

NSA 71
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AUG 29 2005

Paul Fabien
Ford Motor Company
Suite 1400
Parklane Towers West
Three Parklane Blvd.
Dearborn, MI 48126

Re: Request for Confidential Treatment of Information Presented to NHTSA at a Meeting at NHTSA's Office of Defects Investigation Related to EA05-003

Dear Mr. Fabien:

This is in response to a letter from James P. Vondale, dated May 25, 2005, in which he requests confidential treatment for certain information that Ford Motor Company (Ford) presented to NHTSA's Office of Defects Investigation (ODI) on May 18, 2005 regarding EA05-003 related to 2003 and 2004 model year F-Super duty and Excursion vehicles equipped with 6.0L diesel engines. Ford seeks confidential treatment for a slide show presentation contained in a single CD-ROM that is identified as 5-18-05 Ford Presentation (Updated 5-25-05). In addition to the presentation, and in order to address a question raised by the agency during the presentation, Ford includes a supplemental slide regarding the mileage accumulation model used in its analysis. Ford states that it maintains this information in a record keeping system designed to control the information's dissemination. Ford requests confidential treatment for a period of ten (10) years.

As to the information contained in the slide show presentation, Ford asserts that it contains commercial information and is exempt from disclosure pursuant to 49 CFR § 512.15, 5 U.S.C. § 552(b)(4), and 49 U.S.C. § 30167. Ford claims that the disclosure of the information on the CD-ROM would likely cause substantial competitive harm to Ford (as contemplated in 49 CFR § 512.15, 5 U.S.C. § 552(b)(4), and 49 U.S.C. § 30167). Ford states that the slide show presentation contains detailed warranty, reliability, and root cause analyses, as well as test procedures and results. Ford states that the information concerning Ford's analysis of warranty, reliability, and root cause could be used by competitors to identify quality issues and modify competitive components and strategies to the detriment of Ford. It also asserts that such information could be used by competitors to develop or improve their own products and processes without the need to invest the substantial resources invested by Ford to develop the information.

For the reasons discussed further in this correspondence, I am granting your request for confidential treatment.

I note that Ford's response to the agency's inquiry was not required to be submitted to NHTSA under 49 U.S.C. § 30166 because the agency did not transmit a formal request to Ford for these materials. Accordingly, the presentation, along with the additional slide, that you have identified in your letter will be treated as having been voluntarily submitted to the agency. Voluntarily submitted information provided to an agency may be withheld from disclosure under Exemption 4 of the Freedom of Information Act if the submitter does not customarily disclose that information to the public. *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). The agency believes that the content of the slide show is not the type of information that Ford would customarily disclose to the public. Accordingly, the entire slide show presentation will be withheld under Exemption 4.

Finally, because the agency evaluated Ford's request for confidential treatment under the voluntary submission test, the agency will not address the merits of Ford's claims of substantial competitive harm. This test applies to required submissions to the Government, a situation that is not at issue here. See, e.g. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Notwithstanding this grant of confidential treatment, the information may be disclosed under the various provisions set forth in 49 U.S.C. § 30167 and 49 C.F.R. Part 512. 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). You will be notified prior to the release of any information under the procedures established by our regulations (49 CFR § 512.22(b)).

Sincerely,

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Otto G. Matheke, III
Senior Attorney

NHTSA:NCC30:DiMarsico:pll:8/23/05:NCC05-005047
NCC-30:Subj/Chron
NSA-11:Scott Yon w/enclosusres
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