

[Note from NHTSA: The Acting Associate Administrator for Rulemaking signed the following document on February 25, 2011, and we have submitted it for publication in the Federal Register. While we have taken steps to ensure the accuracy of this Internet version of the document, it is not the official version. Please refer to the official version in a forthcoming Federal Register publication or on GPO's Web Site. You can access the Federal Register at: www.gpoaccess.gov/fr/index.html]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Docket No. NHTSA-2011-0027

RIN 2127-AK52

**Federal Motor Vehicle Safety Standards;
Power-operated window, partition, and roof panel systems**

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

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking issued pursuant to the Cameron Gulbransen Kids Transportation Safety Act of 2007. The Act directed NHTSA to initiate a rulemaking to consider requirements for automatic reversal systems (ARS) for power windows and to make a final decision. The agency has decided not to issue a final rule adopting any such new requirements and instead to terminate rulemaking.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael Pyne, NHTSA Office of Avoidance Standards, telephone 202-366-1810. For legal issues, you may call J. Edward Glancy, NHTSA Office of Chief Counsel, telephone 202-366-2992. You

may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, S.E., West Building, Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: For the reasons set forth below, we have decided not to issue a final rule adopting any new requirements for automatic reversal systems (ARS) and are withdrawing our 2009 proposal regarding ARS. This document explains our decision.

The Cameron Gulbransen Kids Transportation Safety Act of 2007 (K. T. Safety Act) directed the Secretary of Transportation to initiate a rulemaking to consider requiring all power windows and panels on light motor vehicles to stop closing and reverse direction automatically when they detect an obstruction, to prevent children and others from being trapped, injured, or killed. It also provided the Secretary with discretion whether to issue a final rule. It stated that if the Secretary determines that additional safety requirements are reasonable, practicable and appropriate, the Secretary shall issue those requirements. Alternatively, it stated if the Secretary determines that no additional safety requirements meet those criteria, the Secretary shall report to Congress on the reasons for not issuing such requirements.

In response to the K. T. Safety Act, the Department's National Highway Traffic Safety Administration (NHTSA) published in the Federal Register (74 FR 45143; September 1, 2009) a notice of proposed rulemaking (NPRM) proposing new requirements for ARS. The proposal discussed the agency's analysis of the injuries and fatalities related to power windows and the performance requirements that the agency had recently adopted for safer power window switches. The benefits of the safer switches rules will be increasingly realized as vehicles with "safer switches" replace older vehicles lacking them.

After the agency analyzed and considered the benefits and costs of installing ARS for all types of vehicle windows in developing the NPRM, NHTSA decided to propose requiring ARS

on only one type of power window, i.e., “express-up” or “one-touch closing” power windows. These windows close without continuous actuation of the window switch by a person. NHTSA also sought comments on requiring ARS for other power windows, and explained that the agency could include such a requirement in a final rule at the end of this rulemaking proceeding. The agency provided estimates of the costs and benefits of the proposal and a number of other regulatory alternatives. NHTSA also announced that it would begin providing consumers with information regarding which vehicles are equipped with ARS at www.safercar.gov by October 2009.

In response to its proposal, NHTSA received comments from vehicle manufacturer associations, suppliers, safety advocacy organizations, members of Congress and individuals. Vehicle manufacturers supported the proposal. In contrast, several safety advocacy organizations, several suppliers, and a number of individuals urged that the agency require ARS for all power windows. The members of Congress said that they believed that the agency’s proposal would not sufficiently achieve the Congressional intent of protecting children and asked the agency to review and take fully into account additional data submitted by commenters about the frequency of injuries and deaths involving power windows.

Before reaching a final decision, we carefully considered all of the public comments. Among other things, we considered data from a survey conducted for and submitted by a safety organization relating to the incidence of minor injuries. We also considered cost estimates provided by a supplier. In the NPRM, we noted that because the agency’s estimates of less severe injuries were primarily based on emergency room data, those estimates likely represented a floor rather than a ceiling. The survey data indicate that there are a substantial number of

minor injuries, although the survey does not allow us to estimate the number of minor injuries on an annual basis.

We attempted to calculate the number of each type of injury based on information from multiple sources, including mortality data, hospital emergency department records, the agency's Special Crash Investigations program, and survey information submitted during the comment period. For the purpose of making these calculations, we grouped power window injuries into two main categories.

First, there are a very small number of critical and fatal power window injuries resulting from an occupant's (usually a young child) being strangled or having his or her chest compressed when trapped by a closing power window. Most of these critical and fatal injuries have occurred in older vehicles with unsafe switches. They happened as a result of an occupant's kneeling or leaning on a window switch in a vehicle with unprotected window switches, causing inadvertent window closings. This category of injuries has been addressed by our rules requiring safer switches. New vehicles with safety switches are steadily replacing the older vehicles without such switches, thus also steadily eliminating this category of injuries.

Second, there is a much larger number of less serious, mostly minor, injuries, most often resulting from a power window's closing on a person's finger or hand. In these cases, the window is intentionally activated (presumably by the driver). The most common injuries involve the pinching of fingers.

Given our present understanding of the data about the nature, source, and number of power window injuries, we believe that there are very few fatalities or serious injuries that any additional requirements for ARS could mitigate or prevent. They would instead address primarily "finger-pinch" type injuries.

There is considerable uncertainty about benefits estimates, particularly with respect to preventing or mitigating the less serious, mostly minor, injuries involving a power window closing on a person's finger or hand. The agency has no data to indicate just how effective ARS is in reducing finger-pinch type injuries, because the number of finger-pinch type injuries is not collected in any data source. While the available information suggests that there may be a relatively large number of these injuries, we do not know how many occur annually; the survey results do not include or enable us to make a reliable estimate. The only information we have about the severity of those injuries is that in a survey respondent population of 1,001 people, 3 out of 33 people injured sometime in their lifetime indicated that they had sought medical attention for a power window related injury, indicating that this was a very minor injury for most. The company that conducted the survey did not ask those respondents about the nature of their injury, the type or model year of vehicle and the type of power window involved, or the seating position they were occupying at the time of their injury. Thus, we do not have clear information about the severity or source of these injuries.

Further, there is substantial uncertainty as to the proper way of valuing them for purposes of analyzing benefits and costs. For the NPRM, we did not have a method for valuing the cost of minor, non-crash injuries and so instead assumed values based on the comprehensive costs for persons who are injured in crashes (\$16,799 for person whose maximum injury level was a minor injury). However, this approach had the effect of overstating the value because the costs associated with a person who experiences a minor "finger-pinch" type injury are not comparable to the costs associated with a person who is injured in a crash. In the latter situation, the person's entire body is typically exposed to crash forces, and the average person experiencing minor

injuries in a crash has more than one such injury. The agency still does not have a generally accepted method for valuing the much lower cost of these more minor, non-crash injuries.

We also considered the possibility of people being entrapped without being injured. While entrapment without an injury is theoretically possible, e.g., in situations of partial window enclosure, we are not aware of any evidence that this is an actual problem.

In reaching a final decision regarding this rulemaking, we considered the statutory provision providing that the Department is to issue a final rule in this area only if it determines that additional safety standards are reasonable, practicable, and appropriate.

After considering the comments and available data, we have determined for the reasons stated above that there is not sufficient information to make a determination at this time that a requirement for ARS for power windows that do not already have this feature would, or would not, be reasonable, practicable and appropriate. Such a rule would be costly, but we cannot determine with any certainty whether the costs would be reasonable given the potential benefits. Those benefits would almost wholly consist of an uncertain number of minor injuries.

We also considered an alternative approach of requiring automakers to continue their currently voluntary practice of providing ARS for “express-up” or “one-touch closing” power windows and to specifying an ARS test requirement. The alternative we proposed included an ARS test requirement based on a United Nations Economic Commission for Europe (ECE) regulation (R21). We believe that this alternative, if implemented, would result in minimal benefits and nearly no costs because vehicle manufacturers are already voluntarily equipping their “express-up” or “one-touch closing” power windows with ARS that are either ECE compliant or nearly ECE compliant.

We have also considered further whether safety would be materially improved by adopting the proposed alternative that requires ARS for express-up windows. Thus far, manufacturers have been voluntarily providing ARS for all express up windows. There is no reason at present to believe that vehicle manufacturers will discontinue this current practice. Moreover, the benefits of specifying the ECE R21 test requirement would be minimal. Given these considerations, adopting the proposed rule would not, at present, advance the child safety goal of the K. T. Safety Act. We do not read the statutory language to require issuance of such a rule, and we have accordingly decided not to issue a rule in this proceeding.

We plan to monitor power window designs on new vehicles and data relevant to power window injuries. If a new entrant in the U.S. market began importing vehicles with express up windows lacking ARS or if a manufacturer discontinued its current voluntary practice of providing ARS, we would reexamine our options.

The K. T. Safety Act specifies that if the Department does not issue a rule requiring ARS for power windows, it must make available to the public through the Internet and other means information indicating which vehicles with power windows and/or panels are or are not equipped with ARS. The Department has been or will be using several methods to provide this information since October 2009. We have been using our Five-Star safety rating program at www.safercar.gov to indicate whether particular make-models have ARS. To improve this program and help ensure that vehicles that are listed have effective ARS, we plan to list vehicles as having ARS only if they have ECE compliant ARS (as determined in a test procedure that in the near future we will place in Docket number NHTSA – 2006-26555 – accessible at

www.regulations.gov) or the slightly more stringent ARS test requirement that we developed for power windows systems that operate when the key is not in the ignition.

We are also including general information about power window safety in our “Buying a Safer Car for Child Passengers” brochure and at our new website “Keeping Kids Safe: Inside and Out”.¹

Based on the foregoing discussion, we are withdrawing our 2009 notice of proposed rulemaking and terminating rulemaking.

¹ <http://www.nhtsa.gov/Driving+Safety/Child+Safety/Keeping+Kids+Safe:+Inside+&+Out>