

### 3. Stamp Each Page

The proposal specified the manner in which information submitted to NHTSA and claimed to be confidential must be marked, and identified the supporting documentation that must accompany each submission. The NPRM intended to continue the requirement that each page containing information claimed to be confidential be marked as such. The markings would indicate if an entire page was claimed to be confidential or would identify with brackets any particular portions of a page claimed to be confidential.

This proposal was intended to avoid misunderstanding by establishing a system through which companies could provide the agency with clear direction as to which portions of the pages or documents were claimed to be confidential. To allow the pages with confidential information to be identified easily, the proposal provided also that each page claimed to contain confidential information must be numbered.

The RMA claimed that the combination of this feature with other parts of the proposed regulation would create an unreasonable burden and violate the Paperwork Reduction Act. The RMA was concerned with the combined effect of presumably requiring three versions of the same information, stamping each appropriate page with the word "confidential," potentially redacting personal information, and the potential application of all the requirements to each quarterly submission of the early warning reporting information.

As noted above, we have made various modifications to address many of these concerns. We have clarified that we did not intend to require a so-called third version of each submission, have eliminated the proposal to require the redaction of personal identifiers, and have addressed the early warning reporting information through a series of class determinations covering those portions we have determined are entitled to confidential treatment under Exemption 4 of the FOIA.

In sum, we believe that this final rule simplifies the process for submitting confidentiality claims, allows for the more efficient handling of those claims within the agency and imposes no additional burden on those submitting the information. The final early warning reporting regulation likewise clarified those reporting obligations and, we believe, assuages many of the concerns raised by the RMA.

Those providing submissions electronically must either separate the

material that is confidential from that which is not, or find an alternative method of marking those pages that are confidential. We note that companies increasingly are supplying information required as part of a defect or noncompliance investigation in electronic formats.

### C. Subpart C—Additional Requirements

In Subpart C, the agency proposed to retain additional requirements from the existing regulation that submitters must follow when certain circumstances apply. The NPRM stated that we did not intend to change these requirements substantively, only to clarify the requirements and assemble them in a single subpart.

The requirements contained in this portion of the proposed rule covered such issues as the submitter's continuing obligation to amend information provided in support of a claim for confidential treatment, the manner in which confidential treatment is to be claimed for multiple items of information or for information submitted by a third party, the steps submitters must take if they need an extension of time to claim confidential treatment, and the consequences for noncompliance with part 512.

The final rule includes the requirement that submitters specify with their claim the length of time for which confidential treatment is sought. The information supporting the confidentiality request must include adequate justification for the time period specified in the claim.

The agency did not receive comments objecting to the proposed reorganization of these provisions into Subpart C, or to most of the specific requirements contained in this portion of the proposal. Objections were raised, however, regarding two provisions of the proposal:

#### 1. Duty To Amend

The existing regulation provides that submitters of information "shall promptly amend supporting information" justifying a claim for confidential treatment "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." 49 CFR 512.4(i). The NPRM proposed to revise this language to provide that submitters "shall promptly amend any information under § 512.4 of this part

whenever the submitter knows or becomes aware that the information was incorrect at the time it was provided to NHTSA, or that the information, although correct when provided to NHTSA, is no longer correct."

Several comments, including those submitted by TMA and AIAM, objected to this proposed change on the grounds that it would impose an unreasonable burden on submitters to monitor submissions constantly in order to avoid civil penalties. Workhorse expressed concern that, by removing the "knowing concealment" standard, the rule would subject submitters to civil penalties based on "constructive knowledge." Business interests urged the agency not to adopt the proposed changes. Public Citizen, on the other hand, considers the "knowing concealment" standard "too weak" and believes it allows situations in which materials that are no longer confidential receive continued protection "long after the conditions justifying its confidentiality have been removed."

We note that the agency requires the submitter to identify the length of time for which confidential treatment is sought. The agency will evaluate these requests when determining whether to grant confidential treatment and will release information once the time period for which confidential treatment is granted has lapsed. If the time period between the grant and the possible disclosure is long, the agency may seek reconfirmation, with appropriate support, that the information remains confidential.

The comments show that the proposed language could impose substantial and unnecessary burdens on submitters to monitor information previously submitted to the agency without providing additional benefit, since the agency is able to monitor the time for which confidential treatment is granted and is able to reassess a confidentiality grant should the information be requested. Accordingly, we have revised the final rule to clarify that the duty to amend relates to the supporting information submitted to justify the claim for confidential treatment, not to the substance of the reported information itself. In addition, we have revised the rule further so that, as before, the duty to amend is triggered only when circumstances are such that a failure to amend the supporting information would constitute a knowing concealment.

#### 2. Third Parties

In the NPRM, the agency proposed that, when confidentiality is claimed for information obtained by the submitter