

**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)) (Attachments 1 through 5). 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. 72 FR 59434 (Oct. 19, 2007).

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 paper copies, engineering drawings, CD-ROMs, or videotapes. In most instances, the submitter selects the form. Recently, an increasing amount of information has been submitted in CD-ROM format. Under NHTSA's regulations, confidential information is not sent to NHTSA using the web or email. As explained in a recent Federal Register notice covering the submission of electronic data, the provision of information to NHTSA in forms such as CD-ROMs, rather than attachments to e-mails, assures control over confidential information. Moreover, it avoids the problems associated with large files attached to e-mails, which can exceed our storage capacity. *See* 72 FR at 59467. There were no objections to this approach. When reviewing the information for which confidential treatment is requested, the agency carefully examines the request for the information, the submitted information, and the accompanying justification for treating it as confidential. As this review of these submissions is required by the case law in this area, 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. However, NHTSA has

incorporated into Part 512 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, Appendix B. These classes are separate from those that cover EWR data, noted above. Information that falls within one of these presumptive classes does not require a full justification to 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 only Federal agency responsible for motor vehicle safety, bumper, theft, and odometer standards, ordinarily, no other Federal agency receives information that submitters provide to NHTSA.

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, Chrysler, Michelin, and BridgestoneFirestone. 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 each request for confidential treatment of information, the agency could not legally grant requests for 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.

Attachment 8 is NHTSA's September 27, 2007 FEDERAL REGISTER notice (72 FR 54974) asking for public comment on NHTSA's proposed extension of this collection of information. NHTSA received no public comment in response to this notice.

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.

No assurance of confidentiality is given to the respondents.

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 450 requests for confidential treatment of information annually. Based on the number of requests for confidential treatment received in the first half of 2007, the agency estimates that it will receive approximately the same number of requests for confidential treatment in 2007. Almost all 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 Part 512. 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 hours to prepare the submission. 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. The total number of burden hours is estimated at 3600 hours (8 hours x 450 requests/year) for 49 CFR Part 512.

The estimated annual costs associated with the burden hours are estimated at \$96,120. This estimate was derived by multiplying the estimated annual burden of 3600 hours by \$26.70 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 \$2,070.00 (450 requests x \$4.60 for postage).

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 \$350,000 per annum.

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

The burden hours continue to remain the same but the estimated cost will increase as a result of changes to the postage fees.

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.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.

Attachment(s):

1. 49 U.S.C. § 30167, Disclosure of Information by the Secretary of Transportation
2. 49 U.S.C. § 32505(c), Confidentiality of Information (Bumper Standards)
3. 49 U.S.C. § 32708, Confidentiality of Information (Odometers)
4. 49 U.S.C. § 32910(c), Disclosure of Information (Automobile Fuel Economy)
5. 49 U.S.C. § 33116, Disclosure of Information (Theft Prevention)
6. 49 CFR Part 512, Confidential Business Information
7. FEDERAL REGISTER notice, 72 FR 59434 (Oct. 19, 2007) (Confidential Business Information Final Rule)
8. FEDERAL REGISTER notice, 72 FR 54974 (Sept. 27, 2007)