

definition of an eligible FTA-assisted capital project to include costs for operating ADA-related complementary paratransit in any sized UZA, for any grant applicant that is in compliance with ADA. Hence, providers of ADA-related paratransit service may apply for funds at the 80/20 Federal/local share ratio in accordance with Section 3027 of TEA-21. Up to 10 percent of the urbanized area's apportionment under Section 5307 of Title 49, Chapter 53, may be used for the ADA-related costs. The option to use and the allocation of the 10 percent is to be made by the local Metropolitan Planning Organization.

Criteria

The criteria by which FTA will allow eligibility for Federal transit operating assistance under the provisions of Section 360 of the Omnibus Appropriations Act for Fiscal Year 1999 are as follows:

1. The operator provides demand responsive service exclusively for elderly persons and/or persons with disabilities. Such service does not include service for the general public.
2. The number of demand responsive vehicles, operated in maximum service, is 20 or fewer.
3. The operator provides the demand responsive service in a UZA with a population of 200,000 or over.
4. The demand-responsive service provided is not ADA paratransit service complementary to fixed route service.
5. Neither fixed-route nor ADA-related paratransit service complementary to fixed-route service is provided in the service areas serve by the demand responsible service for which Federal transit operating assistance will be requested.
6. The transit provider, in at least one of Federal Fiscal Years 1996, 1997, or 1998, has received an FTA grant for operating assistance under Section 5307 of Title 49 U.S.C. or has received operating assistance under Section 5307 passed through from another FTA grantee and has reported the assistance in the National Transit Database. An exception to the criteria of reporting the funds received by a pass through arrangement would be the case in which FTA has allowed an exemption to the reporting because the transit operator operated nine or fewer vehicles.
7. The Metropolitan Planning Organization concurs in the use for operating assistance of a portion of the urbanized area's Section 5307 apportionment.

Calculation

After determining a transit provider's eligibility to use Section 5307 funds for

operating assistance, and taking into account the total amounts of Federal transit operating assistance being requested, FTA will determine the amount for which the recipient is eligible. Determination will be made on the basis of the recipient's past receipt—either directly or indirectly—of Federal transit operating assistance under Section 5307 of Title 49 U.S.C. The transit operator will not receive more than the maximum the operator has received in any one of the Federal Fiscal Years 1996, 1997, or 1998.

If the total amount requested by all eligible recipients pursuant to Section 360 is greater than \$1 million, FTA will calculate the amount eligible to each eligible recipient on the basis of Federal transit operating assistance obligated to or passed through to the particular eligible recipient in the past, as a proportion of the total amount of Federal transit operating assistance obligated to or passed through to all of the eligible recipients requesting eligibility under Section 360.

FTA Grant Application Requirements

All of the normal FTA grant requirements regarding Federal transit operating assistance apply, as described in Appendix D of FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions," dated October 1, 1998. Understanding that amendments to Transportation Improvement Programs (TIP) and to State Transportation Improvement Programs (STIP) will have to be made, FTA will not require that the funds be programmed in a TIP before the letter of intent is received. Use of the funds under Section 360 must be programmed in an approved TIP and an approved STIP, however, before FTA can obligate funds.

Letter of Intent

The letter of intent, which must be received by the appropriate FTA Regional Office on or before April 15, 1999, should address the following:

1. Each criterion of eligibility listed.
2. The amounts of Federal transit operating assistance received, either directly or indirectly, in each of Federal Fiscal Years 1996, 1997, and 1998.
3. The amount of Fiscal Year 1999 funds that will be requested for Federal transit operating assistance. Such amount may not be greater than the maximum amount received in any one of Federal Fiscal Years 1996, 1997, or 1998.

Issued on: January 20, 1999.

Gordon J. Linton,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-99-4973]

Nissan Motors Corporation U.S.A.; Receipt of Application for Decision of Inconsequential Noncompliance

Nissan Motor Corporation U.S.A. (Nissan) has determined that certain 1998 and 1999 Nissan Frontier pickup trucks equipped with automatic transmissions were not in full compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Nissan has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

We are publishing this notice of receipt of an application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Under S3.1.4.1 of FMVSS No. 102, if a vehicle's transmission shift lever sequence includes a park position, identification of the shift lever positions (including the positions in relation to each other and the position selected) shall be displayed in view of the driver under two conditions: if the ignition is in a position where the transmission can be shifted, or the transmission is not in park.

From September 1997 to August 1998, Nissan produced approximately 22,000 U.S. light trucks that use an electronic display in the instrument panel to indicate transmission gear position. In these vehicles, when the ignition key is in the "OFF" or "ACCESSORY" position, the selected gear position is not displayed. "OFF" refers to the range of movement of the ignition key between the "LOCK" and "ACCESSORY" positions. The gear selector lever can be moved while the ignition switch is in "OFF" or "ACCESSORY." There is no detent for "OFF" as the key is rotated nor is "OFF" labeled on the ignition switch.

There is a detent for "ACCESSORY" and it is labeled on the ignition switch. Nissan believes that it is highly unlikely that a driver would actually turn and leave the key in the "OFF" position. Nissan states that the affected vehicles do comply with all other requirements of FMVSS 102.

Nissan supports its application for inconsequential noncompliance with the following statements:

The situation involving the Frontier trucks is essentially the same as that described in an inconsequentiality petition filed by General Motors Corporation in 1993 and granted by NHTSA. See 58 FR 16735, March 30, 1993 and 58 FR 33296, June 16, 1993. The petitioner in that matter stated that, on certain of its vehicles, the PRNDL display would not be illuminated if the transmission was left in a position other than "PARK" when the ignition key was turned "OFF." The petitioner noted that the vehicles in question complied with FMVSS 102 during normal ignition activation and vehicle operation. In that matter, NHTSA concluded that since the noncompliance did not occur during times that the affected vehicles were operated, "the noncompliance presents no discernible threat to safety." See 58 FR 33297.

As NHTSA noted in proposing the current version of the standard (49 FR 3240911, August 25, 1988), the purpose of the display requirement is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." In all but the rarest circumstances, 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.

In the case of the Nissan trucks, the selected gear position and PRNDL display are always visible when the engine is running. The selected gear position is not shown in the instrument panel electronic display if the engine is turned off. If the ignition key is rotated to the "ON" position, the selected gear position immediately illuminates. If the transmission is in "PARK" and the engine is started, the selected gear position becomes immediately visible.

If the driver seeks to start the truck when the transmission is not in the "PARK" or "NEUTRAL" position, ignition would be impossible, as required under FMVSS 102. As soon as the ignition key is rotated to the "ON" or "START" position, the selected gear would become immediately apparent as the display is illuminated under these conditions. This means that the engine will only start under the condition that

the PRNDL and selected gear position are visible to the driver.

Because the movement of the shift lever to place the transmission in "PARK" is the same on all vehicles using a column-mounted shift lever, that is, pulled toward the driver and then moved all the way to the left, most drivers do not rely on the PRNDL display to ensure the transmission is in "PARK." This means that it is highly unlikely a driver attempting to place the transmission in "PARK" would fail to do so even if the gear position was not visible on the PRNDL display.

If the driver were to attempt to remove the key before exiting the vehicle while erroneously believing that the transmission is in "PARK" (with the ignition key being in the "OFF" or "ACCESSORY" position), it would be impossible to remove the key from the ignition. This would alert drivers that the transmission was not in "PARK" and cause them to put it in "PARK" so that they could remove the key. If the driver opens the door before attempting to remove the key, the FMVSS 114 audible warning would sound when the door is opened, providing further indication of the improper gear selection. As stated by NHTSA, exiting the vehicle in these circumstances "would be limited to the rare situation." See 54 FR 29042, 29044 (July 11, 1989).

Nissan believes that the theoretical risk of one of the subject vehicles rolling away after the driver exits the vehicle because they failed to place the transmission in "PARK" and/or to engage the parking brake while leaving the key in the ignition switch in the "OFF" or "ACCESSORY" position so that the selected gear is not displayed in the PRNDL is no higher than in a vehicle in which the PRNDL display is working properly.

Although there may be rare circumstances when it would be useful to know the gear position when the engine is off, this information is provided by the shift lever position. Moreover, the electronic display can be illuminated simply by turning the key to the "ON" position. As noted above and as stated in the final notice granting the General Motors petition, "in all but the rarest circumstances, the primary function of the PRNDL display is to inform the driver of gear selection and relative position of the gears while the engine is running." See 58 FR 33297.

The gear selector lever on these trucks cannot be moved from the "PARK" position if the key is not in the ignition switch. Therefore, the fact that the selected gear is not displayed in the PRNDL with the ignition key in the "OFF" or "ON" position has no

relevance when the key is not in the switch.

Nissan has no record of any customer complaint or accident report that could be associated with or attributed to this condition.

We invite you to comment in writing on Nissan's application. Comments should refer to the docket number and be submitted in two copies to: U.S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590.

We will consider comments received before the close of business on the closing date indicated below. We will file the application and supporting materials. We will consider, to the extent possible, all comments received after the closing date. When we grant or deny the application, we will publish the notice in the **Federal Register**.

Comment closing date: February 24, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 19, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 132X)]

Union Pacific Railroad Company— Abandonment Exemption—in Rio Grande and Mineral Counties, CO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 21.6-mile line of railroad known as the Creede Branch, extending from milepost 299.3 near Derrick to the end of the line at milepost 320.9 at Creede, in Rio Grande and Mineral Counties, CO.¹ The line

¹ The line is located on the former railroad known as The Denver and Rio Grande Western Railroad Company, a company of the former Southern Pacific Transportation Company which merged into UP pursuant to Board authority granted in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996). In this filing, UP is seeking to abandon the stub end of the line.