



U.S. Department of Transportation
**National Highway Traffic Safety
Administration**



VIA EMAIL ONLY

December 22, 2022

Mr. Sean Waters
Vice President, Product Compliance
and Regulatory Affairs
Daimler Trucks North America, LLC
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Dear Mr. Waters,

The December 29, 2020 Consent Order between the National Highway Traffic Safety Administration (NHTSA or the “Agency”) and Daimler Trucks North America, LLC (DTNA) was for a two-year term, “provided, however, that NHTSA may extend the term of this Consent Order for an additional year if NHTSA reasonably finds that an extension is warranted.” Consent Order ¶ 35. This letter is to notify you that NHTSA has determined that a one-year extension is warranted. As described in more detail below, the Agency has concerns regarding the seriousness with which the company has taken its obligations under the Safety Act and Consent Order. The term of the Consent Order will now end December 28, 2023.

First, NHTSA is concerned about DTNA’s compliance with its recall-related obligations. Specifically, DTNA filed many incomplete Defect and Noncompliance Information Reports (DIRs) and had numerous issues with owner notification letters during the term of the Consent Order. Additionally, NHTSA is concerned about the length of time that DTNA took to consider a straightforward noncompliance issue before filing a recall. The Agency is also concerned with DTNA’s interactions with NHTSA during the term of the Consent Order, which have negatively impacted the productiveness of the Consent Order meetings.

Based on these concerns regarding DTNA’s compliance with its legal obligations and the Consent Order requirements, NHTSA has decided to extend the Consent Order for an additional year.

Recall-Related Concerns

As you are aware, one of the concerns that led to this Consent Order was the timeliness of DTNA’s recalls. *See* Consent Order ¶ 9. To that end, the Consent Order required the company

to take action to improve its compliance with the legal requirements for recalls. Specifically, Paragraph 28(a) provides:

DTNA shall develop written procedures and employee training materials to: [] improve its processes and facilitate compliance with its legal obligations to investigate potential safety defects and noncompliances, timely identify and report safety defects and noncompliances, submit complete and accurate DIRs, and timely amend DIRs as required. *See* 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6[.]

Despite those requirements to improve DTNA’s compliance, it is troubling that a large number of recalls filed by DTNA during the Consent Order had incomplete DIRs that required follow-up by the Agency. Fifty of the 93 recalls that DTNA filed since January 2021 were incomplete and required amendments for missing required elements. Those issues were identified by the Agency in its recall acknowledgement letters to the company. Furthermore, 24 of the 50 incomplete DIRs required additional formal notices from NHTSA to obtain the missing information. Additionally, since January 2022, the Agency identified 12 issues with DTNA’s Part 577 owner notification letters, including major issues in two recalls that required DTNA to renotify owners of the recalls. NHTSA’s Recall Management Division recently began having regular meetings with DTNA, which we hope will help mitigate these types of issues in the future. However, it is important that the company ensure it meets its legal requirements for recalls and other obligations without need for intervention by the Agency.

NHTSA also has concerns about the length of time DTNA took to consider a straightforward noncompliance matter before filing a recall. After NHTSA’s Office of Vehicle Safety Compliance (OVSC) brought the issue—involving size requirements for lettering on emergency exit labels on school buses—to DTNA’s attention, DTNA took nearly two years to file a recall (recall number 22V-075). The safety standard (FMVSS No. 217) requires the lettering to be at least 5 cm high and DTNA’s DIR acknowledged that some of the letters measured only 4.9 cm high.¹

Interactions with NHTSA at Consent Order Meetings

The Consent Order required frequent communications between the Agency and the company to provide the Agency with enhanced oversight, given the serious issues that led to the Consent Order. NHTSA is concerned about the level of seriousness with which the company has taken its interactions with the Agency during this time.

Specifically, Paragraph 26 of the Consent Order requires, in relevant part:

DTNA shall meet with NHTSA, either virtually or in person, on at least a

¹ While the company made various arguments as to why this potentially was not a noncompliance, we have concerns about the legitimacy of those arguments and the resulting lengthy delay in reaching the conclusion that the lettering did not meet the height requirement. DTNA also filed an inconsequentiality petition for this recall (recall number 22V-075), which remains pending.

monthly basis during the term of this Consent Order, and will include in those meetings a discussion of the SEL[Safety Evaluation List] referenced in Paragraph 25 above as well as recent manufacturer communications, Vehicle Owner Questionnaires (“VOQs”), DTNA’s recall decision-making (including decisions not to recall) or other issues of interest to NHTSA.

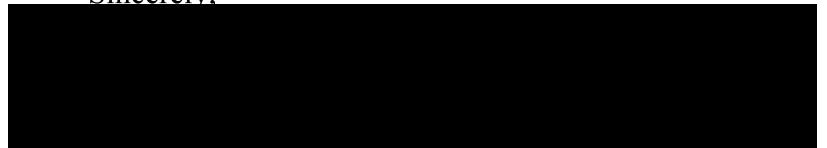
NHTSA is concerned that DTNA has not fully participated in Consent Order meetings with NHTSA in a productive manner. NHTSA repeatedly only learned about DTNA’s internal investigations after DTNA had already determined that there was no safety issue or had already decided to file a safety recall. At other times, the company seemed dismissive of potential safety concerns raised by the Agency. Certain meetings also lacked personnel who were capable of adequately addressing the issues raised by the Agency, although more recently the company has included additional personnel in the meetings. While these issues have improved somewhat over time, regrettably, the Agency has not seen a demonstrated improvement in DTNA’s safety culture to the extent it expected during the initial two-year Consent Order term. We recognize that the company has recently committed to improving its working relationship with the Agency and we look forward to observing progress during the next year of the Consent Order.

The Consent Order is now extended until December 28, 2023. ODI will address with you in further detail the Agency’s expectations for the remainder of the Consent Order term.

Given the nature of the issues identified by the Agency that warrant this extension, DTNA is also reminded that the Consent Order includes a civil penalty that is currently being held in abeyance “pending DTNA’s satisfactory completion, as reasonably determined by NHTSA, of the requirements of [the] Consent Order and compliance with the Safety Act and the regulations thereunder.” Consent Order ¶ 12(b). While the Agency has not yet determined whether to begin the formal process of invoking abeyance penalties, as described in Paragraph 18 of the Consent Order, that matter remains under review.

If there are any questions concerning this matter, please feel free to contact Dan Rabinovitz, Office of the Chief Counsel, via email at Daniel.Rabinovitz@dot.gov.

Sincerely,



Ann Carlson
Acting Administrator

cc:

David Kayes, Corporate Legal Counsel at DTNA
Tim Goodman, Thompson Hine LLP (Outside Counsel)