



CHRYSLER

NHTSA
WASHINGTON, DC 20590

2008 SEP 15 P 4: 13

OFFICE OF CHIEF
COUNSEL

Stephan J. Speth

Director
Vehicle Compliance & Safety Affairs

September 12, 2008

Mr. Anthony M. Cooke
Office of Chief Counsel (NCC-111)
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 in PE08-047

Dear Mr. Cooke:

Chrysler LLC ("Chrysler") is submitting information on CDs to the NHTSA office of Defect Investigation in connection with the above referenced Information Request ("IR"). Based on a careful review of the submission, Chrysler has determined that the files in Enclosures 7 and 8 consist of confidential business 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).¹ Therefore, Chrysler is submitting these 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 in Enclosure 7-Conf Bus Info – consists of three summaries of testing procedures and results (hood latch secondary BR.pdf; Bates page #PE08-047-Chrysler-0002-0004, LTR 109038 BR hood latch.pdf; Bates page #PE08-047-Chrysler-0005-0062, and 110190mr.pdf; Bates page #PE08-047-Chrysler-0063-0068). Enclosure 8-Conf Bus Info – consists of the design and

¹ Chrysler has taken steps to assure that the CDs 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, 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.

material changes and the reasons for the changes of the subject components (Change History.pdf; Bates page #PE08-047-Chrysler-0001).

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

This submission is subject to the substantial competitive harm standard set forth in 49 C.F.R. § 512.15(b) for information that a submitter is required to provide to the agency.

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

This agency's regulations and 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. *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). 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). "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." *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 information at issue here should be protected under these standards.

The testing data and summary would give competitors insight into Chrysler's testing standards and criteria for its designs. This information would provide competitors insights into Chrysler's operational strengths and allow them to develop their own design criteria and test standards and procedures without incurring the substantial expense typically required for independent design and test development. Consequently, the release of this information would enable competitors to compete more effectively against Chrysler and cause Chrysler substantial competitive harm.

The change history would reveal information about the design and manufacturing process changes to the subject component, the timing of such changes, the reasons for the changes, and the process by which such changes were made. Thus, these documents reveal information about the design and the manufacturing process, as well as Chrysler's lead-time and operational capacity information, which could enable competitors to improve their own

designs and manufacturing processes, evaluate Chrysler's operational strengths, and compete more effectively against Chrysler.

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

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

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

Because Chrysler anticipates that the information will be competitively sensitive indefinitely, Chrysler 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@chrysler.com

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,



Stephan J. Speth

cc: Thomas Cooper

Attachment and Enclosures

Certificate in Support of Request for Confidentiality

I, Stephan J. Speth pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Chrysler LLC's Director, Vehicle Certification, Compliance and Safety Affairs and I am authorized by Chrysler 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 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 LLC;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Chrysler LLC has claimed confidential treatment has never been released or become available outside Chrysler LLC, except to certain contractors of Chrysler 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 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 12th day of September, 2008



Stephan J. Speth