

motorcycle involves insertion of the key into the switch and turning the ignition to the "on" position, then operating the separate starter button. An operator would not be able to start the engine inadvertently by using only the ignition switch.

Kawasaki Motors Corporation stated the following in support of its application for inconsequential noncompliance:

No safety consequences attach to the omission of the "ignition" identification for the switch. Operators are familiar with the function and location of the ignition switch as well as the use of the ignition key to operate the switch. The location of the switch, in combination with frequently referenced displays such as turn signal, neutral, and high beam indicators means that the operator is quite familiar with the switch and its location, and experiences no adverse consequences from the lack of "ignition" identification for the switch. In fact, an operator unable to identify the ignition switch, due to the lack of labeling, would be unable to start or operate the motorcycle in the first place.

The other ignition switch labeling, *i.e.*, the word "off" at the appropriate switch position, is present as required, and the remainder of the vehicle controls and displays comply with the requirements of FMVSS No. 123.

In their application, KMC stated that it is unaware of any accidents, injuries, owner complaints or field reports for the subject vehicles vis-à-vis this noncompliance, and has received no communications of any kind from owners, dealers, or anyone else indicating any awareness of the missing label.

After reviewing KMC's application, NHTSA concludes that the noncompliance of KMC with respect to FMVSS No. 123 does not constitute a consequential vehicle safety concern. Motorcycles, including the non-complying Kawasaki motorcycles, are equipped with an engine kill switch located on the right handlebar where it is within reach of the rider's right hand. A motorcycle operator confronted with the need to quickly shut off the engine can do so without moving his hand from the handgrip. By using the kill switch, there is no need for the operator to locate the ignition switch. As a result, the missing label on the ignition switch should not prevent immediate engine shut-down.

Accordingly, KMC's application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance as required by 49 U.S.C. 30120.

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

Issued on: August 15, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB-290 (Sub-No. 223X)]**

#### **Norfolk Southern Railway Company— Abandonment Exemption—in Mingo County, WV**

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.59-mile line of railroad between milepost TE-1.50 at Licks Fork Spur and milepost TE-3.09 at Elda, in Mingo County, WV. The line traverses United States Postal Service Zip Code 24293.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (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 Surface Transportation Board (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 September 27, 2003,<sup>1</sup> unless stayed pending reconsideration. Petitions to stay that do not involve

<sup>1</sup> While NSR initially indicated a proposed consummation date of September 26, 2003, because the verified notice was filed on August 8, 2003, consummation may not take place prior to September 27, 2003. NSR's representative has subsequently confirmed that consummation cannot occur before September 27, 2003.

environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 17, 2003, 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 NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

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

NSR 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 September 2, 2003. 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.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

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

<sup>2</sup> 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.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).