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WASHINGTON, D.C.

October 14, 2021

VIA ELECTRONIC SUBMISSION ONLY

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

Re: Daimler Trucks North America LLC – Request for Confidential Treatment
TBB Leaf Springs Presentation (October 13, 2021)

Dear Ms. Carlson,

On behalf of Daimler Trucks North America LLC (“DTNA”), we request confidential treatment for the enclosed presentation regarding TBB Leaf Springs presented to NHTSA during the meeting held on October 13, 2021 (“Confidential Information”). DTNA seeks permanent confidential treatment of the entire information set forth in the Confidential Information. The Confidential Information is being submitted via electronic submission only, in accordance with procedures set forth in the agency’s public advisory on its website, <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> (last visited October 14, 2021) whereby NHTSA advises that it is treating electronic submission as an acceptable method for submitting confidential business information (“CBI”) to the agency under 49 CFR Part 512 in light of Covid-19.

The Confidential Information qualifies for protection from public disclosure as a voluntary submission under 5 U.S.C. § 552(b)(4) (“Exemption 4”), 49 C.F.R. § 512.15 (d) and (e), the well-known standard set forth under *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (en banc) 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 voluntarily submitted to the agency in the context of a meeting as described above. A certificate in support of this request is attached pursuant to 49 C.F.R. § 512.4(b). DTNA seeks permanent confidential treatment for this information in its entirety.

¹ Although NHTSA’s confidentiality standard under 49 C.F.R. § 512.15(d) applies the “not customarily released” test, NHTSA issued this standard before the Supreme Court’s decision in *Argus Leader*. NHTSA thus should assess confidentiality consistent with *Argus Leader*.

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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. v. Food & Drug Admin.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). 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). “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).

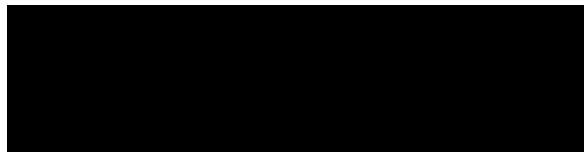
The standard for confidential information for voluntary submissions had previously been set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (en banc), which established that under FOIA Exemption 4, documents and materials submitted voluntarily to a government agency are to be treated differently than those that were submitted because the submitter was required to submit them. If materials are submitted voluntarily, as here, *Critical Mass* declares that confidential treatment will be granted under Exemption 4 when the information would not customarily be released to the public by the submitter. Under that standard, the Confidential Information squarely qualifies for confidential treatment because DTNA submits this information voluntarily to the agency, and DTNA would not customarily release such detailed commercial information to the public.

In addition, the United States Supreme Court’s recent decision in *Argus Leader* holds that FOIA allows a federal agency to withhold from disclosure records submitted by a private entity where the submitter keeps the records secret and the agency promises to keep the records from disclosure. DTNA customarily keeps secret the detailed commercial information set forth in the Confidential Information, and DTNA believes that the agency has assured DTNA and other private entities that it will keep from disclosure the type of information set forth in the Confidential Information. Accordingly, whether analyzed under *Critical Mass* or *Argus Leader*, the Confidential Information squarely qualifies as confidential, and should be protected from public disclosure pursuant to Exemption 4.

If you receive a FOIA request for disclosure of the Confidential Information 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, as appropriate, to further protect the Confidential Information.

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

Sincerely,



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



Attachments

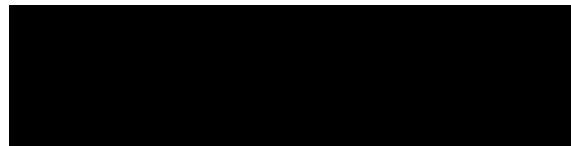
1. Declaration of 
2. TBB Leaf Springs Presentation (October 13, 2021)

Certificate in Support of Request for Confidentiality

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

1. I am the Executive Manager for Vehicle Safety of 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 14th day of October 2021.



Exec Manager, Vehicle Safety
Daimler Trucks North America LLC
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Portland, OR 97217