

information) or Exemption 7 (investigative records), and further argued that either exemption allows the agency to retain the data as confidential. The Alliance asserted that Congress considered the early warning data to be pre-investigative screening information of the type NHTSA traditionally considers part of its internal deliberative process, and intended that the information be confidential until such time as a defect investigation is opened. The Alliance contended that the effect of Section 30166(m)(4)(C) was to modify a presumption in Section 30167(b) generally favoring disclosure.

Public Citizen argued that the TREAD Act did not create a categorical, statutory exemption from disclosure, and that a class determination that information does not presumptively create competitive harm should apply to information about consumer complaints, warranty data and property damage claims. Public Citizen further contended that it is reasonable to disclose each of the other categories of information because it is summary data by make and model and therefore, in Public Citizen's view, not competitively harmful. Public Citizen also asserted that reports of death and injuries and field reports are materials prepared as part of a defect investigation and therefore should be disclosed.

#### IV. Overview of the Final Rule

In the NPRM, we proposed changes to part 512 that were designed primarily to simplify and improve the clarity of the regulation and to update specific sections of the regulation to reflect current case law and legislation. The proposal was intended to ensure the efficient processing of requests for confidential treatment and the proper protection for sensitive business information received by NHTSA.

In a newly captioned Subpart A, the final rule includes the general provisions that establish the purpose, scope, and applicability of the regulation governing claims for confidential treatment, and that define the terms used in the regulation. Additionally, the final rule revises the definition of confidential business information to reflect developments in the law.

The final rule addresses the number of copies to be submitted to the agency when information is claimed to be confidential. The following must accompany any claim for confidential treatment: (1) A complete copy of the submission, (2) a copy of a public version of the submission and (3) either a second complete copy of the submission or, alternatively, only those

portions of the submission containing the material relating to the request for confidential treatment, with any appropriate sections within the pages marked in accordance with this rule. Those filing comments to rulemakings must additionally submit a copy of the public version to the docket. The submissions must also be marked in accordance with this final rule.

The final rule has eliminated the requirement that submitters redact personal identifying information from their submissions. The final rule specifies in Subpart B the manner in which information submitted to NHTSA and claimed to be confidential must be marked and identifies the supporting documentation that must accompany each submission. Each page containing information claimed to be confidential must be marked. If an entire page is claimed to be confidential, the markings must indicate this clearly. If portions of a page are claimed to be confidential, they must be marked by enclosing them within brackets "[ ]."

The final rule clarifies issues relating to the duty to amend claims for confidential treatment. It also provides that, when confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with the submission requirements of Part 512, including the requirement to submit a certificate and supporting information.

We have decided against the creation of categories of information presumed not to cause substantial competitive harm for a variety of reasons, including the fact that such a presumption is duplicative of existing law. Class determinations are intended to reduce or eliminate the need for individual consideration of information that, by its nature, has been determined to cause substantial competitive harm if released. Class determinations alleviate the unnecessary burden of filing individual claims for confidential treatment. Information not subject to one of the class determinations is already presumed to be publicly available. Submitters must make individual claims relating to the information and carry the burden of showing that disclosure would either likely cause substantial competitive harm or, if the information is voluntarily submitted, that it is not ordinarily released to the public.

We nonetheless remain concerned that submitters may routinely seek confidential treatment for information the agency has consistently determined would not cause competitive harm if

released. We will take appropriate action to discourage those who repeatedly file claims for confidential treatment despite our consistent rejection of similar requests.

Consistent with the analysis contained in the October 27, 2000 memo, we have determined that Section 30166(m)(4)(C) of the TREAD Act did not create a categorical statutory exemption pursuant to Exemption 3 of the FOIA applicable to all early warning reporting information. We have decided to consider the confidentiality of early warning reporting information pursuant to Exemption 4 of the FOIA, which exempts confidential business information from disclosure. We have created a series of class determinations covering those portions of the early warning reporting information we have determined are entitled to confidential treatment. We are permitting the information in these classes to be submitted and given confidential treatment without the filing of a part 512 justification and the accompanying certificate.

#### V. Specific Provisions of Part 512

##### A. Subpart A—General Provisions

The agency proposed to include in Subpart A the general provisions that establish the purpose, scope, and applicability of the regulation governing claims for confidential treatment, and that define the terms used in the regulation. In addition, we proposed to revise the definition of confidential business information to reflect developments in the law.

The agency did not receive any comments objecting to these portions of the regulation, and is adopting the proposed changes to this subpart without modification.

##### B. Subpart B—Submission Requirements

The agency proposed to delineate in Subpart B the specific requirements that submitters must follow when they request confidential treatment for materials submitted to NHTSA. The NPRM described the information required to be submitted with a confidentiality request, how documents were to be marked, how many copies would be required, where materials were to be submitted and what supporting documentation would be needed. The comments raised no concerns regarding most provisions contained in proposed Subpart B, but several commenters objected to certain of its features.