



April 24, 2024

Via Electronic Submission Only

Mr. John Donaldson
Acting Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Request for Confidential Treatment:
PE21-004 Freightliner Cascadia Engine Electrical Wiring Harness Chafe Part Number
Descriptions

Dear Mr. Donaldson:

On behalf of Daimler Truck North America LLC ("DTNA"), we request confidential treatment for information provided in the enclosed response to the National Highway Traffic Safety Administration's ("NHTSA") March 25, 2024 request for electrical wiring harness chafe part number descriptions set forth in DTNA's June 3, 2021 original and November 30, 2022 supplemental information request ("IR") response in PE21-004. DTNA seeks permanent confidential treatment for the following: (1) the information identified within brackets in the narrative response of DTNA; (2) the entirety of the information set forth in the Excel Spreadsheet titled "Response to Q1 – April 22-2024" provided as an attachment to the narrative response; and the (3) the entirety of the information set forth in the PowerPoint Slide deck titled "Commodity Harness (April 22, 2024)" (collectively "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).

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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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*, the confidential details regarding DTNA's aftermarket parts, including part numbers, descriptions, suppliers, and supplier contact information. As the manufacturer of the 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.

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

Sincerely,



Kerem Bilge
Counsel
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Enclosures:

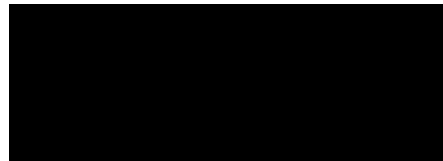
Certificate in Support of Request for Confidentiality (DTNA)
Confidential Version of DTNA's Response
Public Version of DTNA's Response

Certificate in Support of Request for Confidentiality

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

1. I am the Product Defect Investigation Engineering Manager in Daimler Truck 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 24th day of April 2024.



Sam Geser
Product Defect Investigation Engineering
Manager
Compliance and Regulatory Affairs
Daimler Truck North America LLC
4747 N. Channel Ave
Portland, OR 97217