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

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, Request Nos. 13-17**

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 information contained in DTNA's response to Request Nos. 13-17 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 internal plans, procedures, and 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

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. 13.
2. Information and Documents responsive to Request No. 14.
3. Information and Documents responsive to Request No. 15.
4. Information and Documents responsive to Request No. 16.
5. Information responsive to Request No. 17.
6. Privilege Log and Document Index for AQ18-002 Response.

Item #1 – Information and Documents related to how DTNA “became aware of a potential issue related to certain Kidde fire extinguishers, and began an investigation.” (Request No. 13)

In response to Request No. 13, DTNA is providing a description of how DTNA became aware of the potential issue with Kidde fire extinguishers; the nature of DTNA’s investigation to determine the scope and consequences of the issue; whether the action is one routinely taken in instances where a safety defect may exist; and conclusions of DTNA’s investigation. The DTNA response and corresponding documents related to Request No. 13 include descriptions and explanations about DTNA processes, analyses, investigations, internal deliberations, and consultations with suppliers. DTNA asserts that this information is proprietary and confidential information about

DTNA processes, analyses, investigations, internal deliberations, and supplier consultations, 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. 13 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 period “between when Kidde released NHTSA Recall No. 17E-062 and when DTNA decided to initiate Recall No. 17V-810.” (Request No. 14)

In response to Request No. 6, DTNA is providing a description of the chronology of events that occurred between when Kidde released Recall 17E-062 and when DTNA initiated Recall 17V-810; whether the actions are ones routinely taken in instances where a supplier issues a CPSC recall; and documents associated with or used to make its safety-related defect determination. The DTNA response and corresponding documents related to Request No. 14 include descriptions and explanations about DTNA processes, analyses, investigations, internal deliberations, and consultations with suppliers. DTNA asserts that this information is proprietary and confidential information about DTNA processes, analyses, investigations, internal deliberations, and supplier consultations, 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. 14 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 DTNA's decision to recall the subject vehicles in Recall 17V-810. (Request No. 15)

In response to Request No. 15, 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 and corresponding documents related to Request No. 15 includes descriptions and explanations about DTNA processes, analyses, investigations, internal deliberations and consultations with suppliers. DTNA asserts that the information is proprietary and confidential information about DTNA processes, analyses, investigations, internal deliberations, and supplier consultations, 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. 15 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 DTNA’s issuance of owner notification letters for Recall 17V-810. (Request No. 16)

In response to Request No. 16, DTNA is providing a description of the chronology of events that occurred between when DTNA submitted its Part 573 report for Recall 17V-810 and when DTNA submitted its draft owner notification letter to NHTSA; whether the actions are ones routinely taken in instances where owners need to be notified that a safety defect has been identified; and why owner notification letters were not furnished within 60 days of DTNA’s Part 573 report. The DTNA response and corresponding documents related to Request No. 16 include descriptions and explanations about DTNA processes, analyses, investigations, internal deliberations and consultations with suppliers. DTNA asserts that the information and documents are proprietary and confidential information about DTNA processes, analyses, investigations, internal deliberations, and supplier consultations, 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. 16 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 related to a DTNA owner notification letter “relating to the defect in the subject vehicles prior to March 30, 2018.” (Request No. 17)

DTNA asserts that the information in response to Request No. 17 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 #6 – 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.

Mr. Jonathan C. Morrison
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Please contact me if you have any questions.

Sincerely yours,



Andy Jones

Attachments:

Two confidential versions of AQ18-002 information request response, Request Nos. 13 – 17
One redacted version of AQ18-002 information request response, Request Nos. 13 – 17
DTNA Certificate in support of confidentiality

DAIMLER

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 October 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);

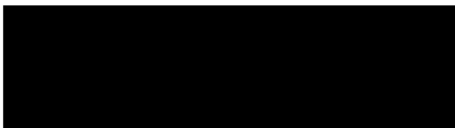
(3) I hereby request that the information marked confidential be protected on an ongoing basis;

(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 18th day of October 2019.



Andy Jones