

DAIMLER

Daimler Trucks North America

Andy Jones
Manager
Product Compliance and Regulatory Affairs

October 5, 2018

Jonathan C. Morrison
Office of Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building, W41-227
Washington, DC 20590

Re: **Request for Confidential Treatment of Daimler Trucks North America LLC's Response to NHTSA Audit Query AQ18-002**

Dear Mr. Morrison:

Pursuant to 49 CFR Part 512 and Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), Daimler Trucks North America LLC ("DTNA") respectfully requests confidential treatment for the confidential and proprietary DTNA information contained in DTNA's response to AQ18-002. Pursuant to 49 CFR Part 512 and instructions provided by NHTSA, this request attaches two complete, unredacted versions of DTNA's response to AQ18-002, and a redacted version of the response. The submission is marked "CONFIDENTIAL BUSINESS INFORMATION" and confidential material is enclosed in brackets in accordance with 49 C.F.R. § 512.6(b). Supporting information under 49 C.F.R. § 512.8 is provided below.

49 C.F.R § 512.8(a) – Describe the information for which confidentiality is being requested
The documents for which confidentiality is being requested are portions of the AQ18-002 response and supporting files related to AQ18-002 (hereinafter referred to as "Confidential DTNA Material"). The specific files for which confidential treatment is requested are listed below. These materials are marked "Confidential Business Information" on each page, as required by 49 C.F.R. § 512.6. As described in detail below, the Confidential DTNA Material reveals detailed vehicle sales and distribution figures, including information regarding model, model year, VIN, original state of sale or lease, part number, date of manufacture, warranty coverage, and owner name and contact information. It also includes descriptions of DTNA's internal document management and compliance systems and strategies, and consumer complaints, field reports and property damage claims including internal DTNA assessments. Competitors could use this information to evaluate DTNA's sales distribution, internal structure, and processes and to improve their own processes, plans, and market position.

49 C.F.R § 512.8(b) – Identify the confidentiality standard(s)
Under § 512.15(b), information is exempt from disclosure if its disclosure would cause substantial harm to the competitive position of the submitter. Exemption 4 of FOIA, 5 U.S.C § 552(b)(4), protects the confidentiality of information that would be likely to cause substantial competitive harm to the submitter if disclosed. *See Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (confidential commercial information is protected from disclosure under FOIA if its release is likely to cause competitive harm). The materials described below are proprietary and confidential business information, the release of which is likely to cause competitive harm to DTNA, and are therefore entitled to confidential treatment.

49 C.F.R § 512.8(c)(2) - What the harmful effects of disclosure would be and why the effects should be viewed as substantial

Disclosure of the Confidential DTNA Material would cause substantial competitive harm. The trucking 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 the competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval cost 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. Castle*, 662 F.2d 45, 51 (D.C. Cir. 1981). Substantial competitive harm may also result from disclosures that reveal a company's strengths and weaknesses to competitors.

The Confidential DTNA Material could allow a competitor to improve a process or create a marketing strategy that without the Confidential DTNA Material the competitor would not. These consequences have been recognized as competitively significant and have been deemed to constitute substantial competitive harm. DTNA's competitors would greatly benefit, at DTNA's expense, from disclosure of the Confidential DTNA Material. The disclosure of this information would cause substantial harm to DTNA's competitive position.

This request for confidentiality pertains to portions of the AQ18-002 response and supporting files related to AQ18-002:

1. Number of subject vehicles in the response to request number 1
2. Attachment 1, Production Data
3. Description of the system and process used to gather the information for the response to request number 1
4. Descriptions of the property damage claims and DTNA's internal assessments in the response to request number 2
5. Description of the system and process used to gather the information for the response to request number 2
6. Attachment 2, Request Number Two Data
7. Description of the system and process used to gather the information for the response to request number 3
8. Attachment 3, Request Number Two Documents (Customer Complaints); Attachment 4, Request Number Two Documents (Field Reports); and Attachment 5, Request Number Two Documents (Property Damage Claims)
9. Description of DTNA's search methods and criteria, systems, and process used to gather the information for the response to request number 4

Item #1 - Number of subject vehicles in the response to request number 1

Request number 1 of AQ18-002 asks DTNA to provide information regarding the number of vehicles sold or leased for the subject vehicles. DTNA asserts that specific information regarding sales numbers and patterns is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. While overall vehicle sales figures are available, the extent to which specific models are sold, the geographic sales patterns,

and the customer to whom they are sold is not available outside of DTNA. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain. Competitors could also adjust their own market plans and undercut DTNA's market share and reduce competition, resulting in substantial competitive harm to DTNA.

Item #2 - Attachment 1, Production Data

Request number 1 of AQ18-002 asks DTNA to provide information regarding the VIN, make, model, model year, part number, date of manufacture, date warranty coverage commenced, and state where the vehicle was originally sold or leased for the subject vehicles. DTNA asserts that specific information regarding sales numbers and patterns is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. While overall vehicle sales figures are available, the extent to which specific models are sold, the geographic sales patterns, and the customer to whom they are sold is not available outside of DTNA. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain. Competitors could also adjust their own market plans and undercut DTNA's market share and reduce competition, resulting in substantial competitive harm to DTNA.

Item #3 - Description of the system and process used to gather the information for the response to request number 1

In response to request number 1 of AQ18-002, DTNA is providing information regarding its internal systems and processes for document management and compliance. DTNA asserts that this information is proprietary information regarding DTNA's internal structure and compliance strategies, which would harm DTNA's competitive position if released.

Item #4 - Descriptions of the property damage claims and DTNA's internal assessments in the response to request number 2

Request number 2 of AQ18-002 asks DTNA to provide detailed information on field reports and property damage claims which relate to, or may relate to, the alleged defect in the subject vehicles. DTNA contends that detailed information about property damage claims, including DTNA's internal assessments, are proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

Item #5 - Description of the system and process used to gather the information for the response to request number 2

In response to request number 2 of AQ18-002, DTNA is providing information regarding its internal systems and processes for document management and compliance. DTNA asserts that this information is proprietary information regarding DTNA's internal structure and compliance strategies, which would harm DTNA's competitive position if released.

Item #6 - Attachment 2, Request Number Two Data

Request number 3 of AQ18-002 asks DTNA to provide detailed information regarding complaints, reports, claims, notices, or matters identified in response to request number 2, including vehicle owner or fleet name, street address, email address and telephone number, VIN, make, model, and model year, and vehicle mileage. DTNA asserts that specific information regarding the subject vehicles is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. While overall vehicle sales figures are available, information regarding specific models and model years, geographic distribution, and owner information is not available outside of DTNA. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain. Competitors could also adjust their own market plans and undercut DTNA's market share and reduce competition, resulting in substantial competitive harm to DTNA. In addition, DTNA contends that information about complaints, reports, claims, notices, or matters identified in response to request number 2 constitutes proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

Item #7 - Description of the system and process used to gather the information for the response to request number 3

In response to request number 3 of AQ18-002, DTNA is providing information regarding its internal systems and processes for document management and compliance. DTNA asserts that this information is proprietary information regarding DTNA's internal structure and compliance strategies, which would harm DTNA's competitive position if released.

Item #8 - Attachment 3, Request Number Two Documents (Consumer Complaints); Attachment 4, Request Number Two Documents (Field Reports); and Attachment 5, Request Number Two Documents (Property Damage Claims)

Request number 4 of AQ18-002 asks DTNA to provide copies of complaints, reports, claims, notices, or matters identified in response to request number 2. DTNA contends that detailed consumer complaints, field reports and property damage claims, including DTNA's internal assessments, are proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

Item #9 - Description of DTNA's search methods and criteria, systems, and process used to gather the information for the response to request number 4

In response to request number 4 of AQ18-002, DTNA is providing information regarding its internal systems and processes for document management and compliance. DTNA asserts that this information is proprietary information regarding DTNA's internal structure and compliance strategies, which would harm DTNA's competitive position if released.

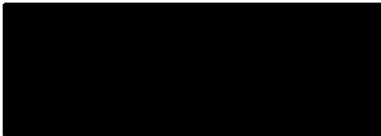
49 C.F.R § 512.8(d) – Indicate if any items of information fall within any of the class determinations included in the Appendices to Part 512

Item #2, and Item #6 above, the production and property damage claim VINs, are subject to the class determination for vehicle identification number information. To the extent VIN information is found in Item #8 - Attachment 3, Request Number Two Documents, that information also is subject to a class determination. *See* 49 CFR Part 512, Appendix D. Additionally, information in Item #1 - number of subject vehicles in the response to request number 1, and Item #8 - Attachment 3, Request Number Two Documents, is subject to a class determination under Appendix C(b)(1) and Appendix C(a)(2) and (3).

49 C.F.R § 512.8(e) – Indicate the time period for which confidential treatment is sought
DTNA anticipates that this information will continue to have great competitive value for the foreseeable future. Accordingly, DTNA requests that the information be protected from disclosure permanently.

Please contact me if you have any questions.

Sincerely yours,



Andy Jones

Attachments:

Two confidential versions of AQ18-002 information request response
One redacted version of AQ18-002 information request response
Certificate in support of confidentiality

DAIMLER

Daimler Trucks North America

Andy Jones

Manager

Product Compliance and Regulatory Affairs

Certificate in Support of Request for Confidentiality

I, Andy Jones, pursuant to the provisions of 49 CFR Part 512, state as follows:

(1) I am Andy Jones, Manager, Product Compliance and Regulatory Affairs, for Daimler Trucks North America LLC (DTNA), and I am authorized by DTNA to execute this certificate on its behalf;

(2) I certify that the information marked confidential and contained in DTNA's response to AQ18-002 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) (as incorporated by reference in and modified by the statute under which the information is being submitted);

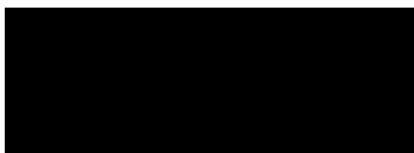
(3) I hereby request that the information marked confidential be protected on an ongoing basis;

(4) This certification is based on the information provided by the responsible DTNA 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 DTNA;

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which DTNA has claimed confidential treatment has never been released or become available outside DTNA, except as hereinafter specified: the information has been made available as necessary for the purpose of obtaining advice and assistance from counsel and other confidential advisors or in the course of confidential business relationships, such as supplier relationships;

(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 DTNA 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 the 5th day of October, 2018.



Andy Jones

A Daimler Company

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