

Syon
NVS-213

JUN 12 2013

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Kenneth M. Bush
Associate Director, Government Relations
Suzuki Motor of America, Inc.
3251 E. Imperial Highway
P.O. Box 1100
Brea, CA 92822-1100

Re: Request for Confidential Treatment in Response to EA 12-005

Dear Mr. Bush:

This responds to your March 4, 2013 request for confidential treatment for Suzuki Motor of America, Inc. (Suzuki) information submitted in response to an Office of Defects Investigation information request (IR) in EA12-005. Suzuki requests that documents marked confidential on the CD-ROM labeled "Suzuki Response to NVS-212-pco; EA 12-005 CONFIDENTIAL BUSINESS INFORMATION" attached to its response to the IR be granted confidential treatment. Suzuki requests that this information be kept confidential indefinitely.

Suzuki seeks confidential treatment for information it considers to be confidential business information and information that is not released to the public. This information is marked confidential in electronic submissions contained on CD-ROMs.

I have reviewed your submission, including the materials that you claim are entitled to confidential treatment and the arguments that you assert in support of your claims. While I have not reached a conclusion regarding each individual argument that you assert, I conclude that, with the exception of the compliance test data discussed below, the materials for which you requested confidentiality are entitled to confidential treatment pursuant to Exemption 4 of the Freedom of Information Act, 5 U.S.C. §552(b)(4).

With regard to the compliance test data included in your request, the agency has long taken the position that, although testing is not required before certification, testing conducted for purposes of certification of compliance should not be withheld from public disclosure. While we recognize that such test results may have competitive consequence, the agency believes that the public's interest in having access to a company's basis for certification outweighs the manufacturer's more limited interest in protecting competitively sensitive information that may be contained in the compliance testing. Further, we do not believe that disclosure will discourage such testing or discourage the development of other

means of documenting compliance (such as computer modeling). Section 30115 requires a good faith basis and exercise of reasonable care in certification of compliance and, by documenting that basis, manufacturers generally are able to justify their certification should it be later questioned.

Section 30167(a)(4) of the Vehicle Safety Act provides the agency with the authority to disclose otherwise confidential information “when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101.” Section 30101, in turn, sets forth the purpose of the Vehicle Safety Act, which “is to reduce traffic accidents and deaths and injuries resulting from traffic accidents,” including through the prescription of vehicle safety standards. Section 30115 requires certification to those safety standards and Section 30112 prohibits the sale of noncompliant vehicles.

NHTSA’s investigations ensure compliance with those statutory provisions and with the federal motor vehicle safety standards. To the extent a company based that compliance on vehicle testing, the public has a strong interest in access to that information. We believe the public’s access to information relating to the manufacturer’s compliance with legal obligations to meet the federal motor vehicle safety standards, including its margin of compliance, outweighs the potential competitive harm flowing from the disclosure of such compliance information. We will not protect from disclosure test data that forms the basis for certification with federal motor vehicle safety standards. Accordingly, your request for confidential treatment for the documents listed in Appendix A of this letter is denied.

This partial grant of confidential treatment is subject to certain conditions. The information may be disclosed under 49 CFR 512.22 based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances that may affect the protection of the information. 49 CFR 512.10. Furthermore, this information may be disclosed if such disclosure would be in the public interest, pursuant to the procedures established in 49 CFR 512.23. If necessary, you will be notified prior to the release of any information under the procedures established by our regulations. 49 CFR 512.22(b).

If you disagree with the partial denial of your request noted above, you may request reconsideration. If you seek reconsideration, your request must be addressed to NHTSA’s Chief Counsel and filed within 20 working days after the receipt of this letter. 49 CFR 512.19(a). Any such request should contain additional justification supporting your claims for confidential treatment consistent with 49 CFR Part 512 and applicable case law.

Sincerely,

Original Signed By

Otto G. Matheke, III
Senior Attorney