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Daimler Trucks North America

Andy Jones
Manager
Product Compliance and Regulatory Affairs

October 17, 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 (Requests 30-46)

Dear Mr. Morrison:

Pursuant to 49 CFR Part 512 and Exemptions 4 and 6 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 Requests 30-46 in 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 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 document management and compliance 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 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. Internal DTNA procedures, policies and documents described in the responses to request numbers 30 through 46.
2. Personally identifying information included in the response to request number 30.
3. Attachment 6, Organizational Chart.
4. Attachment 7, Field Communications Procedures.
5. Attachment 8, Field Communications.
6. Attachment 9, Technical Service Notes.

Item #1 – Internal DTNA procedures, policies and documents in the responses to request numbers 30-46

In response to request numbers 30-46 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. Disclosure of the information also could reveal strategic strengths and weaknesses of the company.

Item #2 – Personally identifying information included in the response to request number 30

The response to request number 30 includes 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(e).

Item #3 – Attachment 6, Organizational Chart

As part of its response to request number 30, DTNA is providing Attachment 6, an organizational chart of DTNA's Compliance and Regulatory Affairs department. Attachment 6 provides information regarding DTNA's internal systems and compliance structure, which would harm DTNA's competitive position if released. In addition, Attachment 6 includes 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(e).

Item #4 – Attachment 7, Field Communications Procedures

As part of its response to request number 32, DTNA is providing Attachment 7, which contains its field communications procedures. Attachment 7 provides information regarding DTNA's 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. Disclosure of the information also could reveal strategic strengths and weaknesses of the company.

Item #5 – Attachment 8, Field Communications

As part of its response to request number 34, DTNA is providing Attachment 8, which contains field communications. Attachment 8 reveals information regarding DTNA's internal compliance processes and communications, which would harm DTNA's competitive position if released. Disclosure of the information also could reveal strategic strengths and weaknesses of the company.

Item #6 – Attachment 9, Technical Service Notes

As part of its response to request number 38, DTNA is providing Attachment 9, which contains Technical Service Notes documents. Attachment 9 reveals information regarding DTNA's internal compliance processes and communications, which would harm DTNA's competitive position if released. Disclosure of the information also could reveal strategic strengths and weaknesses of the company.

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

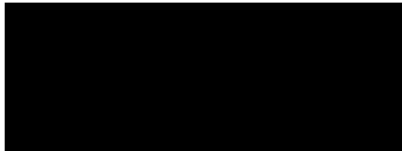
No items of information fall within the class determinations of Part 512.

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,

A large black rectangular redaction box covering the signature of Andy Jones.

Andy Jones

Attachments:

- Two confidential versions of AQ18-002 information request response
- One redacted version of AQ18-002 information request response
- October 5, 2018 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);

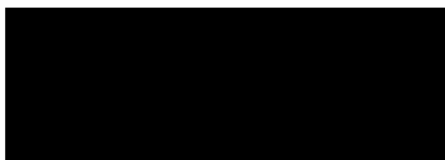
(3) I hereby request that the information marked confidential be protected on an ongoing basis;

(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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