

# KING & SPALDING

King & Spalding LLP  
1700 Pennsylvania Ave, NW  
Suite 200  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737  
www.kslaw.com

Jacqueline Glassman  
Partner  
Direct Dial: +1 202 626 9228  
Direct Fax: +1 202 626 3737  
Mobile: +1 202 251 2575  
jglassman@kslaw.com

August 4, 2020

## **VIA OVERNIGHT MAIL**

The Honorable James C. Owens  
Acting Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E.  
West Building, Room 41-304  
Washington D.C. 20590

Re: Request for Inconsequential Noncompliance, Daimler Coaches North America, LLC  
Recall No.: 20V-411

Dear Administrator Owens:

Pursuant to 49 U.S.C. § 30118(d) and 49 C.F.R. Part 556, Daimler Coaches North America, LLC (“DCNA”) submits this petition for inconsequentiality for NHTSA Recall No. 20V-411. DCNA seeks an exemption from the notice and remedy requirements of the Vehicle Safety Act, pursuant to 49 U.S.C. §§ 30118(d) and 30120(h), and 49 C.F.R. Part 556, because the noncompliance described below is inconsequential to motor vehicle safety.

DCNA filed a Noncompliance Information Report on July 15, 2020, and amended it on July 16, 2020 (copy attached). The Noncompliance Information Report identifies a total of 538 Setra S407 buses Model Years 2012 - 2019 and Setra buses S417 Model Years 2009 - 2020 that do not meet the FMVSS 101 requirements for the illumination and brightness of certain controls and control identifiers. As required by 49 C.F.R. § 556.4(b)(3), the noncompliance report was filed by Daimler Coaches North America, LLC which is located at 2477 Deerfield Drive Fort Mill, South Carolina 29715.

## **I. Background and Description of the Noncompliance**

DCNA is the United States distributor of the buses that are the subject of this petition. The vehicles are manufactured by EVO Bus GmbH (“EVO Bus”), a subsidiary of Daimler AG. On July 9, 2020, EVO Bus determined that 538 Model Year 2012 - 2019 Setra S407 and Model

Year 2009 - 2020 Setra S417 motorcoach buses do not fully comply with the illumination and brightness requirements for controls in FMVSS 101. Specifically, the brightness level of the windshield defog and defrost control identifier is not adjustable and the hazard warning lamp symbol included on the control is not illuminated and does not have a means to adjust the brightness. Despite the noncompliance, the condition does not create an unreasonable risk to motor vehicle safety. The majority of the affected vehicles have been operating in the field for many years and without incident.

## **II. Analysis**

FMVSS 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 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.

The relevant provisions are provided below:

S5.3.2.1 Means must be provided for illuminating the indicators, identifications of indicators and identifications of controls listed in Table 1 to make them visible to the driver under daylight and nighttime driving conditions.

S5.3.2.2 The means of providing the visibility required by S5.3.2.1:

- (a) Must be adjustable to provide at least two levels of brightness;
- (b) At a level of brightness other than the highest level, the identification of controls and indicators must be barely discernible to the driver who has adapted to dark ambient roadway condition;
- (c) May be operable manually or automatically; and
- (d) May have levels of brightness, other than the two required visible levels of brightness, at which those items and identification are not visible.

Despite the requirement above, the lack of illumination on the hazard warning lamp symbol included on the control and inability to adjust brightness of the defrost/defog control do not present an increased risk to motor vehicle safety. 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.

### **Hazard Warning Lamp**

The hazard warning lamp is controlled by a large red plastic toggle switch that is 19 mm across by 40 mm high. See photograph below:



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 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.

An exemplar photo is provided below:



### **Windshield Defrost/Defog**

The windshield defrost/defog symbol is located adjacent to the control knob as depicted in the photo below:



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 S5.3.2.1. However, each of the functions surrounding the windshield defrost/defog symbol, many of which are not regulated by FMVSS 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. Thus, 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 of the 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 Fed. Reg. 33323 (July 19, 1991).

The buses that are the subject of this petition are motorcoaches 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 101 because it is expected that the drivers will not only monitor their vehicle's 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 Fed. Reg. 67766 (December 11, 2019); *Autocar Industries, LLC and Hino Motors Sales U.S.A., Inc., Grant of Petitions for Decision of Inconsequential Noncompliance*, 84 Fed. Reg. 11162 (March 25, 2019); *Daimler Trucks North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance*, 82 Fed. Reg. 33551 (July 20, 2017).

### **III. Conclusion**

EvoBus 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

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this petition. In the majority of cases, the vehicles have been in use for many years and without incident.

Based upon the foregoing data and information, DCNA requests that the agency determine that the noncompliance involving FMVSS 101 is inconsequential to motor vehicle safety and that it be relieved of its notice and remedy obligations.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacqueline Glassman". The signature is written in a cursive, flowing style.

Jacqueline Glassman  
Partner

JG:cli

Enclosure