



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

1200 New Jersey Avenue SE.  
Washington, DC 20590

NOV 19 2015

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Donald Neff  
Manager, Technical Compliance Office  
Nissan North America, Inc.  
P.O. Box 685001  
Franklin, TN 37068-5009

NEF-120mjl  
EA15-004

Dear Mr. Neff:

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has upgraded the Recall Query (RQ15-001) to an Engineering Analysis (EA15-004) to further investigate the effectiveness of the remedy for safety recall 14V-138 (subject recall) involving reprogramming the Occupant Classification System (OCS) algorithm in certain model year 2013-2014 Nissan and Infiniti vehicles manufactured by Nissan North America, Inc. (Nissan), and to request certain information. Specifically, in order to conduct a comparative assessment of different OCS designs used in the subject vehicles and other Nissan vehicles, we are primarily requesting field and warranty data on these vehicles in this request.

Since the April 2015 request letter sent under RQ15-001, this office has received approximately 54 Vehicle Owner's Questionnaire (VOQ) reports on the vehicles covered by the subject recall, which allege problems with the OCS after recall repairs and/or other OCS related repairs were made by Nissan/Infiniti dealers. The majority of the complaints allege the front passenger air bag status light stays on (i.e., indicating passenger air bag is inappropriately turned off) for adult front seat passengers. Some of the complaints state the dealers have made multiple repair attempts but the problem still persists. An electronic image of each VOQ report has been e-mailed to your office. A list of the reference number of each report is shown at the end of this letter.

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

- **Subject vehicles:** All vehicles covered by the subject recall (14V-138), which currently covers: model year (MY) 2013-2014 Nissan Altima, Pathfinder, Sentra and LEAF; MY 2013 Infiniti JX35; MY 2014 Infiniti QX60 and Q50; and MY 2013 Nissan NV200/Taxi vehicles, manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.



- **Similar vehicles:** All Nissan and Infiniti vehicles equipped with 2-load cell sensor system-based OCS that are identical, or substantially similar, to that in the subject vehicles but not covered by the subject recall (14V-138), including but not limited to, model year (MY) 2014-2015 Nissan Altima, Pathfinder, Sentra and LEAF; MY 2014-2015 Infiniti QX60 and Q50; and MY 2014-2015 Nissan NV200/Taxi vehicles, i.e., those vehicles manufactured after the OCS software update was implemented into vehicle production in approximately February 2014 (cutoff date of subject recall) and manufactured for sale or lease in the United States, including, but not limited to, the District of Columbia, and current U.S. territories and possessions.
- **Peer vehicles:** All Nissan and Infiniti vehicles equipped with a 4-load cell sensor system-based OCS.
- **Subject recall:** NHTSA recall number 14V-138.
- **Subject components:** The Occupant Classification System, and all its components, designed to classify the type/size of occupants and objects in the front passenger seat.
- **Nissan:** Nissan North America Inc., Nissan Motor Co., Ltd., all of their past and present officers and employees, whether assigned to their principal offices or any of their field or other locations, including all of their 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 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:** Allegation of one or more of the following after the remedy for the subject recall was performed:
  - a. Occurrence of the defect condition identified in the subject recall;
  - b. Any improper, incorrect or unwanted illumination of the front passenger air bag status light (i.e., indicating passenger air bag is turned off) for adult occupants of either sufficient weight (i.e., weight of 105 pounds or more) or unknown (unreported) weight sitting in the front passenger seat;

- c. Illumination of the air bag warning light accompanied by the illumination of the front passenger air bag status light (i.e., indicating passenger air bag is turned off); and/or
  - d. Asymmetrical deployment of the frontal air bags in a crash; specifically, the scenario where the passenger air bag does not deploy while the driver air bag deploys.
- **Alleged condition:** Allegation of one or more of the following:
    - a. Any improper, incorrect or unwanted illumination of the front passenger air bag status light (i.e., indicating passenger air bag is turned off) for adult occupants of either sufficient weight (i.e., weight of 105 pounds or more) or unknown (unreported) weight sitting in the front passenger seat;
    - b. Illumination of the air bag warning light accompanied by the illumination of the front passenger air bag status light (i.e., indicating passenger air bag is turned off); and/or
    - c. Asymmetrical deployment of the frontal air bags in a crash; specifically, the scenario where the passenger air bag does not deploy while the driver air bag deploys.
  - **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. By make, model, model year and production period (month/year), separately state for the subject vehicles, similar vehicles and peer vehicles, the number of vehicles that 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 2010, or a compatible format, entitled “PRODUCTION DATA.”

2. By model and model year, separately state for the subject vehicles, similar vehicles and peer vehicles, 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 and the alleged condition in the similar and peer vehicles:

- a. Consumer complaints, including those from fleet operators;
- b. Field reports, including dealer field reports;
- c. Reports involving a crash, injury, or fatality;
- 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, 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. 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. Reported weight of the front passenger occupant(s) allegedly being misclassified resulting in the turning off of the passenger air bag;
  - j. Whether a crash is alleged;
  - k. Whether property damage is alleged;
  - l. Number of alleged injuries, if any; and
  - m. Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2010, or a compatible format, entitled “REQUEST NUMBER TWO DATA.” Provide the data separately for the subject vehicles, similar vehicles and peer vehicles.

4. Produce copies of all documents related to each item within the scope of Request No. 2. Organize the documents separately for the subject vehicles, similar vehicles and peer vehicles and separately by category (i.e., consumer complaints, field reports, etc.) and describe the method Nissan used for organizing the documents. Describe in detail the search methods and search criteria used by Nissan to identify the items in response to Request No. 2.

5. By model and model year, separately state for the subject vehicles, similar vehicles and peer vehicles, a total count for all of the following categories of claims (excluding recall remedy repair claims for the subject recall), collectively, that have been paid by Nissan to date that relate to, or may relate to, the alleged defect in the subject vehicles and the alleged condition in the similar and peer 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), street address, email address and telephone number;
- c. Vehicle's VIN;
- d. Vehicle's make, model and model year;
- e. Repair date;
- f. Vehicle mileage at time of repair;
- g. Repairing dealer's or facility's name, telephone number, city and state or ZIP code;
- h. Labor operation number(s);
- i. Problem code(s);
- j. Diagnostic trouble code(s), if any;
- k. Replacement part number(s) and description(s);
- l. Concern stated by customer;
- m. Cause as stated on the repair order;
- n. Correction as stated on the repair order; and
- o. Comment, if any, by dealer/technician relating to claim and/or repair.

Provide this information in Microsoft Access 2010, or a compatible format, entitled "WARRANTY DATA." Provide the data separately for the subject vehicles, similar vehicles and peer vehicles.

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 lists of all labor operations, labor operation descriptions, problem codes, and problem code descriptions applicable to the alleged defect in the subject vehicles and the alleged condition in the similar and peer vehicles. State, by model and model year, the terms of the new vehicle warranty coverage offered by Nissan on these 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 these vehicles and state by option, model and model year, the number of vehicles that are covered under each such extended warranty.
7. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect in the subject vehicles and the alleged condition in the similar and peer 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.

### **Legal Authority for This Request**

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.

### **Civil Penalties**

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.) The Vehicle Safety Act, as amended, 49 U.S.C. § 30165(a)(3), provides for civil penalties of up to \$7,000 per violation per day, with a maximum of \$35,000,000 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. This includes failing to respond completely, accurately, and in a timely manner to ODI information requests. The maximum civil penalty of \$7,000 per violation per day is established by 49 CFR 578.6(a)(3). The maximum civil penalty of \$35,000,000 for a related series of daily violations of 49 U.S.C. § 30166 is authorized by 49 U.S.C. § 30165(a)(3) as amended by § 31203(a)(1)(B) of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act, Public Law 112-141.

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.

### **Confidential Business Information**

**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 EA15-004 in Nissan's response to this letter and in any confidentiality request submitted to the Office of Chief Counsel.

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 phrase “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONTAINS CONFIDENTIAL BUSINESS INFORMATION” (as appropriate) must appear at the top of each page containing information claimed to be confidential, and the information must be clearly identified in accordance with 49 CFR 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. *See* 49 CFR 512.6(c) (as amended by 72 Fed. Reg. 59434 (October 19, 2007)).

If you have any questions regarding submission of a request for confidential treatment, contact Otto Matheke, Senior Attorney, Office of Chief Counsel at [otto.matheke@dot.gov](mailto:otto.matheke@dot.gov) or (202) 366-5253.

#### **Due Date**

Nissan's response to this letter, in duplicate, together with a copy of any confidentiality request, must be submitted to this office by **December 28, 2015**. Nissan's response must include all non-confidential attachments and a redacted version of all documents that contain confidential information. If Nissan finds that it is unable to provide all of the information requested within the time allotted, Nissan must request an extension from Scott Yon at (202) 366-0139 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.

Please send email notification to Michael Lee at [michael.lee@dot.gov](mailto:michael.lee@dot.gov) and to [ODI\\_IRresponse@dot.gov](mailto:ODI_IRresponse@dot.gov) when Nissan sends its response to this office and indicate whether there is confidential information as part of Nissan's response.

If you have any technical questions concerning this matter, please call Michael Lee of my staff at (202) 366-5236.

Sincerely,



Otto Matheke  
Acting Director  
Office of Defects Investigation  
Office of Enforcement



## VOQ reference numbers:

10701946 10702003 10702667 10702798 10703032 10703657 10703766 10703813 10704196  
10704988 10705530 10705919 10706621 10712543 10712568 10712575 10713335 10714316  
10714330 10714536 10714980 10715132 10715945 10717336 10720918 10720971 10721331  
10721746 10723424 10724568 10731167 10731868 10732012 10732065 10733877 10735438  
10745948 10745982 10746399 10747660 10748077 10749091 10749110 10758979 10761398  
10763320 10764590 10766486 10775946 10779712 10781422 10781449 10781508 10781901