

# DAIMLER

October 1, 2019

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

*Via Federal Express*

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's July 2, 2019 Information Request Regarding Preliminary  
Evaluation PE19-007**

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 and Hendrickson information contained in DTNA's response to NHTSA's July 2, 2019 Information Request concerning Preliminary Evaluation PE19-007 ("PE19-007 IR"). Pursuant to 49 CFR Part 512 and instructions provided by NHTSA, this request attaches two complete, unredacted versions of DTNA's response to the PE19-007 IR, 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 PE19-007 IR response and supporting documents (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 below, the Confidential DTNA Material includes production data, customer complaint and field report data and documents, warranty data and information, component assessments and analyses, part modification information, and part sales data. Competitors could use this information to evaluate DTNA's internal processes and supplier information and to improve their own processes, plans, and market position. This information is highly confidential to DTNA and reveals facts that would not otherwise be available, or, for the assessment and analysis data, would not otherwise be available without independent testing. 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 information in the Confidential DTNA Material includes confidential product, analytical and performance information, as well as important information about product evaluation and assessment procedures and part modifications. Knowledge of 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 materials represent proprietary and confidential business information. This information represents a significant investment in research and development, which would cause substantial competitive harm to the company if disclosed to competitors. 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 PE19-007 IR response and supporting documents related to PE19-007:

1. Number of subject vehicles and explanatory production information in the response to Request No. 1
2. Attachment 1, Production Data
3. Description of the systems and processes used to gather the information for the responses to Request Nos. 1-10
4. Descriptions of the customer complaints and field report in the response to Request No. 2
5. Attachment 2, Request Number Two Data
6. Attachment 3, Request Number Two Documents
7. Information regarding DTNA’s search methods and findings for the response to Request No. 4.
8. Information regarding the number of warranty claims in the response to Request No. 5.
9. Attachment 5, Warranty Data.

10. Information regarding DTNA's search methods and codes for the response to Request No. 6
11. Information regarding the actions described in the response to Request No. 8.
12. Information regarding the component modifications described in the response to Request No. 9
13. Information regarding part sales and suppliers provided in the response to Request No. 10

**Item #1 - Number of subject vehicles and explanatory production information in the response to Request No. 1**

Request No. 1 of PE19-007 asks DTNA to provide information regarding the number of subject vehicles sold or leased. DTNA asserts that specific information regarding sales numbers and patterns is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. While overall vehicle sales figures are available, the extent to which specific models are sold is not available outside of DTNA. In addition, the response to Request No. 1 includes information regarding DTNA's production arrangements with Ford and GM for the Minotour model. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain. Competitors could also adjust their own market plans and undercut DTNA's market share and reduce competition, resulting in substantial competitive harm to DTNA.

**Item #2 - Attachment 1, Production Data**

Request No. 1 of PE19-007 asks DTNA to provide information regarding the VIN, make, model, model year, part number, date of manufacture, date warranty coverage commenced, and state where the vehicle was originally sold or leased for the subject vehicles, as well as certain component and supplier information. DTNA asserts that specific information regarding sales numbers and patterns and product specifications is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. While overall vehicle sales figures are available, the extent to which specific models are sold, the geographic sales patterns, and the customer to whom they are sold is not available outside of DTNA, nor is information on specific components provided. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain. Competitors could also adjust their own market plans and undercut DTNA's market share and reduce competition, resulting in substantial competitive harm to DTNA.

**Item #3 - Description of the systems and process used to gather the information for the responses to Request Nos. 1-10**

In response to Request Nos. 1-10 of PE19-007, 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.

**Item #4 - Descriptions of the customer complaints and field report in the response to request number 2**

Request No. 2 of PE19-007 asks DTNA to provide detailed information on customer complaints and field reports which relate to, or may relate to, the alleged defect in the subject vehicles.

DTNA contends that detailed information about complaints and field reports, including DTNA's internal assessments, are proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

**Item #5 - Attachment 2, Request Number Two Data**

Request No. 3 of PE19-007 asks DTNA to provide detailed information regarding complaints and field reports identified in response to Request No. 2, including vehicle owner or fleet name, street address, email address and telephone number, VIN, make, model, and model year, and vehicle mileage. DTNA asserts that specific information regarding the subject vehicles is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. While overall vehicle sales figures are available, information regarding specific models and model years, geographic distribution, and owner information is not available outside of DTNA. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain. Competitors could also adjust their own market plans and undercut DTNA's market share and reduce competition, resulting in substantial competitive harm to DTNA. In addition, DTNA contends that information about complaints and field reports identified in response to Request No. 2 constitutes proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

**Item #6 - Attachment 3, Request Number Two Documents**

Request No. 4 of PE19-007 asks DTNA to provide copies of complaints and field report documents related to the items identified in response to Request No. 2. DTNA contends that detailed consumer complaint and field report documents, including DTNA's internal assessments, are proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

**Item #7 - Information regarding DTNA's search methods and findings for the response to Request No. 4**

In response to Request No. 4 of PE19-007, 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.

**Item #8 - Information regarding the number of warranty claims in the response to Request No. 5.**

Request No. 5 of PE19-007 asks DTNA to provide information on the number of warranty claims which relate to, or may relate to, the alleged defect in the subject vehicles. DTNA contends that information about warranty claims is proprietary information, a trade secret, and would be likely

to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

**Item #9 - Attachment 5, Warranty Data**

Request No. 5 of PE19-007 asks DTNA to provide detailed information regarding the warranty claims identified in response to Request No. 5, including vehicle owner or fleet name, street address, email address and telephone number, VIN, repair date, vehicle mileage, repair codes, replacement parts, whether a piece of a fractured leaf spring separated from the vehicle, and the concern stated by the customer. DTNA contends that information about warranty claims is proprietary information, a trade secret, and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

**Item #10 - Information regarding DTNA's search methods and codes for the response to Request No. 6**

In response to Request No. 6 of PE19-007, 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.

**Item #11 - Information regarding the actions described in the response to Request No. 8.**

In response to Request No. 8 of PE19-007, DTNA is providing information regarding assessments, analyses, tests, investigations and evaluations that relate to, or may relate to, the alleged defect in the subject vehicles. DTNA contends that specific information regarding these types of actions is proprietary information, a trade secret and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with substantial market information they could not otherwise obtain and provide competitors a list of perceived "strengths" and "weaknesses" of DTNA products.

**Item #12 - Information regarding the component modifications described in the response to Request No. 9**

In response to Request No. 9 of PE19-007, DTNA is providing information regarding modifications of the subject component. DTNA contends that specific information regarding these types of modifications is proprietary information, a trade secret and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with important technical information they could not otherwise obtain regarding DTNA products, and would harm DTNA's competitive position if released.

**Item #13 - Information regarding part sales and suppliers provided in the response to Request No. 10**

In response to Request No. 10 of PE19-007, DTNA is providing information regarding part sales and suppliers of the subject component. DTNA contends that specific information regarding part sales and suppliers is proprietary information, a trade secret and would be likely to cause substantial harm to DTNA's competitive position if released. Disclosure of this information would provide competitors with important information they could not otherwise obtain regarding DTNA products and business relationships, and would harm DTNA's competitive position if released.

**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**

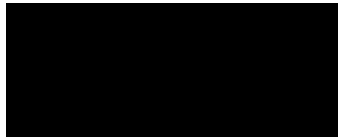
Certain portions of Attachment 2 fall within the class determination of Part 512, Appendix B(A)(1), which provides that blueprints and engineering drawings are presumptively confidential. In addition, item #2 (Attachment 1, Production Data), Item #5 (Attachment 2, Request Number Two Data), item #6 (Attachment 3, Request Number Two Documents) and Item #9 (Attachment 5, Warranty Data) 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  
Manager  
Product Compliance and Regulatory Affairs  
Daimler Trucks North America LLC  
4747 N. Channel Avenue  
Portland, OR 97217  
andy.jones@daimler.com  
(503) 745-5508

**Attachments:**

- Two confidential versions of PE19-007 information request response
- One redacted version of PE19-007 information request response
- Certificate in support of confidentiality