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June 27, 2019

VIA FEDERAL EXPRESS

Mr. Jonathan Morrison, Chief Counsel
Office of the Chief Counsel
National Highway Traffic Safety Administration
West Building W41-227
1200 New Jersey Avenue, SE
Washington D.C. 20590

Re: Hyundai Motor America – Request for Confidential Treatment

Dear Mr. Morrison,

On behalf of Hyundai Motor America (“HMA”), we request confidential treatment for certain designated information submitted in response to NHTSA’s Office of Defects Investigation (“ODI”) April 12, 2019 Information Request (as amended on May 23, 2019) with regard to PE19-003, an inquiry into non-crash vehicle fires on model year (“MY”) 2011-2014 Hyundai Sonata and Santa Fe vehicles. HMA asserts this information is protected from public disclosure pursuant to 5 U.S.C. § 552(b)(4) (“Exemption 4”) and § 552(b)(6) (“Exemption 6”), and 49 C.F.R. § 512.15(d) and (e). HMA seeks confidential treatment for certain types of information that are regularly and properly protected by the agency in other submissions. HMA seeks permanent confidential treatment for this information in its entirety.

Along with this request, HMA has provided a copy of its response and the supporting information in electronic format on a CD-ROM, with the exterior labelled “HYUNDAI MOTOR AMERICA PE19-003 VOL. 1 JUNE 27, 2019 CONFIDENTIAL BUSINESS INFORMATION.” The files are in the format requested by the agency (Microsoft Access 2010 or a compatible format) and “Confidential Bus Info” appears in the unredacted native file names.

I. Standard for Confidential Business Information

Generally, Exemption 4 protects trade secrets and privileged or confidential commercial or financial information. It 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).

The standard for confidential information had previously been set forth by the D.C. Circuit in *National Park & Conservation Ass'n v. Morton*, stating that commercial and financial information that is required to be submitted to a federal agency "is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." 498 F.2d 765, 770 (D.C. Cir. 1974). The documents for which HMA is seeking confidential treatment qualify as confidential under the *National Park* standard.

In addition, the United States Supreme Court's recent decision in *Food Marketing Institute v. Argus Leader Media*, No. 18-481 (U.S. June 24, 2019) further supports HMA's position through its holding that FOIA allows a federal agency to withhold from disclosure records submitted by a private entity where the submitter keeps the records secret and the agency promises to keep the records from disclosure. HMA customarily keeps private the information described in Section II of this letter, and HMA believes that the agency has assured HMA and other private entities that it will keep from disclosure the type of information referenced in this letter. Whether analyzed under *National Park* or *Food Marketing Institute*, the documents for which HMA is seeking confidential treatment qualify as confidential and should be protected from public disclosure pursuant to Exemption 4.

II. Internal Product Evaluations and Assessments

The documents for which HMA is seeking confidential treatment are responses prepared by HMA and HMA's counsel, in connection with the ODI's April 12, 2019 Information Request (as amended on May 23, 2019) with regard to PE19-003. These responses contain confidential business information including internal product evaluations and assessments. Consistent with the agency's longstanding practice, disclosure of the company's internal assessments and evaluations are protected under *National Parks* (and now *Food Marketing Institute*) because they reveal details about HMA's products that could not otherwise be obtained without significant investment, and because they reveal the type of information and analysis that HMA considers important when evaluating potential product concerns. Disclosure of this information would provide a windfall to HMA's competitors, and is precisely the type of windfall that Exemption 4 was intended to protect against. The release of these responses could cause substantial harm to HMA if the information was disclosed to the public.

The documents for which Hyundai is seeking confidential treatment under FOIA Exemption 4 on the above-described basis include the following:

- Response to Request Nos. 2 and 3: HMA's Response to Request No.2 includes a spreadsheet detailing the number of consumer complaints, field reports, property damage claims and legal proceedings related to the broadly-defined defect categories contained in

the Information Request. If released, these figures would cause substantial competitive harm to HMA because they would provide competitors with insight into HMA's product strengths, areas of negative consumer feedback and levels of claims submitted and field reports prepared related to a broad variety of circumstances. HMA's Response to Request No. 3 contains the underlying data used to compile the information provided in Response to Request No. 2. Release of any of this information would provide HMA's competitors with an awareness of product performance feedback and an improperly-obtained competitive advantage.

- Response to Request No. 5: HMA's Response to Request No. 5 concerns the number of warranty and goodwill claims, and supporting documentation related to the broadly-defined defect categories contained in the Information Request. This information would cause substantial competitive harm to HMA if released. This information would provide competitors with insight into HMA's product strengths and weaknesses and the levels of warranty claims submitted related to the defect categories. Release of this information would also reveal the information HMA relies upon in making warranty-related determinations. Information related to the financial costs associated with these warranty claims could also be used to provide other manufacturers with an unfair competitive advantage. Reports and data related to warranty claims are specifically exempt from disclosure and are included in NHTSA's Early Warning Reporting Class Determinations, Appendix C, because the agency recognized the adverse effects of the release of this information. The same rationale for protecting this category of information applies equally outside of that context, and confidential treatment is appropriate here.

III. Personal Identifying Information

HMA's production also includes personal identifying information that should be protected from disclosure by Exemption 6 of the Freedom of Information Act, 5 U.S.C. § 552(b)(6). Given the substantial volume of information contained in the data produced and the integrated nature of the personal identifying information, HMA has not redacted personal identifying information. HMA indicates below those responses to specific requests that contain or are likely to contain personal identifying information:

- Response to Request 3 (Customer name, address, contact information and VIN information)
- Response to Request 5 (Customer name, address, contact information and VIN information)

If you receive a FOIA request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, HMA respectfully requests notification of the FOIA request and an opportunity to provide further justification for confidential treatment, if warranted, and to allow HMA to conduct a deeper review of the request information.

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Please contact me if you have any questions with regard to this confidentiality request.

Sincerely,



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Enclosures