



March 21, 2019

Administrator
c/o Deputy Administrator Heidi King
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE, West Building
Washington, D.C. 20590

PETITION FOR DEFECT INVESTIGATION

Deputy Administrator King:

In accordance with 49 U.S.C. 30162 and 49 C.F.R § 552.1, the Center for Auto Safety (Center), on behalf of its members who own and share the road with 2017-2018 Nissan Rogues, hereby petitions the National Highway Traffic Safety Administration (NHTSA) to initiate a Defect Investigation into false activation of the emergency braking system that is placing Rogue owners and other road users in danger.

Complaints submitted to NHTSA via Vehicle Owner Questionnaire (VOQ) indicate that a significant number of Rogue owners have experienced unintended braking due to Nissan's Automatic Emergency Braking (AEB). The Center has found 87 such complaints in NHTSA's VOQ data for the 2017-18 Rogue.¹ All of these complaints indicate that the Rogue's AEB engaged when no obstruction was in the path of the vehicle. Many complaints indicate that braking is abrupt or forceful, endangering both the Rogue occupants as well as people in vehicles nearby, who are forced to avoid a collision with a suddenly stopped vehicle.

Based on Nissan's actions, the manufacturer is aware of the issue and has apparently attempted to address it from a technical standpoint. However, instead of conducting a recall, Nissan has issued a Technical Service Bulletin (TSB), launched two "Quality Actions," and initiated a "Customer Service Initiative" related to the issue. When taken together, these Nissan programs do not represent an adequate long-term solution to ensure continued safe operation of Rogues and suggest that Nissan is failing to comply with recall responsibilities under the Safety Act. Accordingly, the Center files this petition as a request for NHTSA to investigate this issue thoroughly to ensure that Nissan remains compliant with its obligations under 49 CFR Part 573.

AEB complaints on the 2017-18 Rogue began to appear in NHTSA VOQ's as early as April 2017. Nissan first issued a TSB to dealers in the summer of 2018, citing "unexpected

¹ See <http://www.autosafety.org/wp-content/uploads/2019/03/2017-2018-Nissan-Rogue-AEB-Complaints-3-20.xlsx>

operation of AEB, FEB, or FCW."² The TSB outlines a repair consisting of either replacement or reprogramming of the vehicles' laser radar control unit. Nissan then initiated two "Quality Actions," one in August 2018, and another in October 2018, both of which request, but do not require, that dealers remedy the AEB condition in 2018 Rogues prior to sale.³

Earlier this year, Nissan launched a "Customer Service Initiative" intended to "increase awareness of an available update for the Automatic Emergency Braking (AEB) system."⁴ Presumably, this update is the repair outlined in the July 2018 TSB. Though the full document remains unavailable to the public via NHTSA's Manufacturer Communications search at the time of this petition, the summary portion available suggests that Nissan's communication to Rogue owners does not acknowledge the potential safety issue involved. The language treats the problem as no more than a performance update, thus providing little incentive for consumers to avail themselves of the repair opportunity until they experience the problem.

Perhaps more critically, the repair described in the Nissan "Customer Service Initiative" is available to owners at no cost *only during the basic coverage period of the warranty*, 3 years or 36,000 miles. This means that within the next year, some owners of defective Rogue AEB systems will begin being forced to pay for repairs that should have been provided under a recall at no cost and for a substantially longer period than the basic warranty.

In order to ensure that all Rogue owners are provided accurate notification of the safety issues involved, and afforded equal opportunity to receive the appropriate repair no matter when the issue occurs in relation to their warranty period, NHTSA should conduct a formal investigation and make a determination that the Rogue emergency braking system presents an unreasonable risk to safety and insist Nissan recall these defective vehicles.

Some typical examples of braking complaints include:

2018 Nissan Rogue – NHTSA ID No. 11113479 – Escondido, CA

Forward emergency braking keeps engaging with no object in front. Has happened several times. the latest time was this evening. It engaged on the interstate at a speed of 65 mph dropped speed to 45 with a semi-truck directly behind me. Other times it has happened when driving up or down hills, when accelerating on the on ramp to the freeway.

2018 Nissan Rogue – NHTSA ID No. 11187374 – Sandy Hook, CT

While driving down a straight suburban road at approximately 40 mph, the car beeps

² NHTSA's TSB database indicates that Nissan originally issued NTB18-041 in early June 2018, but the bulletin was subsequently revised and reissued as NTB18-041a on July 19, 2018. <https://static.nhtsa.gov/odi/tsbs/2018/MC-10143816-9999.pdf>

³ August 17, 2018 Quality Action: <https://static.nhtsa.gov/odi/tsbs/2018/MC-10145048-9999.pdf>

October 12, 2018 Quality Action: <https://static.nhtsa.gov/odi/tsbs/2018/MC-10148747-9999.pdf>

⁴ See NHTSA ID No. 10152995, Manufacturer Communication Number NPSB18-443 AEB U, January 25, 2019.

several times and comes to a sudden and harsh stop with the brake pedal fully depressed. Car behind almost slammed into the car. No obstruction on road, clear weather.

2017 Nissan Rogue – NHTSA ID No. 11186903 – Gross Pointe Park, MI

While the vehicle was in motion on both city streets and interstate highways the automatic emergency brake (AEB) has activated when there wasn't any traffic or obstacles present. At one time on the highway it almost caused an accident due to sudden and abrupt unneeded braking slowing the car unexpectedly nearly causing cars behind me to run into me. This vehicle behavior has occurred multiple times.

2018 Nissan Rogue – NHTSA ID No. 11185890 – Minnetonka, MN

The automatic emergency brake system engages when there is a clear road and no obstructions in front of or around the vehicle whatsoever. The most recent incident happened while the car was in motion on a highway going 45-50 mph - the AEB system deployed and the car fully engaged the brakes in an attempt to stop. This was on an open road with no other vehicles or obstructions in the road or even in my direct line of sight. there are many others who seem to have reported this issue to their dealer's service dept. and have been told there is nothing wrong with the sensors. I live where ice is common - had this happened even traveling at a slower pace in bad road conditions, I could have spun out, slid into other traffic, into the ditch, etc. this is an extremely dangerous situation...it's a rear-end collision or even worse accident just waiting to happen.

2017 Nissan Rogue – NHTSA ID No. 10972343 – Canton, MI

The vehicle was traveling on a road that goes under a bridge on I-275. The front camera system mistook the bridge for an object on the road and activated the brakes. The car braked on its own. The car did this on two separate occasions and was taken to the dealer on both occasions. On the 2nd occasion Nissan engineering declared the system worked as intended. The vehicle was within its lane of travel when approaching the bridge.

2018 Nissan Rogue - NHTSA ID No. 11073644 – Saratoga Springs, NY

Brand new 2018 Nissan Rogue that has around 2,000 miles on the car: automatic emergency braking system engaged when driving straight down a country road where no other car was present. An audible warning sounded and the vehicle slowed down on its own. Since the incident, an error light for the automatic emergency braking system flashes on the dashboard with an audible warning, then disappears. All the incidents have occurred driving straight down a country road when no other car is in front of my own, and this has occurred six times over the last five weeks.

2018 Nissan Rogue - NHTSA ID No. 11089960, Westbury, NY

The emergency braking engages without reason. This has led to 2 near misses. Once the car just stopped in the road. I thought it might have misinterpreted a snow pile. Then, driving over a train crossing, the car just stopped. Luckily I was able to get it moving before a train came. Very scary! When I called the service department, they were not

very concerned. They thought there would be a software fix in a few weeks and I should just shut off the emergency braking feature until then! I paid extra for this feature that is most likely going to get me in an accident!!! Crazy!! I believe a recall is needed asap before someone gets killed.

2018 Nissan Rogue – NHTSA ID No. 11123321 – Manassas, VA

Forward emergency braking system engages while approaching a metal roadway surface and comes to a complete and abrupt stop. The roadway is a driveway on a private property. This vehicle is equipped with a safety system designed to prevent collisions with objects ahead, but engages when there is no object in front. The dealership has been aware of this issue since July 5, 2018 and the manufacturer has been aware since July 26, 2018. In several instances, motorist traveling behind were unexpectedly surprised and forced to take evasive maneuvers to avoid collision.

2018 Nissan Rogue – NHTSA ID No. 11128704 – Bronx, NY

Emergency stop was activated abruptly while driving on highway no vehicles were in front of my when this happened the vehicle behind almost rear ended me. I took my Rogue to Nissan last week for braking system failure. Apparently it was a cylinder assy-br. however yesterday this happened to me. I am afraid of driving my SUV. Nissan doesn't seem to acknowledge this issue and we are at risk. Consumer stated this event happened to me 3 times. The second time that happened the entire brake system came into a failure. the 3rd time it happened after they "fixed the issue."

2018 Nissan Rogue – NHTSA ID No. 11099313 – Palm Coast, FL

On May 31, 2018, I was driving at about 50 mph on a 4 lane road with no cars behind me, and the nearest car in front of me about a mile ahead. Suddenly my car came to a full and complete stop and then proceeded at about 5 mph. This was accompanied by two warning beeps and a severe grinding noise. At no time was my foot on the brake. I had the car towed to my dealership, but they could find nothing wrong, nor could they duplicate the problem. I called their national consumer hotline, but they said they have never heard about the problem. A quick search on Google reveals that there are many complaints on this issue.

A review of all complaints indicates that the AEB system may be triggered by railroad tracks, traffic lights, bridges, parking structures, and other fixed objects that do not pose a threat to the vehicle. A significant portion of the 87 complaints occurred during interactions with railroad tracks or other metal objects in front of the vehicle. Nissan's recent "Customer Service Initiative" acknowledges this issue as well. However, many of the complaints involve incidents that occurred on the open road with no obstacles in sight, or in response to other motor vehicles that appear to be operating safely. Additionally, a number of complaints suggest that the vehicle was on an upward or downward incline at the time of false activation.⁵

⁵ It is worth noting that the 2017-2018 Rogue far outpaces every other vehicle on the market in NHTSA complaints categorized under Forward Collision Avoidance. The only vehicle that approaches the Rogue in number of

Nissan AEB is part of Nissan’s “Intelligent Safety Shield,” which serves as a critical life-saving technology when performing correctly. Nissan introduced AEB into Rogues halfway through the 2017 model year as part of its commitment to voluntarily introduce this technology into all of its vehicles by the agreed September 2022 target many manufacturers have set. Notably, there is no Federal Motor Vehicle Safety Standard (FMVSS) regulating the performance of AEB in the United States. Compliance or certification testing related to such a standard could have prevented this issue from making its way into two model years’ worth of production.⁶ Without such standards or certification, NHTSA’s use of its investigative and enforcement authority is critical to ensuring that AEB-equipped vehicles perform safely.

For the reasons discussed above, the Center urges NHTSA to grant this Petition for Defect Investigation into 2017-2018 Nissan Rogue vehicles. Since VOQ complaints continue to be submitted, despite Nissan’s attempt at a “non-recall recall” via service bulletin, it is reasonable to conclude that more Nissan Rogues will experience false AEB activation, threatening the safety of Rogue owners, their passengers, and other vehicles and humans on the road. Pursuant to 49 U.S.C. § 30162(d), the Center formally requests NHTSA respond to this petition within 120 days, if not sooner, as Nissan has already acknowledged the problem, and it presents a clear safety issue. In the meantime, the Center will do its part to inform the public of the risk these vehicles present and the need for Nissan to issue a recall, notify owners, and repair these vehicles as quickly as possible.

Thank you for your prompt consideration of this petition.

Sincerely,



Jason Levine
Executive Director

complaints is the 2013-15 Toyota Avalon and Avalon Hybrid, which was recalled for failures very similar to those seen in Rogue complaints. See: <http://www.autosafety.org/wp-content/uploads/2019/03/Forward-Collision-Avoidance-Complaints.jpg>

⁶ See Center for Auto Safety petition on Automatic Emergency Braking: <https://www.autosafety.org/wp-content/uploads/import/NHTSA%20CWD%20Petition%20for%20Rulemaking%20v4.pdf>