

JUN 16 2005

Frank Slaveter
Senior Manager, Technical Compliance
Nissan North America, Inc.
P.O. Box 191
Gardenia, CA 90248-0191

Re: Confidentiality Reconsideration/PE04-077

Dear Mr. Slaveter:

This is in response to your letter of May 6, 2005, requesting reconsideration of a March 18, 2005, denial of confidential treatment for materials submitted by Nissan North America, Inc. (Nissan) relating to alternator failures on 2003-2004 Murano vehicles. Nissan's original request for confidential treatment was submitted on January 28, 2005. The materials now at issue include a number of Nissan documents and photographs as well as documents and photographs from a Nissan supplier. Specifically, Nissan requests confidential treatment for the documents in attachments J through L. The reconsideration request states that Nissan is now providing a more detailed accounting of the grounds for its claim, a supplier certification and a more thorough organization of the submitted materials. Nissan requests that the materials be granted permanent confidential treatment.

Based on the expanded grounds in your request for consideration, I am reversing Mr. Matheke's prior determination.

Mr. Matheke denied Nissan's request because Nissan did not sufficiently justify its claims for confidentiality (49 CFR § 512.8), did not properly label which pages were being submitted for a confidentiality determination (49 CFR § 512.6(b)) and did not provide certification for the third-party documents submitted (49 CFR § 512.9).

Resubmitted Information

Nissan's submission was required pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct investigations and to require manufacturers to submit reports.

The resubmission was evaluated under the competitive harm standard set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

The submission consists of three attachments, J through L. These attachments contain documents, photographs, test results and other information relating to the subject vehicle, defect analysis and other related topics. The reconsideration request and accompanying certificate indicates that Nissan does not "publish or disseminate this type of information" because "it would cause Nissan and its suppliers substantial competitive harm."

In the initial submission, there was no marking of pages as either "CONFIDENTIAL" or "ENTIRE PAGE CONFIDENTIAL," as required by 49 CFR § 512.6(b). In this resubmission, every page submitted for confidential treatment was stamped "CONFIDENTIAL." Please note that 49 CFR § 512.6 requires a notation of "CONFIDENTIAL" only when portions of a page are submitted for consideration, while "ENTIRE PAGE CONFIDENTIAL" is appropriate when the entire page being is claimed to be confidential.

Third Party Documents

Hitachi, one of Nissan's suppliers, provided a large amount of the documents and photographs at issue here. These third party documents are not under Nissan's exclusive control and any claim for their confidential treatment must be supported by a certification. While Nissan did not originally provide the necessary certification from Hitachi, NHTSA has received it with this reconsideration request. As such, the Hitachi documents will be considered for confidential treatment. As for Nissan's claims that they were not required to provide this certification, the Agency respectfully disagrees.

Required Information

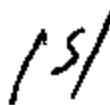
Nissan's submission consists of both Nissan and Hitachi materials, including engineering drawings, test results, related memoranda and other proprietary information. The release of this information would be likely to cause Nissan substantial competitive harm. Therefore, this information is accorded confidential treatment.

Subject to the conditions below, this grant of confidential treatment will be permanent.

This grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR § 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information (49 CFR § 512.10). If necessary, you will be notified prior to the release of any information under the procedures established by our regulations (49 CFR § 512.22(b)).

My decision is administratively final.

Sincerely,

Handwritten signature of Jacqueline Glassman in black ink.

**Jacqueline Glassman
Chief Counsel**

