



Fisker Inc.
1888 Rosecrans Avenue
Manhattan Beach, California 90266
Fiskerinc.com

March 22, 2024

John Donaldson
Deputy Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington D.C. 20590

Re: Request for Confidential Treatment – Fisker Group Inc.

Dear Mr. Donaldson:

This request for confidential treatment is submitted by Fisker Group Inc. ("Fisker"). Pursuant to 5 U.S.C. § 552 and 49 C.F.R. Part 512, Fisker seeks confidential treatment for information within the following documents being submitted in response to PE24-001:

- "Q1 – RESPONSE - CONFIDENTIAL" content within brackets on page 1, and the entire contents of page 2
- Entire contents of "PRODUCTION DATA"
- "Q7 – RESPONSE – CONFIDENTIAL" content within brackets on page 1

As a general matter, Exemption 4 of the Freedom of Information Act ("FOIA") 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 these 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).

Fisker is seeking confidential treatment under the test announced in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019) (finding that confidential protection under FOIA Exemption 4 requires two conditions: (1) that the information is kept private or closely held by the person providing it; and (2) that the person receiving it provides some assurance that the information will be kept secret).

In this case, granting confidential treatment for the provided presentation is consistent with these principles. First, the information provided by Fisker is customarily and actually treated as

private. Fisker does not release or otherwise provide this information or any information like it to the public. Second, consistent with the agency's longstanding practice of maintaining confidential treatment of this type of internal and sensitive business information, this constitutes assurance that NHTSA will continue to treat the information that Fisker has provided as confidential.

The confidential information that Fisker has submitted contains confidential information regarding, among other things, VIN numbers, production and sales information, vehicle software information, and information regarding Fisker's internal business systems. Maintaining the confidential nature of all of this information is necessary for Fisker to remain competitive in the industry. All of this information is used for internal operations and analysis only and it is precisely the type of information for which the agency has traditionally granted confidential treatment.

The information contained in Fisker's submitted materials has not been publicly disclosed and Fisker has taken measures to ensure that the information contained is not disclosed or otherwise made available to any persons outside of the company, or its parents, suppliers, or affiliates. Insofar as is known by Fisker, this information is not known outside of the company, except for these related parties. The information may have been disclosed, only as necessary for the purposes of obtaining advice and assistance from outside counsel and other confidential advisers. However, such disclosures do not compromise the confidential nature of the information.

Fisker respectfully seeks confidential treatment of the entirety of the information provided to the agency and also requests that the information be treated as confidential for an indefinite period of time. A copy of the materials for which confidential treatment is requested is being provided with appropriate markings. Confidential treatment is being requested for the entire set of materials, thus no public-facing documents are being provided.

Please contact me if you have any questions.

Sincerely,


[Justin Walker \(Mar 21, 2024 22:10 PDT\)](#)

Justin Walker
VP, Legal, Managing Counsel

Enclosures



Certificate in Support of Request for Confidentiality

I, Justin Walker, pursuant to the provisions of 49 CFR part 512, state as follows:

(1) I, Justin Walker, am Vice President, Managing Counsel of Fisker Group Inc. (Fisker), and I am authorized by Fisker to execute this certificate on its behalf;

(2) I certify that the information contained in the attached materials 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) (as incorporated by reference in and modified by the statute under which the information is being submitted);

(3) I hereby request that the information contained within the following to be protected indefinitely;

- “Q1 – RESPONSE - CONFIDENTIAL” content within brackets on page 1, and the entire contents of page 2
- Entire contents of “PRODUCTION DATA”
- “Q7 – RESPONSE – CONFIDENTIAL” content within brackets on page 1

(4) This certification is based on the information provided by the responsible Fisker 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 Fisker;

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which Fisker has claimed confidential treatment has never been released or become available outside Fisker (except as hereinafter specified);

(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 Fisker 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 22th day of March, 2024.

Justin Walker
Justin Walker (Mar 21, 2024 22:10 PDT)

Justin Walker
Fisker Group Inc.