

March 8, 2013

**ISUZU**  
DET-13-036

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OFFICE OF CHIEF  
COUNSEL

Mr. O. Kevin Vincent  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E. (NCC-110)  
West Building  
Washington, D.C. 20590

RE: Request for Confidential Treatment Concerning  
Isuzu Response to Peer Information Request in NVS-212-pco/EA12-005

Dear Mr. Vincent:

This letter seeks confidential treatment, pursuant to 49 C.F.R. Part 512, for information submitted to the National Highway Traffic Safety Administration (NHTSA) on behalf of Isuzu Motors Limited and Isuzu Manufacturing Services of America, Inc. The information for which Isuzu requests confidential treatment consists of portions of Isuzu's response to the Office of Defects Investigation (ODI) peer information request in the above-captioned investigation. Specifically, Isuzu requests confidentiality for developmental vehicle testing, and for internal summary sheets enumerating aspects of the certification test processes. Isuzu also understands that the agency will withhold personal identifying information of vehicles under Freedom of Information Act (FOIA) Exemption 6.

All of these materials have been marked "Confidential Business Information" (CBI) as required by 49 C.F.R. § 512.6. The materials for which confidential treatment is sought are contained in Attachment 4, Testing Information, on the attached CD. The attachment provides tests by vehicle. The CBI tests are clearly identified within these vehicle files. Confidential test videos are identified as CBI in the name of the video.

To allow the agency to evaluate the claim of confidentiality, Isuzu has translated one of the certification test report summary sheets (the summary sheet for the Model Year 2000 Rodeo compliance test report, document "sample FT Page ET5-1244CBI.pdf" contained in Attachment 4 on the attached CD). The remaining summary sheets are essentially the same for purposes of this confidentiality claim. Although the developmental testing reports contain some Japanese writing, Isuzu believes that the competitive harm of such documents is apparent, particularly considering the voluntary nature of the submission and the fact that the documents contain numerous drawings and numeric test results. In light of docket memos indicating that the agency is not requiring production of developmental testing from other peer respondents, and the substantial burden of translating these documents, Isuzu reserves the right to resubmit its response without the developmental testing should the agency require translation. Isuzu respectfully requests that the agency provide us an opportunity to do so prior to any adverse decision with regard to this confidentiality claim.

We understand that the peer review information request inadvertently referenced 49 U.S.C. § 30166 and that the agency considers the information responsive to this request to be voluntarily submitted for purposes of FOIA, and therefore subject to the test announced in *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992) and incorporated into the agency's regulations at 49 C.F.R. §512.15(d). Under that standard,



information must be afforded confidential treatment if it is not customarily released to the public. The Isuzu information for which confidential treatment is sought satisfies that criteria. The information would additionally be entitled to confidential treatment under *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), because it is propriety information the release of which is likely to cause competitive harm.

Development Testing. While Isuzu understands the agency does not, for policy reasons, protect from disclosure testing conducted with the intent of providing the basis for certification to the federal motor vehicle safety standards, the Isuzu information for which confidential treatment is sought includes testing conducted during vehicle development. This testing was conducted not for the purpose of certification, but rather for the purpose of educating the further design and engineering of the vehicle as a whole. Development testing is not relied upon for certification of the vehicle. Nor does, or has, Isuzu released these test reports to the public. Disclosure of this information would make it more difficult for the agency to obtain similar information in future peer review investigations, and indeed the docket reflects that not all respondents will be providing developmental testing information in their responses. The information is therefore entitled to confidential treatment under *Critical Mass*.

Disclosure would additionally cause significant competitive harm to Isuzu, and is therefore also entitled to protection under *National Parks*. Disclosure of developmental testing would allow competitors to see Isuzu's approach to designing and engineering its products, the frequency with which it tests, the type of tests conducted, the results of those tests, and the company's responses to the test results. Competitors could not obtain access to this information, as it cannot be reverse engineered. Such information is relevant to each of the vehicle segments in which Isuzu conducts business and in markets outside the United States. Accordingly, while Isuzu does not currently sell light duty vehicles in the United States, disclosure of its developmental testing would provide competitors in other segments and outside the United States information about Isuzu's engineering, design and development, resulting in substantial competitive harm.

Testing Summary Sheets. Isuzu also seeks confidential treatment for the internal summary sheets enumerating aspects of the certification test processes. Isuzu does not seek confidential treatment for the underlying certification test report itself. The summary sheets, however, reveal significant information about Isuzu's confidential and proprietary process for reporting information to its management, what information it highlights for purposes of later development and design efforts, and the efforts that Isuzu makes to control various types of information. This data would reveal to competitors information about Isuzu's internal processes and considerations that cannot be otherwise obtained through reverse engineering. These summary sheets, including the form of the summary sheet itself, have not been publicly disclosed and Isuzu makes considerable effort to retain their confidentiality. Disclosure would also reveal significant elements of Isuzu's protocols and assist competitors in other vehicle segments and other markets, causing substantial competitive harm to Isuzu. The summary sheets, therefore, are also entitled to confidential treatment under *Critical Mass*, as well as under *National Parks*.

Isuzu has taken measures to ensure the information referenced above has not been disclosed or otherwise made available to any persons outside of Isuzu, its parents, suppliers, partners and affiliates. Insofar as is known by Isuzu, this information has never been released or become available outside of Isuzu, except to these related parties, and portions of it may have been made available as necessary to suppliers, partners or to counsel. Such disclosures do not compromise the confidential nature of the information because of the close business relationship between Isuzu and its affiliates, nor does selective disclosure to advisers and

suppliers bound by obligations of confidentiality compromise such confidentiality. Insofar as is known by Isuzu, this information has never appeared publicly.

We request that confidentiality be granted indefinitely, until such time as the information is no longer held confidential by Isuzu. We would appreciate your notifying us of your decision when practicable.

Please contact me at (734) 582-9262 if there are any questions concerning this request, or in the event that NHTSA receives a request for disclosure or otherwise seeks to disclose this information.

Sincerely,



Jeffery A. Marsee  
Chief Representative  
Emissions & Safety  
Isuzu Manufacturing Services of America, Inc.

Enclosures: Two complete copies of submission  
One redacted version of submission  
Certificate in Support of Request for Confidentiality

cc: Mr. Frank S. Borris II



**CERTIFICATE IN SUPPORT OF  
REQUEST FOR CONFIDENTIALITY**

I, Jeffery A. Marsee, pursuant to the provisions of 49 CFR Part 512, state as follows:

(1) I am the Chief Representative, Emissions & Safety, for Isuzu Manufacturing Services of America, Inc. (Isuzu), and I am authorized by Isuzu to execute documents on their behalf;

(2) I certify that the information marked confidential in Isuzu's response to NHTSA's peer information request in EA12-005 is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C § 552(b)(4);


(3) I hereby request that the information marked confidential in the Isuzu response be protected on an ongoing basis;

(4) This certification is based on the information provided by the responsible personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside Isuzu;

(5) Based upon that information, and to the best of my knowledge, information and belief, the information for which Isuzu has claimed confidential treatment has never been released or become available outside of Isuzu, except as hereinafter specified: the information has been made available as necessary for the purpose of obtaining advice and assistance from counsel and other confidential advisors or in the course of confidential business relationships;

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside of Isuzu because of unauthorized or inadvertent disclosure except as stated in Paragraph 5; and

(7) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the 8 day of March, 2013.

  
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Jeffery A. Marsee