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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2012-0142; Notice 2]

Nissan North America, Incorporated, Grant of Petition for
Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA)

ACTION: Grant of Petition

SUMMARY: Nissan North America, Inc. (Nissan) has determined that certain model year (MY) 2009 through 2012 Nissan Titan trucks manufactured from January 31, 2008 to July 17, 2012 and MY 2012 Nissan NV trucks, buses or multipurpose passenger vehicles (MPVs) manufactured from December 20, 2010 to July 17, 2012, do not fully comply with paragraph S3.1.4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect*. Nissan has filed an appropriate report dated July 23, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*.

ADDRESSES: For further information on this decision contact Mr. Vince Williams, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202)366-2319, facsimile (202)366-5930.

SUPPLEMENTARY INFORMATION:

I. Nissan's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556), Nissan submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Nissan's petition was published, with a 30-day public comment period, on July 5, 2013, in the Federal Register (78 FR 40546.) No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at:

<http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2012-0142."

II. Vehicles Involved: Affected are approximately 45,167 MY 2009 through 2012 Nissan Titan trucks manufactured from January 31, 2008 to July 17, 2012 and MY 2012 Nissan NV trucks, buses or MPVs manufactured from December 20, 2010 to July 17, 2012 equipped with steering column-mounted transmission shift levers with a manual mode.

III. Rule Text: Paragraph S3.1.4.1 of FMVSS No. 102 specifically states:

S3.1.4.1 Except as specified in S3.1.4.3, if the transmission shift position sequence includes a park position, identification of shift positions, including the

positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

- (a) The ignition is in a position where the transmission can be shifted; or
- (b) The transmission is not in park.

IV. Summary of Nissan's Analyses: Nissan explains that the noncompliance is that on the affected vehicles a unique sequence of actions can lead the shift position indicator to incorrectly display the shift position as required by paragraph S3.1.4.1 of FMVSS No. 102.

Nissan further explains that the noncompliance occurs when the following sequences are accomplished:

- (1) The transmission is shifted into "manual" shift mode by pressing the "manual" shift mode button; and
- (2) The ignition is switched from the "ON" position directly into "ACC" position, which shuts off the engine.

During the time in which the ignition is in the "ACC" mode, the gear position indicator displays the last "manual" gear position of the transmission ([1]^M through [4]^M) prior to the "ACC" mode. If the key is not rotated from the "ACC" position and the shift lever is moved, the last "manual" gear position will be displayed regardless of the shift lever position (the engine will not be running). Turning the ignition to either the

"ON" or "OFF" positions will reset the indicator, at which point the correct position will be displayed.

This issue only occurs when the ignition is switched from "ON" into "ACC" mode and the engine is off. Further, the vehicle cannot be restarted unless the ignition is switched out of "ACC" at which point the shift position indicator would reset and show the correct position. Likewise, if the ignition is turned to the "OFF" position to turn the vehicle completely off, the position indicator resets itself and will display the correct shift position the next time the vehicle is started.

Nissan believes the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The vehicle cannot be operated in the noncompliant condition. The noncompliant condition only exists when the vehicle ignition is switched from the "ON" directly into the "ACC" mode and exists only for the time that the ignition remains in "ACC" mode. The engine is not running at this time. If the transmission is shifted into park while in "ACC" mode, it cannot be removed from park unless the ignition is switched to the "ON" position. If the ignition is switched to either the "ON" position (to start the vehicle), or the "OFF" position (to remove the key and exit the vehicle) the shift indicator resets to

- the correct position and the vehicle is no longer in the noncompliant condition.
2. The sequence of events that leads to the noncompliant condition is exceptionally rare. This sequence, stated in the description of the noncompliance, is not one that a driver should encounter in the typical operation of the vehicle. If a driver were to happen into this circumstance, the condition is so fleeting that the vehicle would likely be taken out of the noncompliant condition almost immediately. This is evidenced by the fact that some of the affected vehicles have been on the road for four years and Nissan has not received any customer complaints or warranty claims regarding the issue.
 3. The likelihood of an affected vehicle being inadvertently left out of park is nearly impossible in this case. When the noncompliant condition occurs, the shift indicator states, incorrectly, that the vehicle is in a "manual" forward gear regardless of the actual shifter position. Due to the geometry of the shifter, the park position should be apparent to the driver even without the assistance of the shift indicator.
 4. Furthermore, since the owner cannot remove the mechanical key from the ignition while the transmission

is in any position except for park due to the transmission shift interlock, it is unlikely that a vehicle would be left unattended in the noncompliant condition. Given this, the driver will either exit the vehicle without the key or the driver will remain in the vehicle.

If the driver attempts to leave the vehicle without the key, an audible warning (as required by FMVSS No. 114) will sound, alerting the driver that the key is in the ignition. This should reduce the possibility of the operator leaving the vehicle.

If the driver remains in the vehicle, he or she will attempt to restart the vehicle. An attempt to restart will take the ignition from the "ACC" position to the ON position and the indicator will reset to the correct position.

5. As NHTSA recognized in proposing FMVSS No. 102 (see 49 FR 32409-32411, August 25, 1988,) the purpose of the display requirement for PRNDM information is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." Thus, the primary function of the transmission display is to inform the driver of gear selection and relative position of the

gears while the engine is running. Except for the absence of the required transmission shift position during the one circumstance described above, which occurs when the engine is not running, all of the 45,167 affected vehicles otherwise comply with paragraph S3.1.4.1 of FMVSS No. 102.

Nissan also stated its belief that in similar situations, NHTSA has granted the applications of other petitioners.

Nissan has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 102.

In summation, Nissan believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

V. NHTSA'S Decision: NHTSA has reviewed Nissan's analyses that the subject noncompliance is inconsequential to motor vehicle safety. Considering the rare occurrence where the shift position indicator fails to correctly display the shift position, the noncompliance poses little if any risk to motor vehicle safety. This is because the vehicle cannot be started or operated in a manual gear position of the transmission, i.e., 1 through 4. In

addition, the mechanical ignition key in these vehicles cannot be removed unless the transmission control is in "park," and an audible warning required by FMVSS No. 114 would alert a driver exiting the vehicle if the key remained in the starting system. Furthermore, if the driver places the vehicle in park, the shifter cannot be moved to another position without rotating the key from the accessory position, at which point shift position indicator would reset and show the correct shift position.

In consideration of the foregoing, NHTSA has decided that Nissan has met its burden of persuasion that the FMVSS No. 102 noncompliance is inconsequential to motor vehicle safety. Accordingly, Nissan's petition is hereby granted and Nissan is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to approximately 45,167 vehicles that Nissan no longer controlled at the time that it determined that a noncompliance existed in the subject vehicles. However, the

granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Nissan notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Claude H. Harris, Director
Office of Vehicle Safety Compliance

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