

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue SE
Washington, DC 20590**

In re:

Navistar Recalls 18V-315, 18V-316

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the National Highway Traffic Safety Administration (“NHTSA” or the “Agency”), an operating administration of the U.S. Department of Transportation, and Navistar, Inc. (“Navistar”), to resolve issues surrounding the timeliness of Navistar’s filing of 49 C.F.R. Part 573 Reports of Noncompliance with respect to NHTSA Recall Numbers 18V-315 and 18V-316 (the “Subject Recalls”).

WHEREAS, Navistar submitted Noncompliance Information Reports with regard to the Subject Recalls on May 15, 2018 stating that the emergency release window mechanism on certain buses, including certain school buses, did not comply with Federal Motor Vehicle Safety Standard (“FMVSS”) No. 217;

WHEREAS, NHTSA believes that Navistar should have submitted its Noncompliance Information Reports at an earlier date; and

WHEREAS, NHTSA and Navistar have discussed the timing of Navistar’s decision to conduct a noncompliance recall, as well as a series of process enhancements and educational efforts that Navistar has begun to implement.

NOW THEREFORE, the parties set forth the basis for this Settlement Agreement, and the terms under which they have agreed to resolve the matter.

Basis for the Civil Penalty and Settlement Terms

1. As the basis for imposing civil penalties, NHTSA has raised concerns about the timing of Navistar's filing of 49 C.F.R. Part 573 Reports of Noncompliance for the noncompliances with FMVSS No. 217 identified in the Subject Recalls.

2. The Secretary of Transportation has the authority to impose and to compromise the amount of civil penalties under the Safety Act, taking certain factors into account. *See* 49 U.S.C. § 30165. The Secretary has delegated her authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2.

3. Pursuant to 49 U.S.C. § 30165, NHTSA and Navistar have agreed that in order to resolve the issue, Navistar shall pay the United States a civil penalty not to exceed \$1,000,000 (One Million Dollars) ("Total Civil Penalty").

a. Of this total amount, Navistar will pay \$600,000 (Six Hundred Thousand Dollars) as a lump sum payment within 45 days of the effective date of this Settlement Agreement (the "Lump Sum Payment").

b. Navistar shall only be liable for payment of the remaining \$400,000 (the "Abeyance Funds") in accordance with the conditions in Paragraph 6 below. Navistar shall be deemed released from any amount of the Abeyance Funds remaining at the expiration of this Settlement Agreement consistent with the provisions set forth in Paragraph 6.

c. If Navistar fails to make the Lump Sum Payment set forth above, or any payments of the Abeyance Funds as may become due in accordance with Paragraph 6 on or before their respective due dates, Navistar shall be in default of this Settlement Agreement and any unpaid amount of the Lump Sum Payment or any amount of the

Abeyance Funds as may become due in accordance with Paragraph 6 shall become immediately due and owing. In that event: (i) Navistar agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to applicable law, including the Claims Collection Act and the U.S. Department of Transportation's regulations, 49 C.F.R. § 89, either administratively or in any court; and (ii) Navistar affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding. In addition, in such a proceeding, Navistar shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses. Nothing in this provision precludes Navistar from challenging the imposition of any of the Abeyance Funds on the merits.

4. In determining the amount of an appropriate civil penalty, NHTSA has considered the civil penalty factors set forth in 49 U.S.C. § 30165(c) and has taken Navistar's views of how those factors should be applied into account. NHTSA has also considered the ongoing progress that Navistar has made to refine and enhance its compliance program.

5. The term of this Settlement Agreement is one year from the date of execution. This Settlement Agreement will expire on its own at the conclusion of the one year period.

6. Safety Notice, Opportunity to Respond, and Payment of Abeyance Funds. If, during the term of this Settlement Agreement, NHTSA identifies any concerns involving potential safety-related defects or noncompliances with applicable FMVSS in vehicles manufactured by Navistar, NHTSA agrees to timely inform Navistar of such concerns promptly in writing and within a reasonable time (not to exceed 30 days) from the time NHTSA's enforcement personnel first became aware of the concern using reasonable due diligence (the "Safety Notice").

- a. To the extent that NHTSA timely communicates a Safety Notice to Navistar, Navistar will have 30 calendar days from the date on which the Safety Notice was first communicated to Navistar by NHTSA ("Evaluation Period") to respond to the issue ("Opportunity to Respond"). The parties may extend this time by mutual agreement, and NHTSA agrees not to unreasonably deny such extension, if appropriate in consideration of all relevant circumstances.
- b. In response to the Safety Notice and within the Evaluation Period, Navistar may provide a written explanation of the issue, along with supporting documentation. Should there be a reasonable dispute over the issue, the parties agree to reasonably discuss the issue and how best to resolve it.
- c. If Navistar does not respond to the Safety Notice within 30 calendar days or the time period of any agreed upon extension, then NHTSA may impose the Abeyance Funds until such time as Navistar provides a response.
- d. The parties agree and understand that a response may require multiple submissions, and that the Abeyance Funds shall not be imposed if Navistar makes a good faith effort to provide as much information as is reasonably available at that time, even if the response is not yet complete or is preliminary, within the initial time frame agreed upon.
- e. Payment of the Abeyance Funds shall be prorated at a daily rate equal to \$400,000 divided by the 365 days in the Settlement Term (equal to \$1,096 per day), with payment due within forty-five (45) days from the date Navistar becomes liable for payment of such Abeyance Funds.

7. In the event that any Abeyance Funds become due and owing, these shall constitute compromised civil penalties pursuant to 49 U.S.C. § 30165(b). Such payments will be made by electronic funds transfer to the U.S. Treasury, in accordance with the instructions provided by NHTSA and as set forth in this Settlement Agreement.

8. NHTSA will apply these Settlement Agreement provisions in a fair and just manner and will communicate with Navistar in good faith.

9. This Settlement Agreement cannot be modified, amended or waived except by an instrument in writing signed by all parties.

10. Nothing in this Settlement Agreement shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation at the time of the execution of this Settlement Agreement, or as amended thereafter.

11. None of the specific reporting obligations described in this Settlement Agreement relieve Navistar of its obligation to submit any other reports required by the Safety Act or corresponding regulations.

12. This Settlement Agreement shall be effective upon execution by both Navistar and NHTSA. Any breach of the obligations under this Settlement Agreement may, at NHTSA's option, be immediately enforceable in any United States District Court.

13. This Settlement Agreement has been negotiated and prepared by both Navistar and NHTSA. If any of the Settlement Agreement's provisions require a court's interpretation, no ambiguity found in this Settlement Agreement shall be construed against the drafter.

14. The parties who are the signatories to this Settlement Agreement have the legal authority to enter into this Settlement Agreement, and each party has authorized its undersigned to execute this Settlement Agreement on its behalf.

15. Should any condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other provision of this Settlement Agreement.

16. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Settlement Agreement.

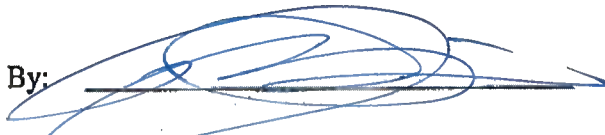
17. This Settlement Agreement may be executed in counterparts, each of which shall be considered effective as an original signature.

18. This Settlement Agreement is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Settlement Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Settlement Agreement and the attachments thereto.

[SIGNATURE PAGES FOLLOW]

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: 12-18, 2019

By: 

Jonathan C. Morrison
Chief Counsel

Dated: 12/18, 2019

By: 

Christopher S. Perry
Acting Assistant Chief Counsel
for Litigation and Enforcement

Dated: 12/18 2019

By: 

Sarah Sorg
Senior Trial Attorney

NAVISTAR, INC.

Dated: 12-17, 2019

By: 

Chad Clark
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Navistar, Inc.

Dated: Dec 17, 2019

By: 

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