



June 24, 2005

**VIA OVERNIGHT DELIVERY**

Federal Trade Commission  
Office of the Secretary  
CAN-SPAM ACT RULE MAKING,  
PROJECT NO. R411008  
Room H-159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**NISSAN NORTH AMERICA, INC**

Legal Department  
8900 Freeport Parkway  
Irving, TX 75063-2438

Mailing Address: P.O. Box 660407  
Dallas, TX 75266-0407

Telephone: 214.596.5170  
Fax: 214.596.4599



**Re: CAN-SPAM ACT RULE MAKING, PROJECT NO. R411008;  
Proposed 16 C.F.R. 316.4(a)**

Dear Sirs:

I write to you on behalf of Nissan North America, Inc. and its affiliates in the United States (hereafter collectively referred to as "Nissan") regarding the above-referenced Project, within which is proposed a revision to 16 C.F.R. 316.4(a) ("Proposed Rule"), shortening the time to honor CAN-SPAM opt-out requests to three business days. Thank you for the opportunity to respond to the Proposed Rule.

Nissan's comments are limited to that portion of the Proposed Rule regarding the reduction of the deadline to three days for honoring opt-out requests. Nissan is concerned that this time frame is too short for compliance with all opt-out requests. Some of the commenters suggesting a shorter compliance deadline appear to be businesses established more recently and with a principal business strategy of conducting e-business through the internet. This profile would not describe Nissan, and Nissan is surmising would not describe many other businesses whose main business is not e-business and who conduct long-established business activities through older legacy systems. Nissan has multiple databases both internally (among various operating departments and divisions) and externally (with marketing service providers). These databases are not centralized, do not electronically communicate with each other, and therefore do not result in real-time updates between each other for opt outs made by any customers to e-marketing from any of these sources. Therefore, if any one of the operational areas of the company using one of these source databases receives an opt-out request, updating or synchronization to the other databases or sources must happen off-line, resulting in a time delay to have all the databases updated. Some marketing providers update only on a weekly basis. While it is true that the frequency of updates might be shortened, a three-day limit presents a tight deadline for information exchanges or updates that are manual.

The problem of separate databases in separate operating areas of a company is not necessarily solved by the possible aggregation of those databases. This is partly because of the requirements of information privacy laws. As you know, information privacy laws place emphasis on privacy of information even within a business enterprise, suggesting that information should be accessible only to those employees of an organization who have a need to know. The proposed three-day deadline suggests a contradicting need for speed and aggregation of data, in order to enhance prompter recognition of opt outs. From an information privacy perspective, one might conceive of good reasons for having separate databases within an enterprise based on divergent uses of the database. For example, when

a manufacturer works with or derives information from finance affiliates or dealers or franchisees acting as financial institutions under the Gramm-Leach-Bliley Act, it may wish to segregate or separately use this data in a way that is sensitive to the financial nature of the data and the protections of that data under the various financial privacy laws. Entirely different privacy considerations might apply to different databases used for other purposes or sourced from other activities such as sales marketing, service or maintenance, or parts and accessories. Even if one central opt-out list was created and all opt outs from all marketing sources were directed to that list, the separate databases would still need to be scrubbed against or synchronized to that list.

While Nissan would make all best efforts to comply with any rule that should be issued by The Commission, we are simply pointing out that the three-day timeline seems unnecessarily tight, and allows no meaningful time for off-line work, for quality control, or to deal with errors or problems.

A useful analogy might be made in looking at the requirements of the No-Call Rule. There, a registered user of the No-Call list is only required to scrub against the list once every thirty days. It has not been suggested that a subscriber must scrub against the list once every three business days or that there is some inherent danger of a marketer taking advantage of a customer and calling them as frequently as possible during the intervening time frame. Presumably, phone calls would be more invasive and offensive to a customer than e-mail. Nissan questions any assumption that notice to a marketer that a customer is opting out of contact will result in that marketer engaging in a frenzied campaign of multiple calls or e-mails, before the implementation of the opt out. It would be a waste of time to the marketer to attempt to aggressively market a customer who has already stated a disinterest in receiving marketing communications. If that marketer needs to use a reasonable time frame in order to act on the opt out, it is somewhat incredulous to suggest that marketer would be able to use that time to engage in an aggressive series of marketing communications. In short, the level of urgency that is being implied in seeking a very short opt-out period is probably being overstated.

Nissan respectfully submits that the three-day opt-out compliance deadline is too short and probably unnecessary. Nissan respectfully requests that The Commission not make the proposed change.

Yours truly,

***Nissan North America, Inc.***  
***Legal Department***

Alan R. Hunn  
Managing Counsel

ARH/dc

CC: Dale Walker, Director, Communication & Processing Services  
Viky Fisher, Consumer Privacy & Information Security Compliance Specialist  
Eva Ribman, Interactive Marketing Planner  
Stephanie Hawkes, Senior Paralegal