Department employees who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Department have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

(b) In meeting its obligations under paragraph (a) of this section, the Department shall comply with the Electronic and Information Technology Accessibility Standards (*See* 36 CFR part 1194).

(c) *Alternative means of access when undue burden is imposed.* When development, procurement, maintenance, or use of EIT that meets the standards as provided in 36 CFR part 1194 would impose an undue burden, the Department shall provide individuals with disabilities covered by this section with the relevant information and data by an alternative means of access that allows the individual to use the information and data.

(d) *Procedures for determining undue burden.* The Department procedures for finding that full compliance with 36 CFR part 1194 would impose an undue burden can be found at: *http://www.state.gov/m/irm/impact/126338.htm.*

Subpart B—Complaint Procedures

§ 147.7 Filing a Section 508 complaint.

(a) An individual with a disability who alleges that Department EIT does not allow him or her to have access to and use of information and data that is comparable to access and use by individuals without disabilities, or that the alternative means of access provided by the Department does not allow the individual to use the information and data, may file a complaint with the Department's Office of Civil Rights (S/OCR).

(b) Employees, applicants for employment, or members of the general public are encouraged to contact personnel in the Department office that uses or maintains a system that is believed not to be compliant with Section 508 or 36 CFR part 1194 to attempt to have their issues addressed. Nothing in this complaint process is intended to prevent Department personnel from addressing any alleged compliance issues when made aware of such requests directly or indirectly.

(c) A Section 508 complaint must be filed not later than 180 calendar days after the complainant knew, or should have known, of the alleged discrimination, unless the time for filing is extended by the Department. A Section 508 complaint must be submitted in writing by fax, email, mail, or hand delivery to the S/OCR office, using the Form DS–4282, Discrimination Complaint Form, which can be downloaded at: *http://eforms.state.gov/searchform.aspx.*

(d) Once a Section 508 complaint has been received, S/OCR will conduct an investigation into the allegation(s) and render a decision as to whether a Section 508 violation has occurred. Within 180 days of the receipt of a complete complaint under this part, the Secretary shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(e) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 147.7(d). The Department may extend this time for good cause.

(f) Timely appeals shall be accepted and processed by the Department.

(g) The Secretary shall notify the complainant of the results of the appeal within 60 days of the receipt of the appeal. If the Secretary determines that additional information is needed from the complainant, the Secretary shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(h) Individuals who submit a complaint must keep S/OCR updated at all times with current contact information, to include address, phone number, and working email address. Failure to do so may result in having the complaint closed prior to arriving at a decision on the merits of the complaint.

(i) A Department employee who receives a Section 508 complaint or a communication that raises an issue that might reasonably be considered a Section 508 complaint, should forward such communication(s) to S/OCR.

§ 147.8 Final agency action.

Either a decision by the Secretary on the merits of a complaint, or no notification in writing from the Secretary within 180 days of filing the complaint, will a constitute a final agency action and exhaustion of the complainant's administrative remedies for purposes of 5 U.S.C. 701, *et seq.*

Dated: December 17, 2015.

John M. Robinson,

Director, Office of Civil Rights, Department of State.

[FR Doc. 2015–32485 Filed 12–31–15; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. NHTSA–2015–0130]

RIN 2127–AL62

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the existing procedures for the submission and processing of requests for confidential treatment. NHTSA is proposing that it will defer acting on requests for confidential treatment until it receives a FOIA request for the information, if the Agency decides that making a determination of confidentiality is necessary or if making a determination is in the public interest. In general, unless and until a determination is made, the information for which confidential treatment is requested will not be disclosed.

To ensure that requests for confidential treatment will provide an adequate basis for deferred determinations, this notice also proposes that submitters affirmatively specify whether the materials for which confidential treatment is sought were voluntarily submitted and provide an adequate basis for their claim of voluntariness. The proposal also contains provisions addressing agency disposition of inadequate or incomplete requests to ensure that submitters comply with the requirements when making requests for confidential treatment. Additionally, to facilitate communication with those making requests for confidential treatment, this notice proposes that an electronic mail address be provided with all requests.

NHTSA is also proposing to amend the regulation to provide submitters of confidential information with the option of submitting their requests for confidential treatment and the materials accompanying these requests electronically.

DATES: Comments on the proposal are due March 4, 2016. In compliance with the Paperwork Reduction Act, NHTSA

is also seeking comment on amendments to an information collection. See the Paperwork Reduction Act section under Rulemaking Analyses and Notices below. Please submit all comments relating to the information collection requirements to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section. Comments to OMB are most useful if submitted within 30 days of publication. See the **SUPPLEMENTARY INFORMATION** portion of this document for DOT's Privacy Act Statement regarding documents submitted to the Agency's dockets.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Comments regarding the proposed information collection should be submitted to NHTSA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Please see the Privacy Act heading under Regulatory Analyses and Notices.

FOR FURTHER INFORMATION CONTACT: Otto Matheke, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, or Thomas Healy, Office of Chief Counsel, NHTSA, (202) 366–7161, facsimile (202) 366–3820. The mailing address for both these officials is 1200 New Jersey Ave. SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This notice proposes to amend NHTSA's regulations governing requests for confidential treatment (49 CFR part 512) to allow the Agency to defer making determinations on requests for confidential treatment until a request is made under the Freedom of Information Act (FOIA) or if the Agency decides that making a determination is necessary or is in the public interest so that NHTSA can more efficiently manage the increasing number of requests for confidential treatment. Generally, unless and until a determination is made, the information for which confidential treatment is requested will be kept confidential.

NHTSA is also proposing to amend part 512 to provide requestors with the option of submitting their requests for confidential treatment and the materials accompanying these requests electronically in an effort to more efficiently manage requests for confidential treatment received by the agency.

The number of requests for confidential treatment received by NHTSA has increased significantly since NHTSA first promulgated its confidentiality regulations in 1981. At that time the ''Big Three'' domestic automobile manufacturers still dominated the U.S. market. The U.S. automobile market has since become more diverse because of new entries from Asia, a significant decline in the market share controlled by the ''Big Three'' and the corresponding expansion of market share by other companies, including ''foreign'' manufacturers, many of whom now have U.S. production facilities. Not surprisingly, as the market share of these companies increased, their interactions with the agency have increased as well. New agency programs, such as the New Car Assessment Program (NCAP), have further increased the flow of data into NHTSA. More recently, the digitization of information, the widespread adoption of email, and the relative ease of storing, organizing and maintaining electronic information, have often expanded the volume of data encompassed by requests for confidential treatment. By proposing to accept requests for confidential treatment electronically and to limit agency confidentiality determinations to instances where the confidential materials involved are the subject of a FOIA request, or where the Agency finds that a determination is necessary or is in the public interest, the Agency will be able to more efficiently manage the increasing number and size of requests for confidential treatment.

Requests for confidential treatment would be reviewed for completeness and compliance with applicable regulatory requirements and, if necessary, denied. Ordinarily, complete and compliant requests would be substantively reviewed when and if a FOIA request seeking the information is received. However, to ensure that the scope of requests for confidential treatment is consistent with applicable law, the agency is also proposing that it may also make confidentiality determinations on its own initiative, even when it has not made a finding that a determination is necessary.

To ensure that persons requesting confidential treatment provide the agency with all the information that may be required to make deferred determinations of confidentiality, this notice also proposes that confidentiality requests must state whether the information at issue was voluntarily submitted or submitted in response to a compulsory process. In either case, this notice proposes that requests for confidential treatment contain information about the circumstances of the NHTSA inquiry resulting in the submission of the materials claimed as confidential. Additionally, to facilitate communication with those seeking confidential treatment, this notice proposes that requests for confidential treatment contain the electronic mail address of the person designated as the intended recipient of any NHTSA determination of confidentiality.

II. Background

A. NHTSA's Confidentiality Practices and Regulations

The Agency's regulations governing requests for confidential treatment are found in 49 CFR part 512. Part 512 directs that confidential materials and requests for confidential treatment must be submitted to NHTSA's Office of Chief Counsel. 49 CFR 512.7. Currently, requests must be in writing and may not be submitted electronically. *Id.* Once a request is submitted, the information at stake remains confidential until NHTSA makes its determination. 49 CFR 512.20. Determinations must be made by the Chief Counsel's office within a reasonable time. 49 CFR 512.17(b). However, if the information at issue in a request is also the subject of a FOIA request, part 512 states that NHTSA generally must determine whether to grant the confidentiality request in 20 days. 49 CFR 512.17(a). This 20 day limit may be extended by the Chief Counsel for ''good cause.'' *Id.* If NHTSA denies a request, the submitter has 20 working days (from receipt) to request reconsideration of the denial. 49 CFR 512.19. If a request for confidential treatment is granted, it may be modified by the Chief Counsel due to newly discovered or changed facts, a change in the applicable law, a change in a class determination, the passage of time, or a finding that a prior determination is erroneous. 49 CFR 512.22.

First promulgated in 1981, part 512 established that NHTSA would make confidentiality determinations within 30 days for certain classes of information. 46 FR 2049 (January 8, 1981). These classes included: (1) Information relating to a rulemaking proceeding with an established public docket, (2) information relating to a petition proceeding with an established public docket, (3) information relating to a defect proceeding, (4) information relating to an enforcement proceeding involving alleged violations or a regulation or standard, or (5) information provided pursuant to a NHTSA reporting requirement. *See e.g.* 49 CFR 512.5(b) (1981). In all other instances, the 1981 final rule established that NHTSA would defer making a confidentiality determination unless a FOIA request was made for information the submitter claimed to be confidential. 49 CFR 512.5(d)(1981). If a FOIA request was made, the 1981 final rule specified that NHTSA would determine the confidential status of materials covered by the request within 10 days of the request unless the information fell within the five categories described above. *Id.*

The Agency noted that many commenters suggested that the issuance of confidentiality determinations in 30 days or less was inconsistent with the practices of other Federal agencies and would be unduly burdensome for the Agency. 46 FR. at 2050. NHTSA also observed that some Federal agencies had adopted a policy of immediate determination and that making immediate determinations would benefit both submitters and the public. *Id.* The Agency stated that making immediate determinations would make it easier for NHTSA to segregate and control confidential information and that the public would benefit by having access to information that was not be presumed to be confidential because no determination over its status had been made. *Id.* NHTSA also explained that concerns over overloading the Agency with unnecessary work were ''unfounded.'' The information that would be subject to immediate determinations would be limited to materials that generated by investigations, required regulatory reports and rulemaking actions. For these categories of information, the Agency concluded that non-confidential information would customarily be made public. *Id.* Accordingly, the best course for NHTSA would be to make immediate determinations for the 5 named classes of information. *Id.*

Responding to a petition for reconsideration filed by the Motor Vehicle Manufacturer's Association (MVMA), NHTSA modified the 1981 final rule in a notice published on June 7, 1982. 47 FR 24587 (June 7, 1982). The Agency observed that the crux of the MVMA petition, as well as the comments generated during the rulemaking process, was that making immediate determinations of confidentiality was inconsistent with other government agency practices and would be overly burdensome on both submitters and NHTSA. *Id.* at 24588. After reviewing its use of confidential information, the Agency determined that most of these materials originated in defects investigations and standards enforcement proceedings. *Id.* Mindful that 49 CFR 554.9 provides that communications submitted by a manufacturer which are the subject of an investigation will be made public during that investigation, NHTSA concluded that it may withhold information claimed to be confidential pending a final determination of confidentiality if that request for confidential treatment appeared to have a reasonable chance of success. *Id.* NHTSA then stated that it would be ''. . . unnecessary or inappropriate . . .'' to immediately determine the confidentiality of defect and noncompliance information when it is received. Accordingly, the Agency concluded that the immediate determination process previously established for five classes of information no longer fit NHTSA's needs. Therefore, NHTSA amended section 512.6 of part 512 to state that the Agency would make confidentiality determinations at its own initiative or when it received a FOIA request for the information claimed to be confidential. *Id.*

The 1982 response to the MVMA petition for reconsideration established that NHTSA would make confidentiality determinations at one of two junctures—when the Agency decided that it would do so or when NHTSA received a FOIA request for the information at issue. However, NHTSA promulgated a number of amendments to part 512 in 1989. *See* 54 FR 48892 (November 28, 1989). Among other things, the 1989 amendments eliminated the prior reference to the five classes of data and simply stated that any confidentiality determinations would be made within a ''reasonable time'' unless a FOIA request for the information had been made. *Id.* at 48897. If a FOIA request for the data had been made, the 1989 amendments retained the requirement that a determination must be made within 10 days of the FOIA request. *Id.*

Beyond stating that the amendment would ensure efficient processing and proper identification of business information received by NHTSA, neither the NPRM (54 FR 28696 (July 7, 1989)) nor the preamble to the final rule (54 FR 48892 (November 28, 1989)) explained the rationale for adopting this ''reasonable time'' standard. NHTSA also did not offer any guidance on what time period would constitute a ''reasonable time.''

NHTSA subsequently promulgated amendments to part 512 in July 2003, (68 FR 44209, (July 28, 2003)), October 2007 (72 FR 59434 (October 19, 2007)), and July 2009 (74 FR 37878 (July 29, 2009)). These amendments established class determinations for data submitted pursuant to the early warning reporting (EWR) requirements authorized by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Public Law 106–414, 114 Stat. 1800, the ''Cash for Clunkers'' program authorized by the Consumer Assistance to Recycle and Save Act of 2009 (the CARS Act) (Pub. L. 111–32) and established procedures for submitting and marking electronic

documents and information. The ''reasonable time'' standard for making confidentiality determinations established by the 1989 amendments to part 512 was not addressed or modified by the 2003, 2007, and 2009 final rules.

B. Other NHTSA Statutes and Regulations and Confidential Materials

Any proposal examining potential modifications to NHTSA's regulations governing the confidentiality of information submitted to the Agency must be consistent with statutory provisions directing the disposition of these materials. Because NHTSA is proposing to defer acting on requests for confidential treatment until a FOIA request is made, a particular concern is whether statues governing NHTSA's activities require disclosure of confidential information in the absence of a FOIA request.

When originally enacted in 1966, the Safety Act contained provisions directly addressing certain categories of confidential information submitted to NHTSA. The provision then codified at 15 U.S.C. 1402 imposed a duty on motor vehicle manufacturers to notify vehicle owners and NHTSA if the manufacturer had determined that a safety related defect existed in one of its products. Section 1402(d) required that these manufacturers provide NHTSA with all communications related to the defect that were sent to dealers and vehicle owners. This section further commanded that the Secretary ''. . . shall disclose so much of the information contained in such notice . . .'' or other information obtained from a manufacturer in relation to a failure to comply with Federal motor vehicle safety standards that ''. . . will assist in carrying out the purposes of this Chapter . . .''.[1]

The authority to release information from defect-related manufacturer communications to dealers and customers was not, and is not, unlimited. 15 U.S.C. 1402(d) further stated that the Secretary ''. . . shall not disclose any information which contains or relates to a trade secret or other matter referred to in [the Trade Secrets Act (18 U.S.C. 1905)]'' unless such disclosure ''is necessary to carry out the purposes'' of the Safety Act.[2]

Congress amended the Safety Act in 1974 and, among other things, expanded the reporting requirements originally found in section 1402 by adding part B ''Discovery, Notification and Remedy of Motor Vehicle Defects.'' *See* Motor Vehicle and Schoolbus Safety Amendments of 1974, Public Law 93–492. The new reporting requirements of 15 U.S.C. 1418 commanded manufacturers of motor vehicles and motor vehicle equipment to furnish the Secretary with copies of all defect or non-compliance related notices and other communications given by the manufacturer to dealers and consumers (15 U.S.C. 1418(a)(1)). Section 1418(a)(2)(A) directed the Secretary to disclose ''. . . so much of any information which is obtained under this Act . . .'' relating to safety related defect or a non-compliance determined to exist by the manufacturer or NHTSA ''. . . as he determines will assist in carrying out the purposes of this part . . .''. Again, the authority to disclose safety-related defect or non-compliance related information was limited. The amendment further specified that information subject to the Trade Secrets Act shall not be disclosed unless the Secretary determines such disclosure is necessary to carry out the purposes of the Safety Act (15 U.S.C. 1418(a)(2)(B)). Additionally, section 1418(a)(2)(C) stated that the foregoing disclosure requirements ''. . . shall be in addition to, and not in lieu of . . .'' the requirements of the Freedom of Information Act (5 U.S.C. 552). The foregoing sections were redesignated as 49 U.S.C. 30167(a) and (b) when the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1381 *et seq.,* was codified (without substantive change) as 49 U.S.C. chapter 301—Motor Vehicle Safety in 1994, Public Law 103–272.

The 1974 amendments also replaced the reporting requirements in 15 U.S.C. 1402 with specific provisions addressing the disclosure of cost information in the event a manufacturer opposes an action of the Secretary on the basis of increased cost. 15 U.S.C. 1402(a) directed that manufacturers submit such cost information for evaluation by the Secretary. 15 U.S.C. 1402(b)(1) and (b)(2) specified that such cost information, and the Secretary's evaluation of the cost data, shall be made available to the public unless the submitter satisfies the Secretary that the information contains a ''trade secret or other confidential matter.'' In that event, disclosure shall only be made in a manner preserving the confidentiality of the information (15 U.S.C. 1402(b)(1) and (2)). The provisions of section 1402 are now found in 49 U.S.C. 30167(c) as a result of the 1994 codification (without substantive change) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1381 *et seq.,* as 49 U.S.C. chapter 301—Motor Vehicle Safety, Public Law 103–272.

Other statutory provisions relating to various programs administered by NHTSA are also relevant to agency processing of confidential information. Section 32303(c) of chapter 323 (49 U.S.C. 32301 et. seq.) forbids the disclosure of personally identifying information collected from a vehicle insurer without the consent of that person when NHTSA has obtained crash or injury information from an insurance company. NHTSA is authorized to collect information pursuant to administration of the odometer fraud provisions of chapter 327 *(see e.g.* 49 U.S.C. 32706) but is forbidden by Section 32708 of that chapter from publicly disclosing information subject to the Trade Secrets Act (18 U.S.C. 1905). Similarly, NHTSA is empowered to collect information under the vehicle anti-theft provisions of chapter 331 (49 U.S.C. 33101 *et. seq.*) but Section 33116 of chapter 331 directs that the Agency may not publicly disclose any of this information that is subject to the Trade Secrets Act (18 U.S.C. 1905).

The Corporate Average Fuel Economy (CAFE) provisions of chapter 329 (49 U.S.C. 32901 *et. seq.*) direct that certain information be released, but also restricts information that NHTSA may release to the public. Section 32910(c) provides that NHTSA shall disclose certain information obtained under this chapter under section 552 of title 5. However, this command to release fuel economy information under the Freedom of Information Act (FOIA) (5 U.S.C. 552) is limited by subsequent language stating that NHTSA ''. . . may withhold information under section 552(b)(4) of title 5 only if the Secretary or Administrator decides that disclosure of the information would cause significant competitive damage.'' Section 32910(c) further provides that fuel economy measurements and calculations performed by the Environment Protection Agency under section 32904(c) ''shall be disclosed under section 552 of title 5 without regard to section 552(b).'' Under the foregoing provisions, NHTSA has a general duty to make fuel economy information available under FOIA unless the Agency finds that release of the information would cause significant competitive harm. If the information at issue is fuel economy measurement and calculation data generated under section 32904(c) by the Environment Protection Agency (EPA), NHTSA must make these materials available regardless of whether the information is exempt from

[1] The purpose of the Safety Act is ''to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents.'' 49 U.S.C. 30101.

[2] As discussed below, the Trade Secrets Act is considered to be co-extensive with FOIA exemption 4. *See CNA Financial Corp.* v. *Donovan,* 830 F.2d 1132, 1151 (D.C. Cir. 1987).

disclosure under the FOIA exceptions found 5 U.S.C. 552(b).

With the exception of the EPA fuel economy calculations described in 49 U.S.C. 32904(c), which NHTSA is required to release, NHTSA's release of information obtained in furtherance of its varied missions is tempered by the requirement that the Agency not disclose information whose release would cause competitive harm or is subject to the Trade Secrets Act (18 U.S.C. 1905). We note that is has long been established that the Trade Secrets Act is considered to be co-extensive with FOIA exemption 4. *See CNA Financial Corp.* v. *Donovan,* 830 F.2d 1132, 1151 (D.C. Cir. 1987). Accordingly, other than EPA fuel economy calculation data, the statutes governing various agency programs do not require NHTSA to release information it has received if that information is confidential under FOIA exemption 4.

The Agency is also not required to release confidential information under its own regulations. NHTSA promulgated regulations codifying the procedures employed in defect and non-compliance investigations in 1980. See 45 FR 10796 (February 19, 1980). The 1980 final rule created 49 CFR part 554. While Section 554.9 directs that files from closed or suspended investigations, including communications between the Agency and the manufacturer of the product in question, are to be made be publicly available, it does not require the disclosure of confidential information. Rather, information made public under section 554.9 may include confidential material if NHTSA determines such disclosure to be necessary to the investigation.

C. Federal Government Confidentiality Determination Practices

NHTSA has traditionally followed a practice of responding to all requests for confidential treatment as soon as is practicable after those requests have been filed. This practice, as well as the Agency's requirement that submitters provide formal requests for confidential treatment when submitting information to NHTSA, is rather unique. Most Federal agencies have adopted different approaches. Some agencies normally make determinations regarding the confidentiality of information only when they receive a FOIA request for the information. *See e.g.* 17 CFR 145.9(d)(10) (Commodity Futures Trading Commission). Other agencies adopt the position that determinations of confidentiality will be made either at the Agency's discretion or when a FOIA request is made. *See* 12 CFR 261.16(a) (Board of Governors of the Federal Reserve), 18 CFR 388.112 (Federal Energy Regulatory Commission), and 40 CFR 2.204 (Environmental Protection Agency). Within the Department of Transportation, NHTSA is the only agency that has followed a practice of making immediate determinations of confidentiality in response to all requests that it received. Given our experience, and under our considered judgment, we have tentatively concluded that the better practice, like that of other agencies, is to make determinations only upon receipt of a FOIA request or if a determination is otherwise necessary.

D. Volume and Scope of Confidentiality Requests

The task of making substantive determinations on requests for confidential treatment has increased in complexity in recent years. Changes in the automotive industry, new agency programs and changes to existing agency programs have increased the volume of information being submitted to NHTSA. Furthermore, materials for which confidential treatment is sought more often include, images, databases, pictures, videos and other digital materials which has increased the amount of data being submitted to NHTSA. NHTSA is now receiving almost twice the number of requests for confidential treatment and requests for reconsideration than it did ten years ago. NHTSA receives between approximately 300 to 500 requests for confidential treatment in a given year.

The widespread use of electronic documents, data systems and information management and storage systems have enabled manufacturers to create and store more information and, when compelled by an agency request requiring them to produce it, to submit more data to NHTSA.

A 2003 study performed by the University of California at Berkeley concluded that the growth in electronic storage needs for data had doubled between 2000 and 2003. *See http://www2.sims.berkeley.edu/research/projects/how-much-info-2003/.* In 2012, it was believed that the amount of electronic data maintained by businesses and other large entities was doubling every 18 months. *See http://www.cio.com/slideshow/detail/72421?source=ctwartcio#slide1.* In almost all contexts, but particularly in the case of defect and non-compliance investigations, the submission of data to NHTSA in an electronic format via CD–ROM, thumb drives, hard drives or other media is now an established practice. The size of these submissions is increasing over time as more emails, photographs, videos, spreadsheets, PowerPoint presentations and other digital documents are being generated by manufacturers. Further, the relative ease of storing and managing digital documents makes it possible to retain multiple iterations and drafts of similar documents and data. While NHTSA's recent series of investigations into unintended acceleration in Toyota vehicles are not representative of typical agency defect investigations, it is noteworthy to observe that Toyota submitted over 42 gigabytes of data to the Agency in response to NHTSA requests. More recently, two investigations, the General Motors ignition switch investigation (TQ14–001) and the Takata air bag rupture investigation (EA15–001), resulted in more than a terabyte of data being provided to the Agency.

As more data is produced by manufacturers and subsequently given to NHTSA in the course of investigations, the workload imposed by substantive confidentiality reviews of the data has grown and continues to grow. In today's world, a gigabyte of data is not considered to be a significant amount. However, if that gigabyte of data consists of documents without embedded photographs or videos, the printed versions of the documents would fill the bed of a pickup truck. *See* ''How Much Information? Data Powers of Ten'' *http://www2.sims.berkeley.edu/research/projects/how-much-info/datapowers.html.* Applying this estimate to the digital materials submitted during the Toyota unintended acceleration investigations described above, one can conclude that NHTSA received enough documents to fill at least 42 pickup trucks.

Although the size and scope of the Toyota unintended acceleration, the GM ignition switch, and Takata air bag rupture investigations were unusually large, large amounts of data are being submitted in routine defect matters. In one recent NHTSA investigation examining fuel pump failures in certain Volkswagen vehicles, Volkswagen submitted approximately 2.5 gigabytes of documents in response to formal agency Information Requests (IRs) during this investigation. Using the rule of thumb noted above, that one gigabyte of electronic documents would fill a pickup truck if reproduced on paper, substantive review of this data required that the Agency examine two and one-half truckloads of documents.

The explosive data growth resulting from the development and use of digital materials has created new industries

and products for managing this information. Law firms and litigants have had to adapt to these developments through the use of various tools to organize and sift through the mountains of information now being produced by business entities. A variety of software packages now exist for these purposes. *See http://www.americanbar.org/content/dam/aba/migrated/tech/ltrc/charts/litsupportchart_final.authcheckdam.pdf.* These products, although essential for litigating complex cases in today's world, are not suitable for use as tools in substantively reviewing submissions for confidentiality purposes.

When materials are provided to NHTSA in response to a formal investigation request or similar compulsory inquiry, the proper legal standard for any grant of confidential treatment is whether release of the information at issue would be likely to cause the submitter to suffer substantial competitive harm or would impair the government's ability to obtain similar information in the future. *See National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974). Therefore, the central determination that must be made is not related to a particular issue, set of individuals or specific events and transactions. This central issue—would release of the data be likely to cause substantial competitive harm—is general in nature when compared to the specific inquiries involved in litigation. Moreover, determining if competitive harm would be likely to flow from releasing information is not tied to specific persons, particular transactions or discrete events. For this reason, commercially available litigation support software is not suitable for making confidentiality determinations, and development of a dedicated software solution for this purpose would certainly be difficult and expensive.

E. Receipt of Confidentiality Requests

A claim for confidential treatment must be submitted to the Chief Counsel at an address specified in the regulations. 49 CFR 512.7. NHTSA is proposing to amend part 512 to provide submitters of confidential information with the option of submitting their requests for confidential treatment and the materials accompanying these requests electronically, by email, through a secure portal or through a similar secured site, rather than to an actual physical address used by the post office. The Agency is currently working to develop a system that would allow submission of materials electronically.

The Agency notes that the many of the requests for confidential treatment involve materials stored on electronic media in various file formats. These include discs, thumb drives, and portable external hard drives. The current regulation requires a complete copy of the submission, a redacted version, and either a second complete copy of the submission or those portions of the submission containing the material for which confidential treatment is claimed and any additional information the submitter deems important to the Chief Counsel's consideration of the claim. 49 CFR 512.5. As discussed in a final rule, 68 FR 44209, 44212 (July 28, 2003), the Chief Counsel was to distribute the complete copy and the public version of the material to the program office for its use, and will use the additional marked copy or set of material to evaluate the claim for confidential treatment. The rationale for the foregoing system was to provide the program office with the information necessary for program activity expeditiously and ensure that the program office is aware of which material is claimed to be confidential and which is not, and to provide the Chief Counsel with the information needed to consider the claim for confidential treatment. *Id.*

The proposal to allow submission of materials electronically would eliminate the requirement for the additional marked copy or set for those submissions, as this information will be stored in an electronic repository or other system that would permit the applicable NHTSA program office as well as the Office of Chief Counsel to access it. Therefore, the Agency believes that the proposal to allow electronic submission will reduce inefficiencies.

NHTSA also believes that the proposal to allow electronic submissions could result in savings for requestors. Many requestors use commercial carriers to send the confidential information to NHTSA's physical address. If a requestor is permitted to submit the request and information electronically, it would serve to eliminate those delivery costs. Furthermore, requestors who submit electronically would not incur the additional expense associated with producing discs, thumb drives, and portable hard drives to NHTSA. Finally, those submitting confidential materials electronically would not be required to submit two copies of the confidential version of the information at issue because a single copy would be sufficient to address the agency's needs.

Adopting an electronic submission process also has the potential to improve transparency and facilitate public access to information that is not claimed as confidential by submitters. Such ''public'' data, if provided electronically, can be (after review by the Agency and redaction, if necessary) quickly and easily transferred to repositories that allow for public access. Adopting an electronic submission process would also allow NHTSA to more efficiently manage requests for confidential treatment as the agency will no longer have to use resources to process and store incoming hard copies of these requests.

III. Proposed Rule

NHTSA is proposing to amend part 512 to explicitly direct that confidentiality determinations will be made only at certain times: When the materials at issue are the subject of a FOIA request or, in the absence of such a FOIA request, if NHTSA determines it is necessary because it is required by statute, regulation or other requirement, or otherwise necessary, it determines that it is in the public interest, or to ensure that a person submitting requests for confidential treatment comply with part 512 and is not making claims that are unduly broad or not supported by applicable law. We believe that these proposed changes will allow NHTSA to more efficiently manage requests for confidential treatment and the materials with which these requests are associated. These proposed changes will also more align NHTSA's approach for handling requests for confidential treatment with those of other operating administrations within DOT.

It is the Agency's intent that it will ordinarily make substantive determinations of confidentiality only when a FOIA request seeking the information has been filed. Otherwise, NHTSA will make determinations in response to requests for confidential treatment when, at the Agency's discretion, a determination is either in the public interest or is otherwise necessary. In most cases, the Agency's exercise of discretion will result in no determination being issued unless and until a FOIA request for the information has been filed with the Agency. Although this proposal appears to not deviate from the existing requirements of part 512, NHTSA has long followed a practice of responding to every request for confidential treatment as soon as it is practicable to do so. As noted above, NHTSA now believes it should not continue to make determinations for each and every request for confidential treatment it receives.

Under the current regulations, information received by NHTSA, for

which a properly filed confidentiality request is submitted, will be kept confidential until the Chief Counsel makes a determination regarding its confidentiality. 49 CFR 512.20(a). Such information will not be disclosed publicly, except in accordance with part 512. *Id.* The Agency is not proposing any change to this regulation.

Because the Agency is proposing to follow a policy, in the absence of special circumstances, of making confidentiality determinations only when a FOIA request is filed, this notice proposes additional amendments aimed at ensuring that requests for confidential treatment are sufficiently complete to allow making a determination in the future, should the Agency act on the request. The Agency does intend to perform an initial review of all requests for confidential treatment to ensure completeness and compliance with the requirements of part 512 to ensure that the request is complete so it can be processed at a later date. This initial review will be limited to the sufficiency of incoming requests. In the event that a request is found to be insufficient, the agency is proposing to employ an abbreviated letter to deny the request and notify the recipient of the reason(s) for the denial. Furthermore, NHTSA is also proposing to amend part 512 to explicitly provide that the Agency may make confidentiality determinations in certain instances to ensure that manufacturers are not making overly broad requests.

A. Time of Determination

49 CFR 512.17 currently provides that NHTSA will make confidentiality determinations at one of two junctures: Within 20 working days after a FOIA request is made for the information claimed to be confidential or within a reasonable period of time, if not requested under FOIA. Section 512.17(b), which governs when determinations are made in the absence of a FOIA request, states:

> (b) When information claimed to be confidential is not requested under the Freedom of Information Act, the determination of confidentiality will be made within a reasonable period of time, at the discretion of the Chief Counsel.

This provision, which was inserted into the newly created 512.17 in the July 2003 final rule amending part 512 (68 FR 44209), is similar to language that originally appeared as Section 512.6(d) in the 1989 amendments intended to simplify part 512:

> (d) For information not requested pursuant to the Freedom of Information Act, the determination of confidentiality is made within a reasonable period of time at the discretion of the Chief Counsel.

54 FR 48892, 48897 (Nov. 28, 1989)

As promulgated in 1989, section 512.6 provided that NHTSA would place submitter-redacted or ''public'' versions of materials submitted with a confidentiality request on public view (*see* 54 FR at 48897, section 512.6(b)) and make a determination of confidential treatment within 10 days after a FOIA request is filed for information claimed as confidential (54 FR at 48897, section 512.6(c)). For information not subject to a FOIA request, the determination would be made within a ''reasonable time'' as described in section 512.6(d).

As noted above, section 512.6 established different timing requirements for confidentiality determinations for different categories of materials prior to the 1989 amendments. For materials outside of five specific categories, section 512.6(d) declared that confidentiality determinations would be made within 10 days of a FOIA request seeking the information. 47 FR 24587, 24591–2 (June 7, 1982). As set forth in section 512.6(b), confidentiality determinations for five discrete categories of data would be made when required by the FOIA, NHTSA statues or regulations or when NHTSA determined disclosure was in the public interest. *Id.* at 24591. Accordingly, prior to the 1989 amendment stating that determinations would be made within a ''reasonable time,'' NHTSA's regulations provided that it would make confidentiality determinations at its own initiative unless the information at issue the subject of a FOIA request. *Id.* at 24591.

The most identifiable constant in the evolution of NHTSA's approach to the timing of confidentiality determinations is that determinations must be made within a designated time period after a FOIA request. Beyond this, the record does not provide much insight into how the position taken in 1982 that NHTSA would make determinations at its own initiative became transformed into a 1989 final rule stating determinations would be made within a reasonable period of time at the discretion of the Chief Counsel. While the adoption of the latter phrase was characterized as not constituting a substantive change (54 FR 48894), the language employed appears to provide that the discretion exercised by NHTSA's Chief Counsel was limited to *when* a determination would be made and not, as the 1982 final rule provides, *if* a final determination would be made.

The Agency's recent practice of making determinations on all requests for confidential treatment as soon as is practicable is at odds with the position stated in the 1982 final rule. The current language—determinations are made within a reasonable time at the Chief Counsel's discretion—infers that determinations will be made in all cases. If this was not intended, and an ambiguity exists, an interpretation that the Chief Counsel has the discretion to not make final confidentiality determinations is more consistent with the existing record.

NHTSA believes that the evolution of part 512 supports the conclusion that the Agency is not required to act on all requests for confidential treatment and is only compelled to do so by a FOIA request, when it determines it is necessary, or in the public interest.

NHTSA is therefore proposing to amend section 512.17 to explicitly provide that it will make confidentiality determinations only under certain conditions. One condition will be when NHTSA receives a FOIA request seeking information that may be within the scope of a request for confidential treatment. Other conditions under which NHTSA will make a confidentiality determination will exist if the Chief Counsel, at his discretion, determines that making a determination is necessary or is in the public interest.

As it did when issuing the 1982 final rule governing the timing of confidentiality determinations, NHTSA tentatively concludes that publicly releasing materials not claimed to be confidential is consistent with the requirement found in 49 CFR part 554.9 that non-confidential materials submitted by a manufacturer will be made available to the public during the course of an investigation. *See* 47 FR 24587, 24588 (June 7, 1982). Furthermore, it is our tentative view that permitting electronic submissions will facilitate a more expeditious process in making the material not claimed to be confidential publicly available. However, the Agency does note that the disclosure of such material will not be instantaneous— there will necessarily be a delay in making the material publicly available, as the Agency will need to review, and if necessary, redact certain information contained in the submissions, such as names, addresses and telephone numbers of consumers that must be removed in order to protect the personal privacy of individuals.

Deferring determinations on requests for confidential treatment until NHTSA receives a FOIA request for the information, or decides that making a determination is required by statute or regulation or is in the public interest,

will allow the agency to more efficiently process requests falling into these classes. By deferring determinations on requests for confidentiality for materials failing into other categories, NHTSA can focus its resources on reviewing those requests for which a FOIA request has been filed or for which the agency has decided that a confidentiality determination is otherwise necessary.

B. Request Requirements

This notice also contains proposals to amend certain current requirements for requests for confidential treatment. In recognition of the increasing importance and use of electronic mail, NHTSA is proposing to amend section 512.8(f), which presently requires those requesting confidential treatment to provide the name, address and telephone number of the person to whom a determination should be sent, to require that those seeking confidential treatment also provide an electronic mail address for the designated recipient of NHTSA's determination of confidentiality. We are also proposing to amend section 512.8(a), which presently requires identification of the confidentiality standard applicable to the request, to more explicitly direct that persons requesting confidential treatment specify why the materials for which confidentiality is requested are being submitted to NHTSA and whether the submission is required by statute, regulation or other compulsory process. Among other things, the proposed amendment would require the identification of the NHTSA official requesting the information claimed as confidential, the date of the request, the subject matter of the request and the form in which the request was made. The proposal also amends section 512.8 to more explicitly require that requesters specify the factual basis for any claim that materials claimed as confidential are voluntarily submitted and, where applicable, to specify which materials are voluntarily submitted and which are not.

The applicable legal standards for granting confidential treatment differ significantly depending on whether the materials are voluntarily submitted or in response to a legal requirement. *See, Critical Mass Energy Project v. Nuclear Regulatory Comm'n,* 975 F.2d 871 (D.C. Cir. 1992) and *National Parks & Conservation Ass'n v. Morton,* 498 F.2d 765 (D.C. Cir. 1974). Under the test set forth in *Critical Mass,* financial or commercial information provided to the government on a voluntary basis is ''confidential'' for purposes of Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) if it is the kind of information that would customarily not be released to the public by the submitter. 975 F.2d at 879. For compulsory submissions, under *National Parks,* information is confidential under Exemption 4 if its disclosure would be likely to cause substantial competitive harm to the submitter or to impair the government's ability to collect the information in the future. 498 F.2d at 770. Proper application of these standards obviously has an impact on whether materials are granted confidential treatment as well as the time and resources required for submitters to prepare a request for confidential treatment and the resources needed to review such a request.

It is NHTSA's experience that persons submitting requests for confidential treatment often resort to employment of a standard form letter that does not properly designate or identify data voluntarily submitted or submitted as a result of legal compulsion. These requests generally contend, in a conclusory fashion, materials are entitled to confidential treatment under both *National Parks* and *Critical Mass.* In other instances, additional information may be provided by a submitter voluntarily along with materials that were required. Submitters providing conflated requests run the risk that their requests will not be evaluated properly. From NHTSA's point of view, these requests may also be more difficult to process. Our concern that the confidentiality standards applicable to specific requests may not be correctly identified, documented and supported is heightened by our proposal to defer making confidentiality determinations. If the foregoing proposal is adopted, most determinations, to the extent determinations are made, will not be made until some period of time after an initial request is filed. It is therefore important that requests for confidential treatment provide an adequate record on which such deferred determinations could be properly made.

C. Consequences for Noncompliance

NHTSA is also proposing to amend section 512.13(a) to remove language stating that improperly filed requests for confidential treatment may not necessarily result in a waiver of confidential treatment if the agency receives notice of the request or otherwise becomes aware of the claim before the material at issue is disclosed to the public.

We first note that the existing language is somewhat superfluous. Section 512.13(a) authorizes the Chief Counsel to make a determination that failing to follow the submission requirements in section 512.4 may waive claims for confidential treatment. Since NHTSA is not required to make a waiver determination when requests are not filed or are improperly filed, it may continue to exercise its discretion and not find that a waiver has occurred for any number of reasons. As these may include NHTSA's independent knowledge that the materials involved are confidential or NHTSA's receiving notice that a proper claim for confidential treatment will be asserted, the agency's tentative conclusion is that that the existing language is not necessary.

The agency is also concerned that retaining the existing language is undesirable. As noted above, incomplete, improperly prepared and untimely requests for confidential treatment create additional burdens for NHTSA. We see no reason to maintain language that could encourage a casual approach to submitting requests for confidential treatment, particularly since we are also proposing to defer making confidentiality determinations until receipt of a FOIA request or the determination is necessary or in the public interest. When making determinations is deferred, the passage of time necessarily compounds the impact of errors in requests and increases the difficulties inherent in resolving them. Accordingly, our proposal includes revising section 512.13(a) to strike language implying that failure to file a request for confidential treatment or filing one improperly will not result in a waiver of confidentiality.

D. Manner of Submission

NHTSA is proposing to amend part 512 to allow requests for confidential treatment and the accompanying materials to be submitted electronically. Currently, part 512 anticipates that materials will be submitted to a physical address. 49 CFR 512.7. NHTSA believes that providing the option for electronic submission will increase efficiencies, reduce burdens for the agency and submitters and facilitate more expeditious release of non-confidential information.

E. Other Changes in the NPRM

NHTSA is also proposing to amend 49 CFR 512.4 to clarify how requestors submitting requests for confidential treatment for materials submitted in compliance with 49 CFR part 537, *Automotive Fuel Economy Reports,* should submit their requests. Because requests for confidential treatment are

submitted in compliance with 49 CFR part 537 are also required to comply with the requirements of 49 CFR part 512, we are amending 49 CFR 512.4 to make this clarification. We also note that the amendments to 49 CFR part 512 in this NPRM are intended to be consistent with, and not to conflict with, the amends to 49 CFR part 512 proposed in our NPRM, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,* 80 FR 40138, 40732 (July 13, 2015). Depending on the timing of the final rule in this rulemaking action, NHTSA may make additional revisions to the final rule to effectuate the proposed revisions to 49 CFR part 512 in the *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,* NPRM. NHTSA also requests comment on whether it would be more efficient for persons submitting request for confidential treatment to submit only those reports specified in 49 CFR part 537 through the part 537 electronic portal and to submit the certification in Appendix A the materials specified in 49 CFR 512.8 through the electronic submission method proposed in this NPRM.

F. Class Determination for Vehicle Model Identifying Information Provided in Petitions for Exemption From Parts Marking Requirements Under the Vehicle Theft Prevention Standard

NHTSA has tentatively concluded that the name of the passenger motor vehicle make, model, line, and model year for which a manufacturer is seeking an exemption from the theft prevention standard under 49 CFR part 543 will be presumed to be confidential until such time that the petition for exemption is granted or denied.

The agency notes that vehicle manufacturers routinely seek confidential treatment for this make, model, line and model year information. We have previously stated, when making determinations on requests for confidential treatment, that 49 CFR 543.7(f) contains publication requirements related to the disposition of all 543 petitions. Under the foregoing section, the information published in the **Federal Register** (whether the petition is granted or denied) includes make, model, and model year of vehicle and a general description of the proposed theft deterrent device. Because listing the name of the passenger motor vehicle make, model, line, and model year that is the subject of the petition is necessary in order to notify law enforcement agencies of models exempt from the Theft Prevention Standard, NHTSA has tentatively concluded that release of the information is necessary to achieve the objectives of part 543.

We have also tentatively concluded that release of this information at the time NHTSA issues a determination in response to a petition filed under part 543 is not likely to result in substantial competitive harm to the petitioner. This tentative conclusion is based on two factors. The first is that manufacturers have a significant degree of latitude in when exemption petitions are filed and can therefore control when model information is released by NHTSA. The second is that now model name, line, model year and make information routinely enters the public domain, either by accident or design, before NHTSA grants or denies parts marking exemption petitions.

Section 543.5(b)(4) requires that petitions for exemption must be filed no later than eight months prior to start of production for the model line for which the exemption is sought. In turn, NHTSA is required under 49 CFR 543.7(c) to make a determination on the petition not later than 120 days after the petition is filed. Provided that a petition for exemption is filed not less than eight months prior to the start of production, a manufacturer is free to file that petition at any time of its own choosing. Moreover, a manufacturer filing a petition knows that NHTSA must act on it within 120 days after it is filed. Manufacturers can therefore both control and predict when NHTSA will release its decision in response to an exemption petition, particularly since the agency's practice has traditionally been to use to full 120 days allocated to the task.

NHTSA's experience in processing requests for confidential treatment for make, model name, line and model year information contained in parts marking exemption petitions strongly suggests that some or all of this information is often in the public domain when NHTSA acts on the exemption petition. We also note that in some instances the make, model name, line and model year information has been found to be publicly available when the petition for exemption and accompanying request for confidential treatment were submitted. In at least one instance, the ''confidential'' information at issue was ''leaked'' to members of the automotive press several months before the request for confidential treatment was made.

For the foregoing reasons, we are proposing that make, model name, line and model year information submitted in petitions for exemption under 49 CFR part 543 shall be presumed to be confidential up to the date that NHTSA acts on the exemption petition or until this information enters the public domain, whichever comes first. We request comments on this proposal.

IV. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[3] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[4]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *https://www.whitehouse.gov/omb/fedreg_reproducible.* DOT's guidelines may be accessed at *https://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/statistical_policy_and_research/data_*

[3] *See* 49 CFR 553.21.

[4] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

quality_guidelines/html/guidelines.html.

How can I be sure that my comments were received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[5]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule. If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

[5] *See* 49 CFR part 512.

You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

V. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

VI. Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563.

This action would amend part 512 to modify agency procedures for receiving and processing requests for confidential treatment. There are no new significant burdens on information submitters or related costs that would require the development of a full cost/benefit evaluation. Therefore, this rulemaking has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget.

Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA requests public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement has any implications for this rulemaking.

Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that this rule is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule would impose no additional reporting obligations on small entities. This proposed rule addresses the Agency's receipt and treatment of requests for confidential treatment and would modify procedures for all submitters, including small entities, with regard to confidentiality determinations. Therefore, a regulatory flexibility analysis is not required for this proposed action.

National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that this action would not have ''federalism implications'' because it would not have ''substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government,'' as specified in section 1 of the Executive Order. This proposed rule generally would apply to private motor vehicle and motor vehicle equipment manufacturers, entities that sell motor vehicles and equipment and motor vehicle repair businesses. Thus, Executive Order 13132 is not implicated and consultation with State and local officials is not required.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by

State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposal would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Pursuant to this Order, NHTSA notes as follows: This proposed rule would addresses the Agency's receipt and treatment of requests for confidential treatment and would modify procedures for all submitters with regard to confidentiality determinations. The rule would not have retroactive effect.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This proposal would make changes to the materials that persons requesting confidential treatment of documents submit to NHTSA to justify confidential treatment.

In compliance with the PRA, we announce that NHTSA is seeking comment on a revision of a currently approved collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR part 512, Confidential Business Information.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2127–0025.

Form Number: The collection of this information uses no standard form.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information:

Persons who submit information to the agency and seek to have the agency withhold some or all of that information from disclosure under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, must provide the agency with sufficient support that justifies the confidential treatment of that information. In addition, a request for confidential treatment must be accompanied by: (1) A complete copy of the submission; (2) a copy of the submission containing only those portions for which confidentiality is not sought with the confidential portions redacted; and (3) either a second complete copy of the submission or alternatively those portions of the submission that contain the information for which confidentiality is sought. Furthermore, the requestor must submit a completed certification as provided in 49 CFR part 512, Appendix A. *See generally* 49 CFR part 512 (NHTSA Confidential Business Information regulations). Requestors who submit their requests for confidential treatment electronically must only provide one copy of the complete submission and one copy of the submission containing only those portions for which confidentiality is not sought with the confidential portions redacted along with their supporting justification for their request for confidential treatment and a completed certification.

The proposed rule would amend Part 512 to require the identification of the NHTSA official requesting the information claimed as confidential, the date of the request, the subject matter of the request and the form in which the request was made. The proposal would also amend section 512.8 to more explicitly require that requesters specify the factual basis for any claim that materials claimed as confidential are voluntarily submitted and, where applicable, to specify which materials are voluntarily submitted and which are not.

Description of the Need for the Information and Use of the Information:

NHTSA receives confidential information for use in its activities, which include investigations, rulemaking actions, program planning and management, and program evaluation. The information is needed to ensure the agency has sufficient relevant information for decision-making in connection with these activities. Some of this information is submitted voluntarily, as in rulemaking, and some is submitted in response to compulsory information requests, as in investigations.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information):

There are thousands of potential submitters of claims for confidential treatment of information, including vehicle manufacturers, equipment manufacturers, and registered importers. The vast majority of these requests, however, have come, and will continue to come, from large manufacturers. Based on our recent experience with submissions, we estimate that we will receive approximately 500 requests for confidential treatment of information annually. A vast majority of these requests come from a small number entities. Therefore some entities subject to NHTSA's jurisdiction will file multiple requests while a majority will file none at all.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information

To the extent that there is an ''average'' submission, preparation of a request for confidential treatment, including the review and marking of documents and writing a request letter, consumes 2–4 hours. In the case of submissions by large manufacturers, which often consist of hundreds of pages of information, on average, it would probably take about eight and half hours to prepare the submission. Some submissions, usually those related to major agency investigations, may require hundreds of hours of time for document review, marking, organization and preparation of request letters. On the other hand, the typical small business that submits a single blueprint should only need about five (5) minutes to fully comply with the regulation. We believe that 10 hours per request in reasonable estimate of the time it takes to submit response given that differences in amount of time it takes to prepare individual each request. We believe that the modifications to this collection will increase the burden of submitting a request for confidential treatment by 15 minutes or less. The total number of burden hours is estimated at 5000 hours (10 hours $\times$ 500 requests/year) for 49 CFR part 512. Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.

• Whether the Department's estimate for the burden of the information collection is accurate.

• Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the **Federal Register**.

The agency recognizes that the collection of information contained in today's proposed rule may be subject to revision in response to public comments.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This proposed action does not meet either of these criteria.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

• Have we organized the material to suit the public's needs?

• Are the requirements in the rule clearly stated?

• Does the rule contain technical language or jargon that isn't clear?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

• Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and record keeping requirements.

Proposed Regulatory Text

For reasons discussed in the preamble, NHTSA proposes to amend 49 CFR part 512 as follows:

■ 1. The authority for Part 512—Confidential Business Information continues to read as follows:

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.95.

■ 2. Amend Section 512.4 by adding paragraph (e) to read as follows:

§ 512.4 When requesting confidentially, what should I submit?

* * * * *

(e) Any person submitting information pursuant to 49 CFR part 537 requesting that the information be withheld from public disclosure pursuant to 5 U.S.C. 552(b) shall comply with this Section as well as with § 537.5.

■ 3. Amend Section 512.5 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

§ 512.5 How many copies should I submit?

(a) Except as provided for in either paragrpah (c) or (d), a person must send the following in hard copy or electronic format to the Chief Counsel when making a claim for confidential treatment covering submitted material:

* * * * *

(d) A claim for confidential treatment submitted electronically in accordance with this part must include:

(1) A complete copy of the submission, and

(2) A copy of the submission containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed have been redacted.

(3) A copy of any special software required to review materials for which confidential treatment is requested and user instructions must also be provided.

* * * * *

■ 4. Amend Section 512.6 by revising paragraph (c)(1) and adding paragraph (d) to read as follows:

§ 512.6 How should I prepare documents when submitting a claim for confidentiality?

* * * * *

(c) Submissions in electronic format accompanying a request for confidential treatment in hard copy or paper—(1) Persons submitting a claim for confidential treatment in hardcopy or on paper as specified in § 512.7(a) of this part may submit all or part of the information claimed as confidential in an electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, information submitted in an electronic format shall be submitted in a physical storage medium such as an optical disk, portable hard drive or similar device and shall be submitted with the hardcopy or paper request for confidential treatment. The exterior of the medium (*e.g.,* the disk or portable hard drive itself) shall be permanently labeled with the submitter's name, the subject of the information and the words ''CONFIDENTIAL BUSINESS INFORMATION''.

* * * * *

(d) Submissions in electronic format accompanying a request for confidential treatment submitted electronically—(1) Persons submitting a claim for confidential treatment electronically as specified in § 512.7(b) of this part shall mark the materials claimed to be confidential in accordance with the requirements set forth in paragraphs d(2) and (3) of this section.

(2) Confidential portions of electronic files submitted in other than their original format must be marked ''Confidential Business Information'' or ''Entire Page Confidential Business Information'' at the top of each page. If only a portion of a page is claimed to be confidential, that portion shall be designated by brackets. Files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify confidential information by alternative markings using existing attributes within the file or means that are accessible through use of the file's associated program. When alternative markings are used, such as font changes or symbols, the submitter must use one method consistently for electronic files of the same type within the same submission. The method used for such markings must be described in the request for confidentiality. Files and materials that cannot be marked internally, such as video clips or executable files or files provided in a format specifically requested by the agency, shall be renamed prior to submission so the words ''Confidential Bus Info'' appears in the file name or,

if that is not practicable, the characters ''Conf Bus Info'' or ''Conf'' appear. In all cases, a submitter shall provide an electronic copy of its request for confidential treatment.

(3) Confidential portions of electronic files submitted in other than their original format must be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format must, if practicable, be marked with consecutive page numbers or sequential identifiers so that any page can be identified and located using the file name and page number. Confidential portions of electronic files submitted in their original format that cannot be marked as described above must, to the extent practicable, identify the portions of the file that are claimed to be confidential through the use of existing indices or placeholders embedded within the file. If such indices or placeholders exist, the submitter's request for confidential treatment shall clearly identify them and the means for locating them within the file. If files submitted in their original format cannot be marked with page or sequence number designations and do not contain existing indices or placeholders for locating confidential information, then the portions of the files that are claimed to be confidential shall be described by other means in the request for confidential treatment. In all cases, submitters shall provide an electronic copy of their request for confidential treatment.

(4) Electronic media may be submitted only in commonly available and used formats.

■ 5. Revise Section 512.7 to read as follows:

§ 512.7 Where should I send the information for which I am requesting confidentiality?

(a) Claims for confidential treatment submitted in hardcopy or on paper must be submitted in accordance with the provisions of this regulation to the Chief Counsel of the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building W41–326, Washington, DC 20590.

(b) Claims for confidential treatment submitted electronically must be submitted in accordance with the provisions of this regulation by the designated method or to the designated NHTSA system permitting electronic submission.

■ 6. Revise Section 512.8 to read as follows:

§ 512.8 What supporting information should I submit with my request?

When requesting confidential treatment, the submitter shall:

(a) Explain why the information for which confidential treatment is being requested has been submitted to NHTSA, and specifically identify:

(1) Any request by the government for the information submitted, including the subject matter of the request, the form in which the request was made, the date of the request, and the name of any government official requesting the information, and

(2) Any statute, regulation, order, subpoena, information request or other compulsory process that requires the submission;

(b) Describe the information for which confidential treatment is being requested;

(c) Identify the confidentiality standard(s) under which the request for confidential treatment should be evaluated in accordance with § 512.15, and indicate whether the materials for which confidential treatment is sought were, either in whole or in part, voluntarily submitted or were required to be submitted by statute or regulation or other requirement. The request must also specify with sufficiency what information was submitted voluntarily and what information was required to be submitted;

(d) Justify the basis for the claim of confidentiality under the confidentiality standard(s) identified pursuant to paragraph (c) of this section by describing:

(1) Why the information qualifies as a trade secret, if the basis for confidentiality is that the information is a trade secret;

(2) What the harmful effects of disclosure would be and why the effects should be viewed as substantial, if the claim for confidentiality is based upon substantial competitive harm;

(3) What significant NHTSA interests will be impaired by disclosure of the information and why disclosure is likely to impair such interests, if the claim for confidentiality is based upon impairment to government interests;

(4) What measures have been taken by the submitter to ensure that the information is not customarily disclosed or otherwise made available to the public, if the basis for confidentiality is that the information is voluntarily submitted;

(5) The factual basis supporting any and all claims that any of the materials for which confidential treatment is sought were voluntarily submitted or were required to be submitted by any statute or regulation; and

(6) If the information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

(e) Indicate if any items of information fall within any of the class determinations included in Appendix B to this part;

(f) Indicate the time period during which confidential treatment is sought; and

(g) State the name, address, telephone number and electronic mail address of the person to whom NHTSA's response to any inquiries should be directed.

■ 7. Section 512.13 is amended by revising paragraph (a) to read as follows:

§ 512.13 What are the consequences for noncompliance with this part?

(a) If the submitter fails to comply with § 512.4 of this part at the time the information is submitted to NHTSA or does not request an extension of time under § 512.11, the claim for confidentiality may be waived. If the information is placed in a public docket or file, such placement is disclosure to the public within the meaning of this part and may preclude any claim for confidential treatment. The Chief Counsel may notify a submitter of information or, if applicable, a third party from whom the information was obtained, of inadequacies regarding a claim for confidential treatment and deny the request as described in § 512.18(b) or may allow the submitter additional time to supplement the claim, but has no obligation to provide either notice or additional time.

* * * * *

■ 8. Section 512.17 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 512.17 How long should it take to determine whether information is entitled to confidential treatment?

* * * * *

(b) When information claimed to be confidential is not requested under the Freedom of Information Act, but a determination is necessary because it is required by a statute, regulation or other requirement, the Chief Counsel will make a determination on the claim within in a reasonable period of time, at the discretion of the Chief Counsel.

(c) When information claimed to be confidential is not requested under the Freedom of Information Act, and a determination is not otherwise required by a statute, regulation or by other requirement, the Chief Counsel may make a determination on the claim when:

(1) The Chief Counsel, at his or her discretion, decides that making a determination of confidential treatment

may assist in ensuring that persons submitting requests for confidential treatment comply with this part and applicable law;

(2) The Chief Counsel, at his or her discretion, decides that making a determination is otherwise necessary; or

(3) The Chief Counsel, at his or her discretion, decides that making such a determination is in the public interest.

* * * * *

■ 9. Appendix F to part 512 is redesignated at Appendix G to part 512.
■ 10. A new Appendix F is added to read as follows:

Appendix F to Part 512—Exemptions From Vehicle Theft Prevention Standard

The Chief Counsel has determined that the name of a line, make, model and the model year of a vehicle that is the subject of a petition filed under 49 CFR part 543, if released, is likely to cause substantial harm to the competitive position of the manufacturer submitting the information: The foregoing determination will remain effective until the information specified above enters the public domain or the agency issues a determination in response to the petition, whichever comes first.

Dated: December 18, 2015.

Paul A. Hemmersbaugh,

Chief Counsel.

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