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APPENDIX A TO PART 512—CERTIFICATE IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

APPENDIX B TO PART 512—CLASS DETERMINATIONS

APPENDIX C TO PART 512—OMB CLEARANCE

AUTHORITY: 49 U.S.C. 322; 5 U.S.C. 552; 15 U.S.C. 1401; 15 U.S.C. 1402; 15 U.S.C. 1407; 15 U.S.C. 1418; 15 U.S.C. 1914; 15 U.S.C. 1944; 15 U.S.C. 1990d; 15 U.S.C. 2005; 15 U.S.C. 2029; delegation of authority at 49 CFR 1.50.

SOURCE: 54 FR 48895, Nov. 28, 1989, unless otherwise noted.

§512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§512.3 Definitions.

Administrator means the Administrator of the National Highway Traffic Safety Administration.

Chief Counsel means the Chief Counsel of the National Highway Traffic Safety Administration.

Confidential business information means information described in 5 U.S.C. 552(b)(4).

NHTSA means the National Highway Traffic Safety Administration.

Substantial competitive harm encompasses “significant competitive damage” under title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 *et seq.*

§512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall:

(1) Stamp or mark “confidential,” or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) On each page marked in accordance with paragraph (a)(1) of this section, mark each item of information which is claimed to be confidential with brackets “[]”.

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit two copies of the documents containing allegedly confidential information (except only one copy of blueprints) and one copy of the documents from which information claimed to be confidential has been deleted to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include the name, address, and telephone number of a representative for receipt of a response from the Chief Counsel under this part.

(5) If a document containing information claimed to be confidential is submitted in connection with an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement, for which there is a public file or docket, simultaneously submit to the appropriate NHTSA official a copy of the document from which information claimed to be confidential has been deleted. This copy will be placed in the public file or docket pending the

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resolution of the claim for confidential treatment.

(b)(1) When submitting each item of information marked confidential in accordance with paragraph (a) of this section, the submitter shall also submit to the Office of the Chief Counsel information supporting the claim for confidential treatment in accordance with paragraph (b)(3) and paragraph (e) of this section.

(2) If submission of the supporting information is not possible at the time the allegedly confidential information is submitted, a request for an extension of time in which to submit the information, accompanied by an explanation describing the reason for the extension and the length of time needed, must be submitted. The Chief Counsel shall determine the length of the extension. The recipient of an extension shall submit the supporting information in accordance with the extension determination made by the Chief Counsel and paragraph (b)(3) of this section.

(3) The supporting information must show:

(i) That the information claimed to be confidential is a trade secret, or commercial or financial information that is privileged or confidential.

(ii) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the submitter of the information.

(iii) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(iv) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the submitter has authorized that appearance or confirmed the accuracy of the information. The submitter must include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information.

(v) Prior determinations of NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the submitted information, or similar information possessed by the submitter including class determinations under this part. The submitter must include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the FEDERAL REGISTER.

(vi) Whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(vii) If information is voluntarily submitted, why disclosure by NHTSA would be likely to impair NHTSA's ability to obtain similar information in the future.

(viii) Whether the submitter of the information asserts that disclosure would be likely to impair other protectable government interests, what the effect of disclosure is likely to be and why disclosure is likely to impair such interests.

(ix) The period of time for which confidentiality is claimed (permanently or until a certain date or until the occurrence of a certain event) and why earlier disclosure would result in the harms set out in paragraph (b)(2)(vi), (vii) or (viii) of this section.

(c) If any element of the showing to support a claim for confidentiality required under paragraph (b)(3) of this section is presumptively established by a class determination, as issued pursuant to §512.10, affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again.

(d) Information in support of a claim for confidentiality submitted to NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to NHTSA the basis for the opinions, and the name, title and credentials

showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to NHTSA with the request a certification in the form set out in appendix A from the submitter or an agent of the submitter that a diligent inquiry has been made to determine that the information has not been disclosed, or otherwise appeared publicly, except as indicated in accordance with paragraphs (b)(3)(iii) and (iv) of this section.

(f) A single submission of supporting information, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information and a certification from the third party necessary to comply with paragraphs (b), (d) and (e) of this section.

(h) Information received by NHTSA that is identified as confidential and whose claim for confidentiality is submitted in accordance with this section will be kept confidential until a determination of its confidentiality is made under section 512.6 of this part. Such information will not be publicly disclosed except in accordance with this part.

(i) A submitter of information shall promptly amend supporting information provided under paragraphs (b) or (e) of this section if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(j) Noncompliance with this section may result in a denial of a claim for confidential treatment of information. Noncompliance with paragraph (i) of this section may subject a submitter of information to civil penalties.

(1) If the submitter fails to comply with paragraph (a) of this section at the time the information is submitted to NHTSA so that the agency is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality may be waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information disclosed to the public may be precluded.

(2) If the submitter of the information does not provide all of the supporting information required in paragraphs (b)(3) and (e) of this section, or if the information is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in §512.5, a request that such information be afforded confidential protection may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

§512.5 Substantive standards for affording confidential treatment.

Information submitted to or otherwise obtained by NHTSA may be afforded confidential treatment if it is a trade secret, or commercial or financial information that is privileged or confidential. Information is considered to be confidential when:

(a) Disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; or

(b) Failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future; or