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August 30, 2019

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

Daimler Trucks North America
Andy Jones
Manager
Product Compliance and Regulatory Affairs

**Re: Request for Confidential Treatment of Daimler Trucks North America LLC's
Response to NHTSA Audit Query AQ18-002, Request Nos. 5-12 and 29**

Dear Mr. Morrison:

Pursuant to 49 C.F.R. Part 512 and Exemptions 4 and 6 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4) and (b)(6), Daimler Trucks North America LLC ("DTNA") respectfully requests confidential treatment for the confidential and proprietary DTNA and Kendrion information contained in DTNA's response to Request Nos. 5-12 and 29 in AQ18-002. Pursuant to 49 C.F.R. 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 (hereinafter referred to as "Confidential DTNA Material"). The specific information for which confidential treatment is requested is 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 includes descriptions of DTNA's testing plans, procedures, and results, DTNA's internal corporate deliberations, analyses and processes, and internal systems and strategies. Competitors could use this information to evaluate DTNA's internal structure and processes and to improve their own processes, plans, and market position. In addition, the Confidential DTNA Material includes personally identifying information that is the type of material that is protected from disclosure under Exemption 6 of FOIA.

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

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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 August 2019 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 27th day of August 2019.



Andy Jones

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. Additionally, personally identifying information is exempt from disclosure under Exemption 6 of FOIA, 5 U.S.C. § 552(b)(6), and therefore would be entitled to confidential treatment under 49 C.F.R. § 512.15(e).

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 likely 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. Costle*, 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. Information and Documents responsive to Request No. 5.
2. Information and Documents responsive to Request No. 6.
3. Information and Documents responsive to Request No. 7.
4. Information and Documents responsive to Request No. 8.
5. Information and Documents responsive to Request No. 9.
6. Information and Documents responsive to Request No. 10.
7. Information responsive to Request No. 11.
8. Information responsive to Request No. 12.
9. Information responsive to Request No. 29.
10. Privilege Log and Document Index for AQ18-002 Response.

Item #1 – Information and Documents related to DTNA’s December 2015 diagnosis of the “original issue” as “a driver education issue and there was no indication that the condition affected the brake lights.” (Request No. 5)

In response to Request No. 5, DTNA is providing a description of the overall process used for DTNA to make a determination that this “original issue” was “a driver education issue” and not a safety-related defect; an explanation of whether the action is one routinely taken by DTNA in

instances where a safety defect may exist and why the action did not reveal the defect existed; and documents associated with or used in preparation for DTNA's December 2015 diagnosis. The DTNA response and corresponding documents related to Request No. 5 include descriptions and explanations about DTNA processes, analyses, investigations, and internal deliberations. DTNA asserts that this information is proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA's competitive position if released. Disclosure of the information also could reveal strategic strengths and weaknesses of the company. The Request No. 5 documents also include personally identifying information that is the type of material that is protected from disclosure under Exemption 6 of FOIA. *See* 5 U.S.C § 552(b)(6). DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #2 – Information and Documents related to the April 2016 additional review of warranty data that *“revealed a potential issue whereby the stop light switch may not activate.”* (Request No. 6)

In response to Request No. 6, DTNA is providing an explanation of what prompted the “additional review of warranty”; a description of the nature of this warranty review; explanations of whether the action is one routinely taken by DTNA in instances where a safety defect may exist, what “revealed a potential issue,” and why this warranty review did not reveal the defect existed; and documents associated with or used to make the determination that there was “a potential issue.” The DTNA response and corresponding documents related to Request No. 6 include descriptions and explanations about DTNA processes, analyses, investigations, and internal deliberations. DTNA asserts that this information is proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA's competitive position if released. Disclosure of the information also could reveal strategic strengths and weaknesses of the company. The Request No. 6 documents also include personally identifying information that is the type of material that is protected from disclosure under Exemption 6 of FOIA. *See* 5 U.S.C § 552(b)(6). DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #3 – Information and Documents related to the period when from *“April 2016 to November 2016, returned switches were returned to the supplier where testing of the components showed no problem found.”* (Request No. 7)

In response to Request No. 7, DTNA is providing a description of the testing done between April 2016 and November 2016; explanations of whether the action is one routinely taken by DTNA in instances where a safety defect may exist, why the testing showed there was “no problem found,” and why this testing did not reveal the defect existed; and documents related to the determination that “testing of the components showed no problem found.” The DTNA response and corresponding documents related to Request No. 7 include descriptions and explanations about DTNA processes, analyses, investigations, and internal deliberations. DTNA asserts that the information and documents are proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA's competitive position if released. Disclosure of the information and documents also could reveal strategic strengths and weaknesses of the company. The Request No. 7 documents also include personally identifying information that is the type of material that is protected from disclosure under

Exemption 6 of FOIA. *See* 5 U.S.C § 552(b)(6). DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #4 – Information and Documents related to the period when from “December 2016 to May 2017 DTNA continued to do an extensive investigation into the root cause of the failure.” (Request No. 8)

In response to Request No. 8, DTNA is providing a description of the investigation done between December 2016 and May 2017; an explanation of whether the action is one routinely taken by DTNA in instances where a safety defect may exist; and an explanation of why this investigation did not reveal the defect existed. The DTNA response and corresponding documents related to Request No. 8 include descriptions and explanations about DTNA processes, analyses, investigations, and internal deliberations. DTNA asserts that the information and documents are proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA’s competitive position if released. Disclosure of the information also could reveal strategic strengths and weaknesses of the company. The Request No. 8 documents also include personally identifying information that is the type of material that is protected from disclosure under Exemption 6 of FOIA. *See* 5 U.S.C § 552(b)(6). DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #5 – Information and Documents related to the period when from “May 2017 to October 2017, DTNA used a new test setup . . . along with further testing by the supplier.” (Request No. 9)

In response to Request No. 9, DTNA is providing description of the testing done between May 2017 to October 2017; an explanation of whether the action is one routinely taken by DTNA in instances where a safety defect may exist; and an explanation of why the testing “concluded that it was possible for air pressure to build between the sensor and connector over time potentially causing the brake lights not to activate after several hard applications of the brake.” The DTNA response and corresponding documents related to Request No. 9 include descriptions and explanations about DTNA processes, analyses, investigations, internal deliberations, and supplier relationships. DTNA asserts that the information and documents are proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA’s competitive position if released. Disclosure of the information also could reveal strategic strengths and weaknesses of the company. The Request No. 9 documents also include personally identifying information that is the type of material that is protected from disclosure under Exemption 6 of FOIA. *See* 5 U.S.C § 552(b)(6). DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #6 – Information and Documents related to DTNA’s “defect decision making in November 2017.” (Request No. 10)

In response to Request No. 10, DTNA is providing a description of the information DTNA had in connection with its defect decision making in November 2017, and copies of documents associated with or used in preparation for DTNA’s November 2017 decision to recall the subject vehicles. The DTNA response and corresponding documents related to Request No. 10 include

descriptions and explanations about DTNA processes, analyses, investigations, and internal deliberations. DTNA asserts that the information and documents are proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA's competitive position if released. Disclosure of the information and documents also could reveal strategic strengths and weaknesses of the company. The Request No. 10 documents also include personally identifying information that is the type of material that is protected from disclosure under Exemption 6 of FOIA. *See* 5 U.S.C § 552(b)(6). DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #7 – Information summarizing the “circumstances relating to the decision to recall the subject vehicles for the defect.” (Request No. 11)

In response to Request No. 11, DTNA is providing information regarding the dates DTNA first became aware of the subject defect and the safety-related defect decision was made; who made that decision; the date that DTNA first filed a Part 573 Report with NHTSA relating to the defect in the subject vehicles; and information necessary for DTNA to make its defect decision. The DTNA response related to Request No. 11 includes descriptions and explanations about DTNA processes, analyses, investigations, and internal deliberations. DTNA asserts that the information is proprietary and confidential information about DTNA processes, analyses, investigations, and internal deliberations, which would harm DTNA's competitive position if released. Disclosure of the information and documents also could reveal strategic strengths and weaknesses of the company. DTNA therefore asserts that the information and documents are entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #8 – Information related to a DTNA Part 573 report “relating to the defect in the subject vehicles prior to November 27, 2017.” (Request No. 12)

DTNA asserts that the information in response to Request No. 12 is proprietary and confidential information regarding DTNA's internal decisionmaking processes, which would harm DTNA's competitive position if released. DTNA therefore asserts that the information is entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #9 – Information related to any “service, warranty, or technical document DTNA has prepared” relating to “the subject defect in the recalled vehicles” or “installation, attachment, replacement, or performance of the stop light pressure switch.” (Request No. 29)

DTNA asserts that the information in response to Request No. 29 is proprietary and confidential information regarding DTNA's internal processes, which would harm DTNA's competitive position if released. DTNA therefore asserts that the information is entitled to confidential treatment under 49 C.F.R. § 512.15.

Item #10 – Privilege Log and Document Index for AQ18-002 Response

DTNA asserts that the information in the privilege log and document index provided with its response to AQ18-002 is proprietary and confidential information regarding DTNA's internal communications, documents and processes, which would harm DTNA's competitive position if

released. DTNA therefore asserts that the information is entitled to confidential treatment under 49 C.F.R. § 512.15.

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

No items of information fall within the class determinations of Part 512.

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, Request Nos. 5 – 12 and 29

One redacted version of AQ18-002 information request response, Request Nos. 5 – 12 and 29
DTNA Certificate in support of confidentiality