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June 11, 2020

Mr. Jonathan C. Morrison  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE, Room W41-227  
Washington, DC 20590

Re: NHTSA Information Request EA18-002 Request for Confidential Treatment

Dear Mr. Morrison:

Today, Ford Motor Company ("Ford") is submitting its response to the information request in the above-referenced investigation. Because the response includes confidential business information that should be withheld from disclosure, Ford is submitting the response through your office with this request for confidential treatment pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).

The supporting information required by your regulations is set forth below.

**A. Description of the Information (49 C.F.R. § 512.8(a))**

The documents and pages for which Ford is requesting confidential treatment are outlined in Attachment 1. We are supplying two copies of the entire confidential submission, together with a "public" copy that does not include the confidential information. Two compact discs containing copies of the documents are labeled "CONFIDENTIAL" and documents contained in the electronic files are marked "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONFIDENTIAL BUSINESS INFORMATION" in the top margin as appropriate. The third compact disc is labeled "PUBLIC" and contains a "public" copy of the documents. Ford notes that these PDF documents were created using Adobe Acrobat 9.0 Professional and must be printed by selecting "document and comments" or "document and markups" in order to print the appropriate bracket markings. The confidential business information in the submission consists of internal analyses and quality control information.

**B. Confidentiality Standard (49 C.F.R. § 512.8(b))**

This submission is subject to the substantial-competitive-harm standard (49 C.F.R. § 512.15(b)).

### C. Justification for Confidential Treatment (49 C.F.R. § 512.8(c))

Part 512 and FOIA Exemption 4 protect the confidentiality of information that, if disclosed, would be likely to cause substantial competitive harm to the submitter. *See* 49 C.F.R. § 512.15(b); *see also, e.g., Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). Under FOIA Exemption 4, a submitter need not establish a certainty that competitive harm will result from a disclosure. Rather, a submitter need establish only that competitive harm is a *likely* result of a disclosure. *See, e.g., Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 29 (D.D.C. 2000).

FOIA Exemption 4 was enacted to prevent disclosures that would “eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter’s] product.” *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). “Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA’s principal aim of promoting openness in government.” *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981).

In addition, courts have recognized that Exemption 4 may be invoked to prevent the substantial competitive harm that can be expected from disclosures that would inform competitors about a firm’s “operational strengths and weaknesses.” *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976); *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, No. Civ-03 C 195-SBC, 2005 WL 1241141, at \*7 (D.D.C. May 24, 2005). Furthermore, information about costs and related financial matters can readily be used for competitive advantage against submitters and, therefore, has long been protected from disclosure under the FOIA. *See, e.g., Gulf & W. Indus., Inc. v. United States*, 615 F.2d 527, 529-530 & n.6 (D.C. Cir. 1979); *Braintree Elec. Light Dep't v. Dep't of Energy*, 494 F. Supp. 287, 290 (D.D.C. 1980); *Fisher v Renegotiation Bd.*, 355 F. Supp. 1171, 1175 (D.D.C. 1973).

The submission includes a great deal of information about how Ford conducts internal analyses, approaches quality control issues, tracks emerging trends in product quality issues, and engages in product evaluation and remediation processes. The disclosure of such information would cause Ford substantial competitive harm. As the D.C. Circuit has noted, information that could be used by competitors “to improve their own manufacturing and quality control systems” merits protection under FOIA Exemption 4. *See United Technologies Corp. v. U.S. Dep't of Def. & Def. Contracting Mgmt. Agency*, 601 F.3d 557, 564 (D.C. Cir. 2010). Every vehicle manufacturer must perform internal analyses and address product quality issues. A disclosure revealing how Ford addresses these matters would enable competitors to develop analytic techniques and product evaluation processes at far less cost and in far less time than independent development efforts would involve. As a result, competitors could use the information to bring competitive products to market faster and at less expense, and to address product evaluation issues at lower cost, than they otherwise could. Like much of the other information at issue in this request, this information also would shed light on Ford’s operational capabilities.

Mr. Jonathan C. Morrison

June 11, 2020

Page 3

**D. Class Determination (49 C.F.R. § 512.8(d))**

The information is not subject to a class determination.

**E. Duration For Which Confidential Treatment Is Sought (49 C.F.R. § 512.8(e))**

Ford requests that the information be accorded confidential treatment for a period of 10 years.

**F. Contact Information (49 C.F.R. § 512.8(f))**

Please direct all written notices to me at Ford Motor Company, Suite 400, Fairlane Plaza South, 330 Town Center Drive, Dearborn, Michigan 48126. Please direct all non-written communication to Ms. Jennifer Jousma, Esq. in Ford's Office of the General Counsel who may be contacted by telephone at (313) 845-8780.

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Ford is supplying two copies of the entire submission, together with a "public" copy that does not include the confidential information. As noted above, we are also supplying an overview to assist in the identification of the documents for which Ford is requesting confidential treatment as Attachment 1. A certificate in support of confidentiality executed on behalf of Ford is included as Attachment 2.

If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, Ford respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted. In the event that the agency should conclude that all or part of the submitted information is not to be given confidential treatment, Ford asks the agency to provide reasonable notice prior to any contemplated disclosure in order that Ford may pursue such legal remedies as it may choose.

Sincerely,



Desi Ujkashevic

Enclosures