

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****Petition for Exemption From the Vehicle Theft Prevention Standard; Volkswagen**

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Volkswagen Group of America (VW) in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the Volkswagen Tiguan vehicle line beginning with model year (MY) 2011. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., West Building, W43-443, Washington, DC 20590. Ms. Mazyck's phone number is (202) 366-0846. Her fax number is (202) 493-2990.

SUPPLEMENTARY INFORMATION: In a petition dated August 26, 2009, VW requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Volkswagen Tiguan vehicle line beginning with MY 2010. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, VW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its new Volkswagen Tiguan vehicle line. VW will install its fourth generation, transponder-based electronic engine immobilizer antitheft device as standard equipment on its Volkswagen Tiguan vehicle line beginning with MY 2011. VW stated that its fourth generation immobilizer actively incorporates the

engine control unit into the evaluation and monitoring processes. Key components of the antitheft device will include a passive immobilizer, an immobilizer control unit, a mechanical ignition lock with immobilizer reading coil, an adapted ignition key, and an engine control unit. The antitheft device will not include an audible or visible alarm feature as standard equipment. VW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

VW stated that once the driver/operator turns on the ignition, the key transponder sends a fixed code to the immobilizer control unit. If this is identified as the correct code, a variable code is generated in the immobilizer control unit and sent to the transponder. A secret arithmetic process is then started in the transponder and the control unit according to a set of specific equations. The results of the computing process is evaluated in the control unit and if they tally, the vehicle key is acknowledged as correct. The engine control unit then sends a variable code to the immobilizer control unit, enabling start up of the vehicle. VW stated that a new variable code is generated each time during this secret computing process. Therefore, VW believes that the code is undecipherable.

In addressing the specific content requirements of 543.6, VW provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, VW conducted tests based on its own specified standards. VW provided a detailed list of the tests conducted (*i.e.*, electrical system temperature stability, mechanical integrity, electrical performance, environmental compatibility and service life) and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Additionally, VW stated that after recognition by the electronic module of the key transponder, a pairing between the key and the immobilizer occurs at which point the key can no longer be used for any other immobilizer.

VW stated that the Volkswagen Tiguan was introduced in the 2009 model year as a parts-marked vehicle, therefore no theft data is available. VW also provided data on the theft reduction benefits experienced by other vehicle lines installed with immobilizer devices that have recently been granted petitions for exemptions by the agency. VW has concluded that the antitheft

device proposed for its Volkswagen Tiguan vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements. The agency agrees that the device is substantially similar to devices in these and other vehicle lines for which the agency has already granted exemptions.

Based on the evidence submitted by VW, the agency believes that the antitheft device for the Volkswagen Tiguan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the part-marking requirements of the Theft Prevention Standard.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that VW has provided adequate reasons for its belief that the antitheft device for the Volkswagen Tiguan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information VW provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full VW's petition for exemption from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking

requirements of the Theft Prevention Standard.

If VW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 1, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35305]

Arkansas Electric Cooperative Corporation—Petition for Declaratory Order

AGENCY: Surface Transportation Board, DOT.

ACTION: Institution of declaratory order proceeding; request for notices of intent to participate and comments; and issuance of procedural schedule.

SUMMARY: In response to a petition filed by Arkansas Electric Cooperative

Corporation (AECC) on October 2, 2009, and the reply of BNSF Railway Company (BNSF), the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e).¹ The issues before the Board arise from Tariff 6041-B Items 100 and 101 (Tariff provisions), issued by BNSF on May 27, 2009, which require that Powder River Basin (PRB) coal shippers using the Joint Line² or the Black Hills Subdivision must ensure that the emission of coal dust from the cars does not exceed the coal dust emissions standards set by BNSF. The issues raised in these filings include: (1) Whether the Tariff provisions constitute an unreasonable rule or practice; (2) whether BNSF may establish rules designed to inhibit the dispersion of coal dust from coal trains operating over its lines; and (3) whether refusal to provide service for non-compliance with the Tariff provisions or other actions to enforce compliance would violate BNSF's common carrier obligation. Due to the vital role transportation of coal by rail plays in the nation's energy supply and the economy in general, the Board seeks public comment and participation on this matter.

DATES: The effective date of this decision is December 1, 2009. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 11, 2009, a notice of intent to participate. Discovery will close on February 1, 2010. Opening evidence and argument from all PORs is due on March 16, 2010. Reply evidence and argument from all PORs is due on April 30, 2010. Rebuttal evidence and argument from all PORs is due on May 17, 2010.³

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies (and also an electronic version), referring to STB Finance Docket No. 35305, to: Surface Transportation Board,

¹ By a separate decision, the Board will address the imposition of a protective order in this proceeding.

² The Joint Line is the rail line serving the southern PRB that is jointly owned by BNSF and the Union Pacific Railroad Company (UP) and operated and maintained by BNSF.

³ Although oral argument on these issues was requested by BNSF, we are not ruling on that request at this time.

395 E Street, SW., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Eric Von Salzen (representing AECC), McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001; (2) Samuel M. Sipe, Jr. (representing BNSF), Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036; (3) Joe Rebein (representing UP), Shook, Hardy & Bacon LLP, 2555 Grand Blvd., Kansas City, Missouri 64108; (4) John H. LeSeur (representing Western Coal Traffic League (WCTL)), Slover & Loftus LLP, 1224 Seventeenth Street, NW., Washington, DC 20036; and (5) any other person designated as a POR on the service-list notice (as explained below, the service-list notice will be issued as soon after December 11, 2009, as practicable).

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: AECC is a generation and transmission cooperative that provides wholesale electric power to electric cooperatives throughout Arkansas. AECC is a co-owner, with other utilities, of generation assets that burn millions of tons of PRB coal annually. During normal operating conditions, three of these plants—White Bluff at Redfield, AR, Independence at Newark, AR, and Flint Creek at Gentry, AR—receive all of their PRB coal via the Joint Line. On May 27, 2009, BNSF issued the Tariff provisions stating that "[e]ffective November 1, 2009, Shipper shall take all steps necessary to ensure that Trains handling cars loaded with Coal from any mine origin that move over [the Joint Line or Black Hills Subdivision] shall not emit more than an Integrated Dust Value (IDV.2) of [300 units or 245 units, respectively] in order to enhance retention of coal in rail cars." AECC seeks a declaratory order stating that the Tariff provisions constitute an unreasonable rule or practice and an illegal refusal to provide service. AECC also asks that the order state that BNSF must permit shippers to transport coal on the Joint Line and Black Hills Subdivision without such restrictions.