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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA-2005-22093]

RIN 2127-AJ31

Federal Motor Vehicle Safety Standards; Theft Protection

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

ACTION: Final rule.

SUMMARY: Our safety standard on theft protection specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. As a result of technological advances in the area of theft protection, the terminology used in the regulatory text of the Standard has become outdated and confusing with respect to key-locking systems that employ electronic codes to lock and unlock the vehicle, and to enable engine activation. This final rule amends and reorganizes the regulatory text of the Standard so that it better correlates to modern theft protection technology and reflects the agency's interpretation of the existing requirements. The new language does not impose any new substantive requirements on vehicle manufacturers.

DATES: This rule becomes effective September 1, 2007. Early voluntary compliance is permitted.

Petitions: Petitions for reconsideration of the final rule must be received not later than May 22, 2006, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Room 5220, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, NVS-123, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-5559. E-Mail: Gayle.Dalrymple@nhtsa.dot.gov.

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I. Background

FMVSS No. 114, Theft protection, specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. The standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4536 kilograms (10,000 pounds) or less. The standard first became effective on January 1, 1970.¹ The purpose of the standard was to prevent crashes caused by unauthorized use of unattended motor vehicles. Thus, the standard sought to ensure that the vehicle could not be easily operated without the key, and that the vehicle operator would not forget to remove the key from the ignition system upon exiting the vehicle.

In response to the problem of accidental rollaway crashes resulting from children inadvertently moving the automatic transmission lever to a neutral position when a stationary vehicle is parked on a slope, NHTSA later amended FMVSS No. 114 to require that the automatic transmission lever be locked in the "park" position before the key can be removed from the ignition system.² Subsequently, NHTSA amended these new requirements to permit an override device that would enable the vehicle operator to remove the key without the transmission being locked in "park," and to move the transmission lever without using the key, under certain circumstances. The purpose of these override provisions was to address certain situations when it may be necessary to remove the key

without shifting the transmission lever because the vehicle has become disabled.³

While FMVSS No. 114 evolved to address not only theft protection, but also accidental rollaway prevention, the terminology used in the regulatory text has remained unchanged since its introduction more than 35 years ago. However, theft protection technology has advanced considerably during that time. As a result, certain provisions of the Standard have become increasingly ambiguous when applied to modern theft protection technology not contemplated by the Standard when it first went into effect.

For example, a number of vehicles now feature electronic systems. Typically, this involves a card or a similar device that is carried in an occupant's pocket or purse. The card carries an electronic code that acts as the key when it is transmitted to the vehicle's onboard locking system. The vehicle has a sensor that automatically unlocks the door and allows the vehicle operator to activate the engine, when it receives the code. The code-carrying device (i.e., card or otherwise) never has to leave the vehicle operator's pocket or purse and is not inserted into the ignition module.

In response to manufacturers' requests, NHTSA issued a series of interpretation letters explaining how the Standard applied to various key-locking systems that did not utilize conventional keys, but instead relied on electronic codes to lock and unlock the vehicle, and to enable engine activation.

II. Recent Letters of Interpretation Regarding FMVSS No. 114

As noted above, the agency has received several requests for legal interpretation of the requirements of FMVSS No. 114, as they apply to key-locking systems using various remote access devices. In response, the agency has stated that the electronic code transmitted from a remote device to the vehicle can be considered a "key" for the purposes of FMVSS No. 114.⁴ We have also elaborated on how other provisions of the standard apply to electronic codes. For example, the agency stated that the narrow provisions related to electrical failure do not apply to electronically coded cards or other means used to enter an electronic key code into the locking system because those provisions were specifically crafted in the context of traditional

³ See 56 FR 12464 (March 26, 1991).

⁴ See <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html> and <http://www.nhtsa.dot.gov/cars/rules/interps/files/7044.html>.

¹ See 33 FR 6471 (April 24, 1968).

² See 55 FR 21868, (May 30, 1990).

keys.⁵ We also explained that systems using an electronic code instead of conventional key would satisfy the rollaway prevention provisions if the code remained in the vehicle until the transmission gear is locked in the "park" position.

We have followed our interpretation of the definition of "key" in addressing other issues related to FMVSS No. 114. However, instead of continuing to rely on interpretations, and possibly facing additional questions in the future, the agency believes that it is appropriate to amend the regulatory text of FMVSS No. 114 so that it better correlates to modern anti-theft technology and better reflects the agency's interpretation of the existing requirements.

III. VW Petition for Rulemaking

In order to prevent accidental rollaways, the Standard currently requires that, for vehicles with automatic transmission, the transmission lever must be locked in "park" before the vehicle operator could remove the key.⁶ However, the Standard also allows an optional "override device" which permits removal of the key without the automatic transmission being locked in "park." The standard currently specifies that this override device "* * * must be covered by a non-transparent surface which, when installed, prevents sight of and activation of the device * * *" and that "* * * The covering surface shall be removable only by use of a screwdriver or other tool."

On October 29, 2002, NHTSA received a petition from VW asking the agency to amend S4.2.2(a) by removing provisions related to the override device covering. VW argued that these provisions are unnecessarily design-restrictive. VW indicated that there are other ways to ensure that the override device is not engaged inadvertently. Specifically, VW suggested that the agency allow an override device that requires using a tool to activate the override device while simultaneously removing the key.

The agency decided to grant the petitioner's request because we tentatively agreed that regulatory text related to the override device cover was unnecessarily design-restrictive. However, instead of addressing only the limited issues raised by VW, our NPRM took a broader approach and proposed to amend and reorganize the regulatory text of FMVSS No. 114 so that it better correlates to modern anti-theft

technology and reflects the agency's interpretation of the existing requirements. That proposal was published on August 17, 2005 and is discussed in further detail below.⁷

IV. Summary of the NPRM

In the NPRM, the agency proposed to reorganize the regulatory text of the Standard. For clarity, the requirements related to theft protection would be separated from the requirements intended to prevent accidental rollaway. We also sought to clarify the regulatory text in order to avoid terminology that was unnecessarily design-restrictive. The specifics of the proposal were as follows:

1. We proposed to revise the paragraphs explaining the Standard's scope and purpose to better reflect its goal of reducing the incidence of crashes resulting from theft and also accidental rollaway of motor vehicles. This change has no substantive significance because the Standard already addresses both safety concerns, and should not be viewed as broadening the scope of the current requirements.

2. We proposed to revise the definition of "key" such that it makes it appropriate not only for conventional keys but also electronic codes and other potential means of unlocking and operating the vehicle. We believe that the new definition is broad enough to include not only electronic codes but also other technologies, including, for example, fingerprint recognition.

3. We proposed to substitute the term "gear selection control" for the term "transmission shift lever."

4. We proposed to amend the requirement that the override device required by S4.2.1 of the current Standard be covered by a non-transparent surface. We proposed allowing an override device that requires using a tool to activate the override device while simultaneously removing the key, as an alternative to covering the device. We believe that requiring the use of a tool in order to activate this type of override device would involve sufficient complexity to prevent possible inadvertent activation by a child.⁸

⁷ See 70 FR 48362 (August 17, 2005).

⁸ S4.2.1 of the current Standard specifies that a key cannot be removed from the ignition until the transmission shift lever is locked in "park." However, the Standard provides for an optional override device designed to allow (a) removal of the key when the transmission is not in the "park," and (b) moving the transmission out of "park" when the key is not in the ignition. The Standard requires that the means for activating this device must be covered by a non-transparent surface which, when installed, prevents sight of and activation of the device. This covering surface can only be removable

5. We proposed to amend the override provisions of the current S4.2.2 to allow manufacturers greater flexibility in designing their override devices and to allow manufacturers the choice to use electronic theft prevention devices, such as immobilizers, instead of using steering locks, if they desire. The current Standard allows only override systems that prevent steering where the key can be released or the transmission lever can be shifted. The agency previously indicated that this requirement ensured that the theft protection aspects of the standard remained intact even in certain situations where the vehicle was disabled.⁹ After further evaluating this aspect of our requirements, we concluded that an override device that would prevent forward self-mobility (such as an immobilizer) instead of steering would be just as effective. As explained in our September 24, 2004 interpretation letter to a party who requested confidentiality:

We note that in promulgating FMVSS No. 114, the agency expressed concern about car thieves who could bypass the ignition lock. In response to this concern, the agency decided to require a device, which would prevent either self-mobility or steering even if the ignition lock were bypassed (see 33 FR 4471, April 27, 1968).

The engine control module immobilizer described in your letter satisfies the requirements of S4.2(b) because it locks out the engine control module if an attempt is made to start the vehicle without the correct key or to bypass the electronic ignition system. When the engine control module is locked, the vehicle is not capable of forward self-mobility because it is incapable of moving forward under its own power.¹⁰

Further, as explained in our May 27, 2003 interpretation letter to Jaguar, preventing steering after a moving vehicle has experienced a complete loss of electrical power would not be appropriate before a vehicle could be safely stopped.¹¹

V. Comments on the NPRM and the Agency's Response

We received two comments in response to the NPRM, from VW and the Alliance of Automobile Manufacturers (Alliance). VW generally supported the proposal and urged the agency to "* * * publish a Final Rule enacting the amendments as soon as possible

by use of a tool. The purpose of this requirement was to ensure that children could not easily gain access to the override device (see 56 FR 12464 at 12466).

⁹ See id at 12467.

¹⁰ <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF005229-2.html>.

¹¹ <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html>.

⁵ See <http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html>.

⁶ See S4.2.2(a) of FMVSS No. 114.

with an effective date 60 days following publication of the Final Rule as proposed in the preamble.” Alliance strongly supported the NPRM, and agreed with NHTSA that the Standard had become outdated as a result of technological advances in theft protection. However, Alliance identified one proposed change that, it believed, was inconsistent with the agency’s intent not to propose changes that would impose new substantive requirements on vehicle manufacturers.

By way of background, S4.5 of FMVSS 114 currently reads, in relevant part, as follows:

“A warning to the driver shall be activated whenever the key required by S4.2 has been left in the locking system and the driver’s door is opened * * *” [emphasis added]

As the regulatory text indicates, the agency does not specify the type of warning that must be activated when the key is in the ignition, and the driver’s door is open. By contrast, the proposed S5.1.3 specifies that a warning must be audible. Alliance argued that specifically requiring an audible warning will prohibit compliance via possible future technologies such as haptic feedback, unique visuals, etc.” The Alliance requested that the requirement for an audible warning be deleted in the final rule.

After carefully considering the comments, we decline to make the change requested by Alliance for the following reasons. First, the agency is not aware of any vehicles complying with the requirement of S4.5 in any manner except for an audible warning. Alliance did not indicate that any of their members have vehicles currently in production that would not comply with the requirements of the proposed regulatory text. Therefore, adopting the proposed change in the regulatory text would not require any changes in the current fleet. Second, we believe that with respect to S4.5, the current regulatory text is unnecessarily broad. This is because a warning must be sufficient to catch a driver’s attention before he or she exits the vehicle without the keys. For example, a visual dashboard telltale might be insufficient to accomplish this goal. We believe that it is necessary to carefully examine the alternatives to audible warnings in order to make sure that they are effective in reducing likelihood of drivers leaving their keys in the vehicle. Finally, there is nothing in the regulation to prevent a manufacturer from using another type of warning in addition to the required audible warning.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under Executive Order 12866, “Regulatory Planning and Review.” The agency has considered the impact of this proposal under the Department of Transportation’s regulatory policies and procedures, and has determined that it is not significant.

This final rule amends and reorganizes the regulatory text of 49 CFR 571.114 so that it better correlates to modern theft protection technology and better reflects the agency’s interpretation of the existing requirements. Additionally, this document makes certain provisions of 49 CFR 571.114 less restrictive. Vehicle manufacturers will not have to make any changes to their vehicles as a result of this rule. The impacts of this rule are so minor that we determined that a separate regulatory evaluation is not needed.

B. Executive Order 13132 (Federalism)

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132. This rule would 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 responsibilities among the various levels of government, as specified in Executive Order 13132.

C. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This final rule is not subject to the Executive Order 13045 because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, safety or health risks having a disproportionate impact on children.

D. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 21403, 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. 21461 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.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires agencies to evaluate the potential effects of their final rule on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it will not have a significant economic impact on a substantial number of small entities.

This final rule amends and reorganizes the regulatory text of 49 CFR 571.114 so that it better correlates to modern theft protection technology and better reflects the agency’s interpretation of the existing requirements. Vehicle manufacturers, or any other small businesses, will not have to make any changes to their products as a result of this rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 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. This final rule does not include any new information collection requirements.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or 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. The NTTAA directs us to provide Congress, through OMB,

explanations when we decide not to use available and applicable voluntary consensus standards.

There are no available voluntary consensus standards that are equivalent to FMVSS No. 114.

H. 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 in any one year (\$120.7 million as adjusted annually for inflation with base year of 1995).

The requirements of this final rule will not result in costs of \$120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

I. Regulation 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.

J. Privacy Act

Please note that 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://dms.dot.gov>.

K. National Environmental Policy Act

NHTSA has analyzed this final rule 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.

L. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 et seq.), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor

vehicle safety, and are stated in objective terms.¹² “Motor vehicle safety standard” means a minimum performance standard for motor vehicles or motor vehicle equipment.¹³ When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.¹⁴ The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.¹⁵ The responsibility for promulgation of Federal motor vehicle safety standards is delegated to NHTSA.¹⁶

In this final rule, the agency carefully considered these statutory requirements.

First, this final rule reflects the agency's careful consideration and analysis of all existing regulatory provisions in FMVSS No. 114, as well as relevant letters of interpretation related to that standard. In developing the substantive provisions of the standard over the years, the agency considered all relevant, available motor vehicle safety information, including available research, testing results, and other information related to various technologies. This final rule amends and reorganizes the regulatory text of FMVSS No. 114 so that it better correlates to modern theft protection technology and reflects the agency's interpretation of the existing requirements. The new language does not impose any new substantive requirements on vehicle manufacturers.

Second, to ensure that the requirements of FMVSS No. 114 are practicable (as well as consistent with our safety objectives), the agency evaluated the cost, availability, and suitability of the standard's provisions, both when initially adopted and during subsequent amendments. As noted above, the changes resulting from this final rule are administrative in nature and would not impact the costs and benefits of the standard. In sum, we believe that this final rule is practicable and would maintain the benefits of Standard No. 114.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how

performance will be tested to ensure compliance with the standard. The language of the standard has been modified to improve clarity or to incorporate existing interpretations, again without changing the substance of the existing requirements.

Fourth, we believe that this final rule would meet the need for motor vehicle safety by clarifying the safety standard, thereby making it easier for regulated parties to comply with all applicable requirements.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard are administrative in nature. They do not affect the substance of the requirements or the bases for those requirements, as articulated in earlier rulemakings. Accordingly, we believe that this final rule is appropriate for vehicles that are subject to FMVSS No. 114 because it furthers the agency's objective to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, part 571 is amended 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, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.114 is revised to read as follows:

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

S1. *Scope.* This standard specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles.

S2. *Purpose.* The purpose of this standard is to decrease the likelihood that a vehicle is stolen, or accidentally set in motion.

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.

S4. *Definitions.*
Combination means a variation of the key that permits the starting system of a particular vehicle to be operated.

¹² 49 U.S.C. 30111(a).

¹³ 49 U.S.C. 30111(a)(9).

¹⁴ 49 U.S.C. 30111(b).

¹⁵ *Id.*

¹⁶ 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

Key means a physical device or an electronic code which, when inserted into the starting system (by physical or electronic means), enables the vehicle operator to activate the engine or motor.

Open-body type vehicle means a vehicle having no occupant compartment doors or vehicle having readily detachable occupant compartment doors.

Starting system means the vehicle system used in conjunction with the key to activate the engine or motor.

Vehicle type, as used in S5.1.2, refers to passenger car, truck, or multipurpose passenger vehicle, as those terms are defined in 49 CFR 571.3.

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

S5.1 *Theft protection.*

S5.1.1 Each vehicle must have a starting system which, whenever the key is removed from the starting system 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.

S5.1.2 For each vehicle type manufactured by a manufacturer, the manufacturer must provide at least 1,000 unique key combinations, or a number equal to the total number of the vehicles of that type manufactured by the manufacturer, whichever is less. The same combinations may be used for more than one vehicle type.

S5.1.3 Except as specified below, an audible warning to the vehicle operator must be activated whenever the key is in the starting system and the door located closest to the driver's designated seating position is opened. An audible warning to the vehicle operator need not activate:

- (a) After the key has been inserted into the starting system, and before the driver takes further action; or
- (b) If the key is in the starting system in a manner or position that allows the engine or motor to be started or to continue operating; or
- (c) For mechanical keys and starting systems, after the key has been withdrawn to a position from which it may not be turned.

S5.1.4 If a vehicle is equipped with a transmission with a "park" position, the means for deactivating the vehicle's engine or motor must not activate any device installed pursuant to S5.1.1(b), unless the transmission is locked in the "park" position.

S5.2 Rollaway prevention in vehicles equipped with transmissions with a "park" position.

S5.2.1 Except as specified in S5.2.3, the starting system required by S5.1 must prevent key removal when tested according to the procedures in S6, unless the transmission or gear selection control is locked in "park" or becomes locked in "park" as a direct result of key removal.

S5.2.2 Except as specified in S5.2.4, the vehicle must be designed such that the transmission or gear selection control cannot move from the "park" position, unless the key is in the starting system.

S5.2.3 *Key removal override option.* At the option of the manufacturer, the key may be removed from the starting system without the transmission or gear selection control in the "park" position under one of the following conditions:

- (a) In the event of electrical failure, including battery discharge, the vehicle may permit key removal from the starting system without the transmission or gear selection control locked in the "park" position; or
- (b) Provided that steering or self-mobility is prevented, the vehicle may have a device by which the user can remove the key from the starting system without the transmission or gear selection control locked in "park." This device must require:

- (i) The use of a tool, and
- (ii) Simultaneous activation of the device and removal of the key; or
- (c) Provided that steering or self-mobility is prevented, the vehicle may have a device by which the user can remove the key from the starting system without the transmission or gear selection control locked in "park." This device must be covered by an opaque surface which, when installed:

- (i) Prevents sight of and use of the device, and
 - (ii) Can be removed only by using a screwdriver or other tool.
- S5.2.4 *Gear selection control override option.* The vehicle may have a device by which the user can move the gear selection control from "park" after the key has been removed from the starting system. This device must be operable by one of the three options below:

- (a) By use of the key; or
- (b) By a means other than the key, provided steering or forward self-mobility is prevented when the key is removed from the starting system. Such a means must require:

- (i) The use of a tool, and
- (ii) Simultaneous activation of this means and movement of the gear selection control from "park;" or
- (c) By a means other than the key, provided steering or forward self-mobility is prevented when the key is

removed from the starting system. This device must be covered by an opaque surface which, when installed:

- (i) Prevents sight of and use of the device, and
- (ii) Can be removed only by using a screwdriver or other tool.

S5.2.5 When tested in accordance with S6.2.2, each vehicle must not move more than 150 mm on a 10 percent grade when the gear selection control is locked in "park."

S6. Compliance test procedure for vehicles with transmissions with a "park" position.

S6.1 Test conditions.

S6.1.1 The vehicle shall be tested at curb weight plus 91 kg (including the driver).

S6.1.2 Except where specified otherwise, the test surface shall be level.

S6.2 Test procedure.

S6.2.1

(a) Activate the starting system using the key.

(b) Move the gear selection control to any gear selection position or any other position where it will remain without assistance, including a position between any detent positions, except for the "park" position.

(c) Attempt to remove the key in each gear selection position.

S6.2.2

(a) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes.

(b) Apply the parking brake (if present).

(c) Move the gear selection control to "park."

(d) Note the vehicle position.

(e) Release the parking brake. Release the service brakes.

(f) Remove the key.

(g) Verify that the gear selection control or transmission is locked in "park."

(h) Verify that the vehicle, at rest, has moved no more than 150 mm from the position noted prior to release of the brakes.

S6.2.3

(a) Drive the vehicle forward down a 10 percent grade and stop it with the service brakes.

(b) Apply the parking brake (if present).

(c) Move the gear selection control to "park."

(d) Note the vehicle position.

(e) Release the parking brake. Release the service brakes.

(f) Remove the key.

(g) Verify that the gear selection control or transmission is locked in "park."

(h) Verify that the vehicle, at rest, has moved no more than 150 mm from the

position noted prior to release of the brakes.

Issued: April 4, 2006.

Jacqueline Glassman,
Deputy Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 050323081-6079-02; I.D. 031505C]

RIN 0648-AT02

Endangered and Threatened Wildlife and Plants: Threatened Status for Southern Distinct Population Segment of North American Green Sturgeon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Following completion of a comprehensive Endangered Species Act (ESA) Status Review and Update for the North American green sturgeon (*Acipenser medirostris*; hereafter, "green sturgeon"), we, NOAA's National Marine Fisheries Service (NMFS), published a Proposed Rule to list the Southern distinct population segment (DPS) of green sturgeon as threatened on April 6, 2005. After considering public comments on the Proposed Rule, we are issuing a Final Rule to list the Southern DPS as a threatened species. NMFS is currently considering issuance of protective regulations that may be necessary and advisable to provide for the conservation of the species. With this document we are also soliciting information that may be relevant to our analysis of protective regulations and to the designation of critical habitat for the Southern DPS of green sturgeon. Details of our analyses, their outcome, and a request for public comment on our proposals will be published in subsequent **Federal Register** notices.

DATES: This final rule is effective June 6, 2006. Replies to the request for information regarding a subsequent ESA section 4(d) Rule and critical habitat designation must be received by July 5, 2006.

ADDRESSES: You may submit information by any of the following methods:

- E-Mail:

GreenSturgeon.Information@noaa.gov.

- Webform at the Federal Rulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

- Fax: 1-562-980-4027, Attention: Melissa Neuman.

- Mail: Submit written information to Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 4213.

Reference materials regarding this determination can be obtained via the Internet at: *http://www.nmfs.noaa.gov* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980-4115 or Lisa Manning, NMFS, Office of Protected Resources (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2001, we received a petition from the Environmental Protection and Information Center (EPIC), Center for Biological Diversity, and WaterKeepers Northern California requesting that we list the green sturgeon as threatened or endangered under the ESA and that critical habitat be designated for the species concurrently with any listing determination. On December 14, 2001, we provided notice of our 90-day finding that the petition presented substantial scientific information indicating that the petitioned action may be warranted and requested information to assist with a Status Review to determine if green sturgeon warranted listing under the ESA (66 FR 64793). To assist in the Status Review, we formed a Biological Review Team (BRT) comprised of scientists from our Northwest and Southwest Fisheries Science Centers and from the United States Geological Survey (USGS). We also requested technical information and comments from state and tribal co-managers in California, Oregon, and Washington, as well as from scientists and individuals having research or management expertise pertaining to green sturgeon from California and the Pacific Northwest. The BRT considered the best available scientific and commercial information, including information presented in the petition and in response to our request for information concerning the status of and efforts being made to protect the species (66 FR 64793; December 14, 2001). After

completion of the Status Review (Adams *et al.*, 2002), we determined on January 23, 2003 (68 FR 4433), that green sturgeon is comprised of two DPSs that qualify as species under the ESA: (1) a northern DPS consisting of populations in coastal watersheds northward of and including the Eel River ("Northern DPS"); and (2) a southern DPS consisting of coastal and Central Valley populations south of the Eel River, with the only known spawning population in the Sacramento River ("Southern DPS"). After consideration of a variety of information to assess risk factors, including abundance, fishing impacts, and habitat modification, destruction, and loss, we determined that neither DPS warranted listing as threatened or endangered (68 FR 4433). Uncertainties in the structure and status of both DPSs led us to add them to the Species of Concern List (formerly the candidate species list; 69 FR 19975; April 15, 2004).

On April 7, 2003, EPIC (and others) challenged our "not warranted" finding for green sturgeon. The U.S. District Court for the Northern District of California issued an order on March 2, 2004, which set aside our "not warranted" finding and remanded the matter to us for redetermination of whether green sturgeon is in danger of extinction throughout all or a significant portion of its range, or is likely to become so within the foreseeable future, because the Court was not satisfied with our examination of whether purported lost spawning habitat constituted a significant portion of either DPS' range. We reestablished the BRT and asked the BRT to consider recent scientific and commercial information available regarding the biological status of green sturgeon and to assist us in assessing the viability of the species throughout all or a significant portion of its range. We published a notice on June 18, 2004, soliciting new information beyond that considered in the previous Status Review and listing determination (69 FR 34135). Following the close of this public comment period on August 17, 2004, we convened the BRT to draft an updated Status Review and distribute the updated Status Review to co-managers (i.e., States of Washington, Oregon and California, Yurok and Hoopa Tribes, U.S. Fish and Wildlife Service (FWS), and the California Bay-Delta Program) for their review and comment. This updated Status Review was finalized on February 22, 2005.

In a **Federal Register** notice published on April 6, 2005 (70 FR 17386), we reaffirmed our earlier determination that the northern green sturgeon DPS does not warrant an ESA listing, but that this