CHRYSLER

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OFFICE OF CHIEF COUNSEL

David D. Dillon
Sr. Manager
Product Investigations & Campaigns

March 2, 2012

Mr. O. Kevin Vincent
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE, Room W41-227
Washington, DC 20590

Re: Request for Confidential Treatment of Business Information Submitted

Dear Mr. Vincent:

Chrysler Group LLC ("Chrysler") is voluntarily submitting a copy of a presentation entitled, "NHTSA Visit 02 08 12 V09 - KJ IAD - CBI.pdf." A request for a copy of this presentation was made during a conversation on February 27, 2012, from Mr. Peter Ong to Mr. David D. Dillon of Chrysler in connection with the ongoing PE11-035/EA12-001 investigation. Based on a careful review of the submission, Chrysler has determined that some of the information in the submission is confidential and should be accorded confidential treatment under this agency's regulations at 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4).[1] Therefore, Chrysler is submitting the enclosed CDs together with this request for confidential treatment to the Office of Chief Counsel.

The information required by Part 512 is set forth below.

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

The business information for which confidential treatment is being sought is contained in a single pdf document, entitled "NHTSA Visit 02 08 12 V09 - KJ IAD - CBI.pdf," which provides analysis and assessments. (Bates page # PE11-035/EA12-001 – Chrysler Group LLC – 05-10 and 12-22). The confidential business information consists of the entirety of slides 5-10 and 12-22. Each of these slides is marked "Entire Page Confidential Business Information."

[1] Chrysler has taken steps to assure that the CDs are free of any errors or defects that would prevent NHTSA from opening the files on the discs. If, however, the agency is unable to open the files, Chrysler respectfully requests that the agency inform Chrysler of the issue, so that Chrysler may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional.

Chrysler Group LLC | 800 Chrysler Drive | CIMS 482-00-91 | Auburn Hills, MI USA | 48326-2757

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

This submission is subject to the voluntary submission standard set forth in 49 C.F.R. § 512.15(d).

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

Information is voluntarily submitted if the agency did not invoke its authority to compel the submission of the information, even if the agency had such authority. *See Parker v. Bureau of Land Management*, 141 F. Supp. 2d 71, 78 n.6 (D.D.C 2001) ("In addition to possessing the authority to compel submission, the agency must also exercise that authority in order for a submission to be deemed mandatory."); U.S. Dept. of Justice, Guide to the Freedom of Information Act at 279 (2009) (http://www.justice.gov/oip/foia_guide09/exemption4.pdf) ("Furthermore, the existence of agency authority to require submission of information does not automatically mean such a submission is 'required'; the agency authority must actually be exercised in order for a particular submission to be deemed 'required.'"). At no time did Peter Ong purport to invoke NHTSA's authority to compel the submission of the information for which Chrysler is seeking confidential treatment.

Information submitted voluntarily should be accorded confidential treatment if it is the type of information that is not customarily disclosed by the submitter to the public. Chrysler does not ever, much less customarily, disclose to the public, the problem solving assessments and analysis and internal processes included in this submission.

Even if this information were submitted under compulsion, it properly would be withheld under 49 C.F.R. § 512.15(b), because its disclosure would cause substantial harm to Chrysler's competitive position. The information for which Chrysler Group is seeking confidential treatment reveals details about how Chrysler Group plans and conducts technical analyses of product issues. The presentation reveals the steps that Chrysler takes in evaluating products and the specific components of Chrysler Group's root cause analyses. Thus, the presentation reveals details about how Chrysler Group defines project problems and goals, how it organizes the product evaluation process, and the kind and scope of Chrysler Group's product evaluation testing. If this information is disclosed, competitors could improve their own product evaluation processes without incurring the time and expense that would be required for them to independently develop their own product analysis expertise. The information also would reveal competitively valuable information about Chrysler Group's operational capacities.

These are precisely the kinds of harmful effects that FOIA Exemption 4 was intended to prevent. *See, e.g., Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) ("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 principle aim of promoting openness in government."); *see also Nat'l Parks & Conservation Ass'n v. Kleppe,* 547 F.2d 673, 684 (D.C. Cir. 1976) (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"); *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) (similar). The D.C. Circuit also has recently noted that 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.,* 601 F.3d 557, 564 (D.C. Cir. 2010).

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))

Because the information for which confidential treatment is being sought is the kind of information that Chrysler does not anticipate ever customarily disclosing to the public, Chrysler requests that the information be accorded confidential treatment permanently. Similarly, because the disclosure of the information would be likely to cause substantial harm to Chrysler's competitive position well into the future, the information should be protected from disclosure permanently if the agency deems the substantial-competitive-harm standard applicable.

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

Please direct all inquiries and responses to the undersigned at:

800 Chrysler Drive, CIMS 482-00-91
Auburn Hills, MI 48326
248-512-0087
dd28@chrysler.com

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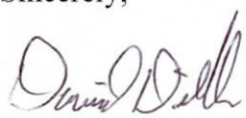
If you receive a request for disclosure of the information for which confidential treatment is being sought before you have completed your review of our request, Chrysler respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,



David D. Dillon

cc: Scott Yon

Attachment and Enclosures

Certificate in Support of Request for Confidentiality

I, David D. Dillon, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

(1) I am Chrysler Group LLC's Senior Manager, Product Investigations & Campaigns and I am authorized by Chrysler Group LLC to execute documents on its behalf;

(2) I certify that the information contained in the attached documents 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 contained in the indicated documents be protected on a permanent basis;

(4) This certification is based on the information provided by the responsible Chrysler Group LLC 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 Chrysler Group LLC;

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which Chrysler Group LLC has claimed confidential treatment has never been released or become available outside Chrysler Group LLC, except to certain contractors of Chrysler Group LLC with the understanding that such information must be maintained in strict confidence;

(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 Chrysler Group LLC 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 2nd day of March, 2012

David D. Dillon