

JUN 14 2013

Donald Neff, Manager
Technical Compliance
Nissan North America, Inc.
One Nissan Way
Franklin, TN 37068

Re: Request for Confidential Treatment in Response to EA 12-005

Dear Mr. Neff:

This responds to your February 18, 2013 request for confidential treatment for Nissan North America, Inc. (Nissan) information submitted in response to an Office of Defects Investigation information request (IR) in EA12-005. Nissan requests that documents marked confidential on the CD-ROM labeled "EA12-005 Confidential DVD Attachment B, C Nissan" attached to its response to the IR be granted confidential treatment. Nissan requests that this information be kept confidential indefinitely.

Nissan seeks confidential treatment for information that it considers to be confidential business information and that is not released to the public. This information is marked confidential in electronic submissions contained on CD-ROMs.

I have reviewed your submission, including the materials that you claim are entitled to confidential treatment and the arguments that you assert in support of your claims. While I have not reached a conclusion regarding each individual argument that you assert, I conclude that the materials for which you requested confidentiality are entitled to confidential treatment pursuant to Exemption 4 of the Freedom of Information Act, 5 U.S.C. §552(b)(4).

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. Furthermore, this information may be disclosed if such

disclosure would be in the public interest, pursuant to the procedures established in 49 CFR 512.23. 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).

Sincerely,

Original Signed By

Otto G. Matheke, III
Senior Attorney

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NISSAN NORTH AMERICA, INC.

Corporate Headquarters
One Nissan Way
Franklin, TN 37068

Mailing Address: P.O. Box 685001
Franklin, TN 37068-5001

Telephone: 615.725.1000

February 18, 2013

Otto Matheke, Esq.
Office of Chief Counsel
National Highway Traffic Safety Administration
NCC-111, W41-227
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Request for Confidential Treatment Pursuant to 49 CFR Part 512 for Certain Documents Voluntarily Submitted in Response to NVS-212pco; EA12-005

Dear Mr. Matheke:

The Office of Defects Investigation ("ODI") has requested Nissan North America, Inc. ("Nissan") to provide certain information in connection with the matter referenced above, and Nissan is responding to this Information Request in a submission under separate cover. Attached to the submission are three appendices (the "Confidential Attachments"), which Nissan is submitting to the Office of Chief Counsel in accordance with 49 C.F.R. Part 512 ("Part 512").

Nissan has determined that certain information contained in the Confidential Attachments is confidential business information and that its public release would likely cause Nissan to suffer substantial competitive harm. Nissan hereby requests that certain information contained in the Confidential Attachments be afforded confidential treatment under Part 512 and Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4) ("Exemption 4") and be permanently protected from public release.

This cover letter sets forth the justifications for Nissan's request for confidential treatment. As you will find in the table in the attached appendix, many documents qualify for confidential treatment under more than one justification category.

In accordance with Part 512, Nissan is submitting to the Office of Chief Counsel complete and redacted copies of the Confidential Attachments and the required certificate in support of the request for confidentiality, together with this request for confidential treatment.

The information required by Part 512 is set forth below.

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

The attached appendix contains a table describing the information for which confidentiality is requested.

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

This submission is subject to the confidentiality standard set forth in 49 C.F.R. §512.15(b), as public disclosure of the information would be likely to cause substantial harm to Nissan's competitive position. This submission is also subject to 49 C.F.R. §512.15(d) for information voluntarily submitted and not customarily released to the public.

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

The attached appendix contains a table presenting the justifications for confidential treatment of the confidential business information in the Confidential Attachments. The table refers to categorized justifications through use of numerical codes. The confidential business information contained in the Confidential Attachments is categorized as: evaluation and remediation protocols (category "1" in the accompanying table); test results, analyses and protocols (category "2" in the accompanying table); and design information and performance factors and standards (category "3" in the accompanying table).

The legal justifications for each category of confidential business information are provided below.

Confidential Business Information

Documents reflecting Nissan's internal product and design standards, development strategies, evaluation methods, testing protocols for product development, and manufacturing and quality control processes contain confidential, competitively sensitive information that Nissan does not disclose publicly. Confidential treatment for this information is warranted because its release would permit a competitor to duplicate Nissan's efforts with respect to product design, research, development, and manufacturing protocols and standards without incurring the substantial investment involved in reverse engineering or in developing their own protocols and standards. *See Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) (in deciding whether to withhold information pursuant to Exemption 4, consideration should be given to "whether release of the requested information, given its commercial value to competitors and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it"); *see also, e.g., Public Citizen Health Research Group v. FDA*, 997 F. Supp. 56, 63 (D.D.C. 1998) (finding competitive harm based in part on the fact that disclosure would allow competitors "to follow in [the submitter's] footsteps, and thereby get a competitive product to the market sooner than otherwise"). Accordingly, because the release of the information in this category would result in "substantial harm to the competitive position" of Nissan, it is entitled to protection from public disclosure. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). *See also, e.g., Critical Mass Energy Project v. NCR*, 975 F.2d 871, 878 (D.C. Cir. 1992); *Occidental Petroleum v. SEC*, 873 F.2d 325, 341 (D.C. Cir. 1989) (information relating to product development is "valuable intellectual property" entitled to protection from public disclosure under Exemption 4). The attached documents for which Nissan requests confidentiality contain confidential business information.

For the reasons described above, and more specifically below, Nissan requests these documents, or certain information contained in these documents, be granted confidential treatment.

1. Evaluation and Remediation Protocols

Some of the submitted material in the Confidential Attachments contains highly sensitive information that may reveal Nissan's protocols and processes for identifying, evaluating, and remedying potential problems in its products. It also includes such information from suppliers. Disclosing such information would allow Nissan's competitors to duplicate Nissan's design, research, and remediation protocols without incurring the substantial expense associated with developing their own protocols. This information, therefore, is commercially valuable, and its release would cause Nissan substantial competitive harm. *See Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 52 (D.C. Cir. 1981) (in determining whether information should be withheld pursuant to Exemption 4, consideration should be given to "whether release of the requested information, given its commercial value to competitors, and the cost of acquiring it through other means, will cause substantial competitive harm to the business that submitted it"); *Public Citizen Health Research Grp. v. FDA*, 997 F. Supp. 56, 63 (D.D.C. 1998) (finding competitive harm based on the fact that disclosure would allow competitors "to follow in [the submitters'] footsteps, and thereby get a competitive product to the market sooner than otherwise"), *aff'd in part & rev'd in part*, 185 F.3d 898 (D.C. Cir. 1999). "Valuable intellectual property," such as this information, is protected from disclosure under Exemption 4. *Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 341 (D.C. Cir. 1989).

2. Test Results, Analyses, and Protocols

Certain information in the Confidential Attachments for which confidential treatment is sought includes highly sensitive information about Nissan's test results, protocols, and analyses of its products. It also includes such information from suppliers. Releasing these materials would give a competitor the fruits of Nissan's tests and test developmental strategies without having to incur the substantial costs associated with the development of their own analyses and test results, thereby enabling them to bring competitive products to market sooner and to improve their own development procedures at the expense of Nissan. Disclosure of this information would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with [Nissan's products]. This is clearly the type of competitive harm envisioned in Exemption 4 * * * ." *Public Citizen Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999) ("*Public Citizen II*").

3. Design Information and Performance Factors and Standards

Some of the documents in the Confidential Attachments reveal competitively sensitive and highly valuable design and performance factor information of Nissan and its suppliers. A number of the documents set forth key design elements for the certain vehicles, and others reveal the performance factors that Nissan considers significant in developing and marketing its products. Like the other information in this submission, the design and standards information reflected in these documents is the product of Nissan's years of experience in the industry and reflects substantial investments of time and money in its development. Thus, disclosure of the information would be a windfall to Nissan competitors (especially to new market entrants), as well as to would-be suppliers, because it would enable them to incorporate design elements and to discover the performance standards that Nissan considers significant without incurring the substantial time and expense necessary to develop their own designs and standards. As a result, Nissan would suffer substantial competitive harm. *See, e.g., Worthington Compressors*, 662 F.2d at 51

("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.") (footnote omitted); *Public Citizen II*, 185 F.3d at 905. In addition, some of the documents are entitled to protection pursuant to NHTSA's class determination contained in Appendix B to Part 512. See 49 C.F.R. Part 512, Appendix B, (1).

Nissan treats as confidential all of the information referenced in this letter and contained in the Confidential Attachments. Nissan does not publish or disseminate this type of information, except for certain limited disclosure to Nissan's suppliers which are made subject to confidentiality agreements or other understandings that the suppliers will maintain the information in strictest confidence. Moreover, Nissan limits access to the information to specific employees.

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

Some of the information in the Confidential Attachments covered under the justification discussed in section C.3 of this submission falls within class determination (1) in Appendix B of 49 C.F.R. Part 512.

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

Nissan requests that confidential treatment be granted on a permanent basis. Disclosure of the information in the Confidential Attachments would cause Nissan and its suppliers substantial competitive harm, and there is no foreseeable time in the future when such disclosure would not inure to the competitive advantage of Nissan's competitors and cause Nissan substantial competitive harm. For the same reasons, Nissan also requests that the Autoliv documents in the Confidential Attachment be granted confidential treatment on a permanent basis.

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

Please direct all inquiries and responses to the undersigned at the following address, telephone number, and e-mail address:

Donald Neff
Manager, Technical Compliance
Nissan North America, Inc.
One Nissan Way
Franklin, TN 37068
Donald.neff@nissan-usa.com
(615) 725-5463

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O. Matheke, Esq.
February 18, 2013
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If you need any clarifications or additional information, please contact me. If you receive a request for disclosure of these documents before you have completed your review of our claim for confidential treatment, Nissan respectfully requests notification of the request and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Should you or your staff have any questions or concerns regarding this request, please contact me at (615) 725-5463. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Neff", with a long, sweeping horizontal stroke extending to the right.

Donald Neff
Manager, Technical Compliance
Nissan North America, Inc.

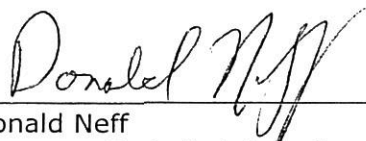
Enclosures

CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, Donald Neff, pursuant to the provisions of 49 CFR part 512, state as follows:

- (1) I am Donald Neff, Manager, Technical Compliance and I am authorized by Nissan North America, Inc. (NNA) to execute this certificate on its behalf;
- (2) I certify that the information contained in the Confidential Attachment is confidential and proprietary and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. Section 522(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);
- (3) I hereby request that the information contained in the Confidential Attachment be protected on a permanent basis;
- (4) This certification is based on the information provided by the responsible Nissan 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 Nissan;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Nissan has claimed confidential treatment has never been released or become available outside Nissan or its suppliers;
- (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 Nissan 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 18th day of February, 2013.

A handwritten signature in cursive script, appearing to read "Donald Neff", is written over a horizontal line.

Donald Neff
Manager, Technical Compliance
Nissan North America, Inc.