

**NISSAN GROUP
OF NORTH AMERICA**



NISSAN NORTH AMERICA, INC.

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June 16, 2020

Mr. Scott Yon
Office of Defects Investigation
National Highway Traffic Safety Administration
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

Re: PE19-010; NEF-102jao

Dear Mr. Yon,

Enclosed is Nissan's response to the referenced NHTSA Information Request of March 30, 2020 concerning the Agency's investigation of allegations involving front passenger OCS mats in certain Nissan vehicles.

This response contains both the partial response material submitted on June 2, 2020 as well as the remaining material not previously submitted.

The attached reply responds by first stating each question, then the response. Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek Latta", with a long horizontal flourish extending to the right.

Derek Latta
Manager
Technical Compliance

Enclosures

Response to

PE19-010

INTRODUCTION

In responding to this Information Request ("IR"), information has been obtained from those places within Nissan likely to contain such information in the regular and ordinary course of business. When a particular Request seeks "documents" as defined in the IR, reasonable, good faith searches have also been made of corporate records that are likely to contain responsive information in those places where such records are likely to be found. We have not checked such documents as "calendars", "appointment books", "financial statements" and "personnel records" even though they are included in the definition of "documents" because such documents would not contain owner complaints, field reports, technical analyses or other information sought by Request 2 pertaining to the alleged defect. We have also searched for responsive documents and information only with respect to vehicles manufactured for sale in the United States, which we understand to be the scope for which the IR seeks information. Nissan has searched for and produced records that were created through March 30, 2020.

Responses are provided after each request, and Attachments are utilized as appropriate. The source of information used as a basis for the data in each Attachment, including the date the data were updated and retrieved, is identified at the beginning of each Attachment, as applicable. If a document itself is the source for the requested information and it is provided, we assume no further source identification is called for. If a document, drawing or component is requested, or if no responsive information is available, we assume no further source identification is called for.

With regard to claims of privilege, Nissan understands that it is acceptable to the Agency for Nissan to identify specific categories of privileged documents rather than any specific document. These specific categories are: 1) communications between outside counsel and Nissan Legal Department employees, other Nissan employees, or other Nissan-represented parties in litigation or claims; 2) communications between Nissan Legal Department employees and other Nissan employees or other Nissan-represented parties in litigation or claims; 3) notes and other work product of outside counsel or of Nissan Legal Department employees concerning communications with Nissan employees or consultants, and the work product of those employees or consultants done for or at the request of outside counsel or Legal Department employees; and 4) other categories to be identified later as necessary. For any privileged documents that are not included in these categories, such documents, if any, will be specifically identified on a separate privilege index at a later time. To the extent that a document is furnished, and unless the production of that document is inadvertent, Nissan is not asserting a privilege claim for that document, although the disclosure of such document does not waive the attorney-client privilege or work-product protection with respect to other documents prepared in connection with the specific litigation or claim or other litigation or claims. In addition, in submitting such documents, we reserve our right to claim the attorney-client privilege and/or work-product protection with respect to analyses that may be prepared subsequently in connection with these and other cases. Also, we understand documents specifically related to the preparation of the responses are not sought.

Nissan believes NHTSA's policy is to protect the privacy of individuals under exemption 6 of the Freedom of Information Act, 5 U.S.C. Section 552(b)(6). We understand that name, address, and other personal information of owners or other individuals, including Nissan personnel, contained in any of the attachments in this response will not be made available to the public. Therefore, Nissan is not requesting confidential treatment for this information pursuant to 49 CFR, Part 512, but we believe any private information concerning individuals should not be made public.

* * * * *

1. State, by model and model year, the number of 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).
 - 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."

Table 1. Production Data Summary

MAKE	MODEL	2017	2018	2019	2020
NISSAN	ROGUE	174,412	312,135	231,878	181,167
NISSAN	ROGUE SPORT	12,914	57,938	80,161	45,016
NISSAN	SENTRA		166,978	241,177	

The information requested in Request 1 is provided, if known, in a Microsoft Access database titled "PE19-010 DATA" that contains a table titled "Q1_PRODUCTION_DATA," which can be found on a disc enclosed as Attachment A.

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:

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.

- a. Consumer complaints, including those from fleet operators;

Table 2. Consumer Complaints Summary

Make	Model	Total Complaints	Unique VINs
NISSAN	ROGUE	1,093	960
NISSAN	ROGUE SPORT	97	90
NISSAN	SENTRA	43	39

- b. Field reports, including dealer field reports;

Table 3. Field Reports Summary

Make	Model	Total Reports	Unique VINs
NISSAN	ROGUE	343	330
NISSAN	ROGUE SPORT	29	29
NISSAN	SENTRA	14	12

- c. Reports involving a crash, injury, or fatality;

Table 4. Crash Report Count

Make	Model	Total Reports	Unique VINs
NISSAN	ROGUE	29	24
NISSAN	ROGUE SPORT	4	4
NISSAN	SENTRA	2	2

Among the 35 total reports listed in Table 4, there are reports of 30 unique incidents involving allegations of minor collisions. Of these incidents, Nissan was able to inspect 11 Subject Vehicles, and only four appear to have involved a potential AEB event connected to the reported incident. Seven of the incident vehicle inspections found no evidence supporting the allegation of AEB involvement in the reported crash. The remaining incident vehicles were not inspected.

Among the complaints and reports listed in Table 2, there are ten reports (representing eight VINs for Subject Vehicles) involving allegations of minor injury. Nissan was able to inspect seven of these Subject Vehicles. Of these seven, only two incidents could reasonably have involved a potential AEB event.

There are zero (0) reports of fatality, which relate to, or may relate to, the alleged defect in the Subject and Peer Vehicles.

d. Property damage claims:

NNA found zero (0) reports of property damage claims, which relate to, or may relate to, the alleged defect in the Subject and Peer Vehicles.

e. Third-party arbitration proceedings where Nissan is or was a party to the arbitration; and

Nissan found zero (0) third party arbitration proceedings where Nissan is or was a party to the arbitration, which relate to, or may relate to, the alleged defect in the Subject and Peer Vehicles.

f. Lawsuits, both pending and closed, in which Nissan is or was a defendant or codefendant.

In its Response to DP19-001 on May 15, 2019, NNA advised that it was aware of two (2) putative class-action lawsuits to which NNA is a defendant and relate to the alleged defect in the subject vehicles. Those two suits were consolidated and include named plaintiffs that own or lease Subject Vehicles (*In re Nissan*; see Attachment A).

NNA is not aware of any putative class-action lawsuits where a named plaintiff owns or leases a Peer Vehicle. However, the named plaintiffs in the consolidated lawsuits make broad allegations and seek to represent a class of owners and lessees of all Nissan and Infiniti vehicles with an automatic emergency braking feature so the class definition asserted by the plaintiffs is so wide ranging as to include Subject Vehicles, Peer Vehicles, and other vehicles.

NNA is also aware of another putative class-action lawsuit where a named plaintiff likewise seeks to represent a class of owners and lessees of all 2017-2019 Nissan vehicles with an automatic emergency braking feature (*Kemp*; see Attachment A). The named plaintiff in that case does not own a Subject Vehicle or a Peer Vehicle, but the class definition asserted by the plaintiff is so broad as to include Subject Vehicles, Peer Vehicles, and other vehicles.

The answers given to Request No. 2 above were gathered from Nissan's data and are current as of March 30, 2020.

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."

The information available to Nissan requested "Request No. 3" is provided in a Microsoft Access database titled "PE19-010 DATA" which contains a table titled "Q3_REQUEST_NUMBER_TWO_DATA" enclosed as Attachment A.

- 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.

Documents requested within the scope of "Request No. 2" are enclosed as Attachment B in a folder titled "REQUEST NUMBER 2 DOCUMENTS". The documents are organized by category and stored as Adobe pdf files.

The search criteria used by Nissan to identify the documents in response to "Request No. 2" are set forth in Attachment C.

- 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.

Documents requested within the scope of "Request No. 5" are enclosed as Attachment D and titled "REQUEST NUMBER 5 DOCUMENTS".

- 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.

Documents requested within the scope of "Request No. 6" are enclosed as Confidential Attachment E and titled "REQUEST NUMBER 6 DOCUMENTS".

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.

The response to "Request No. 7" is enclosed as Confidential Attachment F and titled "REQUEST NUMBER 7 RESPONSE".

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.

Nissan does not believe this issue poses an unreasonable risk to safety.

During Nissan's investigation of incidents involving false activation of the Automatic Emergency Braking (AEB) system in 2017-2018 Rogue and Rogue Sport vehicles, Nissan determined that unique roadway environments such as certain types of railroad crossings and low overhead structures might be interpreted by the system as a target in the path of travel of the vehicle. All incidents investigated by Nissan were location-specific, and in each case, the unique features of the particular roadway environment were identified and used as a basis to improve the performance of the subject AEB system.

In mid-2018, Nissan released an AEB software update that would improve target recognition in these unique roadway environments without negatively impacting the performance of the original design. The software update was made available for all affected Rogue and Rogue Sport vehicles via Technical Service Bulletin (NTB18-041). Approximately 35,000 vehicles were also proactively reprogrammed under dealer actions PC637 and P8327. In January 2019, Nissan sent a notification to all Nissan dealers announcing a customer service initiative to increase awareness of the availability of the software update for customers who experienced the issue. In February 2019, letters were mailed to all registered owners to make them aware of the available software update. Roughly 19,000 of the subject vehicles have been repaired via NTB18-041.

On August 26, 2019, Nissan launched a voluntary service campaign to encourage increased proactive adoption of the updated software. This campaign involved mailing to 100% of customers who had not previously had the update by October 2019, inclusion of the campaign on Nissan's recall lookup tool, and notification to the dealer to apply the reprogram when a customer brings their vehicle in for an unrelated service. All owners were encouraged to receive the free upgrade without regard to experiencing any issues or to the status of their new vehicle limited warranty. At the time of this response, 56% of customers (~291,000 vehicles) have received the remedy via the service campaign. Nissan is also preparing to send reminder emails to all unremedied affected vehicle owners in the near future. Throughout this process, Nissan has updated NHTSA on our efforts to mitigate field issues and address customer concerns.

When comparing the performance of the pre- and post- reprogrammed vehicles, Nissan notes a significant decrease in both complaint volume and complaint rate for the vehicles which have received the improved software. This is consistent with our expectations for the updated software.

Nissan designs its AEB system such that potential risks related to system activation are mitigated, and the driver is aware of the system status and can override the automatic braking activation at any time. If the system detects a potential collision, it provides audible and visual warnings, along with progressive braking force, to both alert the driver to the impending collision and help avoid or mitigate a potential crash. The brake lights will illuminate during an automatic braking event in the same way as the driver pressing the brake pedal, giving surrounding drivers warning that the vehicle is braking.

The AEB system is also designed to limit braking force at speeds above 25mph, preventing heavy braking at higher speeds. During an AEB activation, other safety systems remain active (such as ESC, TCS, and ABS), allowing them to further intervene if needed. Should a false activation occur (as in the unique roadway environments

described previously), the vehicle will release the brake application once the target is no longer detected, in most cases resulting in a short duration braking event and a limited reduction in the vehicle's traveling speed. At any time, driver input to the accelerator or steering will override the AEB system and deactivate the automatic braking. Combined, these system design provisions should significantly reduce the risk of any adverse effects of a false AEB activation.

Nissan is committed to the safety and satisfaction of our customers and to their confidence in our vehicles. We recognize that false AEB activation in the described unique roadway environments present a significant customer dissatisfaction issue and we have moved as quickly as possible to correct the issue while maintaining the overall design and performance parameters of the system.

As the automotive industry and vehicle owners gain more experience with advanced technology systems, additional opportunities for refinement will present themselves. Nissan expects proactive software upgrades to become a more common action to preserve customer satisfaction and confidence in related systems. Nissan does not believe such actions, when intended to refine the system, warrant a safety recall when, as here, the totality of the circumstances demonstrate that there is not an unreasonable risk to safety. For that reason, Nissan believes that the actions taken to address this issue and the mechanism in place for conducting those actions are appropriate.

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ATTACHMENT C
Request 2 Search Criteria

Data submitted subject to Request 2 data was gathered from relevant databases on March 30, 2020. The search criteria used by NNA to identify the claims identified in response to Request No. 2 is as follows:

Model and Model Years: 2017-2020 Rogue and Rogue Sport; 2018-2019 Sentra

Verbatim Keyword Search

Relevant verbatim must contain:

- A. The phrases **FORWARD EMERGENCY BRAKE, AUTOMATED EMERGENCY BRAKE, AUTOMATIC EMERGENCY BRAKE, FEB, AEB**. The words can be in any order (i.e. *EMERGENCY FORWARD BRAKE*) within the phrase.
AND
- B. At least one word or phrase from the following list:
ACTIVATE, STOPPED, ON ITS OWN, RANDOM, ENGAGE, COLLISION PREVENTION

The resulting data was reviewed for relevancy to the request. Any non-relevant documents were removed. Any documents, where relevancy could not be determined because the verbatim was too vague, are included in the submission.

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