vehicle operator can readily identify and locate the hazard warning lamp switch under nighttime conditions, even without the illumination of the hazard warning lamp symbol on the switch. The hazard warning lamp control is located at the immediate right of the driver. The switch is located at the driver's eye level and remains in plain view of the driver when the driver is belted. The hazard warning lamp switch is bright red and is the only switch or control on the immediate right side of the driver that is not black or grey and, thus, easily contrasts with the remainder of the interior and background of the driver's compartment area. The characteristics and placement of the hazard warning lamp switch make it readily apparent under all operating conditions.

3. DCNA described the operation and design of the windshield defrost/defog control for the subject vehicle and DCNA's assessment of risk: The windshield defrost/defog symbol is located adjacent to the control knob. The turn-style control knob that activates the windshield defrost/defog function and the adjacent symbol are automatically illuminated when the vehicle's headlamps are activated but cannot be dimmed in accordance with paragraph S5.3.2.1. However, each of the functions surrounding the windshield defrost/defog symbol, many of which are not regulated by FMVSS No. 101, Table 1, are illuminated. There is a master switch for adjusting the brightness of the area surrounding the driver. Dimming is controlled within the meter assembly menu for the dashboard lights and is adjustable to more than two different levels of brightness. Further, the windshield defog/defrost control is located within a group of controls that are responsible for the heating, cooling, and temperature operations of the driver's compartment of the vehicle. Therefore, the driver would be well aware of the location of the defrost/defog control because it is located within a cluster of controls that operate similar functions. Thus, there is little to no risk that the driver's vision would otherwise be impaired if the display was too bright or too dim.

Further, any driver of a motorcoach such as the vehicles that are the subject of this petition would be a professionally trained driver. As such, the driver would likely have experience in operating the particular vehicle and would be knowledgeable about the location and function of all of the controls and devices within the vehicle. More so, the interior cabin of the motorcoach in the area forward of the driver's seat is sufficiently lit by roadway lighting, other illuminated controls, telltales, and the light emitted from the display of the instrument cluster. As described above, the dashboard lamps are illuminated

when the vehicle is operated with the headlamps on. This would also brighten the area in the vicinity of the driver and would assist in illuminating the hazard warning lamp and other controls and indicators.

The Agency has previously considered conditions where certain controls, telltales, and indicators listed in Table 1 were not visible to the driver under all day and night driving conditions and has concluded that the noncompliance is inconsequential. In particular, an electrical condition which could cause the headlamp upper beam indicator telltale to extinguish for various periods of time and under certain conditions was deemed to be inconsequential. In granting the petition, the Agency relied on the fact that the upper beam telltale would only need to be illuminated under nighttime driving conditions and found at that time that “a comparatively small portion of driving occurs at night, the time of headlamp activation.” *See Grant of Petition for Determination of Inconsequential Noncompliance, General Motors Corp.*, 56 FR 33323 (July 19, 1991).

The buses that are the subject of this petition are motor coaches largely used in commercial activity. As such, the drivers operating these vehicles are trained drivers that should be familiar with the layout, placement, and operation of the hazard warning lamp and defog/defrost controls. NHTSA has previously found that when trained drivers operate vehicles, this diminishes the potential safety consequence of an FMVSS No.101 noncompliance because it is expected that the drivers will not only monitor their vehicles’ condition closely to ensure the systems are properly operating but that “professional drivers will become familiar with the meaning of the telltales and other warnings and the feedback provided to the driver in these vehicles.” *See Mack Trucks, Inc., and Volvo Trucks North America, Grant of Petitions for Decision of Inconsequential*

Noncompliance, 84 FR 67766 (December 11, 2019); Autocar Industries, LLC, and Hino Motors Sales U.S.A., Inc., Grant of Petitions for Decision of Inconsequential Noncompliance, 84 FR 11162 (March 25, 2019); Daimler Trucks North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 82 FR 33551 (July 20, 2017).

4. DCNA summarized corrections taken and its lack of complaints or reports related to the condition described in the petition: Evo Bus and DCNA have corrected this issue in production by including a mechanism to adjust the brightness of the vehicle's defrost/defog control and to illuminate the hazard warning lamp control. DCNA is not aware of any complaints or reports related to the condition described in this petition. In the majority of cases, the vehicles have been in use for many years and without incident.

DCNA concluded by again contending that the subject noncompliances are inconsequential as they relate 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.

DCNA'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.

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, any decision on this petition only applies to the subject buses that DCNA no longer controlled at the time it determined that the noncompliance existed. However,

any decision on 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 DCNA 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.

Billing Code 4910-59-P

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