

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A FRONT AXLE THAT HAS A GAWR OF 14,600 POUNDS OR LESS, AND WITH TWO REAR DRIVE AXLES THAT HAVE A COMBINED GAWR OF 45,000 POUNDS OR LESS, MANUFACTURED BEFORE AUGUST 1, 2011; AND (2) ALL OTHER TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013

Vehicle speed in miles per hour	Service brake				Emergency brake	
	PFC	PFC	PFC	PFC	PFC	PFC
	0.9 (1)	0.9 (2)	0.9 (3)	0.9 (4)	0.9 (5)	0.9 (6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

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Issued on: March 25, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2010-0043]

RIN 2127-AK38

Federal Motor Vehicle Safety Standards; Theft Protection and Rollaway Prevention

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

ACTION: Final rule.

SUMMARY: Pursuant to a statutory mandate in the Cameron Gulbransen Kids Transportation Safety Act of 2007, NHTSA is placing a requirement in Federal Motor Vehicle Safety Standard No. 114 that certain motor vehicles with an automatic transmission that includes a “park” position manufactured for sale on or after September 1, 2010 be equipped with a brake transmission shift interlock (BTSI). This interlock must necessitate that the service brake pedal be depressed before the transmission can be shifted out of

“park,” and must function in any starting system key position. The BTSI requirement adopted by this final rule is identical in substance to the Congressional requirement.

DATES: This final rule is effective April 29, 2010. *Petitions for reconsideration:* If you wish to petition for reconsideration of this rule, your petition must be received by May 14, 2010.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the public docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Gayle Dalrymple, NVS-123, Office of Rulemaking, by telephone at (202) 366-0098, by fax at (202) 366-7002, or by email to gayle.dalrymple@dot.gov. For legal issues, you may contact David Jasinski, Office of the Chief Counsel, NCC-112, by telephone at (202) 366-2992, by fax at (202) 366-3820, or by email to david.jasinski@dot.gov. You may send mail to both of these officials at National Highway Traffic Safety

Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Statutory Mandate and Background

On February 28, 2008, the “Cameron Gulbransen Kids Transportation Safety Act of 2007” (the K.T. Safety Act, or “Act”) was signed into law.¹ This Act relates to several aspects of motor vehicle safety involving incidents where a person, frequently a child, could be hurt in non-traffic situations. The K.T. Safety Act addresses safety concerns related to, among other matters, power windows, rearward visibility, and vehicles rolling away. The latter refers to incidents that typically involve an unattended child managing to shift the vehicle’s transmission out of the “park” position when the child is left in a vehicle with the vehicle’s key. With a BTSI system, the brake pedal must be depressed before the transmission can be shifted out of park. To reduce the occurrence of roll away incidents, the Act requires that each vehicle that is less than 10,000 pounds “gross vehicular weight,” excluding motorcycles and trailers, manufactured for sale after September 1, 2010, that includes an automatic transmission with a “park” position, be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of “park” (i.e., a BTSI system). The Act further requires the system to function in any

¹ Pub. L. 110-189, 112 Stat. 639 (Feb. 28, 2008).

starting system key position in which the transmission can be shifted out of “park.” The Act also requires that a violation of this requirement be treated as a violation of a Federal motor vehicle safety standard.

In August 2006, prior to enactment of the K.T. Safety Act, the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers (AIAM) developed a voluntary agreement requiring full implementation of a Brake Transmission Shift Interlock not later than September 1, 2010.² This agreement, signed by many major automakers, also defined some of the key terms and required that automakers disclose the percentage of their current production vehicles equipped with BTSI systems, as well as when they reached full compliance. The language of that agreement was substantially the same as the BTSI requirement in the K.T. Safety Act.

II. Summary of the NPRM

In a notice of proposed rulemaking (NPRM) published on August 25, 2009,³ NHTSA proposed to incorporate the language of the K.T. Safety Act into the text of Federal Motor Vehicle Safety Standard (FMVSS) No. 114, Theft protection and rollaway prevention. Because Congress mandated all vehicles be equipped with BTSI, no action was required by NHTSA for the requirement to take effect. However, we believed it would be helpful to manufacturers and other interested parties to group the BTSI requirement with other rollaway provisions of FMVSS No. 114. That is, the rollaway provisions of the FMVSSs would be easier to ascertain and understand if the provisions were codified together.

In the NPRM, we proposed locating the BTSI requirement in paragraph S5 of FMVSS No. 114. Additionally, we proposed a minor modification of paragraph S3 of the standard, Applicability, to account for the minor differences between the applicability of the BTSI requirement and the applicability of FMVSS No. 114 generally.

In addition to inserting the statutory requirement into the standard, NHTSA offered for public comment four interpretations of the statutory language:

- The last sentence of section 2(d)(1) of the Act states: “This system shall function in any starting system key position in which the transmission can be shifted out of ‘park.’” We stated that

this sentence means that, no matter the starting system position the key is in (e.g., “lock,” “accessory,” or “start”), the transmission must only shift out of “park” when the service brake is depressed.

- We stated that the BTSI requirement applies to vehicles with all keys, *i.e.*, a physical device or an electronic code, such as those requiring the operator to enter a code or push a button to start the vehicle.

- We understood the term “gross vehicular weight” in section 2(e)(2) to mean “gross vehicle weight rating (GVWR).”

- The phrase “manufactured for sale after September 1, 2010” in section 2(d)(1) of the Act means “manufactured on or after September 1, 2010.”

III. Comments and Analysis

NHTSA received two comments in response to the NPRM. One comment, from the Alliance of Automobile Manufacturers, supported NHTSA’s proposal to include the BTSI requirement in FMVSS No. 114. A second comment, from AIAM, also supported NHTSA’s proposal, but requested that the agency include a gear selection control override option that would allow the vehicle to be shifted out of “park” without depressing the service brake under certain limited conditions. AIAM stated its belief that an override feature would not degrade safety, would promote flexibility, and prevent consumer backlash. AIAM stated its belief that Congress did not intend to require a rigid, inflexible interpretation of the law, while maintaining the safety purpose of the device.

We are not adopting AIAM’s suggested override feature in this final rule for the following reasons. First, it is not clear that an override is permissible within the language of the K.T. Safety Act. AIAM noted that the Act neither expressly prohibits nor requires an override system and argued that NHTSA could implement an override. However, we find no indication either in the text of the K.T. Safety Act or its associated legislative history that Congress envisioned any exception to the plain language of the Act. Furthermore, many Congressional actions, including other portions of the K.T. Safety Act, require NHTSA to undertake rulemaking in various areas of concern and permit a degree of agency discretion in their implementation. In the case of BTSI, Congress made this requirement self-effectuating and did not direct that rulemaking be done, indicating that the

agency is afforded less leeway in the implementation of the requirement.

Second, NHTSA is concerned that implementing an override would be outside the scope of this rulemaking action. The August 25, 2009 NPRM proposed only the incorporation of the statutory language into the standard for the convenience of manufacturers and other readers of the safety standards. The NPRM did not analyze or propose possible mechanisms to adjust the statutory requirement, such as permitting an override in a limited set of circumstances. Therefore, we believe it would be outside the scope of this rulemaking to include such a change to the BTSI requirement in this final rule.

Third, while AIAM suggested that the lack of an override could create a consumer backlash, they provided no information why this would necessarily be so. In a supplement to its comments, AIAM stated that, in some vehicles, if the battery is dead or at a low state of charge, the shift selector control may not be moved from “park” even with the service brake pedal depressed. AIAM provided no data on the number of vehicles or model lines produced that operate this way, nor did AIAM explain why a decision was made to operate these vehicles in this fashion. In short, we are not convinced that an override feature is necessary. We note that no commenter addressed the four interpretations of the BTSI provision of the K.T. Safety Act. Accordingly, we adopt those interpretations without further discussion.

For the reasons discussed above and in the NPRM, and having considered all of the comments received, NHTSA will adopt without change the amendments proposed in the NPRM.

IV. Effective Date

Section 30111(d) of title 49, United States Code, provides that a Federal motor vehicle safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. In this instance, the K.T. Safety Act prescribes the effective date of the BTSI requirement. The inclusion of this mandate in the FMVSSs was solely for the convenience of the reader. Therefore, good cause exists for this amendment to FMVSS No. 114 to become effective before the 180th day after the publication of this rule.

² The announcement and text of this agreement are available on the NHTSA website, <http://www.nhtsa.dot.gov>.

³ 74 FR 42837 (Docket No. NHTSA–2009–0049).

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not "significant" under them. This rulemaking document was not reviewed under E.O. 12866.

Today's notice inserts the Congressional mandate into the Federal motor vehicle safety standards for the convenience of users. It does not impose any additional regulatory requirements. We also note that most vehicles are already equipped with a BTSI system. The agency concludes that the impacts of the changes are so minimal that preparation of a full regulatory evaluation is not required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule merely includes in the Federal motor

vehicle safety standards a requirement passed by Congress in the K.T. Safety Act. No substantive changes to the Act are being made in this final rule. Small organizations and small government units would not be significantly affected since this action will not affect the price of new motor vehicles. For the vast majority of motor vehicle manufacturers, the BTSI requirement merely codifies a voluntary pledge made by manufacturers to install BTSI systems on all vehicles by September 1, 2010. For any vehicle manufacturers that do not already install a BTSI system in their vehicles, NHTSA does not believe that installing such a system will result in a significant economic impact on those entities. This is because the addition of BTSI requires only a relatively simple mechanical and/or electrical modification.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant either consultation with State and local officials or preparation of a federalism summary impact statement. The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government."

Further, no consultation is needed to discuss the issue of preemption in connection with today's final rule. The issue of preemption can arise in connection with NHTSA rules in two ways.

First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation is unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: in some instances, State

requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of some of the NHTSA safety standards. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

NHTSA has considered the nature (e.g., the language and structure of the regulatory text) and purpose of today's final rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including state tort law.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children,

and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this final rule is part of a rulemaking expected to have a positive safety impact on children, it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this final rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to the BTSI requirement. However, we note that currently, most automobile manufacturers incorporate a brake shift transmission interlock in their vehicles. In 2006, most large vehicle manufacturers agreed to a voluntary commitment to include a BTSI system in their vehicles by September 1, 2010. Finally, due to the BTSI provision in the K.T. Safety Act, all manufacturers will be required by statute to include it in their vehicles by September 1, 2010. This final rule incorporates the statutory requirement into FMVSS No. 114 and does not include any additional requirements for manufacturers.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a

written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov>.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA hereby amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.114 is amended by revising paragraphs S3 and S5 and adding paragraph S5.3 to read as follows:

§ 571.114 Standard No. 114; Theft protection and rollaway prevention.

* * * * *

S3. *Application.* This standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to walk-in van-type vehicles. Additionally, paragraph S5.3 of this standard applies to all motor vehicles, except trailers and motorcycles, with a GVWR of 4,536 kilograms (10,000 pounds) or less.

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S5. *Requirements.* Each vehicle subject to this standard must meet the requirements of S5.1, S5.2, and S5.3. Open-body type vehicles are not required to comply with S5.1.3.

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S5.3 *Brake transmission shift interlock.* Each motor vehicle manufactured on or after September 1, 2010 with a GVWR of 4,536 kilograms (10,000 pounds) or less with an automatic transmission that includes a "park" position shall be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of "park." This system shall function in any starting system key position in which the transmission can be shifted out of "park." This section does not apply to trailers or motorcycles.

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Issued on: March 25, 2010.

David L. Strickland,
Administrator.

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