



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

1200 New Jersey Avenue SE
Washington, DC 20590

JUN 8 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Gibbons
Senior Manager, Technical Compliance
Nissan North America, Inc.
333 Commerce Street
Nashville, TN 37201

NVS-212mjl
EA09-005

Dear Mr. Gibbons:

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has upgraded the Preliminary Evaluation (PE08-067) to an Engineering Analysis (EA09-005) to investigate faulty connectors in the side air bag system that can cause the air bag warning lamp to illuminate and the side thorax air bag to become deactivated in model year (MY) 2003-2005 Infiniti Q45 vehicles and MY 2003-2004 Infiniti M45 vehicles. As part of the investigation, this letter requests certain information from Nissan North America, Inc. (Nissan).

The first part of this letter is in regard to Nissan's response dated February 10, 2009, to ODI's information request (IR) dated December 12, 2008 for PE08-067. ODI believes that Nissan did not adequately respond to ODI's December 12 letter as described below. Specifically, Nissan's responses to Request No. 1, 5, 9, 11 and 12 were not fully responsive.

The following was lacking in fully answering our requests (identified by original number below):

ODI Request # 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."



Problem: Nissan did not state the number of the subject vehicles manufactured by model and model year.

ODI Request # 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."

Problem: Nissan did not state the number of claims by model and model year.

ODI Request # 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:

- 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 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.

Problem:

- Nissan did not provide reasonable dates or approximate dates of two of the changes, one for the Q45 and one for the M45, shown on the “Changes/Modifications” charts.
 - Nissan provided information that indicates each change may have occurred during separate 3-month periods.
 - The date or approximate date should be a specific date (i.e., month/day/year), or at the minimum, a specific month/year.
- Nissan did not provide detailed descriptions of the changes.

ODI Request # 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.

Problem:

- Nissan provided a list of several part numbers for which the part descriptions indicate that they are all left-side or driver-side air bag modules; no data was provided for right-side or passenger-side air bag modules.
- Nissan did not provide the number of the subject components sold by month/year of sale.

ODI Request # 12. Produce two of each of the following:

- a. Exemplar samples of each design version of the subject components used in the subject vehicles;
- b. Field-returned samples of the subject components exhibiting the subject failure mode; and
- c. 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.

Problem:

- Nissan provided only one side air bag module assembly (subject vehicles include two different vehicle models).
- Nissan provided no field-returned samples.

ODI strives to complete its investigations in a timely manner. In order to do that, we need a full response to our IR letters. We expect that Nissan desires to see a timely completion of investigations as well. Therefore, care and thoroughness in providing a complete response to ODI requests allows us to avoid unnecessary delays in completing our investigations. With regard to the deficiencies identified above, Nissan must provide responses that address the deficient items above. We trust that Nissan will give care and attention in providing full and complete responses to these requests and all other requests in this letter.

This letter does not constitute a waiver of Nissan's potential for civil penalties for its inadequate responses to ODI's PE IR letter, which is a request for a report under 49 U.S.C. Section 30166(e).

The second part of this letter requests additional information for EA09-005. Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject vehicles:** All MY 2003-2005 Infiniti Q45 vehicles, all MY 2003-2004 Infiniti M45 vehicles, and all other model year Q45 and M45 vehicles equipped with side thorax air bag module connectors and wiring harnesses that are identical, or substantially similar, to those used in the MY 2003-2005 Q45 or MY 2003-2004 M45 vehicles.
- **Subject components:** Side thorax air bag modules including all related wiring harnesses and connectors (these include the body harness wiring harnesses and connectors that connect to the side air bag module connectors).
- **Nissan:** Nissan North America, Inc., all of its past and present officers and employees, whether assigned to its principal offices or any of its field or other locations, including all of its 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 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: any unexpected illumination of the air bag warning lamp; any failure, malfunction, or unsatisfactory operation or condition of any of the subject components (e.g., high resistance, open circuit, short circuit,

intermittent circuit, damaged wire harness or connector, etc.); and any non-deployment of the side thorax air bag.

- **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. On data retrievals (sales data, warranty data, etc.), the data shall be collected at the end of the monthly period (no partial month data) but no earlier than 15 days from the posted date of this letter.

1. Provide updated information to Request Nos. 2 through 8 of ODI's December 12, 2008 information request letter for PE08-067 from the last date information was collected for Nissan's February 10, 2009 response letter for MY 2003-2005 Infiniti Q45 and MY 2003-2004 Infiniti M45 vehicles. The information should be provided in the same format as requested in ODI's December 12 letter.
2. Provide all information to Request Nos. 1 through 8 of ODI's December 12, 2008 information request letter for PE08-067 for all other applicable model year Infiniti Q45 and Infiniti M45 vehicles (excluding those vehicles identified in Request No. 1 above), if any, as defined in this letter as the subject vehicles. The information should be provided in the same format as requested in ODI's December 12 letter.
3. Provide a color copy of the slide presentation used by Nissan during the ODI-Nissan meeting on April 8, 2009. Also provide color copies of any updated or corrected versions of the presentation.
4. Produce copies of all reports and documents that relate to any side-impact crash tests (developmental, certification or other types) of the subject vehicles.

Separately, for each such crash test, state the following information:

- a. Test identification number;
- b. Test date;
- c. Description of test protocol;
- d. Vehicle's model and model year;
- e. Vehicle's VIN;
- f. Whether or not the side thorax air bags and/or side curtain air bags were equipped and deployed; and
- g. Dummy injury values.

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 July 6, 2009. **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 EA09-005 in Nissan's response to this letter. If Nissan finds that it is unable to provide all of the information requested within the time allotted, Nissan must request an extension from Mr. Thomas Cooper at (202) 366-5218 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 (69 Fed. Reg. 21409 et seq; April 21, 2004), to the Office of Chief Counsel (NCC-113), National Highway Traffic Safety Administration, 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" 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.

Please send email notification to Mr. Michael Lee (Michael.Lee@dot.gov) and to ODI_IRresponse@dot.gov when Nissan sends it response to this office and indicate whether there is confidential information as part of Nissan's response.

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

Sincerely,

A handwritten signature in black ink, appearing to be 'KCD', with a long horizontal line extending to the right.

Kathleen C. DeMeter, Director
Office of Defects Investigation
Enforcement