

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 requirements of this regulation, including the requirement to submit a certificate of confidentiality.

The agency received several comments, all from suppliers, raising questions concerning this aspect of the agency's proposal. MEMA/OESA, AORC, Bendix, and WABCO, among others, argued that they should have the opportunity to request confidentiality directly with respect to information that they submit to their customers, and should be able to deal directly with the agency regarding information that is not available to the original submitter.

The agency believes these comments reflect a misunderstanding of the proposed regulation. The proposed regulation would not prevent suppliers from submitting information to the agency or seeking confidential treatment directly. This provision of the NPRM merely provided that if a person submits information that was obtained from a third party (such as an automobile manufacturer submitting information obtained from a supplier, a supplier submitting information obtained from a vehicle manufacturer, a contractor submitting information obtained from a subcontractor, or a similar situation involving wholly different parties), and if the submitter seeks confidential treatment for the information, it must obtain adequate supporting documentation to justify the claim. For example, it may be appropriate, or even necessary, to obtain and submit a Certificate in Support of the Request for Confidentiality that was prepared by the entity from which the information was obtained. In the absence of adequate supporting information, the agency will have no choice but to make the information public. Accordingly, this provision of the proposed rule is adopted without change.

D. Subpart D—Agency Determination

NHTSA proposed in the NPRM to delineate the confidentiality standards and procedures used by the agency to render a confidentiality determination. We also proposed to state that the agency may render determinations involving classes of information and that submitters may request reconsideration if they disagree with an agency decision. We indicated that we were proposing to clarify these provisions and assemble them into a single subpart. We indicated also that we were proposing some substantive changes to these portions of the regulation.

The majority of the comments related to the submission and protection of early warning reporting information, but a few additional issues were also addressed:

1. Time To Request Reconsideration or To Respond When a FOIA Request Is Pending

Part 512 previously provided that, if a request for confidential treatment is denied in whole or in part, the agency would inform the submitter of its right to petition for reconsideration of the denial within ten working days after receiving notice of the agency's decision. The NPRM proposed no changes to this aspect of the rule. A number of comments, primarily from smaller businesses, requested that this period of time be extended.

Blue Bird, for example, asserted that small-to medium-sized companies should have "the opportunity to undertake the type of expanded review which the Company would need in cases where it must fully consider and present all possible arguments and justifications to protect what [it considers to be] proprietary, competitively sensitive information." In addition, MEMA/OESA asserted that "requests for reconsideration where sensitive company documents are otherwise at risk will often require the input of many company employees * * * [and that] the ten-day period under the current and proposed rules * * * provides insufficient time."

These comments recommended that the period of time should be extended from 10 working days to 20 working days or 30 calendar days.

Upon consideration of the difficulties faced by small companies (Blue Bird) and the potential need to coordinate responses with widely dispersed employees (MEMA/OESA), the agency has decided to adopt the commenters' request to extend the period of time to request reconsideration of denials of confidential treatment rendered by the agency, from ten working days to twenty working days.

In related comments, citing sections 512.22 and 512.23 of the regulation, which appear in Subpart E and relate to modifications of confidentiality decisions and the public release of confidential information under certain limited circumstances, the WLF recommended that "the agency should [n]ever give less than ten (10) day advance notice to [a] company before releasing business documents." Although not specifically raised in any other comments, the agency notes that several portions of part 512 provide submitters of information with ten

working days within which to seek review of agency decisions.

For example, if a petition for reconsideration is denied in whole or in part under Section 512.19 (also in subpart D), or if the agency determines that an earlier determination of confidentiality should be modified under section 512.22 or that information previously determined or claimed to be confidential will be disclosed under section 512.23 (in subpart E), the submitter is advised that the information will be made available to the public not less than ten working days after the date on which notification of the agency's action is received.

The reasons that support an extension from ten working days to twenty working days for requesting reconsideration also justify the extension of these other time periods. Nonetheless, while we are revising the regulations to provide a period of twenty working days, rather than ten, in each of the sections referenced above, we are reserving the right to shorten these periods when the agency finds it to be in the public interest.

WLF asserted that the NPRM would provide "an inadequate amount of time to businesses to review and respond to FOIA requests submitted to the [agency] by third parties," and recommended that the agency "provide the third-party FOIA request to the affected business within three (3) business days after receiving it * * * [and] copies of all correspondence between the agency and the FOIA requester."

The agency notes that while the WLF's comments asserted that they concern notice to businesses upon the agency's receipt of a FOIA request for the information, the sections of the NPRM that WLF cites do not relate to these circumstances. Moreover, the agency does not believe that additional notice to submitters is needed at the time a FOIA request is received. Unlike many other Federal agencies, NHTSA does not wait until it has received a FOIA request before asking a submitter to justify the withholding of information. Instead, NHTSA's regulation provides that submitters must support their claims for confidential treatment at the time of submission. See 49 CFR 512.4. The agency would not expect, nor would we welcome, any additional materials from a submitter simply because a FOIA request has been filed. If a submitter disagrees with the agency's confidentiality determination (whether or not it is made in the context of a FOIA request), it can then request reconsideration. Therefore, there is no need to notify submitters if a FOIA