

# NISSAN

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NVS-212

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OFFICE OF DEFECTS  
INVESTIGATION

**NISSAN NORTH AMERICA, INC.**

Corporate Office  
P.O. Box 685001  
Franklin, TN 37068-5001  
Telephone: 615.725.1000

February 10, 2009

Mr. Thomas Z. Cooper, Chief  
Vehicle Integrity Division  
Office of Defects Investigation  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue SE.  
Washington, D.C. 20590

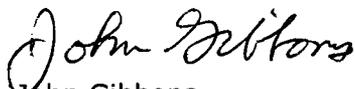
Re: PE08-067; NVS-212mjl

Dear Mr. Cooper:

Enclosed is Nissan's response to the referenced NHTSA Information Request concerning the Agency's investigation of certain 2003 - 2005 model year Infiniti Q45 and 2003 - 2004 model year Infiniti M45 vehicles.

The attached reply responds by first stating each question, then the response. Please contact us if you have any questions.

Sincerely,



John Gibbons  
Senior Manager  
Technical Compliance

Enclosures

February 10, 2009

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 Provided in Response to NVS-212lhs; PE08-067**

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 under separate cover. This submission includes an appendix of confidential attachments, which Nissan is submitting to the Office of Chief Counsel in accordance with NHTSA's regulations. Nissan is hereby requesting that the confidential attachments be permanently protected from public release pursuant to 49 C.F.R. Part 512.

This cover letter sets forth the justifications for Nissan's request for confidential treatment. Nissan has prepared a table that provides the justifications for the confidential material. The table is attached to this letter as an appendix. The table refers to the categorized justifications in the cover letter where appropriate and uses numerical codes which are set forth below.

Also included are confidential documents still needed to be translated (referenced with an asterisk (\*) in the Vaughn index). Nissan is in the process of translating these documents and requests the confidentiality determination on these documents to be withheld until the translations can be completed and submitted to the Chief's Counsel's Office. Specifically, located in Attachment E, these documents are marked with the following numbers:

<b>E54</b>
<b>E95-E96</b>
<b>E97</b>
<b>E93-E94</b>
<b>E188</b>
<b>E190</b>
<b>E161-E176</b>
<b>E189</b>
<b>E186-E187</b>

The attached confidential documents and information generally contain confidential business information. More specifically, many of the confidential documents can be

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 documents are provided below. As you will note in the accompanying table, many documents qualify as confidential for more than one reason.

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.

Nissan is in the process of obtaining a signed certification from, Johnson Controls and will provide it as soon as it is received by Nissan. Nissan requests that the Johnson Control documents be granted confidential treatment on a permanent basis. Disclosure of the information would cause Nissan and its supplier 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.

### ***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. *Evaluation and Remediation Protocols***

Some of the submitted material 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 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). *Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 341 (D.C. Cir. 1989).

## **2. Test Results, Analyses, and Protocols**

The information 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 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 subject vehicles, and others reveal the 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

Mr. O. Matheke  
February 10, 2009  
Page 4

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 me at (615) 725-0764. Thank you for your consideration in this matter.

Sincerely,



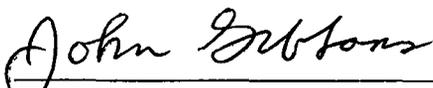
John Gibbons  
Senior Manager, Technical Compliance  
Nissan North America, Inc.

Enclosures

## CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, John Gibbons, pursuant to the provision of 49 CFR 512, state as follows:

- (1) I am John Gibbons, Senior 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 10th day of February, 2009.



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John Gibbons  
Senior Manager, Technical Compliance  
Nissan North America, Inc.

**NISSAN Request for Confidential Treatment**

Translation Needed	Confidential Attachment	Title/File Name	Confidential Pages	Confidentiality Justification	Date	Subject	Responsive
	A	C.A.R. Files.pdf	Confidential Attachment A	1	1/21/2004	Customer Complaints related to subject condition	Request 10
	A	Technical Field Reports.pdf	Confidential Attachment A	1	9/17/2004	Field Reports related to subject condition	Request 2
	A	GCARS Field Reports.pdf	Confidential Attachment A	1	7/21/2004	Field Reports related to subject condition	Request 2
	A	IIR Files.pdf	Confidential Attachment A	1	2/16/2004	Incident Investigation Reports related to subject condition	Request 2
	E	NA-PRO-2004-00739	E1-E7	1,2	11/26/2006	Y34 internal project report: NA-PRO-2004-00739	Request 8
	E	NA-HREP-2006-00842	EB-E11	1,2	12/2/2006	Market Response for NA-PRO-2004-0739	Request 8
	E	NA-TR-2004-00872	E12-E14	1	11/27/2006	Technical Report for NA-PRO-2004-00739	Request 8
	E	NA-TR-2004-00726	E15-E18	1	11/27/2006	Technical Report for NA-PRO-2004-00739	Request 8
	E	NA-TR-2004-00685	E19-E21	1	11/27/2006	Technical Report for NA-PRO-2004-00739	Request 8
	E	NA-IPS-2005-00044	E22-E24	1	1/27/2005	Incident Parts Shipment for NA-PRO-2004-0739	Request 8
	E	NA-IPS-2006-01204	E25-E27	1	7/5/2005	Incident Parts Shipment for NA-PRO-2004-0739	Request 8
	E	NA-IPS-2006-01035	E31-E32	1	9/23/2004	Incident Parts Shipment for NA-PRO-2004-0739	Request 8
	E	NA-IPS-2004-01039	E28-E30	1	9/8/2004	Incident Parts Shipment for NA-PRO-2004-0739	Request 8
	E	NA-PS-2004-01216	E33-E34	1	10/5/2004	Project Supplement for NA-PRO-2004-0739	Request 8
	E	NA-CAR-2005-00472	E35-E37	1,2,3	7/15/2005	Countermeasure Action Request for NA-PRO-2004-0739	Request 8
	E	NA-CAR-2005-00023	E38-E41	1,2,3	3/28/2005	Countermeasure Action Request for NA-PRO-2004-0739	Request 8
	E	Y34 side airbag.pdf	E97	1	1/14/2005	Photograph of side air bag module serial number. (Attachment for NA-CAR-2005-00023)	Request 8
	E	Y34 side module 6-panel.pdf	E98	1,2	1/14/2005	6 Panel Warranty Analysis (Attachment for NA-CAR-2005-00023)	Request 8
	E	Y34 Side Module Executive Summary.doc	E99-E100	1,2	1/14/2005	Summary of investigation results (Attachment for NA-CAR-2005-00023)	Request 8
	E	NA-CAR-2004-00787	E42-E46	1,2,3	12/20/2004	Countermeasure Action Request for NA-PRO-2004-0739	Request 8
	*	00787.jpq	E54	3	11/2/2004	Supplier's Report (Attachment for NA-CAR-2004-00787)	Request 8
	*	KE4 Reply.doc	E95-E96	1,2,3	2/18/2005	Japanese version of Countermeasure Action Request (Attachment for NA-CAR-2004-00787)	Request 8
	E	NA-CAR2004400787.xls	E97	1,2,3	11/8/2004	Japanese version of Countermeasure Action Request (Attachment for NA-CAR-2004-00787)	Request 8
	E	JP-CD-2005-00058	E47-E50	1,2,3	3/16/2005	Countermeasure Data for NA-PRO-2004-00739	Request 8
	*	KE Reply CD.doc	E93-E94	1,2,3	2/18/2005	Japanese Countermeasure Data (Attachment for JP-CD-2005-00058)	Request 8
	E	NA-BIC-2005-00100	E51-E53	1	11/27/2006	Bulletin Issue Control for NA-PRO-2004-00739	Request 8
	E	NA-PRO-2005-00288	E101-E107	1,2	9/18/2008	<b>F50 internal project report: NA-PRO-2005-00288</b>	Request 8
	E	NA-HREP-2006-00844	E108-E112	1,2	11/21/2008	Market Response for NA-PRO-2005-00288	Request 8
	E	NA-TR-2005-00447	E113-E116	1	11/27/2006	Technical Report for NA-PRO-2005-00288	Request 8
	E	NA-TR-2004-00686	E117-E120	1	11/27/2006	Technical Report for NA-PRO-2005-00288	Request 8
	E	F50 side airbag.pdf	E177	1,2	11/27/2006	Photograph of side air bag module serial number (Attachment for NA-CAR-2004-00686)	Request 8
	E	NA-FIR-2005-00246	E121-E123	1	3/25/2005	Field Investigation Report for NA-PRO-2005-00288	Request 8
	E	NA-IPS-2005-00803	E124-E126	1	6/23/2005	Incident Parts Shipment for NA-PRO-2005-00288	Request 8
	E	NA-IPS-2005-00714	E127-E129	1	6/2/2005	Incident Parts Shipment for NA-PRO-2005-00288	Request 8
	E	NA-IPS-2005-00465	E130-E132	1	4/28/2005	Incident Parts Shipment for NA-PRO-2005-00288	Request 8
	E	NA-IPS-2004-01036	E133-E134	1	9/20/2004	Incident Parts Shipment for NA-PRO-2005-00288	Request 8
	E	NA-PS-2006-00290	E135-E136	1	9/12/2006	Project Supplement for NA-PRO-2005-00288	Request 8
	E	NA-PS-2005-00373	E137-E138	1	5/20/2005	Project Supplement for NA-PRO-2005-00288	Request 8
	E	NA-CAR-2005-00509	E139-E142	1,2,3	10/21/2005	Countermeasure Action Request for NA-PRO-2005-00288	Request 8
	E	F50 Side Module Open Executive Summary1.doc	E179	1,2	10/21/2005	Summary of investigation results (Attachment for NA-CAR-2005-00509)	Request 8
	E	NA-CAR-2005-00394	E143-E146	1,2,3	7/6/2005	Countermeasure Action Request for NA-PRO-2005-00288	Request 8
	E	NA-CAR-2005-00230	E147-E151	1,2,3	3/30/2005	Countermeasure Action Request for NA-PRO-2005-00288	Request 8
	E	F50 Side Module Open Executive Summary.doc	E178	1,2	5/20/2005	Summary of investigation results (Attachment for NA-CAR-2005-00393)	Request 8
	*	KE4S Reply PIR.doc	E188	1,2,3	6/14/2005	Japanese Preliminary Investigation Request (Attachment for NA-CAR-2005-00393)	Request 8
	*	E	E190	1,2	6/14/2005	Summary of internal intermediate connector results (Attachment for NA-CAR-2005-00393)	Request 8
	*	000230.pdf	E161-E176	1	2/25/2005	Supplier Investigation Report (Attachment for NA-CAR-2005-00393)	Request 8
	E	F50 Side Module Open Executive Summary2.doc	E180	1,2	5/20/2005	Summary of investigation results (Attachment for NA-CAR-2005-00393)	Request 8
	E	NA-CAR200500230.xls	E189	1,2,3	5/13/2005	Japanese version of Countermeasure Action Request (Attachment for NA-CAR-2005-00393)	Request 8
	E	JP-CD-2005-00239	E152-E155	1	7/4/2005	Countermeasure Data for NA-PRO-2005-00288	Request 8,9
	*	KE4S Reply CD.doc	E186-E187	1,2,3	6/14/2005	Japanese Countermeasure Data (Attachment for NA-PRO-2005-00239)	Request 8
	E	JP-ADR-2005-00153	E156-E157	1,2,3	8/4/2005	Adoption Date Request for NA-PRO-2005-00288	Request 8,9
	E	NA-BIC-2007-00137	E158-E160	1	1/21/2009	Bulletin Issue Control for NA-PRO-2005-00288	Request 8
	E	FMVSS No. 214 Assessment Summary.pdf	E191-E192	1,2	2/9/2009	Summary of internal side air bag assessment test result	Request 8
	E	Q45, M45 Sairbag engineering assessment.pdf	E193-E194	1,2	2/5/2009	Internal analysis to verify Q45/M45 meets applicable FMVSS without side air bag	Request 8
	E	Connector Layout.pdf	E195	3	1/16/2009	Design drawing showing layout change	Request 8,9
	F	0120 Changes Modifications.xls	Confidential Attachment F	3	1/16/2009	Chart showing design and process changes over time	Request 8,9
	F	0123 Changes Modifications.xls	Confidential Attachment F	3	1/16/2009	Chart showing design and process changes over time	Request 8,9
	F	Drone Side Module Field CM Q7-30671.xls	E101-E107	1,3	7/1/2005	Design Note Summarizing Changes	Request 9
	F	Request 9 - Modifications.xls	Confidential Attachment F	1,3	2/9/2009	List of Modifications per Request 5	Request 9

Categories for Confidentiality Justification  
 1. Evaluation and Remediation Protocols  
 2. Test Results, Analyses, and Protocols  
 3. Design Information and Performance Factors and Standards

**Response to**

**PE08-067**

## INTRODUCTION

In responding to this Information Request ("IR"), information has been obtained from those places within Nissan likely to contain such information in the regular and ordinary course of business. When a particular Request seeks "documents" as defined in the IR, reasonable, good faith searches have also been made of corporate records in those places likely to maintain them in the regular and ordinary course of business. Nissan has searched for and produced records that were created up to and on the date this Information Request was received, December 12<sup>th</sup> 2008.

The definitions of "documents" and "Nissan", however, are unreasonably broad, vague and ambiguous in the context of the information sought by this IR. For example, "calendars", "appointment books", "financial statements" and "personnel records" would not contain owner complaints, field reports or other information sought by Request 2 pertaining to the alleged defect. Therefore, searches were not made for such "documents", inasmuch as they would not likely contain responsive information. In addition, Nissan has not provided information from persons or entities over which it does not ordinarily exercise control. Nissan understands this IR to seek information on vehicles manufactured for sale in the United States.

Responses are provided after each request, and Attachments are utilized as appropriate. The source of information used as a basis for the data in each Attachment, including the date the data were updated and retrieved, is identified at the beginning of each Attachment, as applicable. If a document itself is the source for the requested information and it is provided, we assume no further source identification is called for. If a document, drawing or component is requested, or if no responsive information is available, we assume no further source identification is called for.

With regard to claims of privilege, Nissan understands that it is acceptable to the Agency for Nissan to identify specific categories of privileged documents rather than any specific document. These specific categories are: 1) communications between outside counsel and Nissan Legal Department employees, other Nissan employees, or other Nissan-represented parties in litigation and claims; 2) communications between Nissan Legal Department employees and other Nissan employees or other Nissan-represented parties in litigation or claims; 3) notes and other work product of outside counsel or of Nissan Legal Department employees concerning communications with Nissan employees or consultants, and the work product of those employees or consultants done for or at the request of outside counsel or Legal Department employees; and 4) other categories to be identified later as necessary. For any privileged documents that are not included in these categories, such documents, if any, will be specifically identified on a separate privilege index at a later time. To the extent that a document is furnished, Nissan is not asserting a privilege claim for that document, although the disclosure of such document does not waive the attorney-client privilege or work-product protection with respect to other documents prepared in connection with the specific litigation or claim or other litigation or claims. In addition, in submitting such documents, we reserve our right to claim the attorney-client privilege and/or work-product protection with respect to analyses that may be prepared subsequently in connection with these and other cases. Also, we understand documents specifically related to the preparation of the responses are not sought.

Nissan believes NHTSA's policy is to protect the privacy of individuals under exemption 6 of the Freedom of Information Act, 5 U.S.C. Section 552(b)(6). We understand that name, address, and other personal information of owners or other individuals, including Nissan personnel, contained in any of the attachments in this response will not be made available to the public. Therefore, Nissan is not requesting confidential treatment for this information pursuant to 49 CFR, Part 512, but we believe any private information concerning individuals should not be made public.

\* \* \* \* \*

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

Provide the table in Microsoft Access 2000, or a compatible format, entitled "PRODUCTION DATA."

The information requested in 1.a through 1.g is provided, when known, in a file titled, "PRODUCTION DATA.xls" on a CD enclosed as Attachment A.

2. State, by model and model year, the number of each of the following, received by Nissan, or of which Nissan 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. Property damage claims;
  - e. Third-party arbitration proceedings where Nissan is or was a party to the arbitration; and
  - f. Lawsuits, both pending and closed, in which Nissan is or was a defendant or codefendant.

For subparts "a" through "f," 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 "c" through "f," provide a summary description of the alleged problem and causal and contributing factors and Nissan's assessment of the problem, with a summary of the significant underlying facts and evidence. For items "e" and "f," 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.

The information requested in Question 2a-f is provided, when known, in the following file: "Question 2.pdf" on a CD enclosed as Attachment A.

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. Nissan'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 property damage is alleged;
  - k. Number of alleged injuries, if any; and
  - l. Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "REQUEST NUMBER TWO DATA."

The information requested in 3.a through 3.l is provided, when known, in the following file: "REQUEST NUMBER TWO DATA.xls", on a CD enclosed as Attachment A.

4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Nissan used for organizing the documents.

Nissan understands this question to request copies of the specific consumer complaint documents, field report documents, and lawsuit documents (such as the initial legal complaint) for those items included within the response to Request No. 2 above. Consumer complaints, field reports, and the claim summary are contained on a CD in Attachment A in a folder titled "REQUEST NUMBER TWO DOCUMENTS." The documents are organized by the date Nissan received the information.

5. State, by model and model year, a total count for all of the following categories of claims, collectively, that have been paid by Nissan 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. Nissan's claim number;
- b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
- c. Vehicle's 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. Air bag diagnostic fault code;
- j. Replacement part number(s) and description(s);
- k. Concern stated by customer; and
- l. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2000, or a compatible format, entitled "WARRANTY DATA."

The main purpose of the warranty system is to reimburse dealers for performing warranty repairs. Claims are submitted by dealers through an on-line computer system through the use of a set of codes. The codes are designed to allow flexibility for their use and, as such, do not supply a significant amount of information about why a particular repair was made, or specific details about the nature of the repair itself.

Within the limitations of our warranty system as it relates to the subject matter of this inquiry, the total count for all of the categories of paid warranty claims, as described in Request No. 5, is contained in Attachment B. In addition, the information requested in 5.a, 5.c through 5.h and 5.j through 5.l is provided, when known, in a file titled, "WARRANTY DATA.xls" on a CD enclosed in Attachment B. Owner information requested by item 5.b is not present in the warranty system.

6. Describe in detail the search criteria used by Nissan to identify the claims identified 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. State, by make and model year, the terms of the new vehicle warranty coverage offered by Nissan on the subject vehicles (i.e., the number of months and mileage for which coverage is provided and the vehicle systems that are covered). Describe any extended warranty coverage option(s) that Nissan offered for the subject vehicles and state by option, model, and model year, the number of vehicles that are covered under each such extended warranty.

The search criteria used by Nissan to identify the claims identified in response to Request No. 5 are outlined in Attachment B.

Copies of the applicable warranties for the subject vehicles are contained in on a CD enclosed in Attachment C. There are no extended warranties applicable to the subject vehicles as we understand this request. Nissan offers "Security Plus" service contract plans on Nissan vehicles and are available for separate purchase by customers. Information about Nissan's Security Plus programs is contained on a CD enclosed in Attachment D. There are 2,518 subject vehicles covered by Security Plus contracts as follows:

2003 Q45 - 684  
2004 Q45 - 179

2005 Q45 - 279  
2003 M45 - 1,108  
2004 M45 - 268

7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles, that Nissan 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 Nissan is planning to issue within the next 120 days.

No documents were found relevant to Request No. 7. Nissan is not anticipating and related communication to be issued within the next 120 days.

8. Describe all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations (collectively, "actions") that relate to, or may relate to, the alleged defect in the subject vehicles that have been conducted, are being conducted, are planned, or are being planned by, or for, Nissan. For each such action, provide the following information:
- Action title or identifier;
  - The actual or planned start date;
  - The actual or expected end date;
  - Brief summary of the subject and objective of the action;
  - Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
  - A brief summary of the findings and/or conclusions resulting from the action.

For each action identified, provide copies of all documents related to the action, regardless of whether the documents are in interim, draft, or final form. Organize the documents chronologically by action. If an action is not complete, provide a detailed schedule for the work to be done, tentative findings and/or conclusions, and provide an update within 10 days of completion of the action.

"Actions" that relate to, or may relate to, the alleged defect are contained in Confidential Attachment E and are arranged chronologically. Information responsive to items 8.a through 8.f is contained within the attached documents.

9. Describe all modifications or changes made by, or on behalf of, Nissan in the design, material composition, manufacture, quality control, supply, or installation of the subject components, from the start of production to date, which relate to, or may relate to, the alleged defect in the subject vehicles. For each such modification or change, provide the following information:
- The date or approximate date on which the modification or change was incorporated into vehicle production;
  - A detailed description of the modification or change;

- c. The reason(s) for the modification or change;
- d. The part numbers (service and engineering) of the original component;
- e. The part number (service and engineering) of the modified component;
- f. Whether the original unmodified component was withdrawn from production and/or sale, and if so, when;
- g. When the modified component was made available as a service component; and
- h. Whether the modified component can be interchanged with earlier production components.

Also, provide the above information for any modification or change that Nissan is aware of which may be incorporated into vehicle production within the next 120 days.

A description of modifications or changes is contained on a CD in Confidential Attachment F. Confidential Attachment E contains the design note for the change and a timeline showing all changes for the subject condition as well as other conditions.

No changes are planned that may be incorporated into vehicle production within the next 120 days (production has ceased on the subject vehicles).

10. Provide the following information regarding the side air bag circuits in the subject vehicles:

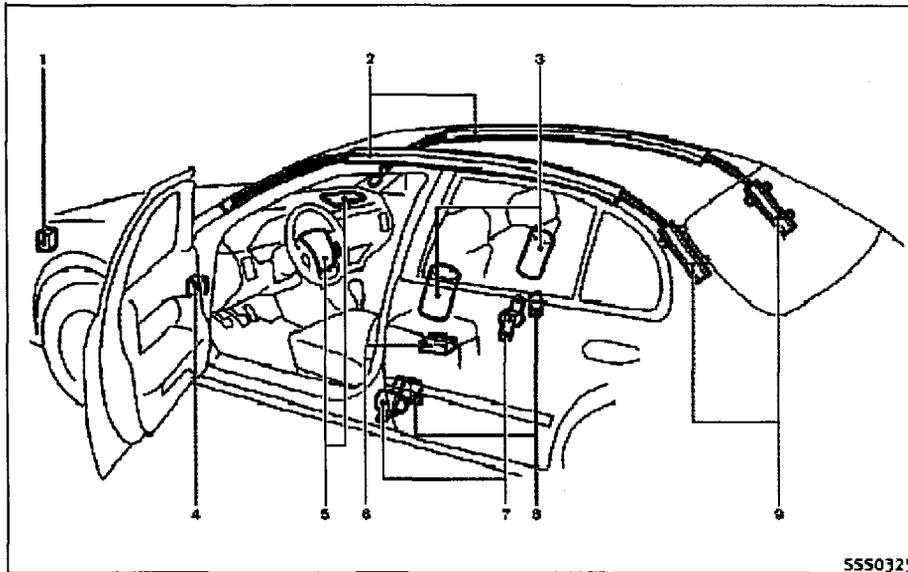
- a. The nominal electrical resistance (include tolerances);
- b. The resistance thresholds designed to illuminate the air bag warning lamp (include tolerances);
- c. The nominal voltage designed to fire the side air bag (include tolerances);
- d. The minimum current needed to properly fire the side air bag (include any test data that support Nissan's response); and
- e. The consequences of fault codes B1134 (left front side air bag module open) and B1129 (right front side air bag module open) with respect to the operation of the air bag system in the subject vehicles.

Also, furnish a description of the side impact protection system in the subject vehicles. This should include the types of all air bags, curtains and etc. by seating position, crash sensing design, deployment strategy, and system diagnostics.

Information responsive to items 10.a through 10.d is contained in the following file: "CONFIDENTIAL BUSINESS INFO (PE08-067) Question 10.pdf" on a CD enclosed as Confidential Attachment G. Information responsive to Question 10(e) is below.

The MY03-05 Q45 and MY 04-05 M45 are equipped with front seat-mounted supplemental side air bags ("SAB"), and side curtain air bag systems ("curtain air bags"). The two systems operate independently.

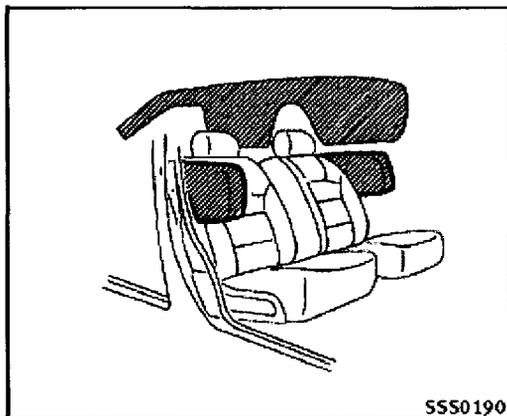
We note that while both vehicles were equipped with SAB, these systems are designed to provide only *supplemental* protection in side impact crashes. The primary protection comes from platform and body structure. Both vehicles were designed to provide adequate protection in side impact crashes without SAB by absorbing and dispersing side impact energy, and both meet and exceeded the static crush resistance requirements specified in S3 of FMVSS No. 214. In fact, the M45 was sold in the Japan market without SAB, and met all applicable safety standards there. While the Q45 (Infiniti's top luxury sedan) was equipped with SAB for marketability reasons, it too was designed to provide adequate protection in side impact crashes without SAB.



SSS0325

- |  |   |
|--|---|
| 1. Crash zone sensor                         | 6. Diagnosis sensor unit                            |
| 2. Supplemental curtain side-impact air bags | 7. Seat belt pre-tensioner retractor                |
| 3. Supplemental side air bag modules         | 8. Satellite sensors                                |
| 4. Pre-crash seat belt sensor                | 9. Supplemental curtain side-impact air bag modules |
| 5. Supplemental front air bag modules        |   |

The SABs are designed to deploy forward of the outboard edge of the front seat back in certain side impact crashes. The curtain air bags are designed to deploy downward from the roof rail in certain side impact crashes. The two systems operate independently.



SSS0190

- If the fault code **B1134** is stored in the air bag Electronic Control Unit (ECU), the Air Bag Warning Lamp continuously flashes, and the driver's side SAB is designed to be

deactivated. The driver's side curtain air bag (and all other air bags in the vehicle) continues to function normally.

- If the fault code **B1129** is stored in the air bag Electronic Control Unit (ECU), the Air Bag Warning Lamp continuously flashes, and the passenger side SAB is designed to be deactivated. The passenger side curtain air bag (and all other air bags in the vehicle) continues to function normally.

11. State the number of the subject components that Nissan has sold that may be used in the subject vehicles by component name, part number (both service and engineering/production), model and model year of the vehicle in which it is used and month/year of sale (including the cut-off date for sales, if applicable). Include any kits that have been released, or developed, by Nissan for use in service repairs to the subject component/assembly which relate, or may relate, to the alleged defect in the subject vehicles.

For each component part number, provide the supplier's name, address, and appropriate point of contact (name, title, and telephone number). Also, identify by model and model year, any other vehicles of which Nissan is aware that contain the identical component, whether installed in production or in service, and state the applicable dates of production or service usage.

The information provided in response to this request reports the total number of parts sold. Parts may be ordered for repair, dealer stock, or vehicle collision repair. Therefore, we are unable to identify the specific use of parts that have been sold.

The total number of the above components or assemblies that have been sold will be provided at a later date.

The supplier's name and address are:

Autoliv ASP, Inc.  
3350 Airport Rd.  
Ogden, USA

The point of contact is Larry Hoover. His telephone number is (801) 725-6821.

12. Produce two of each of the following:

- Exemplar samples of each design version of the subject components used in the subject vehicles;
- Field-returned samples of the subject components exhibiting the subject failure mode; and
- Any kits that have been released or developed by Nissan for use in service repairs to the subject component/assembly which relate, or may relate, to the alleged defect in the subject vehicles.

Exemplar samples and field return samples are being shipped under separate cover.

13. Furnish Nissan's assessment of the alleged defect in the subject vehicles, including:

- a. The causal or contributory factor(s);
- b. The failure mechanism(s);
- c. The failure mode(s);
- d. The risk to motor vehicle safety that it poses; and
- e. What warnings, if any, the operator would have that the alleged defect was occurring or subject component was malfunctioning.

A non-deployment of the supplemental seat mounted side air bags ("SAB") in the subject vehicles does not pose an unreasonable risk to motor vehicle safety. The SAB were included on these vehicles as standard equipment to make them competitive with other luxury vehicles in their segment. The vehicles were designed to provide adequate protection in side impact crashes without SABs by absorbing and dispersing side impact energy. Nissan believes these vehicles meet applicable FMVSSs without SABs. Also, if the alleged condition occurs, the air bag warning lamp will continuously flash to alert the driver to take the vehicle in for service. There have been no reported injuries or fatalities related to the alleged condition in the five years that these vehicles have been driven on the roads.

When offered for sale in the U.S. both vehicles were equipped with SAB, not because they were necessary to meet any safety standards, but because of marketability and competitiveness considerations. More specifically, comparable large luxury sedans offered by Nissan's competitors were all equipped with standard SAB systems.

MY03	Mercedes Benz S-class	Seat-mounted SAB standard
MY03	BMW 7-series	Seat-mounted SAB standard
MY03	Audi A8	Seat-mounted SAB standard
MY03	Lexus LS430	Seat-mounted SAB standard
MY03	Jaguar XJ-series	Seat-mounted SAB standard

Based on engineering judgment, even without SAB, the subject vehicles would still meet and exceed the relevant FMVSS No. 214 requirements applicable at the time of the manufacture. (See Attachment E, E190-E193) The SAB systems in the MY03-05 Q45 and MY04-05 M45 are designed to provide only *supplemental* protection in side impact crashes. The primary protection comes from platform and body structure. Both vehicles were designed to provide adequate protection in side impact crashes without SAB by absorbing and dispersing side impact energy, and both meet and exceed the static crush resistance requirements specified in S3 of FMVSS No. 214. Side curtain air bags, which are not affected by this issue, provide additional protection.

Also, if the alleged condition occurs, the red Air Bag Warning Lamp is designed to continuously flash to alert the driver to take the vehicle in for service. Also, the Owner's Manual contains two separate warnings that tell the vehicle operator to have the vehicle checked as soon as possible if the air bag warning lamp is on.

Nissan is continuing to study the mechanism of how this issue occurs. Nissan's preliminary investigation shows that the relative motion of the side air bag module male and female harness connectors located on the reverse side of the lower seat trim cover may be a contributing factor. More specifically, the repeated relative motion between the two connectors can cause an interruption in the electrical current that will drop the

input voltage below the specified range. When the ECU detects that the input voltage is out of specified range, the SAB is deactivated and the air bag warning lamp illuminates. The curtain air bags and other air bags continue to function normally.

**Conclusion**

Nissan does not believe that the alleged condition is a safety defect because: (1) both subject vehicles were designed to provide adequate protection in side impact crashes without SAB by absorbing and dispersing side impact energy; (2) the subject vehicles would still meet and exceed the relevant FMVSS No. 214 requirements applicable at the time of the manufacture without SAB; (3) the air bag warning lamp continuously flashes to alert the driver when the alleged condition occurs; and (4) there have been no injury or fatality reports related to the alleged condition.

\*\*\*\*\*

**ATTACHMENT A**

CD with Information Related to Requests 1,2,3,4 and 11

This attachment contains a CD containing the information related to Request Numbers 1, 2, 3, and 4. The information was obtained from the Consumer Affairs database, the Tech Line Database, the legal department database and the field reports database as of December 12<sup>th</sup>, 2008. The databases and Legal Files are updated daily.

**ATTACHMENT B**

Warranty Claims Data

Warranty claims data were gathered from Warranty database as of December 12<sup>th</sup>, 2008

The total counts of warranty claims are as follows: 4853 representing 3551 unique VINs

The search criteria used by Nissan to identify the claims identified in response to Request Nos. 5 & 6 is as follows:

**Vehicle Information**

M45

2004-2005 Model Year

Q45

2003-2005 Model Year

**PNC Codes**

Any

**Word Search in Comments**

\*SIDE\*AIR\*BAG\*

Resulting items were reviewed manually to ensure applicability to the Request.

**ATTACHMENT C**

Vehicle Warranties

**ATTACHMENT D**

Security Plus service contracts

**ATTACHMENT E**

Actions

**ATTACHMENT F**

Information Related to Response no. 9

**ATTACHMENT G**

Information Related to Response no. 10