

DAIMLERCHRYSLER

2005 DEC 21 12 12 16

COUNSEL

DaimlerChrysler Corporation
Stephan J. Speth
Director
Vehicle Compliance & Safety Affairs

December 16, 2005

Mr. Stephen P. Wood
Acting Chief Counsel
National Highway Traffic Safety Administration
400 Seventh Street, S.W., Rm. 5219
Washington, D.C. 20590

Re: Request for Confidential Treatment for Certain Documents Provided in Response to PB05-050 Peer Group Inquiry

Dear Mr. Wood:

DaimlerChrysler Corporation (DCC) is submitting information to the NHTSA Office of Defects Investigation in response to an Information Request (IR) dated October 18, 2005 seeking peer vehicle data to assist the agency in its investigation of an alleged defect in Nissan Murano vehicles. Based on a careful review of the submission, DCC has determined that various documents in Enclosure 8 of the submission consist of confidential data that should be accorded confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4). Therefore, DCC is submitting the confidential business information in the enclosed CD-ROM, together with this request for confidential treatment and the certificate required by your regulations, to the Office of Chief Counsel.

A. Description of the Information (49 C.F.R. § 512.8(a))

The documents consist of highly sensitive information about DCC's test protocols and analyses used in the development of an automobile fuel tank system. In addition, the documents set forth competitively valuable design, design process, manufacturing process, and performance factor information related to automobile fuel tank systems. The information also includes proprietary design flow charts, summaries of "best practices" relating to fuel tank design and manufacturing (including dimensional information), and test fixture engineering drawings.

B. Confidentiality Standard (49 C.F.R. § 512.8(b))

The confidentiality standard applicable to this request is the one set forth in 49 C.F.R. § 512.15(d) for information submitted voluntarily to the agency. Since *Center for Auto Safety v. NHTSA*, 244 F.3d 144 (D.C. Cir. 2001), this agency has treated responses to peer review investigations as voluntary. Consistent with this practice, the referenced IR states that "[t]he purpose of this letter is to request peer vehicle data from DaimlerChrysler Corporation" (IR at 1;

emphasis added), and the IR does not refer to or invoke 49 U.S.C. § 30166 or any other basis for NHTSA's authority to compel the submission of responsive information.

Furthermore, even if the designated information were subject to the standard set forth in 49 C.F.R. § 512.15(b) (for required submissions), it should be accorded confidential treatment for the reasons set forth below.

C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))

Information submitted voluntarily should be accorded confidential treatment if it is the type of information that is not customarily disclosed by the submitter to the public. DCC does not ever, much less customarily, disclose information like the information for which DCC is requesting confidential treatment to the public. Accordingly, this information should receive confidential treatment under the voluntary-submission standard.

The information also would satisfy the standards for withholding information submitted under compulsion. DCC's test protocols, performance factors, designs, design processes, manufacturing processes, design and manufacturing best practices, and test fixture engineering drawings are the products of substantial investments of time and money, and reflect DCC's long experience in developmental, design, and manufacturing methods and practices. The disclosure of this information would provide DCC's competitors – including, among others, suppliers and new entrants to the market – with the fruits of DCC's efforts at little or no cost, enabling them to bring competitive products to market sooner and at lower cost, and to improve their own development procedures and designs at DCC's expense. These are precisely the kinds of competitively harmful effects that FOIA Exemption 4 was intended to prevent. *See, e.g., Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) (Exemption 4 was enacted to prevent disclosures that would “eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter's] product”); *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) (“Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government.”).

D. Class Determination (49 C.F.R. § 512.8(d))

The information for which confidential treatment is being sought does not come within a class determination.

Mr. Stephen P. Wood
PE05-050
December 16, 2005
Page 3

E. Duration For Which Confidential Treatment Is Sought (49 C.F.R. § 512.8(e))

Because the information for which confidential treatment is being sought is the kind of information that DCC does not anticipate ever customarily disclosing to the public, and because DCC anticipates that the information will retain its competitive value indefinitely, DCC requests that the information be accorded confidential treatment permanently.

F. Contact Information (49 C.F.R. § 512.8(f))

Please direct all inquiries and responses to the undersigned at the address, telephone number, and email address shown on the first page of this letter.

* * *

As required by your regulations, two confidential copies and one redacted copy of the information are being provided to your office.

If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, DaimlerChrysler respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,



Stephan J. Speth

cc: Jeffrey L. Quandt

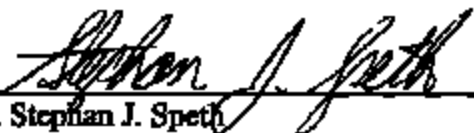
Attachment and Enclosures

Certificate in Support of Request for Confidentiality

I, Stephan J. Speth, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am DaimlerChrysler Corporation's Director, Vehicle Certification, Compliance and Safety Affairs and I am authorized by DaimlerChrysler Corporation to execute documents on behalf of DaimlerChrysler Corporation;
- (2) I certify that the information contained in the indicated documents is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4);
- (3) I hereby request that the information contained in the indicated documents be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible DaimlerChrysler Corporation personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside DaimlerChrysler Corporation;
- (5) Based upon that information, to the best of my knowledge, information and belief the information for which DaimlerChrysler Corporation has claimed confidential treatment has never been released or become available outside DaimlerChrysler Corporation, except for discrete portions of the information which have been disclosed to DaimlerChrysler suppliers with the understanding that such information must be maintained in strict confidence;
- (6) I make no representations beyond those contained in this certificate and in particular, I make no representations as to whether this information may become available outside DaimlerChrysler Corporation because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this sixteenth day of December 2005.



Mr. Stephan J. Speth

DAIMLERCHRYSLER

DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

December 16, 2005

Mr. Stephen P. Wood
Acting Chief Counsel
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Mr. Stephen P. Wood
PE05-050
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Page 3

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Sincerely,


Stephan J. Speth

cc: Jeffrey L. Quandt

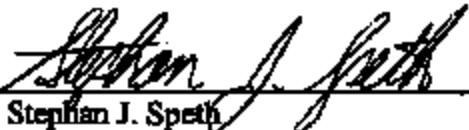
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- (7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on this sixteenth day of December 2005.



Mr. Stephan J. Speth

DAIMLERCHRYSLER

December 15, 2005

Mr. Jeffrey L. Quandt, Chief
Vehicle Control Division
Office of Defects Investigation
National Highway Traffic Safety Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

DaimlerChrysler Corporation

Stephan J. Speth

Director
Vehicle Compliance & Safety Affairs

Reference: NYS-213dlr; PE05-050

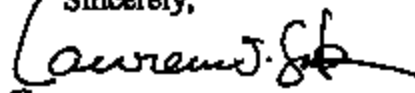
Dear Mr. Quandt:

This document contains DaimlerChrysler's Corporation's (DCC) response to the referenced inquiry dated October 18, 2005 regarding information concerning the fuel tank assembly in the 2003-2005 model year Pacifica vehicles. By providing the information contained herein, DCC is not waiving its claim to attorney work product and attorney-client privileged communications.

The scope of this response is limited to 2004-2005 model year Pacifica (body model designation CS) vehicles manufactured for sale or lease in the United States, since there were no 2003 model year CS vehicles manufactured.

The fuel tank assembly in the subject peer vehicles meets or exceeds all applicable FMVSS standards, as well as all DCC specifications and design guidelines. Although the data contained within this response does reference some allegations of fuel tank damage from road debris, it is unreasonable to believe that any fuel tank assembly would be immune to all conceivable damage from the wide variety of debris that may be encountered during typical driving situations. In addition, DCC is not aware of any reports involving crash, injury, fire, property damage or fatality related to the subject vehicle fuel tank damage from road debris.

Sincerely,


for Stephan J. Speth

cc: Kathleen DeMeter

Attachment and Enclosures

1. **State, by model and model year, the number of subject vehicles DaimlerChrysler has manufactured for sale or lease in the United States. Separately, for each subject peer vehicle manufactured to date by DaimlerChrysler, state the following:**
 - a. **Vehicle Identification Number (VIN);**
 - b. **Model;**
 - c. **Model Year;**
 - d. **Date of manufacture;**
 - e. **Date warranty coverage commenced; and**
 - f. **The state in the United States where the vehicle was originally sold or leased (or delivered for sale or lease).**

Provide this information in Microsoft Access 2003, or a compatible format, entitled "PE05-050 DAIMLERCHRYSLER PRODUCTION DATA."

Note: Unless otherwise indicated in the question response, all data contained in this response is through October 20, 2005.

- A1. The Pacifica vehicle (body model designation "CS") was a new vehicle introduced for the 2004 model year; there were no 2003 model year vehicles manufactured or sold. During the 2004 and 2005 model years, DaimlerChrysler Corporation ("DCC") manufactured 217,147 CS vehicles for sale or lease in the U.S. market.

Model Year (MY)	Make / Model	U.S. Market Volume
2004	Chrysler / Pacifica	98,583
2005	Chrysler / Pacifica	118,564
Total Volume 217,147		

The detailed response that lists the production data is provided in Enclosure 1 as a Microsoft Access 2000 file, titled "Production Data".

2. **State the number of each of the following, received by DaimlerChrysler, or of which DaimlerChrysler is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles:**
 - a. **Consumer complaints, including those from fleet operators;**
 - b. **Field reports, including dealer field reports;**
 - c. **Reports involving a crash, injury, or fatality, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;**
 - d. **Reports involving a fire, based on claims against the manufacturer involving a death or injury, notices received by the manufacturer alleging or proving that a death or injury was**

caused by a possible defect in a subject vehicle, property damage claims, consumer complaints, or field reports;

- e. Property damage claims; and
- f. Third-party arbitration proceedings where DaimlerChrysler is or was a party to the arbitration; and
- g. Lawsuits, both pending and closed, in which DaimlerChrysler is or was a defendant or codefendant.

For subparts "a" through "d" state the total number of each item (e.g. consumer complaints, field reports, etc.) separately. Multiple incidents involving the same vehicle are to be counted separately. Multiple reports of the same incident are also to be counted separately (i.e., a consumer complaint and a field report involving the same incident in which a crash occurred are to be counted as a crash report, a field report and a consumer complaint).

In addition, for items "e" through "g", provide a summary description of the alleged problem and causal and contributing factors and DaimlerChrysler's assessment of the problem, with a summary of the significant underlying facts and evidence. For items "f" through "g", identify the parties to the action, as well as the caption, court, docket number, and date on which the complaint or other document initiating the action was filed.

A2.

- a. There are a total of 13 customer complaints (for 10 unique VINs) that allege fuel tank damage from road debris. There are an additional 5 complaints (for 5 unique VINs) that allege fuel tank damage from an unknown source that may have been road debris.

Criteria	2004 MY	2005 MY	Total	Unique VINs
Fuel Tank Damage Alleged from Road Debris	6	7	13	10
Fuel Tank Damage Unknown Source	2	3	5	5
Total Complaint Count	8	10	18	15

- b. There are a total of 121 field reports (for 120 unique VINs) that allege fuel tank damage from road debris.

Criteria	2004 MY	2005 MY	Total	Unique VINs
Fuel Tank Damage Alleged from Road Debris	89	32	121	120

- c. There are no reports involving crash, injury or fatalities for the subject peer vehicles that are responsive to this inquiry.
- d. There are no reports involving fires for the subject peer vehicles that are responsive to this inquiry.

- e. There are no claims involving property damage for the subject peer vehicles that are responsive to this inquiry.
- f. There are no third party arbitration proceedings, where DCC is or was a party to the arbitration, responsive to this inquiry.
- g. There are no lawsuits, either pending or closed, against DCC, or notices received by DCC that are responsive to this inquiry.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 2, state the following information:

- a. DaimlerChrysler's file number or other identifier used;
- b. The category of the item, as identified in Request No. 2 (i.e., consumer complaint, field report, etc.);
- c. Vehicle owner or fleet name (and fleet contact person), address, and telephone number;
- d. Vehicle's VIN;
- e. Vehicle's make, model and model year;
- f. Vehicle's mileage at time of incident;
- g. Incident date;
- h. Report or claim date;
- i. Whether a crash is alleged;
- j. Whether a fire is alleged;
- k. Whether property damage is alleged;
- l. Number of alleged injuries, if any; and
- m. Number of alleged fatalities, if any;

Provide this information in Microsoft Access 2003, or a compatible format, entitled "PE05-050 DAIMLERCHRYSLER REQUEST NUMBER TWO DATA".

- A3. The detailed summary of all requested information in response to Request No. 2 is provided in Enclosure 3 as a Microsoft Access 2000 compatible format, titled "Request Number 2 Data".
- 4. Produce copies of all documents related to each of items "c" through "e" within the scope of Request No. 2. Organize the documents separately by category (i.e., crash/injury/fatality reports, property damage claims, etc.) and describe the method DaimlerChrysler used for organizing the documents.
- A4. There are no documents relative to items "c" through "e" within the scope of Request No. 2 that are responsive to this inquiry.

Mr. Jeffrey L. Quandt
Reference: NVS-213dlr; PE05-050
December 15, 2005

ATTACHMENT

5. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by DaimlerChrysler to date that relate to, or may relate to, the alleged defect in the subject vehicles: warranty claims; extended warranty claims; claims for good will services that were provided; field, zone, or similar adjustments and reimbursements; and warranty claims or repairs made in accordance with a procedure specified in a technical service bulletin or customer satisfaction campaign.

Separately, for each such claim, state the following information:

- a. DaimlerChrysler claim number;
- b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
- c. VIN;
- d. Repair date;
- e. Vehicle mileage at time of repair;
- f. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
- g. Labor operation number;
- h. Problem code;
- i. Replacement part number(s) and description(s);
- j. Concern stated by customer; and
- k. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2003, or a compatible format, entitled "PE05-050 DAIMLERCHRYSLER WARRANTY DATA."

A5.

Model Year	Warranty Claims
2004	174
2005	108
Total Claims	282

It is often not possible to determine whether each particular warranty claim is related to the alleged condition. There may be other random issues not related to the alleged condition that still trigger replacement of the subject components. DCC has concluded that warranty data cannot be utilized to determine any trend related to the alleged condition.

The detailed response that lists the warranty claim information is provided in Enclosure 5 as a Microsoft Access 2000 compatible format, titled "Warranty Data".

6. Describe in detail the search criteria used by DaimlerChrysler to identify the claims in response to Request No. 5, including the labor operations, problem codes, part numbers and any other pertinent parameters used. Provide a list of all labor operations, labor operation descriptions, problem codes, and problem code descriptions applicable to the alleged defect in the subject vehicles in Microsoft Access 2003, or a compatible format. Also state, by make and model year, the terms of the new vehicle warranty coverage offered by DaimlerChrysler on the subject

vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered).

- A6. The search criteria used by DCC to identify claims in response to Request No. 5 can be found in the charts below:

Repair Description	Labor Operation Code
Fuel Tank Replacement	14600109

Failure Code	Description
A4	Fuel Leak - Seam
X2	Split, Cut or Torn
41	Foreign Material

The standard warranty offered by DCC on all 2004 and 2005 model year CS vehicles was 3 years or 36,000 miles. There was no extended warranty coverage option that related specifically to the subject components. Owners may have purchased additional warranty coverage through third party providers not affiliated with DCC. This warranty data is not available to DCC and is thus not included with this response.

7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the subject condition in the subject peer vehicles, that DaimlerChrysler has issued to any dealers, regional or zone offices, field offices, fleet purchasers, or other entities. This includes, but is not limited to, bulletins, advisories, informational documents, training documents, or other documents or communications, with the exception of standard shop manuals. Also include the latest draft copy of any communication that DaimlerChrysler is planning to issue within the next 120 days.
- A7. There have been no service, warranty, and/or other documents that relate to, or may relate to the alleged condition in the subject peer vehicles that DCC has issued to any dealers, regional or zone offices, field offices, fleet purchasers or other entities. DCC has no plans to issue any such documents in the next 120 days.
8. Provide the following information concerning the subject fuel tank assemblies:
- Drawings showing the nominal and minimum (full jouces) design ground clearance of the subject fuel tank assembly and the corresponding location(s) on the tank assembly-state all assumptions (e.g., tire inflation pressure);
 - Identify all subject vehicle components that have lower ground clearances for each condition cited in "8.a" than the subject fuel tanks and state the location and ground clearance dimension of each;
 - State the minimum design ground clearance for each condition cited in "8.a" for the subject vehicles, the basis for that dimension, the associated component/structure, and the location;

- d. Provide a bottom view drawing or picture showing the undercarriage of the vehicle in the fully built configuration with the fuel tank and the locations of all components identified in "8.b" and "8.c" clearly marked;
- e. Copies of all engineering specifications relating to the packaging, shielding, ground clearance, and/or puncture resistance of the subject fuel tanks;
- f. Copies of all engineering standards, design guides, or similar documents that relate in any way to the packaging, shielding, ground clearance, and/or puncture resistance of fuel tanks in passenger cars or light trucks (including vans and utility vehicles);

A8.

- a. Below is a drawing (Figure 8.a) illustrating the full jounce ground clearance for the fuel tank (89.9 mm). The assumptions made for the curb ground line condition are: 1) tire pressure of 33 psi, 2) 5 passengers, 3) full tank of gas and 4) maximum cargo. The assumption made for the full jounce condition is the curb ground line condition plus 105 mm.

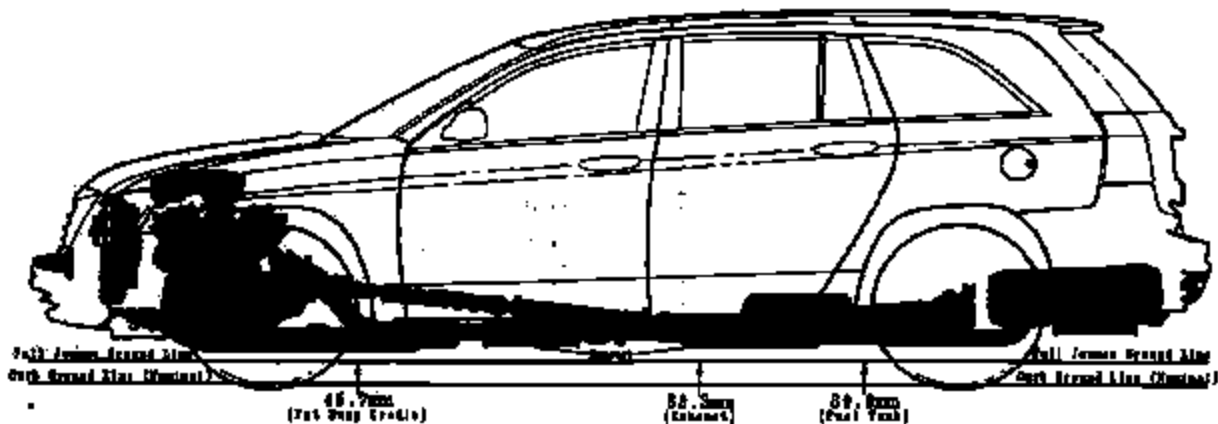


Figure 8.a

- b. The subject vehicle components that have lower full jounce ground clearances are the exhaust (62.3mm) and front suspension cradle (45.7 mm). Locations for these components are shown in Figure 8.a above.
- c. The minimum design ground clearance for the components listed above:
 - 1) Front suspension cradle: 150.7mm (45.7 + 105),
 - 2) Exhaust: 167.3mm (62.3 + 105), and
 - 3) Fuel tank: 194.9mm (89.9 + 105).

Locations for these components are shown in Figure 8.a. above.

- d. Below is a bottom view drawing (Figure 8.d) of the undercarriage of the subject peer vehicle with the exhaust, front suspension cradle, and fuel tank included.

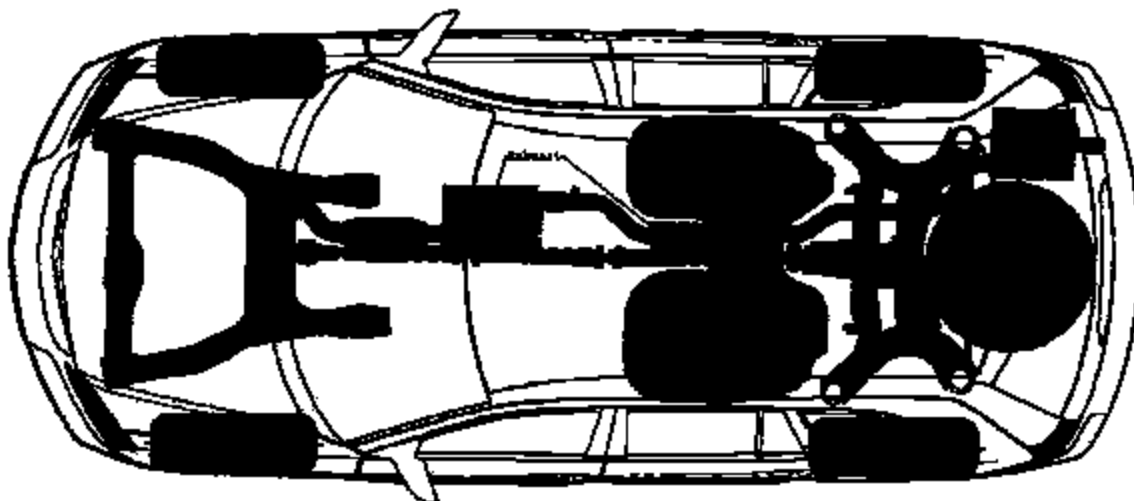


Figure 8.d

e. The following engineering standards, design guidelines, or similar documents relate to the packaging, shielding, ground clearance, and/or puncture resistance of fuel tanks in passenger cars or light trucks (including vans and utility vehicles):

- 1) Plastic Fuel Tank Design SOP
- 2) Engineering Standard PF 8950: Fuel Tank Assemblies – High Density Polyethylene Performance Standard
- 3) Engineering Standard PF 4660: Fuel Tank Impact Performance Standard

These documents are being submitted as Enclosure 8 (Confidential) on CD-ROM to Mr. Stephen P. Wood, NHTSA Office of the Chief Counsel, under separate cover with a request for confidential treatment of information.