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FOR FURTHER INFORMATION CONTACT:

Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR-830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *OSPREY II* is: *Intended Use:* "Charter fishing." *Geographic Region:* "Coast of Maine to Brownsville, Texas and the Caribbean Islands."

Dated: May 24, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04-12108 Filed 5-27-04; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2004-17902; Notice 1]

Volkswagen of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (Volkswagen) has determined that certain vehicles that were produced by Volkswagen AG and AUDI AG in 2004 do not comply with S4.2.2(a) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, "Theft protection." Volkswagen has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Approximately 47,962 model year 2004 vehicles are affected including approximately 37,663 Touareg, approximately 2,268 Phaeton and approximately 8,031 Audi A8L vehicles.

S4.2.2(a) of FMVSS No. 114 requires that

* * * provided that steering is prevented upon the key's removal, each vehicle * * * [which has an automatic transmission with a "park" position] may permit key removal when electrical failure of this [key-locking] system * * * occurs or may have a device which, when activated, permits key removal.

In the affected vehicles, the steering does not lock when the key is removed using the override system provided to permit key removal when the transmission is not in the "park" position.

Volkswagen believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Volkswagen states the following in its petition:

The ignition key/transmission interlock requirements of S4.2 were enacted in Docket 1-21, Notice 9 published May 30, 1990. In that amendment, there was no provision for an override to permit key removal if the transmission was not in the PARK position. In response to petitions for reconsideration and comments to the original NPRM by Toyota, Nissan, Subaru and the Rover Group, NHTSA published Docket 1-21, Notice 10 on March 26, 1991 to revise S4.2 by adding S4.2.1 and S4.2.2 which permitted an override device located behind a non-transparent cover that must be removed with the use of a tool. The activation of the override could permit removal of the key even though the transmission is not in PARK. An override could also permit moving the transmission out of the PARK position after removal of the key. The condition required for the operation of the override device in each case was that the steering would be prevented when the key is removed.

Toyota and Honda filed petitions for reconsideration to the March 1991 Final Rule amendment and these were responded to in Docket 1-21, Notice 11 on January 17, 1992. In Notice 11, NHTSA amended S4.2.2(a) to clarify that key removal is permitted even though the transmission was not in PARK without the activation of the override device in the event of vehicle electrical failure. However, removal of the key with the transmission not in PARK under conditions when the vehicle has normal electric power would only be permitted with the use of the override device. The condition for permitting key removal under any situation when the transmission was not in PARK was that the steering would be prevented when the key is removed.

The provision that the steering must be locked when the key is removed was discussed in both Notice 10 (56 FR 12467, March 20, 1991) and in Notice 11 (57 FR 2040, January 17, 1992) and the stated intent was "to ensure that Standard No. 114's theft protection aspects are not jeopardized." There is no indication that the requirement for the steering to be locked was based on any need to prevent personal injury or property damage.

Volkswagen states that it believes the noncompliance is inconsequential to motor vehicle safety because the presence or absence of a steering lock when the vehicle is without power and the key removed has no significance to motor vehicle safety. Volkswagen explains:

In the Volkswagen and Audi car lines for which this petition is submitted, the ability to remove the key with the override system is the priority security and safety feature (to the extent that it prevents a stolen vehicle from being driven) because the vehicles are equipped with an electronic immobilizer which prevents starting of the vehicle unless the electronically coded key provided for that vehicle is used. The code to start the engine and activate the fuel and ignition system is embedded in the engine control module and therefore cannot be bypassed or defeated. If the key cannot be removed in the event of vehicle power failure, the owner will not be able to lock the vehicle and the car can be started and driven by anyone who can get it repaired, which is as simple as a jump start.

Volkswagen asserts that there is no risk to motor vehicle safety from using the override device to remove the key when the transmission is not in "park" when there is no vehicle power failure because this would occur only in a repair shop or under supervised conditions when the vehicle must be moved but it is desired to remove the key for security reasons. Volkswagen states that in this case, the electronic immobilizer provides anti-theft protection and the steering lock is not significant.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 28, 2004.

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

Issued on: May 24, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04-12134 Filed 5-27-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34507]

The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over NSR's Kansas City District between NSR milepost S241.9 at CA Junction, MO, and NSR milepost S250.6 at Maxwell, MO, a distance of approximately 8.7 miles.

The transaction is scheduled to be consummated on May 30, 2004, and the temporary trackage rights will expire on June 1, 2004. The purpose of the temporary rights is to facilitate maintenance work on BNSF lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and, in accordance with the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union—General Committee of Adjustment (GO-386) v. Surface Transportation Board*, 363 F.3d 465 (D.C. Cir. 2004), any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line*

R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34507, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Sarah W. Bailiff, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161-0039.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: May 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04-12125 Filed 5-27-04; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 412X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Ponca City, Kay County, OK

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.14-mile line of railroad between BNSF milepost 138.00 and milepost 142.14 in Ponca City, Kay County, OK. The line traverses United States Postal Service ZIP Code 74601.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR

1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 29, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 7, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606-6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 4, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).