

1. Copies of Submissions

Part 512 previously provided that submitters send to the Chief Counsel two copies of documents containing information claimed to be confidential and one copy of a public version of the documents, from which portions claimed to be confidential were redacted. Submitters were also to send a second copy of the public version of the document to the appropriate program office within NHTSA (typically those engaged in the development of motor vehicle safety—Enforcement, Rulemaking or Applied Research). Thus, the submitter sent the agency two confidential sets of documents and two public sets of documents.

We proposed changing the regulation to require the submitters to send to the Office of the Chief Counsel one confidential and one public set of submitted documents. The submitter could also send, along with the confidential set, any non-confidential information the submitter wanted NHTSA to consider along with its request. We also proposed that submitters send a confidential and a public set of the documents to the appropriate program office.

A number of comments characterized this proposal as requiring the creation of a “third version” of the submitted materials, and argued that it would significantly increase the time, expense, and difficulty associated with the exercise of the statutory right to protection of confidential commercial and financial information. JPMA and others suggested instead that the agency require submitters to furnish two copies of the complete submission and one or two redacted versions.

The agency did not intend to require the creation of any “third version” of submitted documents. The agency believes that some companies may find it easier to send the Chief Counsel only those material for which confidential treatment is sought, especially when the amount of material claimed to be confidential is small in comparison to the whole submission or when it is limited to documents that are easily severable from the whole. We have accordingly modified this provision to provide this option when submitting confidentiality claims.

Each claim for confidential treatment must be accompanied with the following: (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 individuals who are filing comments to rulemakings must additionally file an electronic or hard copy of the public version to the docket. All submissions must be appropriately marked in accordance with this final rule. Information for which the submitter requests confidential treatment may be submitted electronically or in an electronic format. Submitters should also provide any special software necessary to review the submitted materials.

The Chief Counsel will 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. This will provide the program office expeditiously with the information necessary for program activity and ensure that the program office is aware of which material is claimed to be confidential and which is not. This process will also provide the Chief Counsel with the information needed to consider the claim for confidential treatment. Generally, this will simply be the material for which confidential treatment is sought. The submitter may also include any additional information it wishes the Chief Counsel to evaluate in considering the claim.

2. Personal Information

The agency proposed to include in Part 512 a request that submitters remove personal information, such as names, addresses and telephone numbers of consumers, from the redacted version of submitted materials, to protect the privacy of individuals. The agency’s policy has been to redact personal identifiers from all owner complaints (whether filed directly with the agency or from documents obtained from manufacturers in the course of a defect investigation) before placing them on the public record. The policy was designed to encourage the submission of information by protecting personal privacy concerns. The agency believes that consumers may be less willing to make complaints if their personal contact and other information are made publicly available.

In *Center for Auto Safety v. National Highway Traffic Safety Administration*, 809 F. Supp. 148 (D.D.C. 1993), the Center for Auto Safety sought release of the names and addresses of consumers who filed complaints directly with the agency. The court analyzed the possible effects of disclosure, balancing the interests of the individuals filing

complaints with the asserted public interest in obtaining not only the substance of the complaint, which was publicly available, but also the identities of those filing them. The Court ruled that the privacy of the complainants will be recognized and protected because “there is no ascertainable public interest of sufficient significance or certainty to outweigh [a complainant’s privacy] right” that would justify the release of this personal contact information provided by consumers. *Id.* at 150. Thus, the court upheld the agency’s decision not to release the names of, and other personal information about, those voluntarily providing information to the agency.²

The same policy concerns apply to personal identifiers on copies of information submitted by manufacturers. The judicially recognized privacy interest in protecting the personal identifiers and contact information when a consumer complains to the agency is at least as strong when applied to a consumer who complains directly to the company, and is in all likelihood unaware that the company may be required to send that communication to the government, which, in turn, will place it into a publicly accessible file.

Many comments, including those from TMA and the Alliance, objected to the proposed requirement that submitters remove personal information, pointing out that the legal burden of reviewing and redacting personal identifiers lay with the agency, not with the private submitters of the information. TMA also argued that relying on submitters to redact the information might lead to inconsistent approaches and cause confusion over what personal identifiers are or are not redacted.

In light of the comments, we have revised the proposed regulation to eliminate this requirement. The agency nonetheless would appreciate submissions, in addition to the complete copy, of redacted versions deleting any personal identifiers from any companies willing to provide them.

² Public Citizen expressed opposition to the agency’s practice of providing a release option on its Vehicle Owner Questionnaires to allow the agency to share consumer names with manufacturers but not a similar release option with respect to advocacy groups. Manufacturers have a legal obligation to investigate vehicle problems and make timely defect determinations. The release of information to them, with the owner’s permission, assists in their performance of their legal responsibilities by enabling them to investigate reports of vehicle problems. Advocacy groups and other members of the public have no such statutory obligation.