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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2008-0058; Notice 2]

#### Decision That Certain Nonconforming 1994 and 1995 Land Rover Defender 90 Multipurpose Passenger Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of decision by the National Highway Traffic Safety Administration (NHTSA) that certain nonconforming 1994 and 1995 Land Rover Defender 90 multipurpose passenger vehicles are eligible for importation.

**SUMMARY:** This document announces a decision by NHTSA that a certain limited range of 1994 and 1995 Land Rover Defender 90 multipurpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1994 and 1995 Land Rover Defender 90 MPVs), and (2) they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective December 16, 2008.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Export Auto Sales, Inc., of Chicopee, Massachusetts (Export Auto) (Registered Importer 01-284) petitioned NHTSA to decide whether all nonconforming 1994 and 1995 Land Rover Defender 90 MPVs are eligible for importation into the United States. In its petition, Export Auto compared these nonconforming vehicles to substantially similar U.S.-certified 1994 and 1995 Land Rover Defender 90 MPVs. NHTSA published notice of the petition on March 31, 2008 (73 FR 16961) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. Comments were received in response to the notice of the petition from Skytop Rover Co. (Skytop) of Philadelphia, Pennsylvania (Registered Importer 06-343) and Ford Motor Company (Ford) of Dearborn, Michigan as agent for Land Rover.

#### Skytop's and Ford's comments

Skytop expressed concern that Export Auto's petition does not address several key modifications that Skytop considered necessary for the vehicles to meet various safety standards. Skytop first contends that there were two distinct versions of a cage assembly mounted on both the interior and the exterior of the U.S.-certified models sold in the United States. One version was for the pickup (open back) model and a different version was for the station wagon hardtop (closed-in back) model. Skytop asserted that the U.S.-model cages are necessary for the vehicles to conform to FMVSS No. 216 *Roof Crush Resistance*.

Skytop's second contention is that the petition does not adequately address all modifications necessary to bring the vehicles into compliance with FMVSS No. 301 *Fuel System Integrity*. Specifically, Skytop states that structural modifications to the chassis as well as the addition of a rear step assembly and associated support brackets are required for the vehicles to conform to FMVSS No. 301.

Skytop's third contention is that the rear step assembly is also required for the vehicles to conform to the bumper crash requirements of 49 CFR Part 581 *Bumper Standard*.

Skytop's fourth contention is that the seat belt assembly anchorages do not conform to FMVSS No. 210 *Seat Belt Assembly Anchorages* because the part numbers for those components, as found on the nonconforming vehicles, differ from those on the U.S.-certified model.

Skytop's fifth contention is that the nonconforming vehicles do not meet the requirements of FMVSS No. 114 *Theft Protection* because no seat belt audible warning system is present.

Ford's comments detailed the differences between the U.S.-model vehicles and the nonconforming vehicles that effect compliance with the FMVSS. Ford's comments are summarized below under the heading of each standard the company addressed:

FMVSS No. 101 *Controls and Displays*: The instrument cluster-mounted telltales and speedometer unit of measure in the nonconforming vehicles may not comply with FMVSS No. 101.

FMVSS No. 106 *Brake Hoses*: The brake hoses on Nonconforming vehicles do not have DOT markings.

FMVSS No. 108 *Lamps, Reflective Devices, and Associated Equipment*: Nonconforming vehicles' front lamps and side marker lamps do not conform to FMVSS No. 108. All lamps mounted on the rear of the vehicles may not conform to FMVSS No. 108.

FMVSS No. 110 *Tire Selection and Rims*: Nonconforming vehicles do not have a tire information placard.

FMVSS No. 111 *Rearview Mirrors*: None of the mirrors on nonconforming vehicles conform to FMVSS No. 111. Also, the sun visors on the nonconforming vehicles are not compatible with the U.S.-model interior rearview mirror.

FMVSS No. 114 *Theft Protection*: Nonconforming vehicles do not have the required key warning system. Nonconforming vehicles with automatic transmissions also do not have the required rollaway prevention device.

FMVSS No. 116 *Motor Vehicle Brake Fluids*: Nonconforming vehicles do not have labeling that conforms to FMVSS No. 116.

FMVSS No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars*: Tires on nonconforming vehicles may not conform to the requirements of FMVSS no. 119.

FMVSS No. 124 *Accelerator Control Systems*: The U.S.-model vehicles have a unique throttle design. The throttle installed on nonconforming vehicles has not been evaluated for conformance with FMVSS No. 124 by Land Rover.

FMVSS No. 203 *Impact Protection for the Driver from the Steering Control System*: U.S.-model vehicles were equipped with a padded hub steering wheel and a compatible spline steering column. Nonconforming vehicles are not equipped with these features.

FMVSS No. 205 *Glazing Materials*: Nonconforming vehicles may not be equipped with glazing that conforms to FMVSS No. 205.

FMVSS No. 208 *Occupant Crash Protection*: Seat belts installed in nonconforming vehicles do not conform to the requirements of FMVSS no. 209. Nonconforming vehicles do not have audible or visual seat belt warning systems.

FMVSS No. 209 *Seat Belt Assemblies*: Seat belts installed in nonconforming vehicles do not conform to the requirements of FMVSS no. 209.

FMVSS No. 212 *Windshield Mounting*: U.S.-model vehicles have a safari cage installed with an additional front hoop to protect the windshield and comply with FMVSS No. 212. Some nonconforming vehicles may not have the full external front hoop installed.

FMVSS No. 216 *Roof Crush Resistance*: Vehicles built prior to September 1, 1994 are not required to meet this standard. Non-U.S. certified vehicles built after September 1, 1994 may have a GVWR below the 6,000 lb. applicability cutoff, making it necessary for those vehicles to comply with the standard. U.S.-model vehicles were not certified to the standard because their GVWR exceeded the applicability cutoff. Nonconforming vehicles were not evaluated against these requirements by Land Rover and Ford cannot draw any conclusions about the necessary modifications required to comply with the regulation.

FMVSS No. 219 *Windshield Zone Intrusion*: U.S.-model vehicles have a safari cage installed with an additional front hoop to protect the windshield and comply with FMVSS No. 219. Some nonconforming vehicles may not have the full external front hoop installed.

FMVSS No. 301 *Fuel System Integrity*: The fuel tank and fuel lines were unique to the U.S.-model vehicles. Nonconforming vehicles, at a minimum, require installation of the rear step bar, rollover valve and inertia switch. Land Rover did not evaluate nonconforming vehicles to these requirements and Ford cannot draw any conclusions about the necessary modifications required to comply with FMVSS No. 301.

49 CFR Part 565 *Vehicle Identification number—Content Requirements*: Non-U.S. certified vehicles do not have a check digit and the VIN plate is not visible.

49 CFR Part 567 *Certification*: Non-U.S. certified vehicles do not have a certification label affixed to the B-pillar.

49 CFR Part 575.105 *Consumer Information Regulations*: A sticker (i.e., a

rollover label) is required on the driver's sun visor and is not installed on non-U.S. vehicles.

### NHTSA's Response

After NHTSA's initial review of the petition and the comments from Skytop and Ford, the agency found that the petitioner had failed to address many differences between the U.S.-model vehicles and the nonconforming vehicles that affect compliance with certain FMVSS. The petitioner also failed to fully provide sufficient details about which nonconforming vehicle body types could be considered to be substantially similar to the U.S.-model vehicle body types. Based on information provided by Ford, NHTSA has determined that only certain 2-door pickup body style and certain 2-door station wagon hardtop configurations of the nonconforming vehicles can be considered to be substantially similar to the U.S.-model vehicles. Ford identified the substantially similar nonconforming vehicles as 1994 2-door pickup style, and 1994 and 1995 2-door station wagon hardtop style vehicles that have the characters "A" in the seventh position and "M" in the eight position of their vehicle identification number (VIN).

With regard Skytop's comments NHTSA offers the following observations:

(1) As previously discussed, there are two distinct body styles for the U.S.-conforming model, a 2-door pickup model and a 2-door station wagon hardtop model. Each model has a unique safari cage. After reviewing the comments received from both Skytop and Ford, NHTSA has determined that the presence of those unique U.S.-model safari cages is necessary for the vehicles to meet the requirements of several FMVSS as detailed below.

(2) NHTSA agrees with Skytop that the fuel system in the nonconforming vehicles must be modified in order to conform to all applicable requirements of FMVSS No. 301. NHTSA did not receive any evidence indicating that any specific structural modifications would be required to conform the limited subset of vehicles identified as substantially similar to the U.S.-conforming vehicles to the applicable requirements of FMVSS No. 301. However, the presence of a complete U.S.-model fuel system is warranted, as described below.

(3) The Bumper standard that is referred to by Skytop (49 CFR Part 581 *Bumper Standard*) does not apply to MPVs and is not a FMVSS. Therefore, a vehicle's conformity status with regard to 49 CFR Part 581 cannot be a factor in deciding whether the vehicle is eligible for importation.

(4) NHTSA agrees with Skytop that all seat belt anchorages should be inspected and U.S.-model components must be installed on vehicles not already so equipped to conform to FMVSS No. 210 as described below.

(5) NHTSA agrees with Skytop that an audible key warning system must be installed

in the nonconforming vehicles to conform to FMVSS No. 114 as described below.

NHTSA agrees with Ford's descriptions of the differences between the nonconforming vehicles and the U.S.-conforming model vehicles.

Based on Ford's and Skytop's comments concerning FMVSS Nos. 114, 210 & 301, NHTSA has determined that in addition to the modifications described in Export Auto's petition, the following modifications must be performed to bring the nonconforming vehicles into compliance with all applicable FMVSS:

FMVSS No. 101 *Controls and Displays*: Installation of U.S.-model speedometer and instrument cluster mounted telltale lamps and modification of existing components to achieve compliance with the standard.

FMVSS No. 106 *Brake Hoses*: Inspection of the vehicles and replacement of any nonconforming brake hoses with U.S.-model components.

FMVSS No. 105 *Hydraulic and Electric Brake Systems*: Inspection of all vehicles and installation of U.S.-model brake system components as needed to meet the labeling requirements of the standard on vehicles that are not already so equipped.

FMVSS No. 108 *Lamps, Reflective Devices, and Associated Equipment*: Installation of U.S.-model front and rear side marker lamps. Inspection of all vehicles and replacement of any nonconforming front parking lamps, rear lamps, and reflex reflectors with U.S.-model components on vehicles that are not already so equipped.

FMVSS No. 110 *Tire Selection and Rims*: Installation of a conforming tire and rim information placard.

FMVSS No. 111 *Rearview Mirrors*: Installation of a U.S.-model interior rearview mirror and compatible sun visors if the existing sun visors interfere with the compliance of the U.S.-model interior mirror, and installation of U.S.-model driver's and passenger's side exterior mounted rearview mirrors.

FMVSS No. 114 *Theft Protection*: Installation of a U.S.-model key warning system and installation of a U.S.-model park-interlock on vehicles with automatic transmissions.

FMVSS No. 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars*: Inspection of all vehicles and replacement of any tires that do not conform to the requirements of the standard.

FMVSS No. 124 *Accelerator Control Systems*: Installation of a U.S.-model throttle, or production of test data showing that the existing throttle components conform to FMVSS No. 124.

FMVSS No. 203 *Impact Protection for the Driver from the Steering Control System*: Installation of a U.S.-model padded steering wheel hub and a compatible U.S.-model spline column.

FMVSS No. 208 *Occupant Crash Protection*: Installation of supplemental audible and visual seat belt warning systems and compatible U.S.-model seat belt components.

FMVSS No. 209 *Seat Belt Assemblies*: Installation of U.S.-model seat belts.

FMVSS No. 210 *Seat Belt Assembly Anchorages*: Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model anchorages.

FMVSS No. 212 *Windshield Mounting*: Installation of the complete body style-specific U.S.-model safari cage including the full external front hoop on vehicles not already so equipped.

FMVSS No. 216 *Roof Crush Resistance*: The substantially similar U.S.-model vehicles were not certified to FMVSS No. 216, either because they were manufactured before September 1, 1994, the date the standard became applicable to MPVs, or because their gross vehicle weight rating (GVWR) was 6,000 lbs. or greater. Therefore, nonconforming vehicles manufactured on or after September 1, 1994 will only be eligible under this decision if they were manufactured with a GVWR greater than 2722 kg (6,000 lb).

FMVSS No. 219 *Windshield Zone Intrusion*: Installation of the complete body style-specific U.S.-model safari cage including the full external front hoop.

FMVSS No. 301 *Fuel System Integrity*: Installation of a U.S.-model rear step bar, rollover valve, and inertia switch. Inspection of all vehicles and replacement of any non-U.S.-model fuel system components with U.S.-model components.

49 CFR Part 565 *Vehicle Identification number—Content Requirements*: Nonconforming vehicles imported and certified by RIs are not required to have vehicle identification numbers (VINs) that conform to the style and content requirements of 49 CFR Part 565. However, as required by 49 CFR Part 565.5(b), the VIN that was assigned to an imported vehicle by its original manufacturer must be displayed on the certification label applied by the RI and must also be on a plate or label located inside the vehicle and visible.

49 CFR Part 567 *Certification*: Installation of an RI's certification label as required by 49 CFR Part 567.2(b).

49 CFR Part 575.105 *Consumer Information Regulations*: In addition to ensuring that converted vehicles conform to all applicable FMVSS, an RI who converts one of the subject vehicles must also install a rollover warning label on the driver's sun visor to meet the requirements of 49 CFR Part 575.105.

While the modifications detailed above are extensive, NHTSA has decided that a specific subgroup of nonconforming 1994 and 1995 Land Rover Defender 90 MPVs are capable of being readily modified to conform to applicable FMVSS.

Accordingly, the agency has decided to grant the petition subject to the limitations discussed below.

#### Applicability

The applicability of this decision is limited to nonconforming 1994 and 1995 Land Rover Defender 90 MPVs with the following characteristics:

(1) 1994 Land Rover Defender 90 MPVs—2-door pickup only,

(2) 1995 Land Rover Defender 90 MPVs—2-door pickup and 2-door station wagon hardtop only,

(3) 1994 & 1995 Land Rover Defender 90 MPVs—The seventh position of the VIN must be the character "A,"

(4) 1994 & 1995 Land Rover Defender 90 MPVs—The eighth position must be the character "M,"

(5) 1994 & 1995 Land Rover Defender 90 MPVs manufactured on or after September 1, 1994—The GVWR assigned by the original manufacturer must be greater than 2722 kg.

#### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP-512 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

#### Final Decision

Accordingly, on the basis of the foregoing, NHTSA has decided that the previously described subset of 1994 and 1995 Land Rover Defender 90 MPVs that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 1994 and 1995 Land Rover Defender 90 MPVs originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 16, 2008.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 210X)]

#### Norfolk Southern Railway Company— Abandonment Exemption—in Fulton County, GA

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption<sup>1</sup> under 49 CFR 1152 Subpart

<sup>1</sup> NSR concurrently filed a petition seeking an exemption from the offer of financial assistance (OFA) and the public use provisions at 49 U.S.C.

F—*Exempt Abandonments* to abandon a 4.30-mile line of railroad between milepost DF 633.10 and milepost DF 637.40, in Atlanta, Fulton County, GA. The line traverses United States Postal Service Zip Codes 30303, 30306, 30307, 30308, 30309, 30312, 30324, 30337, 30340, and 30354.<sup>2</sup>

NSR has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) overhead traffic on the line, if any, could 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 report), 49 CFR 1105.8 (historic report), 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 January 22, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>3</sup> formal expressions of intent to file an

10904 and 49 U.S.C. 10905, respectively. The merits of the petition will be addressed in a separate decision.

<sup>2</sup> NSR states that the property underlying the line proposed for abandonment between milepost DF 633.10 and the crossing at grade of DeKalb Avenue/Decatur Street at approximately milepost DF 636.56 was conveyed to a local developer in 2004, and that the developer subsequently conveyed the property to NE Corridor Partners, LLC, which intends to develop the property as part of the Atlanta BeltLine project. NSR also states that it has retained an operating easement and complete operating authority over this property pending receipt of abandonment authority or exemption from the Board.

<sup>3</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.