U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

SEP 6 2012

1200 New Jersey Avenue SE.
Washington, DC 20590

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dale Weiss
Senior Manager, Field Quality Assurance
Nissan North America, Inc.
P.O Box 685001
Franklin, TN 37068-5009

NVS-213krh
PE12-022

Dear Mr. Weiss:

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has opened a Preliminary Evaluation (PE12-022) to investigate allegations of Intelligent Brake Assist (IBA) system malfunctions in model year (MY) 2013 Infiniti JX35 vehicles manufactured by Nissan North America, Inc., and to request certain information.

This office has received two reports alleging incidents of false application of emergency braking while driving in MY 2013 Infiniti JX5 vehicles. Both complaints reported uncommanded vehicle deceleration in the same locations and road conditions. A Preliminary Evaluation has been opened to assess the scope, frequency and potential safety consequences associated with the alleged defect. A copy of each of the reports has been previously sent to you.

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject vehicles:** All MY 2013 Infiniti JX35 vehicles manufactured for sale or lease in the United States and federalized territories.

- **Subject system:** Intelligent Brake Assist (IBA) system and all associated sensors, control modules, software, actuators, wiring and other components.

- **Nissan:** Nissan Motor Company Ltd, all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including North America, Inc. and all other divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of Nissan (including all business units and persons previously referred to), who are or, in or after January 1, 2000, were involved in any way with any of the following related to the alleged defect in the subject vehicles:

a. Design, engineering, analysis, modification or production (e.g. quality control);
b. Testing, assessment or evaluation;
c. Consideration, or recognition of potential or actual defects, reporting, record-keeping and information management, (e.g., complaints, field reports, warranty information, part sales), analysis, claims, or lawsuits; or
d. Communication to, from or intended for zone representatives, fleets, dealers, or other field locations, including but not limited to people who have the capacity to obtain information from dealers.

- **Alleged defect:** Any one or more of the following symptoms or conditions:
    - Collision Mitigation System failure or malfunction, including all associated fault codes;
    - Allegations of IBA emergency braking due to false surveillance; or
    - Allegations of IBA driver warnings due to false surveillance.

- **Document:** "Document(s)" is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar to any of the foregoing, however denominated by Nissan, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by Nissan or

not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **Other Terms:** To the extent that they are used in these information requests, the terms "claim," "consumer complaint," "dealer field report," "field report," "fire," "fleet," "good will," "make," "model," "model year," "notice," "property damage," "property damage claim," "rollover," "type," "warranty," "warranty adjustment," and "warranty claim," whether used in singular or in plural form, have the same meaning as found in 49 CFR 579.4.

In order for my staff to evaluate the alleged defect, certain information is required. Pursuant to 49 U.S.C. § 30166, please provide numbered responses to the following information requests. Insofar as Nissan has previously provided a document to ODI, Nissan may produce it again or identify the document, the document submission to ODI in which it was included and the precise location in that submission where the document is located. When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with the organization of this information request letter (including all individual requests and subparts). When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation.

Please repeat the applicable request verbatim above each response. After Nissan's response to each request, identify the source of the information and indicate the last date the information was gathered.

1. State, by model and model year, the number of MY 2013 Infiniti JX35 Nissan has manufactured for sale or lease in the United States and federalized territories. Separately, for each subject vehicle manufactured to date by Nissan, state the following:
   a. Vehicle identification number (VIN);
   b. Model;
   c. Model Year;
   d. Date of manufacture;
   e. Date warranty coverage commenced; and
   f. The State in the United States, or the federalized territory, where the vehicle was originally sold or leased (or delivered for sale or lease).

   Provide the table in Microsoft Access 2003, 2007, or a compatible format, entitled "PE12-022 PRODUCTION DATA."

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 MY 2013 Infiniti JX35 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 "d," 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.

3. Separately, for each item (complaint, report, claim, notice, or matter) within the scope of your response to Request No. 3, state the following information:
   a. Nissan's file number or other identifier used;
   b. The category of the item, as identified in Request No. 3 (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 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 2003 or 2007, or a compatible format, entitled "PE 12-022 REQUEST NUMBER THREE DATA."

4. Produce copies of all documents related to each item within the scope of Request No. 3. Organize the documents separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Nissan used for organizing the documents.

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 MY 2013 Infiniti JX35: 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 and total cost per claim;
b. Vehicle owner or fleet name (and fleet contact person) and telephone number;
c. 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 and description;
h. Problem code and description;
i. Replacement part number(s) and description(s);
j. Concern stated by customer;
k. Cause and Correction stated by dealer/technician; and
l. Additional comments, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2003 or 2007, or a compatible format, entitled "PE 12-022 WARRANTY DATA."

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).

6. 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.

7. 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 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:

   a. Action title or identifier;
   b. The actual or planned start date;
   c. The actual or expected end date;
   d. Brief summary of the subject and objective of the action;
   e. Engineering group(s)/supplier(s) responsible for designing and for conducting the action; and
   f. A brief summary of the findings and/or conclusions resulting from the action.

The response to this request should include a detailed description of all past, present and future actions by any and all engineering working groups of which Nissan is an active member or is otherwise aware. This includes, at a minimum, all of the information requested in items "a" through "f."

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.

8. 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 system, 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:
   a. The date or approximate date on which the modification or change was incorporated into vehicle production;
   b. A detailed description of the modification or change;
   c. The reason(s) for the modification or change;
   d. The part number(s) (service and engineering) of the original component;
   e. The part number(s) (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

   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.

9. Provide an overview of radar power requirements needed for object classification and detection for all radar cross-section (RCS) target categories (such as road surface, debris, bike, scooter, motorcycle…etc.). Briefly describe RCS measurement techniques, RCS models, simulations, calibration and error correction.

10. Furnish Nissan's assessment of the alleged defect in the subject vehicle, 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;
    e. What warnings, if any, the operator and the other persons both inside and outside the vehicle would have that the alleged defect was occurring or subject component was malfunctioning; and

This letter is being sent to Nissan pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information. Nissan's failure to respond promptly and fully to this letter could subject Nissan to civil penalties

pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) Section 5(a) of the TREAD Act, codified at 49 U.S.C. § 30165(b), provides for civil penalties of up to $6,000 per day, with a maximum of $16,375,000 for a related series of violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. See 49 CFR 578.6 (as amended by 71 Fed. Reg. 28279 (May 16, 2006)). This includes failing to respond to ODI information requests.

If Nissan cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, Nissan does not submit one or more requested documents or items of information in response to this information request, Nissan must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Nissan's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by October 17, 2012. **All business confidential information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office.** In addition, do not submit any business confidential information in the body of the letter submitted to this office. Please refer to PE11-024 in Nissan's response to this letter and in any confidentiality request submitted to the Office of Chief Counsel. If Nissan finds that it is unable to provide all of the information requested within the time allotted, Nissan must request an extension from me at (202) 366-5207 no later than five business days before the response due date. If Nissan is unable to provide all of the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information Nissan then has available, even if an extension has been granted.

If Nissan claims that any of the information or documents provided in response to this information request constitute confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, Nissan must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 CFR Part 512, as amended, to the Office of Chief Counsel (NCC-111), National Highway Traffic Safety Administration, Room W41-227, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Nissan is required to **submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted.** Please remember that the word "CONFIDENTIAL BUSINESS INFORMATION" must appear at the top of each page containing information claimed to be confidential, and the information must be clearly identified in accordance with 5 U.S.C. § 512.6. If you submit a request for confidentiality for all or part of your response to this IR, that is in an electronic format (e.g., CD-ROM), your request and associated submission must conform to the new requirements in NHTSA's Confidential Business Information Rule regarding submissions in electronic formats (49 CFR 512.6(c)). See Federal Register, volume 72, page 59434 (October 19, 2007).

Please send email notification to Kareem Habib (Kareem.Habib@DOT.gov) and to ODI_IRresponse@dot.gov when Nissan sends its response to this office and indicate whether there is confidential information as part of Nissan response. Also provide tracking numbers for the submissions.

If you have any technical questions concerning this matter, please call Kareem Habib of my staff at (202) 366-8703.

Sincerely,

Jeffrey L. Quandt, Chief
Vehicle Control Division
Office of Defects Investigation

Enclosure 1, one CD ROM titled Data Collection Disc containing four files