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December 15, 2009

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

Re: EA09-008: Request for Confidential Treatment

Dear Mr. Vincent:

Today, through the undersigned, PACCAR Inc. ("PACCAR") is submitting further information to the Office of Defects Investigation ("ODI") in response to an information request in the above-referenced investigation. PACCAR previously submitted information in response to the information request on October 15, 2009.

The information is being submitted now because PACCAR's response to Request 5 of the information request inadvertently omitted certain records—omissions recently called to PACCAR's attention by Nate Seymour of ODI. Today's submission includes the information that PACCAR submitted in response to Request 5 on October 15, 2009, as well as the additional information that PACCAR inadvertently omitted.

Because this submission includes confidential business information that, if disclosed, would be likely to cause substantial harm to PACCAR's competitive position, PACCAR is submitting the information to your office, together with this request for confidential treatment and certificate in support of confidentiality executed on behalf of PACCAR. The information required by your regulations follows.

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

The information is being submitted on compact discs. The information for which PACCAR is seeking confidential treatment consists of customer names and phone numbers (Column B) and vehicle-identification numbers ("VINS") (Column C).

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).

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

Part 512 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* 49 C.F.R. § 512.15(b); *see also, e.g., Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). "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).

As noted in Section A of this letter, the information for which PACCAR is seeking confidential treatment consists of customer identifying information—specifically, customer names, customer telephone numbers, and VIN numbers. Such information is treated as confidential by PACCAR and its competitors, and customer lists and customer-identifying information typically are accorded confidential treatment by this agency. Such customer identifying information would be enormously valuable to PACCAR's competitors, who could use such information to target PACCAR's customers for individually-tailored marketing efforts. In light of the competitive value of customer lists and other identifying information, Congress specifically mentioned customer lists as the kind of information that Exemption 4 was intended to protect. *See* H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10, *reprinted in* 1966 U.S.C.C.A.N. 2418, 2427. In addition, some or all of the information is confidential not only under Exemption 4, but also under FOIA Exemption 6.¹

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 will retain its competitive value indefinitely, PACCAR requests that the information be accorded confidential treatment indefinitely.

¹ Exemption 6 clearly applies to the *individuals* whose names, addresses, and phone numbers are revealed in the submitted information. It also may protect privacy interests of the *companies* that are identified. *See AT&T Inc. v. FCC*, No. 08-4024, 2009 WL 2998942, at *6 (3d Cir. Sept. 22, 2009) (holding that corporations have privacy interests that are protected by Exemption 7(C), but declining to determine whether Exemption 6's protections extend to non-individuals).

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

Please direct all inquiries to the undersigned at the address and telephone number on the letterhead.

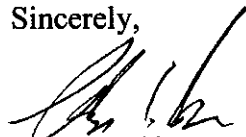
* * *

As noted above, we are submitting the information on compact discs. We are submitting two discs containing confidential information and one disc containing the "public" version of the information. We also have sent a public disc directly to the Office of Defects Investigation.

In the file name of the documents, we have indicated the file that contains confidential information. We also have sought to mark the document containing confidential information by inserting "CBI" at the top of the two columns that contain confidential business information.

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

Sincerely,



Adam C. Sloane

Enclosures

cc: Richard Boyd
Mike Walton

Certificate in Support of Request for Confidentiality

I, Michael K. Walton, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

- (1) I am Corporate Counsel, and I am authorized by PACCAR Inc. to execute certain documents on its behalf, including its Peterbilt Motors Company and Kenworth Truck Company divisions;
- (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 Peterbilt Motors Company and Kenworth Truck Company 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 Peterbilt Motors Company and Kenworth Truck Company;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Peterbilt Motors Company and Kenworth Truck Company have claimed confidential treatment has never been released or become available outside Peterbilt Motors Company and Kenworth Truck Company, except for disclosures to manufacturers who are customers of Peterbilt Motors Company and Kenworth Truck Company and who were provided the information 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 Peterbilt Motors Company and Kenworth Truck Company because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 14th day of December, 2009



Michael K. Walton
PACCAR Inc.

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2009 OCT 15 10:36
October 15, 2009

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

Re: EA09-008: Request for Confidential Treatment

Dear Mr. Vincent:

Today, through the undersigned, PACCAR Inc. ("PACCAR") is submitting its response to a request for information made by the Office of Defects Investigation in the above-referenced investigation. Because the submission includes confidential business information that, if disclosed, would be likely to cause substantial harm to PACCAR's competitive position, PACCAR is submitting the information to your office, together with this request for confidential treatment and certificates in support of confidentiality executed on behalf of PACCAR and Horton Inc., which provided some of the information in this submission. The information required by your regulations follows.

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

The information is being submitted on compact discs. The great preponderance of the information for which PACCAR is seeking confidential treatment consists of customer-identifying information (principally, customer names, addresses, phone numbers, and vehicle-identification numbers ("VINs")). In addition, PACCAR is seeking confidential treatment for production and sales data in the documents responsive to Requests 1, 8, and 17, as well as information from which production and sales data can readily be ascertained, such as the information in the documents responsive to Request 8. PACCAR also is seeking confidential treatment for certain design change information in the document responsive to Request 12.

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).

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

Part 512 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

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harm to the submitter if disclosed. See 49 C.F.R. § 512.15(b); see also, e.g., *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 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).

As noted in Section A of this letter, much of the information for which PACCAR is seeking confidential treatment consists of customer identifying information, including customer names, addresses, telephone numbers, and Vehicle Identification Numbers. Such information is treated as confidential by PACCAR and its competitors, and customer lists and customer-identifying information typically are accorded confidential treatment by this agency.

The disclosure of customer names and other identifying information would be enormously valuable to PACCAR's competitors, who could use such information to target PACCAR's customers for individually-tailored marketing efforts. In light of the competitive value of customer lists and other identifying information, Congress specifically mentioned customer lists as the kind of information that Exemption 4 was intended to protect. See H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10, reprinted in 1966 U.S.C.C.A.N. 2418, 2427. In addition, some or all of the information is confidential not only under Exemption 4, but also under FOIA Exemption 6.¹

PACCAR also is seeking confidential treatment for production and sales data. The disclosure of such information would reveal competitively valuable information about PACCAR's operational strengths and could enable competitors to determine where to concentrate their manufacturing and marketing efforts in order to compete against PACCAR. In enacting the FOIA, Congress was particularly concerned about the competitive significance of sales data, specifically mentioning "business sales statistics" as one of the types of information that Exemption 4 was intended to protect. See H.R. Rep. No. 1497, *supra*, 1966 U.S.C.C.A.N. at 2427.

¹ Exemption 6 clearly applies to the *individuals* whose names, addresses, and phone numbers are revealed in the submitted information. It also may protect privacy interests of the *companies* that are identified. See *AT&T Inc. v. FCC*, No. 08-4024, 2009 WL 2998942, at *6 (3d Cir. Sept. 22, 2009) (holding that corporations have privacy interests that are protected by Exemption 7(C), but declining to determine whether Exemption 6's protections extend to non-individuals).

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As also noted in Section A, PACCAR also is seeking confidential treatment for certain design change information. This confidential information reveals the dates of various design changes, the description of the changes, the reasons for the changes, the bearing supplier, whether the component was withdrawn from production, the date when the modified component was made available for service, and information about interchangeability. The disclosure of such information would give competitors insights into the lead-time for PACCAR product design changes, which, in turn, would reveal competitively valuable information about PACCAR's operational strengths and capacities. Information about a competitor's operational strengths and weaknesses has been deemed to be competitively valuable under Exemption 4. *See Kleppe*, 547 F.2d at 684. PACCAR's competitors could use such information to determine how quickly PACCAR could respond to changes in the market, which would be valuable in formulating strategies to compete with PACCAR.

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 will retain its competitive value indefinitely, PACCAR requests that the information be accorded confidential treatment indefinitely.

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

Please direct all inquiries to the undersigned at the address and telephone number on the letterhead.

* * *

As noted above, we are submitting the information on compact discs. We are submitting two discs containing confidential information and one disc containing the "public" version of the information. We also have sent a public disc directly to the Office of Defects Investigation.

In the file names of the documents, we have indicated the files that contain confidential information (principally through the use of the letters "Conf" in the file names). We also have sought to mark the documents containing confidential information by inserting headers or other notations stating that they contain confidential business information.

Within the documents, file formats and document peculiarities have required us to use a variety of means for designating confidential information. In at least one pdf, we placed brackets around confidential information. In most pdfs containing confidential information, however, we have highlighted the confidential information in yellow, rather than inserting brackets around the information. This saved considerable time in marking the documents and, we believe, resulted in clearer, more obvious designations of confidential material. In the Excel spreadsheets that contain confidential business information, we were generally unable to insert "Confidential

Mr. O. Kevin Vincent

October 15, 2009

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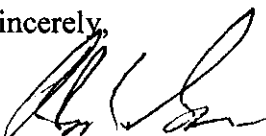
Business Information” headers at the top of the sheets, but, as noted, have put a notation in the file names indicating the presence of confidential business information. We also have indicated the columns containing confidential business information by inserting a notation identifying those columns in the spreadsheet or by inserting a notation indicating the presence of confidential information at the top of such columns. In addition, in one spreadsheet, we highlighted confidential information in yellow.

The submission also includes a few documents formatted as notepads (with a “txt” suffix). The confidential information in the notepads includes customer-identifying information and VINs. We were able to redact the confidential information from the public versions of the notepads, but were unable to mark the confidential data in the confidential versions of the notepads. Because of this, we request that NHTSA refer to our public version of the notepads to ascertain the information for which we are seeking confidential treatment.

In most cases, we have indicated the documents from which information has been redacted by included the word “redacted” or “public” in the file name. In most of those documents, we have indicated where redactions have been made by inserting brackets to indicate deletions of confidential information. In some cases, however, we have blacked out confidential material.

As noted above, certificates in support of confidentiality are attached to this letter. We are enclosing two copies of the submission in its entirety and one copy of the submission that does not include the confidential information. If you receive a request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, PACCAR respectfully requests notification of the request and an opportunity to provide further justification for confidential treatment, if warranted.

Sincerely,



Adam C. Sloane

Enclosures

cc: Richard Boyd
Mike Walton

Certificate in Support of Request for Confidentiality

I, Michael K. Walton, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

(1) I am Corporate Counsel, and I am authorized by PACCAR Inc. to execute certain documents on its behalf, including its Peterbilt Motors Company and Kenworth Truck Company divisions;

(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 Peterbilt Motors Company and Kenworth Truck Company 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 Peterbilt Motors Company and Kenworth Truck Company;

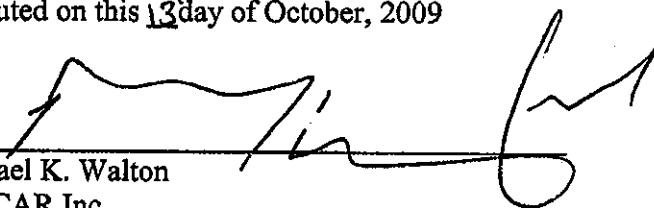
(5) Based upon that information, to the best of my knowledge, information and belief, the information for which Peterbilt Motors Company and Kenworth Truck Company have claimed confidential treatment has never been released or become available outside Peterbilt Motors Company and Kenworth Truck Company, except for disclosures to manufacturers who are customers of Peterbilt Motors Company and Kenworth Truck Company and who were provided the information 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 Peterbilt Motors Company and Kenworth Truck Company because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

(7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this ^{13th} day of October, 2009

Michael K. Walton
PACCAR Inc.



Certificate in Support of Request for Confidentiality

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

- (1) I am Senior VP of Purchasing and Quality and I am authorized by Horton Inc. ("Horton") 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 Horton 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 Horton;
- (5) Based upon that information, to the best of my knowledge, information and belief, the information for which Horton has claimed confidential treatment has never been released or become available outside Horton, except for disclosures to manufacturers who are customers of Horton and who were provided the information 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 Horton because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and
- (7) I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 13th day of October, 2009



Douglas B. Bassinger
Horton, Inc.