

4. In Appendix A to subpart D of part 107, under the section entitled "Penalty Increase for Multiple Counts" (Section IV.C.), the parenthetical phrase "\$27,500 for a violation occurring after January 21, 1997" is added after "\$25,000."

#### **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

5. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, § 4 (28 U.S.C. 2461 note); Pub. L. 104–134, § 31001.

6. In § 171.1, as revised in the final rule under Docket No. HM–200 on January 8, 1997 (62 FR 1215), new paragraph (c) is added to read as follows:

##### **§ 171.1 Purpose and scope.**

\* \* \* \* \*

(c) Any person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, subchapter A, an exemption issued under subchapter A, of this subchapter, is liable for a civil penalty of not more than \$25,000 (\$27,500 for a violation that occurs after January 21, 1997) and not less than \$250 for each violation. When the violation is a continuing one and involves the transporting of hazardous materials or the causing of them to be transported or shipped, each day of the violation constitutes a separate offense. Any person who knowingly violates § 171.2(g) of this subchapter or willfully violates a provision of the Federal hazardous material transportation law or an order or regulation issued thereunder shall be fined under Title 18, United States Code, or imprisoned for not more than 5 years, or both.

Issued in Washington, DC on January 14, 1997, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

*Deputy Administrator.*

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#### **National Highway Traffic Safety Administration**

##### **49 CFR Part 571**

[Docket No. 1–21, Notice 14]

RIN 2127–AE99

#### **Federal Motor Vehicle Safety Standards; Theft Protection**

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

**ACTION:** Technical amendment.

**SUMMARY:** This document amends the automatic transmission park position test procedure described in Standard No. 114, "Theft Protection," to clarify an ambiguity. The test procedure is unclear in that it requires the service brakes to be applied once in the beginning of the test and once near the end of the test, but does not specify that they should be released anywhere in between these instructions. In addition, outdated sections, i.e., for vehicle manufactured before September 1, 1996, will be removed.

**DATES:** Effective date: This rule is effective February 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. Chris Flanigan, Office of Safety Performance Standards, NPS–21, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–4918. For legal issues: Mr. Paul Atelsek, Office of Chief Counsel, NCC–20, the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. (202) 366–2992.

**SUPPLEMENTARY INFORMATION:** On August 22, 1995, Toyota Motor Corporate Services of North America, Inc. (Toyota) requested an interpretation regarding the automatic transmission park position test procedure outlined in Standard No. 114. The test procedure involves these steps: (1) Drive the subject vehicle forward up a ten percent grade, (2) stop the vehicle with the service brakes, (3) apply the parking brake, (4) move the shift lever to the "park" position, (5) apply the service brakes, (6) release the parking brake, (7) release the service brakes, (8) remove the key, (9) verify that the transmission is locked in the "park" position, and (10) verify that the vehicle has moved no more than 150 millimeters (mm) from its original position.

The standard currently has a test procedure in S5.2 for vehicles manufactured prior to September 1, 1996 and a test procedure in S5.3 for vehicles manufactured on or after September 1, 1996. The only difference

between the two test procedures is that for vehicles manufactured on or after September 1, 1996, the third step (apply the parking brake) is only required if there is a parking brake present. The purpose of using the parking brake is for the safety of those conducting the test. If the parking brake is used in conjunction with the service brakes, there is a backup in case the vehicle operator's foot slips off of the service brakes during the test. This could be hazardous if there is someone in close proximity to the wheels perhaps measuring the vehicle's position.

Toyota states that the unclear part of the test procedure concerns the application of the service brakes. The second step in the procedure is to stop the vehicle on the ten percent grade with the service brakes. The fifth step in the procedure is to apply the service brakes. However, the test procedure does not require the service brakes to be released anywhere in between the second and fifth steps. It is, therefore, unclear whether the service brakes should have been released at any point between the two steps.

In its letter requesting an interpretation of the test procedure, Toyota offers two ways to rectify this ambiguity. First, the fifth step (apply the service brakes) could be removed. In this instance, there would only be one instruction in the procedure (the second step) to apply the service brakes. In this case, the service brakes would remain applied until the seventh step, just before the measurement of vehicle movement is taken.

Second, Toyota proposed inserting an additional step after the third step (apply the parking brake) to release the service brakes. In this case, the service brakes would be applied and then released once the vehicle is on the ten percent grade and the parking brake has been set. Then, once the vehicle's shift mechanism has been placed in the "park" position, the service brakes would be applied again while the parking brake is released. Once the parking brake is released, the service brakes would then be released. The measurement of vehicle movement could then be made.

NHTSA believes that, rather than adding more steps to the test procedure, the best way to eliminate this ambiguity is to remove the fifth step. Because the second step in the procedure requires application of the service brakes and there is no direction to release the service brakes until the seventh step, there is no need to require that they be applied again in the fifth step.

Regarding the removal of dated sections, the standard makes reference

to vehicles manufactured after September 1, 1983, to vehicles manufactured before September 1, 1996, and to vehicles manufactured on or after September 1, 1996. Since these dates are all in the past, these references will be removed, as there is no need to differentiate between them.

NHTSA finds good cause to make this amendment effective 30 days after publication of this document. This amendment makes minor changes to Standard No. 114 that clarify the standard without affecting its requirements.

NHTSA also finds for good cause that notice and an opportunity for comment on this document are unnecessary. This document does not impose any additional responsibilities on any manufacturer. Instead, this document simply clarifies a test procedure and removes outdated sections in the standard.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, this action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. This rule clarifies a test procedure and eliminates outdated sections in Standard No. 114 without changing any of the requirements in the standard. Because this rule does not affect any substantive requirement of the theft prevention standard, its impacts are so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, this rule simply clarifies a test procedure and eliminates outdated sections in Standard No. 114. It has no effect on the manufacture or sale of vehicles or motor vehicle equipment.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will

not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, parts 571 of title 49 of the Code of Federal Regulations are amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 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 as follows:

- a. S4.1 is revised.
b. S4.2 is revised.
c. S5.2 is revised.
d. S5.3 is removed.

The revisions will read as follows:

§571.114 Standard No. 114; theft protection.

\* \* \* \* \*

S4.1 Each truck and multipurpose passenger vehicle having a GVWR of

4536 kilograms or less and each passenger car shall meet the requirements of S4.2, S4.3, S4.4, and S4.5. However, open-body type vehicles that are manufactured for operation without doors and that either have no doors or have doors that are designed to be easily attached to and removed from the vehicle by the vehicle owner are not required to comply with S4.5.

S4.2 Each vehicle shall have a key-locking system which, whenever the key is removed, prevents:

(a) The normal activation of the vehicle's engine or motor; and

(b) Either steering or forward self-mobility of the vehicle or both.

S4.2.1 (a) Except as provided in S4.2.2 (a) and (b), the key-locking system required by S4.2 in each vehicle which has an automatic transmission with a "park" position shall, when tested under the procedures in S5.2, prevent removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

(b) Each vehicle shall not move more than 150 mm on a 10 percent grade when the transmission or transmission shift lever is locked in "park."

\* \* \* \* \*

S5.2 Test procedure. (a) Move the transmission shift lever to any position where it will remain without assistance, including a position between the detent positions, except for the "park" position. Try to remove the key from each possible key position in each such shift position.

(b) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes. Apply the parking brake (if present). Move the shift mechanism to the "park" position. Note the vehicle position. Release the parking brake. Release the service brakes. Remove the key. Verify that the transmission shift lever or transmission is locked in "park." Verify that the vehicle, at rest, has moved no more than 150 mm from the position noted prior to release of the brakes.

Issued on: January 14, 1997.

L. Robert Shelton, Associate Administrator for Safety Performance Standards.

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