



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0084; Notice 3]

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

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

**ACTION:** Denial 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 its report on July 16, 2020 and March 24, 2021. DCNA petitioned NHTSA (the “Agency”) on August 4, 2020 for a decision that the subject noncompliances are inconsequential as they relate to motor vehicle safety. On October 1, 2020 DCNA submitted an amended petition to the Agency. Additionally, DCNA submitted supplemental information to NHTSA on February 5, 2021, March 5, 2021, and March 25, 2021. This notice announces the denial of DCNA’s petition.

**FOR FURTHER INFORMATION CONTACT:** Kamna Ralhan, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-6443.

#### 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 15, 2020 and amended its report on July 16, 2020, and March

24, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. DCNA subsequently petitioned NHTSA on August 4, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that these 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*. On October 1, 2020,<sup>1</sup> DCNA submitted an amended petition to the Agency. Additionally, DCNA submitted supplemental information to NHTSA on February 5, 2021, March 5, 2021, and March 25, 2021.

A notice of receipt of DCNA's petition was published with a 30-day public comment period, on March 26, 2024, in the **Federal Register** (89 FR 21168). 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 follow the online search instructions to locate docket number "NHTSA-2020-0084."

**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, were reported by the manufacturer.

**III. Noncompliance:** DCNA stated that the subject buses are noncompliant because the identifiers for the windshield defogging/defrosting control, the hazard warning signal control, and the HVAC control do not meet illumination requirements in paragraphs S5.3.1, S5.3.2, and Table 1 of FMVSS No. 101. Specifically, the brightness of the windshield defogging/defrosting and HVAC control identifiers cannot be adjusted, and the hazard warning signal control identifier 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. The standard requires that drivers must have the ability to control the timing of illuminating indicators, the brightness of illuminating indicators, the

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

identification of indicators, and the identification of controls listed in Table 1 to make those indicators visible to drivers under daylight and nighttime driving conditions. Additionally, drivers must have the ability to adjust the visibility to 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 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 in the docket, DCNA explains its understanding of FMVSS No. 101 and states that the subject noncompliances do not increase risk to motor vehicle safety. DCNA states 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 states 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 the 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 asserts 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 states 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 the defrost/defog control activates the windshield defrost/defog function and that both the symbol and control knob are automatically illuminated when the subject buses’ headlamps are activated but cannot be dimmed, which is required by S5.3.2.1 of FMVSS No. 101. DCNA asserts that each of the functions surrounding the windshield defrost/defog symbol, many of which are not regulated by FMVSS No. 101’s Table 1, are illuminated. DCNA explains that there is a master switch that allows the driver to adjust the brightness of the area surrounding the controls, 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 buses 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 states 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 drivers of the subject buses 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 states 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 “could cause the headlamp upper beam indicator telltale to extinguish for various periods of time and under certain conditions.” In this case, DCNA states that NHTSA determined that the upper beam telltale would only need to be illuminated during nighttime driving conditions, as only a comparatively small portion of driving occurs at night, which is the time of headlamp activation.<sup>2</sup>

DCNA reiterates that the subject buses are mostly used commercially, and 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 concerning the potential safety consequences of a noncompliance with FMVSS No. 101 because it is expected that the driver will monitor the condition of the vehicle closely “to

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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).

ensure the systems are properly operating.” Additionally, DCNA states that there are several petitions where NHTSA found that the potential risk to motor vehicle safety was inconsequential when the vehicle is operated by a trained driver because professional drivers understand the telltales and other vehicle warnings.<sup>3</sup>

DCNA concludes by stating 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.

## **VI. Summary of DCNA’s Supplemental Submissions:**

In support of its petition, DCNA submitted supplemental information to NHTSA on February 5, 2021, March 5, 2021, and March 25, 2021.

In its February 5, 2021, submission, DCNA clarifies that the reference to dimming through the meter assembly menu means that there is a master switch that operates the dimming function within the instrument cluster that is directly in front of the driver.

On March 5, 2021, DCNA provided photos<sup>4</sup> depicting the noncompliance under various conditions. In the same supplemental submission, DCNA notes 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.

In its March 25, 2021, submission, DCNA notes that in addition to the issues originally covered in its petition, 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.

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<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).

<sup>4</sup> These photos are available in the docket.

DCNA further 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. DCNA notes that these two controls are located in the same area as all the other HVAC controls and their location would be readily known to the experienced professional drivers that operate the buses at issue here.

Additionally, DCNA asserts that 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 states that there is little to no risk of illumination of controls for the heating and air-conditioning system causing the heating and air-conditioning fan to be overly bright and impair the vision of the driver.

## **VII. NHTSA's Analysis:**

### *A. General Principles*

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS is substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.<sup>5</sup>

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.<sup>6</sup> In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.<sup>7</sup> Further, because each inconsequential noncompliance petition must be

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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

evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

### *B. Response to the Petition*

#### **1. Increased Risk Due to Noncompliance:**

DCNA's interpretation of FMVSS No. 101 hinges upon the position that the noncompliance does not elevate the risk to motor vehicle safety compared to a vehicle that is fully compliant with the safety standard. FMVSS No. 101's sections S5.3.2.1 and S5.3.2.2(a) clearly mandate that the brightness of the subject controls, telltales, and indicators must be visible and adjustable under both day and nighttime conditions. DCNA's assessment undervalues that these regulations were promulgated to reduce driver distraction and ensure safety, particularly during challenging lighting conditions.

#### **2. Operation and Design of Hazard Warning Lamp Control:**

In addressing the operation and design of the hazard warning lamp control, it is essential to consider not only the visibility and operability emphasized by DCNA but also the fundamental safety requirements in FMVSS No. 101. The absence of illumination of the identifier for the hazard warning lamp control is a significant concern, as it contravenes the requirements set forth in FMVSS 101, paragraph S5.3.2.1. This provision mandates the illumination of certain control identifiers, including the hazard warning symbol to ensure their visibility under various lighting conditions, thereby facilitating their safe operation by the vehicle operator.

Moreover, while the implementation of a red toggle switch and its strategic placement may assist in locating the control, this design choice does not address the issue of illumination adequacy, which is required under FMVSS No. 101. Specifically, S5.3.2.2(a) in FMVSS 101 requires that the brightness of these controls must be adjustable to accommodate different

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where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

lighting environments, which is a feature that is absent in DCNA's subject vehicles. This limitation could hinder the rapid identification of the control under less-than-optimal lighting conditions, which would increase the risk of a vehicle crash. In safety engineering, there is a concept called "Gaze Fixation." When a driver is in an emergency, they should not have to take their eyes off the road for more than a fraction of a second. By failing to illuminate the hazard symbol, the manufacturer is forcing the driver to blindly search for the control or stare into the dark to find it. This "search time" is exactly when crashes can occur. If a driver is looking for a switch, they are not focusing on the road.

Compliance with FMVSS 101 is not about convenience but more so about predictable behavior. When a vehicle does not follow these illumination requirements, it breaks the "muscle memory" of the driver. In a high-stress situation—like a tire blowout or a sudden obstacle—the human brain reverts to basic instincts. The driver experiences a cognitive delay—they must think about where the switch is instead of immediately seeing and pressing it. That brief two-second delay at highway speeds can mean traveling more than 150 feet without activating the warning lights, which can be the difference between the vehicle behind stopping safely and causing a multi-vehicle crash. The manufacturer's claim that streetlights or moonlight will make the red switch visible is both legally and practically flawed, since safety standards are meant to account for worst-case conditions, such as driving on a pitch-black rural road where no ambient light is available.

Additionally, the requirement for the illumination of controls and their identifications, as stipulated in FMVSS 101, paragraph S5.3 Illumination, further underscores the necessity of this feature. Specifically, S5.3.1(a) outlines the timing of illumination, stating that the identification of controls must be illuminated whenever the headlamps are activated. This requirement ensures that controls are easily identifiable and operable in conditions where headlamp use is necessary, which directly impacts the vehicle's operational safety. The reliance on ambient lighting and audible clicks, while useful, does not fulfill the need for dedicated illumination of controls, as

these incidental sources do not compensate for the visibility and recognition afforded by properly designed illumination.

By neglecting to provide specific illumination for the hazard warning lamp control, the design fails to meet a fundamental safety requirement set by FMVSS No. 101. This failure violates a specific provision for the illumination of controls—that all controls are clearly visible and readily operable under various conditions—and, consequently, this noncompliance increases the risk of a vehicle crash.

### **3. Operation and Design of Windshield Defrost/Defog Control:**

DCNA's reference to the non-adjustable brightness of the windshield defrost/defog indicator still highlights a direct contravention of FMVSS No. 101, S5.3.2.2(a). Even if surrounding functions are illuminated and the control is within a group of related controls, the inability to adjust its brightness could distract the driver, particularly during nighttime driving if the display is excessively bright or too dim, countering FMVSS No. 101's goal of minimizing driver distractions. Windshield defrosting and defogging are not just about driver comfort; they are critical "vision-restoration" tools that can determine whether a driver sees the road or drives blind. When a windshield "flash fogs" due to sudden temperature changes, visibility can drop from 100% to near zero in seconds, requiring immediate action to prevent a crash. The indicator light is the driver's only confirmation that this life-saving system is active, but by making its brightness non-adjustable, the manufacturer creates a dangerous trade-off: a light that is too bright causes disability glare (blinding the driver at night), while one that is too dim forces the driver to stare away from the road to confirm the system's status.

### **4. Professional Training of Drivers:**

DCNA's emphasis on the professional training of drivers does not negate the safety purpose of the requirements of FMVSS No. 101. The standard regulates vehicle safety features, ensuring a consistent safety baseline for all drivers, irrespective of their training or experience. Even professionally trained drivers can be affected by poor design or inadequate illumination,

which could lead to momentary distractions or mistakes. Previous rulings on similar matters, such as those involving Mack Trucks, Inc. and Volvo Trucks North America, were contingent on the specifics of those cases and, as noted elsewhere, are not binding precedent.

## **5. Corrective Measures and Lack of Reported Incidents:**

The Agency acknowledges DCNA's corrective measures and the absence of reported incidents. However, a lack of incidents to date does not establish the insignificance of the noncompliance concerning FMVSS No. 101's safety objectives. As noted above, the absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.<sup>8</sup> The proactive nature of FMVSS No. 101 is to anticipate and address potential risks before they manifest into real-world issues.

## **6. Comparison to Previous Granted Petition:**

Contrary to the previously granted petition cited by DCNA, in which a telltale could sporadically extinguish, DCNA's subject petition involves a continual lack of hazard lamp illumination and adjustable brightness for the windshield defrost/defog control. DCNA's noncompliance is meaningfully different than the granted petition that DCNA cited, given the continual lack of the required functionality in DCNA's case.

### *C. Response to DCNA's Supplemental Information*

#### **1. Non-Dimmable HVAC Controls:**

The lack of dimmable HVAC controls in DCNA's subject vehicle could potentially cause glare or be distracting, especially during nighttime driving. Thus, NHTSA is not persuaded this noncompliance is inconsequential to motor vehicle safety.

#### **2. Reliance on Professional Drivers' Familiarity:**

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<sup>8</sup> 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").

DCNA's reliance on the experience of professional drivers to mitigate potential safety risks is not persuasive. FMVSS No. 101 is designed to ensure safety and ease of use for all drivers, regardless of their professional status or familiarity with a specific vehicle.

### **3. Testing and Driver Glare:**

The testing conducted by DCNA in a dark tunnel, while valuable, does not fully replicate the dynamic and often unpredictable lighting conditions drivers face on actual roads. Real-world driving involves varying degrees of ambient light, reflections, and other visual distractions that DCNA's test scenario does not adequately simulate. FMVSS No. 101 is designed to account for a range of driving scenarios.

Additionally, the ability of drivers to adapt to different lighting conditions varies widely, and DCNA's test does not account for this variability. For example, what may not cause a glare for one driver in a specific testing scenario might cause a distraction or impairment for another in a different context.

Furthermore, outside of controlled test environments, drivers often encounter transient lighting conditions while passing through tunnels, emerging from underpasses, or facing the glare of oncoming headlights. In these scenarios, the ability to adjust the brightness of controls like HVAC systems becomes critically important to maintain visibility and prevent distraction. Testing in a consistently dark environment does not address these transient conditions, which are integral to FMVSS No. 101's focus on facilitating proper control selection under varying lighting.

### **4. Potential for Overly Bright Controls:**

The possibility that the illumination of controls could be overly bright and impair the vision of the driver underscores the importance of compliance with FMVSS No. 101's dimmability requirement. The purpose of this requirement is to prevent such scenarios, ensuring that drivers can indeed adjust the brightness of controls in different driving conditions.

## **VIII. NHTSA's Decision:**

In consideration of the foregoing, NHTSA has decided that DCNA has not met its burden of persuasion that the subject FMVSS No. 101 noncompliance is inconsequential to motor vehicle safety. Accordingly, DCNA's petition is hereby denied, and DCNA is consequently obligated to provide notification of a free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

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

**Eileen Sullivan**

*Associate Administrator for Enforcement.*

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