

# DAIMLERCHRYSLER

2006 NOV 14 A 9:27

DaimlerChrysler Corporation

Stephan J. Speth

Director

Vehicle Compliance & Safety Affairs

November 10, 2006

Mr. Anthony M. Cooke  
Chief Counsel  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W. Rm. 5219  
Washington, DC 20590

Re: Request for Confidential Treatment for Information Provided in EA06-015

Dear Mr. Cooke:

DaimlerChrysler Corporation ("DCC") is submitting information on CD ROM discs to the NHTSA Office of Defects Investigation in connection with the above-referenced Information Request ("IR"). Based on a careful review of the submission, DCC has determined that the files in Enclosures 14 - 24 consist of confidential information that 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).<sup>1</sup> Therefore, DCC is submitting these CD's, together with this request for confidential treatment to the Office of the Chief Counsel.

As required by Part 512, DCC is submitting certificates executed by responsible DCC, Siemens VDO and Freescale personnel. The information required by Part 512 is set forth below.

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

The DCC information for which confidential treatment is being sought consists of highly confidential testing processes and analysis, developmental testing, manufacturing processes and problem solving techniques, diagnostic protocols and performance standards. The Siemens VDO information for which confidential treatment is being sought consists of highly confidential load studies, test data, product circuit designs, and reports. This information was provided to DCC by Siemens VDO. The Freescale DVD consists of a testing analysis based on an experiment on thermal run-away. DCC,

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<sup>1</sup> DCC has taken steps to assure that the CD's are free of any errors or defects that would prevent NHTSA from opening each file on the disc. If, however, the agency is unable to open any of the files, DCC respectfully requests that the agency inform DCC of the issue, so that DCC may take steps to supply NHTSA's Office of Chief Counsel with a disc that is fully functional. Due to duplication issues, only one copy of the Freescale DVD is being submitted today. A second copy will follow shortly.

Siemens VDO and Freescale have maintained the confidentiality of the information and have not disseminated it publicly.

The table attached to this letter will more fully describe the documents.

**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)) for information that must be submitted to the agency. Under this standard, information qualifies for confidential treatment if its disclosure would be likely to result in substantial harm to the competitive position of the submitter.

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

The disclosure of this information would likely cause substantial harm to DCC's competitive position. Under 49 C.F.R. § 512.15(b) and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), information should be withheld from public disclosure if its release would be likely to cause substantial competitive harm to the submitter. *See also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). 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). In addition, FOIA Exemption 4 was enacted to prevent open records requirements from providing windfalls to competitors when private submitters have provided commercial or financial information to the government: "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). Among the competitively-significant disclosures that FOIA Exemption 4 was enacted to prevent were disclosures that would reveal a firm's "operational strengths and weaknesses" to competitors. *See National Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976). The information at issue here satisfies the requirements for protection under these standards.<sup>2</sup>

Competitors could determine the type of testing and reporting that DCC, Siemens VDO, and Freescale do in evaluating products and the process of analysis, product testing methodology and product design information if this information is disclosed. These

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<sup>2</sup> As noted above, DCC is providing a table that identifies the confidential information on the enclosed discs, and specifies the location of the information (by enclosure number and, where applicable, by folder and sub-folder as well as the Bates page numbers). The table also briefly states the basis for the confidentiality claims.

documents reveal valuable information about processes for remedying problems and evaluating and improving products and components. The disclosure of such information would enable competitors to refine their own product evaluation, remediation, and improvement procedures without incurring the costs normally required for independent development of such procedures, and also would provide information about DCC's operational strengths.

There also is a great deal of developmental and design testing information in this submission. NHTSA has recognized that developmental testing information should be protected under Exemption 4 because it reveals the scope, nature, and results of a submitter's proprietary and developmental testing, as well as the submitter's design and performance standards, design philosophies, and the reasons for various design choices. Such information could enable a competitor to develop and upgrade its own testing protocols, improve its design decisions, and gain insights into DCC's operational capacities.

In addition, some of the documents provide information about the performance and operational capacities of suppliers. The disclosure of such information could relieve competitors of the costs and burdens of independently identifying and assessing suppliers, thereby enabling them to bring products competitive with DCC's products to market more quickly and at less cost. *See SMS Data Prods. Grp., Inc. v. United States Dept. of Air Force*, Civ. A. No. 88-0481-LFO, 1989 WL 201031, at \*4 (D.D.C. May 11, 1989) (submitter of information had spent years developing a network of subcontractors, and release of the information would give competitors the information "without needing to expend the same time and resources").

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

The information for which confidential treatment is being sought does not come within a class determination.

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

Since DCC anticipates that the information will retain its competitive value indefinitely, DCC requests that the information be accorded confidential treatment permanently.

**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  
248-512-4188  
SS6@dcx.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, DCC respectfully requests notification of the request(s) and an opportunity to provide further justification for the confidential treatment of this information, if warranted.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Speth". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'S'.

Stephan J. Speth

cc: Kathleen DeMeter

Attachment and Enclosures