DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0005; Notice 2]

Daimler Trucks 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 Trucks North America, LLC (DTNA) has determined that certain model year (MY) 2011–2021 Thomas Built Saf-T-Liner HDX school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating and Crash Protection.* DTNA filed a noncompliance report dated December 17, 2019, and later amended the report on January 16, 2020. DTNA subsequently petitioned NHTSA on January 16, 2020, (DTNA incorrectly dated their petition January 16, 2019) 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: Daniel Lind, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–7235, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Following notice from NHTSA of a failed compliance test, DTNA has determined that certain MY 2011–2021 Thomas Built Saf-T-Liner HDX school buses do not fully comply with the requirements of paragraph S5.2.3 of FMVSS No. 222, *School Bus Passenger Seating and Crash Protection* (49 CFR 571.222). DTNA filed a noncompliance report dated December 17, 2019, and later amended its report on January 16, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA subsequently petitioned NHTSA on January 16, 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. *See* 49 U.S.C. 30118(d), 30120(h); 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 June 12, 2020, in the **Federal Register** (85 FR 35992). One comment was received. To view the petition and all related documents, members of the public can 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–2020–0005.

II. Buses Involved: Approximately 7,601 MY 2011–2021 Thomas Built Saf-T-Liner HDX school buses manufactured between October 21, 2009, and December 16, 2019 (the subject buses), are potentially involved.

III. Noncompliance: DTNA explains in its petition that the noncompliance at issue is that the subject school buses are equipped with a wall-mounted restraining barrier that does not meet the requirements specified in paragraph S5.2.3 of FMVSS No. 222. Specifically, when tested according to the specified test procedure, the restraining barrier did not meet the force/deflection curve or deflection requirements. DTNA contends that the restraining barrier failed to meet these requirements because the upper loading bar contacted the trim panel on the front entry door of the bus, which caused the upper loading bar force to exceed the allowable limit.

IV. Rule Requirements: Paragraph S5.2.3(a) of FMVSS No. 222 includes the requirement relevant to this petition. This requirement states that, ''[w]hen force is applied to the restraining barrier in the same manner as specified in paragraphs S5.1.3.1 through S5.1.3.4 for seating performance tests,'' the restraining barrier ''[f]orce/deflection curve shall fall within the zone specified in Figure 1.''

V. Summary of DTNA's Petition: The views and arguments described in this section, ''V. Summary of DTNA's Petition,'' are the views and arguments presented by DTNA and do not reflect the views of the Agency. In its petition, DTNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In its petition, DTNA submits the following views and arguments:

1. *Background and description of the noncompliance:* DTNA states that it modified the restraining barrier design for the subject buses in October 2009, following an update to FMVSS No. 222, that increased the seat back height requirement to 24 inches. DTNA states that, for aesthetic purposes and not for functional or compliance reasons, it similarly chose to adjust the profiles (slope and angle) of the restraining barrier to match the new higher seatback height. To do so, DTNA added approximately 5⁄8 inch of foam padding to each side of the restraining barrier. The foam was added onto the outside of the frame of the barrier, which did not widen the frame structure itself. The additional padding is used for cosmetic purposes (to promote uniformity of design of the seat profiles at that time) and is not needed to provide protection beyond the construction of the restraining barrier itself.

2. *Analysis:* DTNA states that the purpose of the restraining barrier is to provide compartmentalization for occupants of the first row of school bus seats, where there is no seat back in a forward seat to offer protection. FMVSS No. 222 includes a series of performance requirements for school bus frontal barriers which include the distance between the barrier and the seat (S5.2.1), the barrier height and position (S5.2.2), and barrier forward performance (S5.2.3). The purpose of the barrier forward performance requirement at S5.2.3 is to ensure the front barrier can withstand the impact of certain set forces while, at the same time, maintaining component integrity.

3. *The forces measured in testing are a product of the test apparatus that would not occur in the real world.* DTNA states that the effect of the additional foam outside the restraining barrier frame was to slightly widen the restraining barrier. With a wider restraining barrier, the placement of the upper restraining barrier is moved outwards so that it now encounters the door frame trim. Because the restraining barrier is wider, based on its calculated placement per the test procedure, the corresponding length of the upper loading bar becomes longer than that of the prior design. When the upper loading bar is deployed, it contacts the front entrance door trim and causes the upper loading bar to exceed the force limits.

DTNA states that the behavior of the upper loading bar is a product of the test procedure and does not represent the behavior of the barrier in actual use conditions. Prior to the 2009 design change, there was an approximately two-inch gap at the height where the upper loading arm was placed. This prior design met the barrier forward performance requirements. Following the design change in 2009, that space was filled in with soft foam, but the effect of doing so did not have any impact on the performance or integrity of the barrier itself.

DTNA states that it has conducted its own analysis of the restraining barrier performance in the 2009 design tested by the Agency as well as the prior design. The results of that testing

demonstrate that the additional foam creates approximately 11 mm (.43 inches) of interference between the upper loading bar on the right side of the vehicle and the bus entrance door frame. The additional foam was not intended to and does not provide any safety or functional benefit. Even though the prior design of the restraining barrier left a small gap between the bus sidewall and the barrier itself, the barrier was more than sufficient to meet the performance forward requirements. The addition of foam for cosmetic purposes in 2009 does not deter from the safety of the barrier.

DTNA states that removing the additional 5/8 inches of foam padding would eliminate the potential for any interference with the upper loading bar as it then cannot come into physical contact with the doorframe. The previous small gap in space did not expose occupants to an increased risk of harm (as demonstrated by the lack of any reports from the field potentially related to this issue), and the more recent addition of the foam also does not create any safety concerns beyond the operation of the test itself.

4. *The current restraining barrier addresses the unreasonable risk to safety identified by FMVSS No. 222.* DTNA states that the purpose of a restraining barrier is to compartmentalize and contain passengers located in the first row of seats in the event of a crash or sharp deceleration. The forward performance test evaluates the strength of the restraining barrier in a forward impact and to deflect in a controlled manner as it absorbs the energy of the occupant striking the barrier.

DTNA states that the restraining barrier is intended to provide an equivalent level of compartmentalization as the seat back for the rearward seats. The safety benefit of compartmentalization is realized through the height of the restraining barrier (or seatback), and a restraining barrier that is too low could increase the likelihood that, in a forward crash, an occupant could be thrown over the barrier. This view is consistent with the requirement that the height and position of the restraining barrier match or ''coincide'' with that of the seatback. Because FMVSS No. 222 defines the unreasonable risk to safety as the potential for being thrown over the barrier, it is the height and position of the barrier that mitigate against this risk.

DTNA additionally states that, while the surface area of the barrier must at least coincide with the surface area of the seatback, any additional width of the barrier that extends beyond the frame of the barrier is surplus material that does not address the unreasonable risk to safety addressed by the standard. DTNA states that the Agency has previously recognized that a ''restraining barrier must therefore only coincide with or lie outside of the seatback surface required by S5.1.2. If a seat back surface exceeds the size required in Standard 222, the size of the restraining barrier need not coincide.'' (Ltr. from E. Jones, NHTSA, to L. Wort, Ill. Dept. of Transp. (Aug. 11, 1987).)[1] The reverse also holds true. For the subject buses, the surface area of the barrier is larger than that of the seat back and exceeds the area required by S5.2.1. While the restraining barrier surface area can be larger than the seat back, the unreasonable risk to safety is addressed by maximizing the effects of compartmentalization by ensuring the perimeter of the restraining barrier coincides with the surface area of the seatback.

DTNA states that the test procedure considers the need to assess the portion of the barrier that is intended to bear the force of the loading. DTNA believes that when creating the test procedure, the Agency intentionally limited the length of the loading bar to be approximately 4 inches shorter than the width of the seat back or restraining barrier. DTNA says NHTSA declined to reduce the size of the range to two inches because it wanted ''to ensure loads would be transferred to the seat structure without collapse of the seat back'' and to discourage manufacturers from adding a narrow structural member to meet the requirements. *See* 39 FR 27585 (July 30, 1974). In other words, the objective of the forward performance test is to measure the operation and structural integrity of the restraining barrier by ensuring the loads are concentrated in the core of the structure itself and not the periphery of the structure which could cause it to unnecessarily collapse. Thus, the additional foam installed outwards of the restraining barrier frame has no bearing on the forward performance of the restraining barrier.

5. DTNA states that it has corrected this issue in production by adjusting the location of the installation of the barrier by moving it away from the wall by 3/4 inch. Doing so ensures that in any future testing, the loading bar will not encounter the door frame.

6. Finally, DTNA states that it has used this seating design for over a decade. It is not aware of any consumer complaints or reports of accidents or injuries related to the forward displacement of the restraining barrier.

DTNA concludes its petition by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and requesting 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.

VI. Public Comment: NHTSA received one comment from the general public concerning DTNA's petition. The commenter believed NHTSA should deny DTNA's request on the basis that the subject vehicles failed to meet test requirements. NHTSA appreciates the commenter's input and, for the reasons described below, is denying DTNA's petition.

VII. NHTSA's Analysis

A. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the ''Safety Act'') with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. *See* 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory Federal Motor Vehicle Safety Standards (FMVSS). *See* 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. *See* 49 CFR 1.95.

NHTSA adopts an FMVSS only after it has determined that the performance requirements are objective, practicable, and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with an FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA. To protect the public from such risks, manufacturers whose products fail to comply with an FMVSS are normally required to conduct a safety recall in which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. *See* 49 U.S.C. 30118–20. However, Congress recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. It therefore established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.,* recall) obligations. *See* 49 U.S.C. 30118(d), 30120(h). The Agency's regulations

[1] Available at: *https://isearch.nhtsa.gov/gm/87/nht87-2.66.html.*

governing the filing and consideration of petitions for inconsequentiality exemptions are set forth at 49 CFR part 556.

Under the Safety Act and Part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments regarding the petition. In addition to considering public comments, the Agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition.

Neither the Safety Act nor part 556 define the term ''inconsequential.'' Rather, the Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. In some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. Where a manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available. *See, e.g.,* General Motors, LLC., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (Dec. 20, 2016).

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 found very few noncompliances with performance requirements to be inconsequential. Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely, if ever, found to be inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance petitions is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] NHTSA also does not consider the absence of complaints or injuries to be demonstrative on the issue of whether the noncompliance is inconsequential to safety. The Agency has explained that ''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.'' [3] Likewise, ''the 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.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected also have not resulted in granting an inconsequentiality petition.[5] 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 outcome to an occupant who is exposed to the consequence of that noncompliance.[6]

[2] *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).

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

[4] *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'').

[5] *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).

[6] *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).

B. Response to DTNA's Arguments

NHTSA has reviewed DTNA's arguments that the subject noncompliance is inconsequential to motor vehicle safety. DTNA contends that the noncompliance of the passenger side barrier on the subject buses with the barrier forward performance requirements specified in paragraph S5.2.3 of FMVSS No. 222, poses little, if any, risk to motor vehicle safety. NHTSA does not agree. In reaching this conclusion, NHTSA considered the following:

The purpose of FMVSS No. 222 is to reduce the number of deaths and the severity of injuries that result from the impact of school bus occupants against structures within the vehicle during crashes and sudden driving maneuvers (49 CFR 571.222 S2). The requirements of S5.2.3 *Barrier Performance Forward* of FMVSS No. 222, at issue here are specific to the energy a barrier can absorb during an emergency event, and the rate at which such energy can be absorbed. These requirements are threefold: (1) a barrier must be able to absorb a minimum amount of energy within the first 356 mm of deflection,[7] (2) the rate of energy absorption must fall within a specified Force vs Deflection Zone,[8] and (3) the barrier, and its components, must not separate at any attachment point from the vehicle, nor interfere with normal door operation. In the present case, during NHTSA's compliance test of the barrier in question, the rate of energy absorption exceeded the upper limit of the Force vs Deflection Zone before absorbing the minimum required energy, thereby leading to a compliance test failure.

NHTSA does not agree that the 2009 design change to the subject buses did not have any impact on the barrier performance. DTNA states that it adjusted the profiles (slope and angle) of the barrier to match the new higher seatback height, in addition to adding approximately ⅝ inch of foam padding to each side of the barrier. DTNA did not provide evidence demonstrating that, when DTNA was considering the new barrier design, it tested the design or otherwise engaged in analyses to ensure compliance to the existing requirements of FMVSS No. 222. Similarly, DTNA did not provide evidence demonstrating that any testing

[7] The minimum energy required to be absorbed by the barrier is based on the number of designated seating positions, W, of the seat immediately behind the barrier. *See* 49 CFR 571.222 S5.1.3.4, S4.1(a).

[8] *See* 49 CFR 571.222 Figure 1.

or analyses were ever performed that took into account the obstruction between the new barrier design and front entrance door trim combination.[9] As such, NHTSA is not persuaded by DTNA's argument that the design change was only aesthetic and had no impact on the performance of the barrier, as no evidence was provided in support of this claim.

NHTSA also does not agree that the compliance test failure was caused by the upper loading bar contacting the front entrance door trim during the test. The barrier foam thickness is 3.5 inches (88 mm) and extends approximately 2 inches (51 mm) beyond the end of the loading bar. For the loading bar to contact the front entrance door trim, the loading bar would have had to compress 3.5 inches of foam to 0 inches to directly contact the front entrance door trim. Further, the loading bar is mounted to allow up to 30 degrees rotation in the horizontal plane, so that, when the barrier contacted the front entrance door trim and the foam began to compress on that side, the loading bar would rotate about its pivot point and reduce or eliminate any potential overlap between the loading bar and front entrance door trim. NHTSA therefore is not persuaded by DTNA's argument that the upper loading bar made contact with the front entrance door trim during the NHTSA compliance test because DTNA provided no evidence demonstrating how the 3.5 inches of foam could be compressed to 0 inches, and no analysis that accounted for the rotation of the loading bar away from the front entrance door trim.

NHTSA also does not agree with DTNA's argument that ''placement of the [upper loading bar] should be calculated based on the size of the barrier from the frame inwards and not include the surplus material that does not provide structure to the barrier.'' The NHTSA letter of interpretation which DTNA referenced in support of this argument [10] was responding to a question about whether the height of a barrier needed to match the height of the seat immediately behind a barrier, where the seat height was above the minimum required seat height specified in FMVSS No. 222. This letter of interpretation does not support DTNA's petition because energy absorption by the barrier was not at issue in the letter of interpretation. As such, NHTSA is not persuaded by DTNA's argument that the loading bar width should be calculated based on the barrier frame.

NHTSA does not agree with DTNA's argument regarding the length of the loading bar or its contention that ''the objective of the forward performance test is to measure the operation and structural integrity of the restraining barrier by ensuring the loads are concentrated in the core of the structure itself and not the periphery of the structure which could cause it to unnecessarily collapse.'' The history of FMVSS No. 222 and the requirements for the length of the loading bar show that FMVSS No. 222 was initially proposed as a new vehicle safety standard on February 22, 1973 (38 FR 4776). The preamble for this first proposed rule did not include any discussion on the length of the loading bar, and the proposed regulatory text stated that ''[t]he length of a loading bar is 4 inches less than the width of the seat back in each test.'' In response to comments received on the first proposed rule, a second proposed rule was published on July 30, 1974 (39 FR 27585). The preamble for the second proposed rule included a statement on the length of the loading bar, explaining that ''[t]he specified loading bar remains 4 inches shorter than the seat back width, despite several objections, to ensure that loads will be transferred to the seat structure without collapse of the seat back.'' The proposed regulatory text was slightly revised to provide that ''[t]he length of the loading bar is at least 4 inches less than the width of the seat back in each test.'' In response to comments received on the second proposed rule, a third proposed rule was published on April 23, 1975 (40 FR 17855). The preamble of the third proposed rule included a statement on the length of the loading bar, explaining that ''[t]he loading bar specifications have been tightened to require the bar to be 4 inches shorter than the seat back width, rather than 'at least 4 inches' shorter.' '' The proposed regulatory text in the third proposed rule was essentially reverted back to the text in the first proposed rule and provided that ''[t]he length of the loading bar is 4 inches less than the width of the seat back in each test.'' [11] In response to comments received on the third proposed rule, a fourth proposed rule was published on October 8, 1975 (40 FR 47141). The preamble of the fourth proposed rule included the following discussion specifically related to the loading bar length:

> Manufacturers also requested tolerances in positioning of the loading bar at 16 inches above the seating reference point and in the bar's 4-inch length.[12] As has often been stated in NHTSA interpretations on similar issues, such a request reflects a misunderstanding of the legal nature of the safety standards. They are not instructions, but performance levels that vehicles are required by law to be capable of meeting. Any tolerance in this context would be meaningless and misleading, since it would merely have the effect of stating a performance level that the product must meet when tested by the government, at one end or the other of the tolerance gap, but in a confusing manner. Recognizing that no measurement is perfectly precise, a manufacturer's testing should be designed to show, using this case as an example, that if the seat were tested with the loading bar at precisely 16 inches above the seating reference point, and with a bar exactly 4 inches long, the seat would meet the applicable requirements. This may be done in at least two different ways: (1) by using a test procedure that conforms so closely to the specified input measurements (16 inches, 4 inches, etc.)—that no significant differences in results could occur as a result of the differences between the actual input measurements and the specified ones, or (2)—by determining which ''side'' of the specified measurements is adverse to the product tested, and being sure that the actual input measurements deviate from the specified ones on the adverse side.

The proposed regulatory text was unchanged from the third proposed rule. Following public comment on the fourth proposed rule, a final rule was published on January 28, 1976 (41 FR 4018). The preamble of the final rule did not include any further discussion on the length of the loading bar, and the regulatory text remained unchanged from the third proposed rule. No additional rulemakings have impacted the requirement specified in paragraph S5.6 of FMVSS No. 222 regarding the length of the loading bar. Although DTNA states that ''NHTSA declined to reduce the size of the range [from four inches] to two inches because it wanted 'to ensure loads would be transferred to the seat structure without collapse of the seat back' and to discourage manufacturers from adding a narrow structural member to meet the requirements,'' the history of the rulemaking relating to this standard does not support this statement. This

[9] Manufacturers and testing laboratories may perform tests that are either ''in-bus'' or ''outside of bus'' for barrier and seat tests to evaluate barrier/seat performance. In the present case, the interaction between the barrier and the front entrance door trim is at issue, therefore only ''in-bus'' testing with the same relative placement of the barrier to the door trim would be appropriate for comparative purposes.

[10] Available at: *https://isearch.nhtsa.gov/gm/87/nht87-2.66.html.*

[11] The third proposed rule language matches the modern-day requirements specified in FMVSS No. 222 S5.6 (albeit in English units).

[12] In the preamble discussion of the fourth proposed rule for FMVSS No. 222, references to the loading bar being 4 inches long are actually in reference to the length of the loading bar being 4 inches less than the barrier width at the loading bar height.

same history shows that the Agency, at one time, contemplated *increasing* the size of the range at issue in its second proposed rule with the addition of the phrase ''at least,'' [13] but does not suggest that NHTSA ever contemplated *decreasing* the size of the range. Furthermore, although DTNA's argument implies that a *longer* loading bar may not concentrate loads to the barrier structure and may in fact lead to unnecessary collapse at the periphery of the barrier, DTNA provided no analysis or data supporting this claim. As such, NHTSA is not persuaded by DTNA's argument that ''the objective of the forward performance test is to measure the operation and structural integrity of the restraining barrier by ensuring the loads are concentrated in the core of the structure itself and not the periphery of the structure which could cause it to unnecessarily collapse.''

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. 222 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)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–17132 Filed 8–9–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0030; Notice 2]

Collins Bus Corporation, Denial of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petition.

SUMMARY: Collins Bus Corporation (Collins) has determined that certain model year (MY) 2012 2020 Ford and Chevrolet school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 217, *Bus Emergency Exits and Window Retention and Release.* Collins filed a noncompliance report dated April 15, 2020. Collins subsequently petitioned NHTSA on April 30, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Collins's petition.

FOR FURTHER INFORMATION CONTACT: Daniel Lind, NHTSA, Office of Vehicle Safety Compliance, telephone (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview: Collins has determined that certain MY 2012–2020 Ford and Chevrolet school buses do not fully comply with the requirements of paragraph S5.5.3(b) of FMVSS No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217). Collins filed a noncompliance report dated April 15, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Collins subsequently petitioned NHTSA on April 30, 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.*

Notice of receipt of Collins's petition was published in the **Federal Register** (85 FR 84463) with a 30-day public comment period, on December 28, 2020. No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0030.''

II. Buses Involved: Approximately 11,079 MY 2012–2020 Ford and Chevrolet school buses manufactured by Collins, as the final stage manufacturer, between February 2, 2012, and April 3, 2020, are potentially involved:

- Ford TH 400
- Ford Sh416, models SL, SH, DH, DE, TH, and TL
- Chevrolet DE516
- Chevrolet DH516
- Chevrolet DH500
- Ford TL 400
- Ford T24
- Chevrolet DH400

III. Noncompliance: Collins explains that the noncompliance is that the letter height for the operating instructions label describing the motions necessary to unlatch and open the emergency exits in the subject school buses does not fully comply with the requirements set forth in paragraph S5.5.3(b) of FMVSS No. 217. Specifically, the operating instructions describing the motions necessary to unlatch and open the emergency window exits are only eight (8) millimeters in height rather than the required one (1) centimeter.

IV. Rule Requirements: Paragraph S5.5.3(b) of FMVSS No. 217 includes the requirements relevant to this petition. Paragraph S5.5.3(b) requires that concise operating instructions describing the motions necessary to unlatch and open the emergency exit shall be located within 15 centimeters of the release mechanism on the inside surface of the bus. These instructions shall be in letters at least 1 centimeter high and of a color that contrasts with its background.

V. Summary of Collins's Petition: The following views and arguments presented in this section, ''V. Summary of Collins's Petition,'' are the views and arguments provided by Collins and do not reflect the views of the Agency. Collins describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

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

1. The Noncompliance is Inconsequential to Motor Vehicle Safety: Collins states that the 2-millimeter deficiency in the letter height is inconsequential to motor vehicle safety. The actual height of the emergency window exit operating instructions letters—eight (8) millimeters—is 80 percent of the height required by FMVSS No. 217 (ten (10) millimeters). NHTSA has previously granted inconsequential noncompliance petitions for labeling defects across various motor vehicle safety standards, including for more significant lettering height deficiencies:

- *Notice Granting Petition by Kia Motors:* Letters as little as 53.1 percent of the minimum height requirement. *See* 69 FR 41333 (July 8, 2004) (Docket No. NHTSA–2004–17439).
- *Notice Granting Petition by General Motors:* Lettering height 76.3 percent of the minimum height requirement. *See* 81 FR 92963 (Docket No. NHTSA–2016–0093).
- *Notice Granting Petition by Hyundai:* Letters as little as 78.1 percent of the minimum height requirement. *See* 69 FR 41568 (Docket No. NHTSA–2004–17439).
- *Notice Granting Petition by Mercedes-Benz:* Letters ''about

[13] For clarity, *increasing* the size of the range at issue (which is the length of the loading bar relative to the width of the barrier) would correspond to a *shorter* loading bar. On the same note, *decreasing* the size of the range, would correspond to a *longer* loading bar.