

**NISSAN GROUP  
OF NORTH AMERICA**



**Nissan North America, Inc.**

One Nissan Way  
Franklin, TN 37067

Mailing Address:  
PO Box 685001  
Franklin, TN 37068

July 15, 2020

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

CC: Michael Kuppersmith

**Re: Request for Confidential Treatment Pursuant to 49 CFR Part 512 for Certain Documents Provided in Response to NEF-101am; EA19-005**

Dear Mr. Morrison:

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 under separate cover. This submission includes confidential information, which Nissan is submitting to the Office of Chief Counsel in accordance with NHTSA's regulations and NHTSA's instructions for the Submission of Confidential Business Information During Covid-19 Social Distancing (<https://www.nhtsa.gov/coronavirus/submission-confidential-business-information>). Nissan is hereby requesting that the confidential information be permanently protected from public release pursuant to 49 C.F.R. Part 512.

This cover letter sets forth the justification for Nissan's request for confidential treatment by using a numerical code set forth below.

Some information in response to the Information Request generally contains confidential business information. More specifically, the confidential information can be categorized as: design information and performance factors and standards (category "1"). The legal justifications for each category of confidential documents are provided below.

Nissan treats all of the information at issue in this letter confidentially. 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.

### **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 be granted confidential treatment.

#### **1. Design Information and Performance Factors and Standards**

Some of the information reveals competitively sensitive and highly valuable design and performance factor information of Nissan and its suppliers. A portion of the information sets forth key design elements for the subject vehicles, and reveals performance factors that Nissan considers significant in developing and marketing 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 CFR Part 512, Appendix B, (1).

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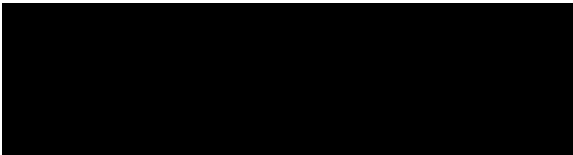
\* \* \* \*

Nissan requests that the information discussed above be granted confidential treatment on a permanent basis. Disclosure of the information 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.

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 Kathleen Roth at (615) 725-0751 or Kathleen.Roth@nissan-usa.com. Thank you for your consideration in this matter.

Sincerely,



Derek Latta  
Manager, Technical Compliance  
Nissan North America, Inc.

Enclosures

## **CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY**

I, Derek Latta, pursuant to the provisions of 49 CFR 512, state as follows:

- (1) I am Derek Latta, Manager, Technical Compliance and I am authorized by Nissan North America, Inc. (NNA) to execute this document.
- (2) I certify that the information contained in the attached documents 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 Nissan's response 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; and
- (7) I certify under penalty of perjury that the foregoing is true and correct. Executed on this 15<sup>th</sup> day of July, 2020.



Derek Latta  
Manager, Technical Compliance  
Nissan North America, Inc.