



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0084; Notice 2]

### 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 15, 2020, and amended it on July 16, 2020, and March 24, 2021. DCNA subsequently petitioned NHTSA (the “Agency”) on August 4, 2020, later amended it on October 1, 2020, and provided supplemental information on February 5, 2021, March 5, 2021, and March 25, 2021, for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. This notice announces receipt of DCNA’s petition and supplemental information.

**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).

**FOR FURTHER INFORMATION CONTACT:** Frederick Smith, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7487.

**SUPPLEMENTARY INFORMATION:**

**I. Overview:** DCNA has determined that certain MY 2012–2019 Setra S407 and MY 2009–2020 Setra S417 buses do not fully comply with the requirements of paragraphs S.5.3.1, S.5.3.2, and Table 1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). DCNA filed a noncompliance report dated July 16, 2020, and amended it on March 24, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DCNA subsequently petitioned NHTSA on August 4, 2020, later amended it on October 1, 2020<sup>1</sup>, and submitted supplemental information on February 5, 2021, March 5, 2021, and March 25, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliances are inconsequential as they relate 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*.

NHTSA previously published notice of receipt of DCNA's petition on November 9, 2020, (85 FR 71392). DCNA provided supplemental information to NHTSA on February 5, 2021, March 5, 2021, and March 25, 2021, that broadened the scope of DCNA's petition. Therefore, NHTSA invites interested persons to comment on DCNA's petition and supplemental information. 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.

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<sup>1</sup> DCNA's amended petition is dated August 4, 2020, but was submitted on October 1, 2020

**II. Buses Involved:** Approximately 538 MY 2012–2019 Setra S407 and MY 2009–2020 Setra S417 motorcoach buses manufactured between May 19, 2009, and January 30, 2019, are potentially involved.

**III. Noncompliance:** DCNA explains that the noncompliance is that the windshield defogging/defrosting indicators, the hazard warning signal indicators, and the HVAC indicators in the subject buses do not meet the timing and brightness of illumination requirements provided in paragraphs S5.3.1 and S5.3.2 of FMVSS No. 101. Specifically, the brightness of the windshield defogging/defrosting and HVAC indicators cannot be adjusted, and the hazard warning signal indicator does not illuminate.

**IV. Rule Requirements:** Paragraphs S5.3.1 and S5.3.2 of FMVSS No. 101 include the requirements relevant to this petition. Means must be provided for controlling the timing of illuminating indicators, the brightness of illuminating indicators, identification of indicators, and the identification 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. 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 describes the subject noncompliances and contends that the noncompliances are inconsequential as they relate to motor vehicle safety.

In support of its petition, which is available in full on the docket, DCNA explains its understanding of FMVSS No. 101 and states its belief that the subject noncompliances do not increase risk to motor vehicle safety. DCNA says that FMVSS No. 101, “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.” DCNA further explains that 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 provides the illumination and color requirements for those controls, telltales, and indicators. Specifically, DCNA explains that S5.3.1(b) requires that the controls listed in Table 1 of FMVSS No. 101, including those for the hazard and windshield defrost/defog control, are required to be illuminated when the headlamps are activated, and the brightness of the control must 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 the affected controls are fully operable. DCNA describes the operation and design of the hazard warning lamp control for the subject buses and provides its assessment of the risk to motor vehicle safety. DCNA explains that the “hazard warning lamp is controlled by a large red plastic toggle switch that is 19 mm across by 40 mm high” and to activate the control the driver would press the bottom half of the switch downward with one finger until there is a clicking noise. DCNA states that operation of the hazard warning lamp “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.” Therefore, DCNA claims that a driver of the subject buses would still be able to confirm that the hazard warning lamp is operating as intended.

DCNA further states that a driver of the affected buses would be able to identify and locate the hazard warning lamp switch even under nighttime conditions because the switch is located to the immediate right of the driver, is at eye level, and is the only switch in that area that is red, rather than black or grey. Thus, DCNA believes that the hazard warning lamp switch is conspicuous and “readily apparent under all operating conditions.”

DCNA describes the operation and design of the windshield defrost/defog control for the subject buses and states that the windshield defrost/defog symbol is located adjacent to the turn-style control knob DCNA also states that it activates the windshield defrost/defog function and that both the symbol and control knob are automatically illuminated when the subject bus's headlamps are activated but cannot be dimmed, which is required by S5.3.2.1 of FMVSS No. 101. DCNA claims that each of the functions surrounding the windshield defrost/defog symbol, many of which are not regulated by FMVSS No. 101, Table 1, are illuminated. DCNA explains that there is a master switch that allows the driver to adjust the brightness of the area surrounding them and dimming can be controlled "within the meter assembly menu for the dashboard lights and is adjustable to more than two different levels of brightness." Furthermore, DCNA states that the controls at issue are located within a group of controls that is "responsible for the heating, cooling, and temperature operations of the driver's compartment of the vehicle." Therefore, DCNA contends that a driver of the subject bus would be familiar with the location of the defrost/defog control because it is located within a cluster of controls that operate similar functions. Thus, DCNA believes that "there is little to no risk that the driver's vision would otherwise be impaired if the display was too bright or too dim."

DCNA notes that a driver of the subject bus would be professionally trained and would therefore be likely to have experience operating the bus and be "knowledgeable about the location and function of all of the controls and devices within the vehicle." DCNA says that the area forward of the driver's seat in the subject buses' interior cabin is "sufficiently lit by roadway lighting, other illuminated controls, telltales, and the light emitted from the display of the instrument cluster." According to DCNA, when operating the subject buses with the headlamps turned on, the dashboard lamps will also be illuminated which will illuminate the hazard warning lamp as well as other controls and indicators.

DCNA states that NHTSA has granted prior petitions for inconsequential noncompliance "where certain controls, telltales, and indicators listed in Table 1 were not visible to the driver

under all day and night driving conditions.” Specifically, DCNA refers to a petition in which “an electrical condition which could cause the headlamp upper beam indicator telltale to extinguish for various periods of time and under certain conditions.” In this case, DCNA says that NHTSA determined that the upper beam telltale would only need to be illuminated during nighttime driving conditions, when a comparatively small portion of driving occurs at night, the time of headlamp activation.<sup>2</sup>

DCNA reiterates that the subject buses are mostly used commercially, therefore, the drivers are trained and “should be familiar with the layout, placement, and operation of the hazard warning lamp and defog/defrost controls.” DCNA states that NHTSA has also granted prior petitions where the potential safety consequence of a noncompliance with FMVSS No. 101 would be diminished because it is expected that the driver would monitor the condition of the vehicle closely “to ensure the systems are properly operating.” Additionally, DCNA says that there are several petitions where NHTSA found that the potential risk to motor vehicle safety was diminished when the vehicle is operated by a trained driver because professional drivers will become familiar with the meaning of the telltales and other warnings and understand them.<sup>3</sup>

DCNA concludes by stating its belief 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 noncompliances, as required by 49 U.S.C. 30118, and a remedy for the noncompliances, as required by 49 U.S.C. 30120, should be granted.

On February 5, 2021, March 5, 2021, and March 25, 2021, DCNA submitted supplemental information. In the supplemental submission dated February 5, 2021, DCNA clarifies that the reference to dimming through the meter assembly menu means that within the

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<sup>2</sup> See General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance, 56 FR 33323 (July 19, 1991).

<sup>3</sup> 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).

instrument cluster that is directly in front of the driver, there is a master switch that operates the dimming function for the controls that surround the driver.

On March 5, 2021, DCNA provided photos<sup>4</sup> depicting the noncompliance under various conditions. Further, in the same supplemental submission, DCNA noted that, under further testing, the illumination of the HVAC controls did not cause any driver glare and did not appear brighter than any of the adjacent markings of the HVAC controls and indicators were still sufficiently recognizable.

On March 25, 2021, DCNA submitted that in addition to the issues originally noted in its petitions, the controls for the vehicle's HVAC system that are covered by FMVSS No. 101, Table 1 can be illuminated but are not dimmable as required by S5.3.2. Specifically, the heating and air-conditioning system and heating and air-conditioning fan are affected. DCNA states that despite the condition that these two controls cannot be dimmed on the vehicles at issue, this does not create an increased safety risk. These two controls are located in the same area as all the other vehicle HVAC controls and their location would be readily known to the experienced professional drivers that operate the motor coaches at issue here. Additionally, the master switch used for adjusting the brightness of the area surrounding the driver is fully operable and adjustable to more than two different levels of brightness. Consequently, DCNA believes that there is little to no risk of illumination of controls for the heating and air-conditioning system and heating and air-conditioning fan could be overly bright and impair the vision of the driver.

DCNA's complete petition and all supporting documents are available by logging onto the 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

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<sup>4</sup> These photos are available on the FDMS website.

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 noncompliances 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 noncompliances existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

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