

**SUPPORTING STATEMENT FOR
CONFIDENTIAL BUSINESS INFORMATION
OMB CONTROL NUMBER: 2127-0025**

A. JUSTIFICATION:

1. Explain the circumstance that make the collection of information necessary. Attach a copy of the appropriate statute or regulation mandating or authorizing the collection of information.

The statutes administered by the National Highway Traffic Safety Administration (NHTSA or the agency) contain provisions prohibiting, with certain exceptions, the agency from making public confidential information that it obtains from manufacturers and other entities (e.g., 49 U.S.C. § 30167, Disclosure of Information by the Secretary of Transportation, 49 U.S.C. § 32505(c), Confidentiality of Information (Bumper Standards), 49 U.S.C. § 32708, Confidentiality of Information (Odometers), 49 U.S.C. § 32910(c), Disclosure of Information (Automobile Fuel Economy), and 49 U.S.C. § 33116, Disclosure of Information (Theft Prevention)). In addition, the Freedom of Information Act (FOIA), 5 U.S.C. § 552, both generally requires all agencies to make public all non-confidential information upon request and provides for the withholding of confidential information. Consistent with these provisions, the agency determines whether information it receives should be accorded confidential treatment.

NHTSA makes determinations of confidential treatment based on requests for confidentiality by manufacturers and other entities submitting the information. These requesters identify the information that they believe is confidential and provide a basis for their assertions that the information is confidential. In general, the basis is one of the disclosure exemptions available under the FOIA. These requests for confidential treatment are submitted pursuant to NHTSA's Confidential Business Information Rule, 49 CFR Part 512, which includes the

procedures for asserting a claim for confidential treatment of information.

Before 49 CFR Part 512 was issued, the agency found that it received increasing numbers of requests for confidential treatment of information, and that some submitters of information who requested confidential treatment provided the justification for such treatment on a piecemeal basis over the course of extended correspondence with NHTSA. To avoid this ad hoc, expensive and time-consuming process, and to expedite the processing of requests for confidential treatment of information, the agency established 49 CFR Part 512.

This information collection request does not cover most early warning reporting (EWR) data reported under 49 CFR Part 579. The collection of EWR data is covered under OMB Control No. 2127-0616. Most EWR data are confidential under class determinations provided in 49 CFR Part 512, with the exception of information on death, injury, and property damage claims and notices, which would be handled on an individual basis according to the procedures of Part 512 and are, therefore, covered by this request. This collection supports the Department's strategic goal of safety.

2. Indicate how, by whom, and for what purpose the information will be used. Indicate actual use of information received from the current collection.

NHTSA obtains confidential information for use in many of its activities, which include investigations, rulemaking actions, program planning and management, and program evaluation. The confidential information is needed to ensure the agency has the relevant information for decision-making in connection with these activities.

If Part 512 were not in existence, the agency would still receive this confidential information, either through voluntary submissions or through compulsory submissions in response to agency requests issued pursuant to its information gathering powers. The only

difference would be that the determinations of whether the information should be accorded confidential treatment would be less structured and, ultimately, more expensive and time-consuming for both the entities requesting confidentiality and the agency.

3. Describe whether the collection of information involves the use of technological collection techniques or other forms of information technology.

The confidential information is frequently provided to the agency in the form of CD-ROMs, thumb drives, paper copies, engineering drawings, or external hard drives. In most instances, the submitter selects the form.

NHTSA is also working to develop a system to allow for requests for confidential treatment of information to be submitted electronically. Allowing the 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.

NHTSA also believes that allowing 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.

When making determinations of confidentiality, the agency carefully examines the request for the information, the submitted information, and the accompanying justification for treating it as confidential. As substantive review of these submissions is required by applicable case law, NHTSA does not believe that improved technology can be used in its review. There are no technical obstacles in reducing the burden associated with the necessary justification for a request for confidential treatment for information. NHTSA has incorporated into Part 512, however, the generally accepted statutory and judicial standards for substantiating confidentiality requests. The agency believes that it would be necessary for a submitter of information to make a similar showing to support the requested confidential treatment of the information even if Part 512 did not exist. Because the regulation elicits the legally necessary information for justification, NHTSA believes there would be legal obstacles to any reduction of the burden.

4. Describe efforts to identify duplication. Show specifically why similar information cannot be used.

There is no duplication in the sense of a submitter being required to submit either the information or the justification more than once.

To obviate the need for detailed submissions and for the agency to exhaustively review information that has been traditionally accorded confidential treatment, Part 512 incorporates classes of information that are presumptively confidential. *See* 49 CFR Part 512. These classes are separate from those that cover EWR data, noted above. Information that falls within one of these presumptive classes does not require the manufacturer to submit justification as to why the materials should be accorded confidential treatment. These presumptive classes have substantially lessened the burden for both the submitters of the information and the agency. For example, manufacturers must submit information to the agency on the new car lines they plan to

introduce within the next two years, so that the likely high theft lines can be selected. Such information is set forth in one of the classes of presumptively confidential information, so the submitters need not prepare a full justification when they submit this information.

The confidential information that the agency obtains is specifically tailored to the context for which the agency is using it. If a manufacturer has already submitted information and that information has been granted confidential treatment, the manufacturer need not resubmit either the information or the justification; it can simply be incorporated by reference.

Because NHTSA is the Federal agency responsible for motor vehicle safety, bumper, theft, and odometer standards, ordinarily, no other Federal agency receives information that submitters provide to NHTSA.

As discussed above, allowing requests for confidential treatment of information to be submitted electronically would reduce the number of physical copies that the submitter would need to submit to the agency.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burdens.

Most of the submitters requesting confidential treatment are very large enterprises, such as General Motors, Toyota, Ford, Honda, and Fiat Chrysler. Small businesses generally submit fewer requests for confidential treatment than do these large enterprises and, when they do submit requests for confidential treatment, in view of their submissions they have a much smaller burden in preparing their justifications.

In any event, NHTSA believes that Part 512 requires the legally necessary information to be included in justifications for requests for confidential treatment of information, so the burden cannot directly be lessened for these small businesses.

6. Describe the consequence to Federal program or policy activities if the information is not collected or collected less frequently.

If the justifications required by Part 512 were not supplied with requests for confidential treatment of information, the agency could not legally grant confidential treatment to the information. This would result in the disclosure (after proper notice) of the information that the submitter believes should not be disclosed. In most instances, this disclosure would be likely to cause the submitter to suffer substantial competitive harm.

7. Explain any circumstances that require the collection to be conducted in a manner inconsistent with the guidelines set forth in 5 CFR 1320.6.

There are no circumstances requiring information to be collected in a manner inconsistent with the guidelines in 5 CFR § 1320.6.

8. Provide a copy of the FEDERAL REGISTER document soliciting comments on extending the collection of information, a summary of all public comments responding to the notice, and a description of the agency's actions in response to the comments. Describe efforts to consult with persons outside the agency to obtain their views.

NHTSA is submitting with this ICR a draft notice of proposed rulemaking soliciting comment on proposed changes to Part 512 that would affect this collection. NHTSA will address any comments received regarding this collection in the final rule.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided to any respondent for providing the information to NHTSA.

10. Describe any assurance of confidentiality provided to respondents.

NHTSA's confidentiality regulation, 49 CFR Part 512, provides that confidential treatment is provided for all materials claimed as confidential when those materials are properly

submitted with a request for confidential treatment. The materials claimed as confidential remain so until such time as the agency makes a determination in response to the submitter's request for confidential treatment. *See* 49 CFR § 512.20. In addition, Appendices B and C of 49 CFP Part 512 contain class determinations establishing that certain categories of information submitted to NHTSA are presumptively confidential and are granted confidential treatment when accompanied by a request for confidential treatment or when submitted to the agency.

11. Provide additional justification for any questions on matters that are commonly considered private.

NHTSA does not request personal or private information for consideration under this regulation.

12. Provide estimates of the hour burden of the collection of information on the respondents.

There are thousands of potential submitters of claims for confidential treatment of information, including vehicle manufacturers, equipment manufacturers, and registered importers. In recent years, NHTSA has received and expects to continue to receive on average approximately 500 requests for confidential treatment of information annually.¹ The vast majority of these requests have come, and will continue to come, from large manufacturers.

An entity requesting confidential treatment must provide a written statement in support of a request for confidential treatment that explains why the submitted information should be withheld from public disclosure, including the legal basis for withholding, along with a certification by a responsible corporate official. *See* 49 CFR § 512.8. To the extent that there is an “average” submission, preparation of a request for confidential treatment, including the

¹ NHTSA received approximately 460 requests in 2013 and 528 requests in 2014. As of December 1, 2015, NHTSA has received and logged approximately 430 requests for the year to date.

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 are modifying this collection to require submitters to identify 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. We are also amending 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. We believe that on average this 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 x 500 requests/year) for 49 CFR Part 512. The estimated annual costs associated with the burden hours of preparing the requests are estimated at \$124,600.00. This estimate was derived by multiplying the estimated annual burden of 5000 hours with the mean hourly wage estimate for Paralegals and Legal Assistants of \$24.92 per hour.

13. Provide estimates of the total annual cost to the respondents or recordkeepers.

There are no start-up costs associated with this collection of information. Total operational costs for this collection are part of each submitter's ongoing costs of doing business.

This collection imposes no maintenance or recordkeeping requirements on submitters, and submitters' employees can write letters requesting confidential treatment.

Estimated postage costs are expected to be \$2,800. Should we allow requests for confidential treatment to be submitted by electronic means, these costs would be reduced.

14. Provide estimates of annualized costs to the Federal Government.

It is difficult to estimate the annualized costs to the government for this regulation but it is well below what the cost was before the implementation of Part 512. The operation involves no government forms or printing or mailing requirements. Attorneys in the NHTSA Office of Chief Counsel handle the analysis of the confidential information. Information storage is provided in existing systems with little or no impact. NHTSA's best estimate of these costs is about \$450,000 per annum. We anticipate that the deferring confidentiality determinations until NHTSA receives a FOIA request for the information or until NHTSA determines, at its own discretion, that making a determination is necessary or is in the public interest would result in cost savings to the government. These cost savings will result from fewer confidentially requests being processed by attorneys in the office of the chief counsel.

15. Explain reasons for any program changes or adjustments imported in Items 13 or 14 of the OMB Form 83-I.

An adjustment in the burden hours have increased by 1320 hours. This reflects an increase of 40 submissions. Additionally, this reflects the time consumed by submitters to identify the NHTSA official requesting the information claimed as confidential, the date of the request, the subject matter of the request, the form in which the request was made and to explicitly identify the factual basis for the request for confidential treatment. Moreover, as more entities continue to create and retain greater amounts of digital data, NHTSA and submitters are

expending greater resources processing and preparing requests for confidential treatment and therefore it takes longer on average to prepare a request.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

The information is not published for statistical use.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

NHTSA is not seeking approval to not display the expiration date for OMB approval.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exception is made to any of the items in the certification statement.