INFORMATION REDACTED PURSUANT TOTHE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C.552(B)(6)

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

1200 New Jersey Avenue SE.
Washington, DC 20590

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

Mr. Derek Latta
Technical Compliance
Nissan Technical Center North America, Inc.
1 Nissan Way
Franklin, Tennessee 37067

NEF-0102jao
PE19-010

Dear Mr. Latta:

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 (PE19-010) to continue investigation of allegations of unintended braking due to the Automatic Emergency Braking (AEB) system engaging with no apparent obstruction in the path of the vehicle (i.e., false positive activation of the AEB system). in certain model year (MY) 2017-2018 Nissan Rogue and Rogue Sport vehicles manufactured by Nissan North America, Inc. (Nissan), as we initially reviewed under Defect Petition (DP) 19-001. Nissan is conducting non-recall service actions to update and improve performance of the AEB system via a software updates. (These actions include, but are not limited to, campaigns NTB18-041, NTB19-064, and P9327) . ODI seeks to verify whether Nissan's current service action adequately addresses the inadvertent activation concern, and also whether the mechanism for conducting the action (via a non-recall action) is the appropriate mechanism. As a result, we are making the enclosed requests for information.

This office has identified 284 Vehicle Owner Questionnaire (VOQ) reports submitted to date alleging the AEB system inadvertently activated while driving, resulting in the vehicle reducing speed (with illumination of the brake lights) including, in some cases, allegedly coming to a complete stop. Several of the events reportedly happened in specific driving scenarios, such as crossing railroad tracks, driving over bridges or other steel roadway structures, or driving in enclosed parking garages, where ostensibly the vehicle would be operating at lower speeds. An electronic copy of each of the VOQ reports will be provided to your office and the reference (ODI) number for each is listed below. This list includes 6 complaints where a complainant submitted duplicate reports for the same vehicle.

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

- **Subject vehicles:** all MY 2017-current production Nissan Rogue and Rogue Sport equipped with AEB (which we understand Nissan refers to as Forward Emergency Braking) systems 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 MY 2018-2019 Nissan Sentra equipped with AEB system 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.

- **Subject component:** Software and/or programming of AEB systems on the subject and peer vehicles either as installed in production or service.

- **Alleged defect:** Unintended braking due to the AEB system engaging with no apparent obstruction in the path of the vehicle. (i.e., false positive AEB activation)

- **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 January 1, 2012, 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.

- **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, ODI is requesting that Nissan produce a comprehensive submission that includes all documents, even if previously provided. 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 **Subject and Peer vehicles** Nissan has manufactured for sale or lease in the United States. Separately, for each subject or peer 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;
g. The State in the United States where the vehicle was originally sold or leased (or delivered for sale or lease);
h. Subject component installed as original equipment; and
i. For the **Subject Vehicles only**;
    i) Whether the vehicle was within scope for Nissan's service action relating to AEB false positive activation;
    ii) If so, whether the vehicle has had the service action completed; and
    iii) If so, date of completion.

Provide the table in Microsoft Access 2010, or a compatible format, entitled "PRODUCTION DATA."

2. State 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 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 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. 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), street address, email 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. For the **Subject Vehicles only**;
    i) At time of incident, description of the subject component installed on the vehicle;
h. Driving scenario (crossing a railroad track, in a parking garage, etc.) at time of event;
i. Whether Nissan has inspected the vehicle, and/or the location where the incident occurred;
    i) If so, was Nissan able to confirm or duplicate the occurrence;
j. Report or claim date;
k. Whether a crash is alleged;
l. Whether property damage is alleged;
m. Number of alleged injuries, if any; and
n. Number of alleged fatalities, if any.

Provide this information in Microsoft Access 2010, or a compatible format, entitled "REQUEST NUMBER TWO DATA."

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. Describe in detail the search methods and search criteria used by Nissan to identify the items in response to Request No. 2.

5. Produce copies of all service, warranty, and other documents that relate to, or may relate to, the alleged defect and/or the subject component in the **Subject 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.

6. 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 and/or subject component 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:
    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.

    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.

7. Describe all modifications or changes made by, or on behalf of, Nissan in the design, software, material composition, manufacture, quality control, supply, or installation of the subject component, from the start of production to date, which relate to, or may relate to, the alleged defect and/or subject component 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 software version(s) (service and engineering) of the original subject component;
   e. The software version(s) (service and engineering) of the modified subject component;
   f. Whether the original unmodified subject component was withdrawn from production and/or sale, and if so, when; and
   g. When the modified subject component was made available as a service component.

   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.

8. 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;
   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;
   f. Mitigations available to vehicle operator to reduce the effect of alleged defect;
   g. Comparative performance of subject vehicles to the peer vehicles and other Nissan vehicles equipped with AEB systems; and
   h. The reports included with this inquiry.

## 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 $21,780 per violation per day, with a maximum of $108,895,910 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. *See* 49 CFR 578.6 (as amended by

Fixing America's Surface Transportation Act (the "FAST Act"), Pub. L. 114-94, § 24110(a)(2), 129 Stat. 1312 (Dec. 4, 2015)). This includes failing to respond completely, accurately, and in a timely manner 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.

**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 PE19-010 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-100), National Highway Traffic Safety Administration, Room W41-326, 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 Daniel Rabinovitz, Trial Attorney, Office of Chief Counsel at daniel.rabinovitz@dot.gov or (202) 366-8534.

**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 **May 19, 2020**. 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 me 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 Joseph Oxenham at Joseph.Oxenham@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's response.

If you have any technical questions concerning this matter, please call Joseph Oxenham of my staff at (202) 366-5464.

Sincerely,

[redacted]

Scott Yon, Chief
VDD-B
Office of Defects Investigation

[redacted]

