



MAY 12 2009

John Gibbons
Senior Manager, Technical Compliance
Nissan North America, Inc.
P.O. Box 685001
Franklin, TN 37068-5001

Re: Request for Reconsideration/Confidential Treatment for Documents Provided in
Response to PE 08-045

Dear Mr. Gibbons:

This responds to Nissan North America, Incorporated's (Nissan) March 14, 2009 request for reconsideration of the National Highway Traffic Safety Administration's (NHTSA) February 19, 2009 partial denial of confidential treatment for documents Nissan submitted in the above matter.

By letter dated February 19, 2009 the agency denied confidential treatment for documents E254-E261 and E264-E274 because these pages were not marked in accordance with 49 C.F.R. § 512.6 and denied confidential treatment for documents E14-E16, E126-E146, and E262-E263 because these pages were not accompanied by a third party certification. *See* 49 C.F.R. § 512.9. Specifically, documents E14-E16 and E126-E146 originated from Excel Polymers, LLC, and E262-E263 originated from Akron Rubber Development Laboratory, Inc. Nissan has resubmitted properly marked documents on a CD-ROM entitled "PE08-045 Confidential Attachments A&E." Your reconsideration request is also accompanied by certifications from Excel Polymers, LLC and Akron Rubber Development Laboratory, Inc. Accordingly, these materials may now be substantively reviewed.

I have decided to grant your request.

I note first that your submission contains potentially identifying personal information for consumers. This potentially personally identifying information, name, address, telephone number, and the last six digits of any vehicle identification numbers ("VIN") will be accorded confidential treatment pursuant to Exemption 6 of FOIA, 5 U.S.C. § 552(b)(6).

The information submitted by Nissan was requested pursuant to 49 U.S.C. § 30166, which authorizes the agency to conduct investigations and require manufacturers to submit reports. Because Nissan was required to submit this information, the information was reviewed under the test set forth in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and its progeny. Under *National Parks*, information concerning a commercial or financial matter may be withheld under Exemption 4 of the Freedom of Information Act ("FOIA") if disclosure of the information would likely cause substantial harm to the competitive position of the submitter, or would likely impair the Government's ability to obtain necessary information in the future. *Id* at 770.

I am granting your request for confidential treatment of pages E14-E16, E126-E146, E254-E261, E262-E263, and E264-E274. These pages contain product design, development, evaluation, and testing information. Public disclosure of this information would likely cause substantial harm to the competitive position of Nissan. Subject to the conditions below, the materials for which you request confidentiality will be permanently treated as confidential.

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).

Nissan's request for reconsideration has been delegated to the undersigned for decision. My decision is administratively final.

Sincerely yours,

Original Signed By

Lloyd S. Guerci
Assistant Chief Counsel
Litigation and Enforcement Division

