



February 15, 2022

Via Electronic Submission Only

Ms. Ann Carlson
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Request for Confidential Treatment:
Daimler Trucks North America LLC's Submission of its Materials Concerning TBB Leaf Springs
Presented to NHTSA on February 3, 2022

Dear Ms. Carlson:

On behalf of Daimler Trucks North America LLC ("DTNA"), we request confidential treatment for information provided in the attached documents presented to National Highway Traffic Safety Administration ("NHTSA") during the TBB Leaf Springs meeting held on February 3, 2022, and DTNA's February 14, 2022 email responses to NHTSA. DTNA seeks permanent confidential treatment of the entire information set forth in the documents ("Confidential Information"). A certificate in support of this request is attached pursuant to 49 C.F.R. § 512.4(b).

The Confidential Information qualifies for protection from public disclosure under 5 U.S.C. § 552(b)(4) ("Exemption 4"), 49 C.F.R. § 512.15 (b) and (e), the well-known standard set forth under *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and its progeny, and the U.S. Supreme Court's decision in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364, 2366 (2019).¹ Among other reasons, it includes confidential commercial information as described in more detail below.

The Confidential Information qualifies for protection from disclosure under Exemption 4 because it includes confidential commercial information. For the purposes of Exemption 4, commercial information includes information in which the submitter has a "commercial interest." *Pub. Citizen Health Research Grp.*, 704 F.2d at 1290. Information is confidential where it is customarily and actually treated as private by its owner, regardless of whether disclosure of the information would cause substantial competitive harm. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364, 2366 (2019).

Setting aside whether *National Parks* and its progeny even survived the U.S. Supreme Court's decision in *Argus Leader*, the information here squarely qualifies for confidential treatment under either standard. The Confidential Information contains information that is both commercial and confidential. This information includes details about, *inter alia*, information regarding potential defects and/or non-

¹ Although NHTSA's confidentiality standard under 49 C.F.R. § 512.15(b) applies the "substantial competitive harm" test, NHTSA issued this standard before the Supreme Court rejected the *National Parks* "substantial competitive harm" test in *Argus Leader*. NHTSA thus should assess confidentiality consistent with *Argus Leader*.

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compliances in its vehicles. As the manufacturer of these vehicles, DTNA has a commercial interest in this information.

DTNA treats this information as confidential and proprietary and does not customarily release or otherwise provide such confidential information or similar information to the public except under assurances that they will be kept confidential. DTNA utilizes numerous systems and processes that limit access to and prevent unauthorized disclosures of Confidential Information, including: (i) password-protected electronic record-keeping systems; (ii) security systems that limit physical access to DTNA electronic and hard-copy record-storage facilities; and (iii) information-security training that emphasizes the importance of preventing unauthorized disclosures for information like the Confidential Information provided to NHTSA.

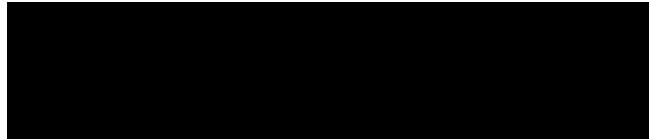
Protecting the Confidential Information from disclosure would also be consistent with the policy behind Exemption 4. Congress enacted Exemption 4 to prevent disclosures that would “eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter’s] product.” *Public Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). “Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs 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). The Confidential Information squarely falls within the Exemption 4 policy interests as well.

If you receive a FOIA request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, DTNA respectfully requests notification of the FOIA request and an opportunity to provide further justification for confidential treatment, if warranted, and to allow DTNA to conduct a deeper review of the requested information.

Please contact me if you have any questions with regards to this confidentiality request.

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Sincerely,



Kerem Bilge
Associate
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, DC 20036



Enclosures:

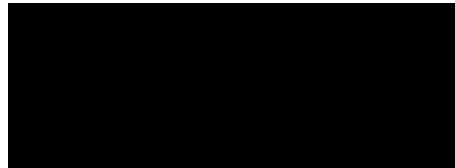
Certificate in Support of Request for Confidentiality (DTNA)
Exponent DTNA Leaf Spring Analysis Review (Feb. 3, 2022)
Copy of email from T. Torgeson to X. Tan and J. Neff with the subject line "DTNA TBB Leaf Springs topic with Exponent, Ryan Harrington - NHTSA Update" dated Monday, February 14, 2022 10:23 AM

Certificate in Support of Request for Confidentiality

I, Tiffani Torgeson, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

1. I am the Manager of Compliance and Regulatory Affairs in Daimler Trucks North America LC (“DTNA”), and I am authorized by DTNA to execute this certificate on its behalf;
2. I certify that the information contained in the attached materials, and for which DTNA seeks confidential treatment, 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 contained in the enclosed be protected on a permanent 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 to the extent that it has been shared on a limited and confidential basis with outside legal counsel and suppliers bound by mutual confidentiality obligation.
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 this 15th day of February 2022.



Tiffani Torgeson
Manager, Compliance and Regulatory Affairs
Daimler Trucks North America LLC
4747 N. Channel Ave
Portland, OR 97217