

Arent Fox

NHTSA  
WASHINGTON, DC 20590

2008 APR -9 P 3: 33

OFFICE OF CHIEF  
COUNSEL

**BY FEDEX**

April 7, 2008

Anthony M. Cooke, Esquire  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
West Building  
Washington, DC 20590

**Christopher H. Grigorian**

Attorney  
202.775.5779 DIRECT  
202.857.6395 FAX  
grigorian.christopher@arentfox.com

**Reference No. 021690-00000**

**Re: Workhorse Custom Chassis, LLC  
Request for Reconsideration of Denial of Confidential Treatment (PE07-032)**

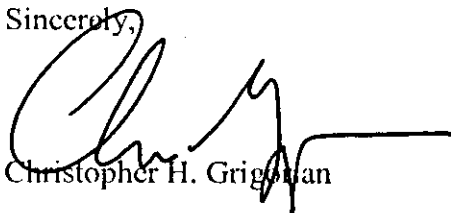
Dear Mr. Cooke:

Pursuant to 49 C.F.R. § 512.19, Workhorse Custom Chassis, LLC is submitting this petition for reconsideration of the agency's March 6, 2008 letter partially denying Workhorse's August 10, 2007 request for confidentiality treatment. The documents that are the subject of the confidentiality request were submitted to the Office of Defects Investigation in connection with the above-referenced Preliminary Evaluation.

The agency denied confidentiality treatment for two documents – a letter from Robert Bosch LLC (“Bosch”) dated October 12, 2001 and a test report issued by Bosch dated August 28, 2001 – on the ground that Workhorse did not include a certificate from Bosch in support of its confidentiality request. Workhorse respectfully requests that NHTSA reconsider and grant confidentiality treatment for these documents, based upon the attached request and certificate provided by Bosch.

Please contact me if you have any questions.

Sincerely,



Christopher H. Grigorian

cc: Dave Bigg (WCC)

Arent Fox

NHTSA  
WASHINGTON, DC 20590  
2008 APR 10 P 3:56  
OFFICE OF CHIEF  
COUNSEL

BY FEDEX

April 7, 2008

Anthony M. Cooke, Esquire  
Chief Counsel  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
West Building  
Washington, DC 20590

**Christopher H. Grigorian**

Attorney  
202.775.5779 DIRECT  
202.857.6395 FAX  
grigorian.christopher@arentfox.com

Reference No. 021690-00000

**Re: Workhorse Custom Chassis, LLC  
Request for Reconsideration of Denial of Confidential Treatment (PE07-032)**

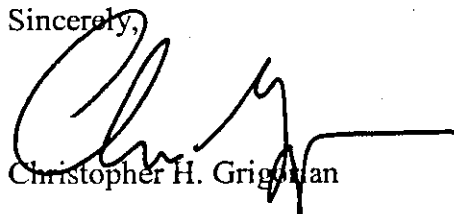
Dear Mr. Cooke:

Pursuant to 49 C.F.R. § 512.19, Workhorse Custom Chassis, LLC is submitting this petition for reconsideration of the agency's March 6, 2008 letter partially denying Workhorse's August 10, 2007 request for confidential treatment. The documents that are the subject of the confidentiality request were submitted to the Office of Defects Investigation in connection with the above-referenced Preliminary Evaluation.

The agency denied confidential treatment for two documents – a letter from Robert Bosch LLC ("Bosch") dated October 12, 2001 and a test report issued by Bosch dated August 28, 2001 – on the ground that Workhorse did not include a certificate from Bosch in support of its confidentiality request. Workhorse respectfully requests that NHTSA reconsider and grant confidential treatment for these documents, based upon the attached request and certificate provided by Bosch.

Please contact me if you have any questions.

Sincerely,



Christopher H. Grigorian

cc: Dave Bigg (WCC)

**ROBERT BOSCH LLC'S REQUEST FOR CONFIDENTIAL TREATMENT OF  
PROPRIETARY INFORMATION SUBMITTED BY WORKHORSE CUSTOM  
CHASSIS LLC IN RESPONSE TO NHTSA'S INFORMATION REQUEST REGARDING  
EA 07-016**

Robert Bosch LLC ("Bosch") seeks confidential treatment, pursuant to 49 C.F.R. Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA Exemption 4"), 5 U.S.C. § 552(b)(4), for proprietary Bosch information previously submitted by Workhorse Custom Chassis LLC ("Workhorse") in connection with its response to NHTSA's information request related to EA 07-016. The information required by your regulations is set forth below. As also required by your regulations a certificate in the form set out in Appendix A to 49 C.F.R. Part 512 is attached.

**§ 512.8(a) – Information for Which Confidential Treatment Is Requested**

The documents for which Bosch seeks confidential treatment are 54 pages of material related to a testing, evaluation and validation of friction material for braking systems (hereinafter referred to as "Confidential Bosch Material"). The Confidential Bosch Material reveals testing process and procedures used by Bosch to evaluate friction material, testing results, specifications, product evaluation and analysis, and Bosch capabilities which competitors could use to improve their own processes and designs. The Confidential Bosch Material contains information which competitors would not have and could not develop without substantial time and expense.

**§ 512.8(b) – Applicable Confidentiality Standard**

The applicable confidentiality standard is set forth at 49 C.F.R. § 512.15(b), which, under the FOIA Exemption 4 case law, applies to information that a submitter is required to provide to a Federal agency. Under this standard, information is exempt from disclosure if its disclosure would cause substantial harm to the competitive position of the submitter. Exemption 4 of the

Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), protect the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed, and 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." See, e.g., 49 C.F.R. § 512.15(b); *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1990).

#### **§ 512.8(c)(2) – Description of Substantial Competitive Harm**

Bosch submits that the disclosure of the Confidential Bosch Material would cause substantial competitive harm. As is well known, the automotive industry is highly competitive. "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). Substantial competitive harm also may result from disclosures that would reveal a firm's "operational strengths and weaknesses" to competitors. See *Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976).

The Confidential Bosch Material includes confidential and proprietary data utilized by Bosch in the development of brake friction products. This is a highly competitive field, and the disclosure of this development and testing data would enable Bosch's competitors to obtain highly valuable information developed by Bosch over long periods, and to do so without

incurring the costs and undertaking the effort typically required for independent development of the information. This would enable Bosch's competitors to develop or improve their own products at Bosch's expense. Disclosure would allow them to bring competitive products to market in far less time and at far less expense than otherwise would be required. Moreover, the Confidential Bosch Material could allow a competitor to develop a product or improve a product that without the Confidential Bosch Material the competitor would never develop. Such consequences have been recognized as competitively significant and have been deemed to constitute substantial competitive harm. *See, e.g., Public Citizen Health Research Grp. v. FDA*, 185 F.2d 898, 905 (D.C. Cir. 1999); *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51-52 (D.C. Cir. 1981).

For example, the Confidential Bosch Material includes documents which describe tests and specifications developed by Bosch for the purpose of designing and analyzing brake friction products. The development of tests and the analysis of the results of the tests included in the Confidential Bosch Material reveal important information regarding Bosch's design parameters. If the Confidential Bosch Material is disclosed, it would allow a competitor to develop competitive products without the time and money Bosch has had to spend.

Bosch's competitors would greatly benefit—at Bosch's expense—from the disclosure of the Confidential Bosch Material. Thus, the disclosure of this information would cause substantial harm to Bosch's competitive position. *See, e.g., Worthington Compressors*, 662 F.2d at 52.

**§ 512.8(d) – Class Determinations**

The Confidential Bosch Material is not subject to a class determination.

**§ 512.8(e) – Time Period for Which Confidential Treatment is Sought**

Bosch anticipates that this information will continue to have great competitive value for the foreseeable future. Accordingly, Bosch requests that the information be protected from disclosure permanently.

**§ 512.8(f) – Name and Address of Contact**

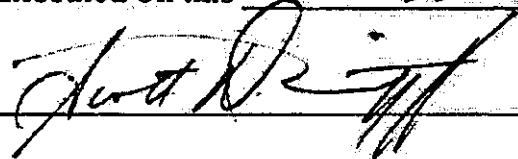
Please direct inquiries regarding this matter to Jerry L. Johnson, Assistant General Counsel (RBNA/LEG), Robert Bosch LLC, 38000 Hill Tech Drive, Farmington Hills, MI 48331, at (248) 876-7381.

### Certificate in Support of Request for Confidentiality

I, Scott Wisthuff, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am the Director of Medium/Heavy Truck Brake Engineering for Robert Bosch LLC ("Bosch") and I am authorized by Bosch to execute documents on its behalf;
- (2) I certify that the information contained in the documents described in the accompanying request for confidential treatment and defined as Confidential Bosch Material are confidential and proprietary data and are 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 Bosch 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 Bosch;
- (5) Based upon that information, to the best of my knowledge, information and belief, the documents for which Bosch has claimed confidential treatment has never been released or become available outside Bosch, except for disclosures to Workhorse Custom Chassis LLC and a limited number of other customers and suppliers of Bosch 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 Bosch 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 25<sup>TH</sup> day of March, 2008

  
\_\_\_\_\_