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March 9, 2020

Mr. Jeffrey Eyres
Office of the Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
West Building, W41-326
Washington, DC 20590

Re: AQ18-002 Duplicate Production for Requests 21-25 (Recall 18V-163)

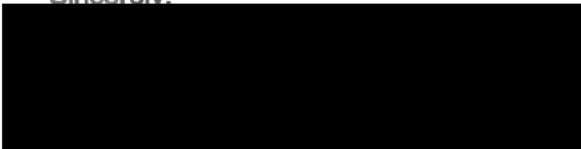
Dear Mr. Eyres:

Enclosed please find the duplicate (color version) of the AQ18-002 production for Requests 21-25 (Recall 18V-163) submitted by Daimler Trucks North America (DTNA) on March 6, 2020.

These materials are submitted pursuant to the request for confidential treatment that accompanied DTNA's original submission on March 6, 2020. A copy of that request is also enclosed.

Please let us know if you have any questions.

Sincerely,


Susan R. McAuliffe

Counsel
susan.mcauliffe@hoganlovells.com
D 202.637.5747

Enclosures

DAIMLER

March 6, 2020

Jonathan C. Morrison
Chief Counsel
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. 21-25**

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. 21-25 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. 21.
2. Information and Documents responsive to Request No. 22.
3. Information and Documents responsive to Request No. 23.
4. Information and Documents responsive to Request No. 24.
5. Information responsive to Request No. 25.
6. Privilege Log and Document Index for AQ18-002 Response.
7. Supplemental Response to Request No. 4.

Item #1 – Information and Documents related to the part of the chronology in the Part 573 Report for Recall 18V-163 when DTNA became aware of an RV outside of the original population that experienced a thermal event, and began an investigation. (Request No. 21)

In response to Request No. 21, DTNA is providing a description of the events that occurred between when DTNA became aware of a thermal event outside of the original recall population and when DTNA decided to initiate Recall 18V-163; whether the action is one routinely taken in instances where a safety defect may exist outside of the originally recall population; conclusions

of DTNA's investigation; and documents associated with or used to reach the decision to expand the recall (these documents are found in Attachment 2, Request No. 21 Documents).

The DTNA response and corresponding documents related to Request No. 21 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. 21 documents in Attachment 2 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 related to DTNA's decision to expand the original recall population by conducting Recall No. 18V-163. (Request No. 22)

In response to Request No. 22, DTNA is providing information about the decision to expand the original recall population by conducting Recall No. 18V-163, including whether the action is one routinely taken in instances where a safety defect may exist outside of the originally recall population, and documents associated with or used to reach the decision to expand the recall (these documents are found in Attachment 3, Request No. 22 Documents).

The DTNA response to Request No. 22 includes 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. 22 documents in Attachment 3 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 related to a DTNA Field Report regarding a July 2017 fire with unknown source. (Request No. 23)

In response to Request No. 23, DTNA is providing information about a DTNA Field Report regarding a July 2017 fire with unknown source, including how DTNA became aware of the fire event; the nature of DTNA's investigation; whether the action is one routinely taken in instances where there is a vehicle fire with an unknown cause; how DTNA made a cause and origin determination; conclusions from DTNA's investigation; and documents associated with or used to reach the conclusion that a safety defect did or did not exist in this vehicle (these documents are found in Attachment 4, Request No. 23 Documents).

The DTNA response to Request No. 23 includes 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. 23 documents in Attachment 4 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 related to a Vehicle Owner Questionnaire (VOQ) regarding an August 9, 2017 vehicle fire. (Request No. 24)

In response to Request No. 24, DTNA is providing information about a VOQ regarding an August 9, 2017 vehicle fire, including how DTNA became aware of the vehicle identified in the VOQ; the nature of DTNA's investigation; whether the action is one routinely taken in instances where there is a vehicle fire; how DTNA made a cause determination; conclusions from DTNA's investigation; and documents associated with or used to reach the conclusion that a safety defect did or did not exist in this vehicle (these documents are found in Attachment 5, Request No. 24 Documents).

The DTNA response to Request No. 24 includes 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. 24 documents in Attachment 5 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 Part 573 Report “relating to the defect in the subject vehicles prior to March 12, 2018.” (Request No. 25)

DTNA asserts that the information in response to Request No. 25 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.

Item #7 – Supplemental Response to Request No. 4.

In its supplemental response to Request No. 4, DTNA is providing information and documents regarding property damage litigation cases (these documents are found in Attachment 6,

Supplemental Request Number Two Documents). DTNA asserts that the information and documents provided in its supplemental response to Request No. 4 and in Attachment 6 represent proprietary and confidential information regarding 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 supplemental Request No. 4 response and documents in Attachment 6 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 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.

Certain portions of Item #1 (Information and Documents related to Request No. 21), Item #2 (Information and Documents responsive to Request No. 22), Item #3 (Information and Documents responsive to Request No. 23), Item #4 (Information and Documents responsive to Request No. 24) and Item #7 (Supplemental Response to Request No. 4) include VINs, and therefore are subject to the class determination for vehicle identification number information. *See* 49 C.F.R. Part 512, Appendix D.

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. 21 – 25
One redacted version of AQ18-002 information request response, Request Nos. 21 – 25
DTNA Certificate in support of confidentiality