

under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2000-7893.

*Date Filed:* September 1, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* MV/PSC/111 dated July 28, 2000, Recommended Practice 1724 (Mail Vote S074), Intended effective date: October 1, 2000.

**Dorothy Y. Beard,**

*Federal Register Liaison*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2000-7854 Notice 1]

#### Mercedes-Benz USA, LLC; Receipt of Application for Determination of Inconsequential Non-Compliance

Mercedes-Benz USA, (MBUSA) of Montvale, New Jersey has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant Crash Protection," on the basis that the noncompliance is inconsequential to motor vehicle safety. MBUSA has filed a report of noncompliance pursuant to 49 CFR Part 573 "Defects and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

#### Description of Noncompliance

MBUSA is a wholly owned subsidiary of DaimlerChrysler, AG (DCAG). MBUSA is incorporated in the state of Delaware and conducts business throughout the United States from the Company's headquarters at One Mercedes Drive, Montvale, New Jersey, 07645.

A limited number of model year 2000 Mercedes-Benz M-Class vehicles, manufactured by Mercedes-Benz, U.S. International, Inc. (MBUSI), the domestic manufacturing subsidiary of DCAG, are equipped with audible seat belt warning devices that do not meet certain requirements mandated by FMVSS No. 208. Specifically, FMVSS No. 208 requires that all passenger

vehicles of less than 10,000 pounds gross vehicle weight rating (GVWR) incorporate a visual and audible seat belt warning system that alerts the driver when the seat belt is unbuckled and the vehicle's ignition switch is moved to either the "on" or "start" position. Manufacturers are afforded two options regarding the visual and audible warning requirements. Specifically, FMVSS No. 208, Paragraph S7.3 states:

"(a) A seat belt assembly provided at the driver's seating position shall be equipped with a warning system that, at the option of the manufacturer, either—

(1) Activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds

(2) and that activates a continuous or flashing warning light visible to the driver displaying the identifying symbol for the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts", for not less than 60 seconds (beginning when the vehicle ignition switch is moved to the "on" or "start" position) when condition (b) exists simultaneously with condition (c), or that

(3) Activates for a period of not less than 4 seconds and not more than 8 seconds (beginning when the vehicle ignition switch is moved to the "on" or the "start" position), a continuous or flashing warning light visible to the driver, displaying the identifying symbol of the seat belt telltale shown in Table 2 of FMVSS 101 or, at the option of the manufacturer, if permitted by FMVSS 101, displaying the words "Fasten Seat Belts" or "Fasten Belts," when condition (b) exists, and a continuous or intermittent audible signal when condition (b) exists simultaneously with condition (c).

(b) The vehicle's ignition switch is moved to the "on" position or to the "start" position.

(c) The driver's lap belt is not in use, as determined, at the option of the manufacturer, either by the belt latch mechanism not being fastened, or by the belt not being extended by at least 4 inches from its stowed position." (emphasis added)

In the M-Class vehicles identified above, the seat belt warning system operates as follows. If a driver enters the vehicle, but neglects to fasten his/her seat belt, when the driver turns the ignition to the "on" or "start" position, a visual warning will flash and an audible warning will sound for eight seconds or until the driver buckles his/her seat belt. If a driver enters the

vehicle and promptly fastens his/her seat belt and then turns the ignition to the "on" or "start" position, the visual warning will flash for four to eight seconds. In addition, the audible warning will sound for a brief period of time less than four seconds (approximately two seconds). This additional audible warning was intended to act as part of the vehicle start-up systems check to alert the driver that all warning systems are fully operational. Based on a July 12, 2000 letter of interpretation from NHTSA, however, MBUSA has learned that the additional two-second audible warning that occurs after the seat belt is fastened is not in compliance with the requirements of FMVSS No. 208 S7.3. Accordingly, MBUSA submitted this petition for determination of inconsequential noncompliance with regards to the extra seat belt buzzers.

#### Supporting Information Submitted by MBUSA

MBUSA does not believe that the foregoing noncompliance will impact motor vehicle safety for a number of reasons. Specifically, a very limited number of these vehicles were produced with the extra buzzer in model year 2000. No other model year vehicles have this feature. In addition, because the audible and visual seat belt warning work as otherwise required by FMVSS No. 208, MBUSA believes that the extra buzzer is, at worst, an annoyance to the driver and does not detract from the safety intent served by the audible signal. Moreover, since the vast majority of vehicle owners do not even buckle their seat belts until after starting their vehicle, MBUSA does not believe that drivers will even notice this extra feature. Those that do notice this feature will only encounter it during vehicle start up and at no other time (i.e., while the vehicle is in operation). Consequently, MBUSA believes this noncompliance is inconsequential to motor vehicle safety.

MBUSA introduced the additional two-second buzzer as a new feature into its model year 2000 M-Class vehicles at the beginning of production. Because a question had arisen regarding the compliance status of this feature with the requirements of FMVSS 208, this feature was removed while model year 2000 M-Class vehicles were in production in order to allow MBUSA time to obtain a definitive response from NHTSA. As a result, only a very limited number of these vehicles were produced with the additional buzzer feature. MBUSA estimates that only 4,354 out of 56,264 vehicles produced as of August 17, 2000 has this feature. This figure

represents only 7.7% of the M-Class vehicles manufactured and sold for model year 2000 to date. This figure will be even lower as production and sale of the 2000 model year vehicle continues. As a result of this extremely low number, MBUSA does not believe that vehicles equipped with the additional buzzer pose a substantial decrease in safety for M-Class owners.

MBUSA continues to believe that the additional buzzer will enhance safety. Specifically, as noted in their October 5, 1999 request for interpretation, MBUSA incorporated this additional buzzer as a systems check to alert vehicle operators of the proper functioning of the audible warning system. Given the extremely short duration of this additional buzzer (approximately two seconds), MBUSA believes that the annoyance factor is low in comparison to the value provided by the systems check. Additionally, the brief audible signal alerted drivers to the importance of safety belt use. While the driver may have been buckled when this alert sounded, the extra reminder may still have been helpful in reminding drivers that other occupants should also be sure to fasten their seat belts, MBUSA believes that this reminder is analogous to the Ford Motor Company's planned new "Belt-Minder" system. As described at the Ford Motor Company Web site,

[t]he Belt-Minder system will use a safety belt usage sensor located in the belt buckle to determine whether a driver is buckled up. The sensor feeds this information to a control module, and if a driver is unbelted when the vehicle is in motion, a red light in the instrument panel will illuminate and a chime will intermittently sound to remind customers to use their safety belts. In time, the system will be expanded to offer front-seat passengers the same type of reminder.

See, <http://www.ford.com/default.asp?pageid=69&storyid=274>. Like the Ford Motor Company Belt-Minder system, the Mercedes-Benz system also serves to remind drivers of the importance of seat belt use and to assure drivers that the buzzer is working. Thus, MBUSA believe the buzzer enhances safety and as such represents a noncompliance that is inconsequential to motor vehicle safety.

MBUSA also believes that the situations in which the additional buzzer will operate also does not negatively impact motor vehicle safety. Specifically, the additional buzzer only sounds under certain conditions, namely upon vehicle startup when the driver has already fastened his seat belt. In this limited situation, the vehicle

engine has just been started and the vehicle is typically not yet in motion. By the time the driver engages the transmission and proceeds, the additional buzzer has already run through its systems check and has shut off. Thereafter, the only time the buzzer will again sound is when the vehicle engine is restarted after it has first been stopped and turned off. Consequently, the buzzer will not operate anytime the vehicle is in motion where it may otherwise distract the driver. For this additional reason, MBUSA believes that the extra buzzer, while not in compliance with the requirements of FMVSS No. 208, is not a noncompliance that will negatively impact motor vehicle safety.

Based on the above analysis, MBUSA does not believe that the extra seat belt warning buzzer has any appreciable impact on motor vehicle safety. Unbelted drivers will receive both the audible and visual warnings for eight seconds as required by FMVSS No. 208 when the vehicle's ignition is turned to the "on" or "start" position. Belted drivers receive the visual warning and a two second audible warning check that merely informs him/her that the audible warning system is operational and reminds the driver of the importance of seat belt use. Due to the extremely short duration of the check audible warning versus the audible warning indicating the need to fasten seat belts, MBUSA believes that belted drivers will not be unduly bothered or confused by the check audible warning. As a result, the MBUSA believes that there will be no diminished effect to the full eight second warning to unbelted drivers reminding them to buckle up. In addition, the additional check buzzer does not operate in situations where the vehicle may be in motion, thus not providing a distraction for vehicle operators that may interfere with operation of the vehicle. Finally, the number of affected vehicles is small (i.e., approximately 7%). For the foregoing reasons, MBUSA has requested NHTSA grant the petition for determination of inconsequential noncompliance.

Interested persons are invited to submit written data, views and arguments on the petition of MBUSA, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The

application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* October 12, 2000,

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

September 6, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 33895]<sup>1</sup>

#### **Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—Pennsylvania Lines LLC and Norfolk Southern Railway Company**

Ohio Southern Railroad, Incorporated (OSRR), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by sublease from Pennsylvania Lines LLC (PRR) and Norfolk Southern Railway Company (NSR) and operate approximately 2.3 route miles of rail line between milepost RQ 36.0, at Wilbren, OH, and milepost RQ 38.1, at New Lexington, OH, including connecting tracks in the vicinity of New Lexington (line).<sup>2</sup>

The transaction was expected to be consummated promptly following the effective date of the exemption. The earliest the transaction could be

<sup>1</sup> On August 25, 2000, the Ohio Southern Railroad, Incorporated filed an Amended Verified Notice of Exemption in STB Finance Docket No. 33895. The notice being served today corrects and supersedes the Board's initial notice that was served on July 18, 2000, and published the same date at 65 FR 44571 by clarifying that the total length of track being acquired is 2.3 route miles and includes connecting tracks in the vicinity of New Lexington. The remainder of the Board's July 18, 2000 notice remains unchanged.

<sup>2</sup> On July 5, 2000, NSR filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered an agreement between PRR, NSR and OSRR for the grant by OSRR to NSR of overhead trackage rights over the line. The trackage rights will enable NSR to continue operations over the line and facilitate the development of a more efficient routing for both OSRR and NSR to move traffic more expeditiously in the region. See *Norfolk Southern Railway Company—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated in Perry County, OH*, STB Finance Docket No. 33900 (STB served July 18, 2000).