on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 14, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. E6–18168 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0747, FRL–8231–6]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address permitting requirements.

DATES: Any comments on this proposal must arrive by November 30, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0747, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.
- E-mail: *R9airpermits@epa.gov*.
- Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local AVAQMD Rule 442. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 1, 2006.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E6–18172 Filed 10–30–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

Docket No. NHTSA–06–26140; Notice 1

RIN 2127–AJ95

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice addresses the confidentiality of certain information that manufacturers of motor vehicles and motor vehicle equipment submit to NHTSA pursuant to the Early Warning Reporting (EWR) rule. The agency is proposing to create class determinations, based on Exemption 4 of the Freedom of Information Act (FOIA), treating certain categories of EWR information as confidential, namely production numbers (excluding light vehicles), consumer complaints, paid warranty claims, and field reports. In addition, for EWR reports on deaths and injuries, NHTSA is proposing to create a class determination based on FOIA Exemption 6 that the last six (6) characters of the vehicle identification number (VIN) are confidential. Finally, the agency is also proposing to clarify its Confidential Business Information rule with regard to confidentiality markings in submissions in electronic media.

DATES: Comments on the proposal are due January 2, 2007.

See the **SUPPLEMENTARY INFORMATION** portion of this document for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

ADDRESSES: You may submit comments by any of the following methods:

- *Web site:* <*http://dms.dot.gov*>. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to <*http://www.regulations.gov*>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <*http://dms.dot.gov*>, including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to <*http://dms.dot.gov*> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1966, the Congress enacted the National Traffic and Motor Vehicle Safety Act (Safety Act), for the purpose of reducing traffic accidents and deaths and injuries to persons resulting from traffic accidents. 49 U.S.C. 30101.[1] Since it was amended in 1974,[2] the Safety Act has contained a series of provisions that address motor vehicles and motor vehicle equipment that contain a potential or actual defect that is related to motor vehicle safety.

First, the Act requires a manufacturer to notify NHTSA and the vehicle or equipment owners if it learns of a defect and decides in good faith that the defect is related to motor vehicle safety. 49 U.S.C. 30118(c). This duty is independent of any action by NHTSA.[3] Ordinarily, a manufacturer's notice is followed by the manufacturer's provision of a free remedy to owners of defective vehicles and equipment. *See* 49 U.S.C. 30120. Collectively, the manufacturer's notice and remedy are known as a recall.

Second, Congress provided NHTSA with considerable investigative and enforcement authority. The Safety Act authorizes NHTSA to conduct investigations and to require manufacturers to submit reports to enable the agency to determine compliance with the statute. 49 U.S.C. 30166(b), (e). In addition, NHTSA may initiate administrative enforcement proceedings to decide whether a motor vehicle or motor vehicle equipment contains a safety-related defect or does not comply with applicable standards. An investigation may culminate in NHTSA's order to the manufacturer to provide notification of a safety-related defect or a noncompliance to owners of the vehicle or equipment. 49 U.S.C. 30118(a)–(b).

As a practical matter, if a manufacturer has not submitted a notice of a safety-related defect to NHTSA and if the agency has not received information that provides a sufficient basis for the opening of an investigation, it has been unlikely that NHTSA would investigate a potential problem. This practical limitation on NHTSA's investigations manifested itself in 2000. Under the limited level of reporting then required, the agency lacked sufficient information to identify defects in Firestone tires mounted on Ford Explorers.[4] Numerous fatalities occurred before NHTSA opened an investigation and Firestone conducted recalls.

On November 1, 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Pub. L. No. 106–414, 114 Stat. 1800. The TREAD Act added provisions to the Safety Act that expanded the scope of the information manufacturers submit to NHTSA prior to a manufacturer-initiated recall. In relevant part, the TREAD Act required the Secretary of Transportation to publish a rule setting out the early warning reporting (EWR) requirements to enhance the agency's ability to carry out the Act. 49 U.S.C. 30166(m). In general, the TREAD Act authorized the agency to require manufacturers to submit information that may assist in the early identification of defects related to motor vehicle safety. *Id.*

In July 2002, NHTSA promulgated the EWR rule. 67 FR 45822 (July 10, 2002).[5] Generally, the EWR rule required certain manufacturers of motor vehicles (*e.g.*, automobiles and other light vehicles, trucks, buses, motorcycles, and trailers) and motor vehicle equipment (*e.g.*, tires and child restraints) to submit data regarding production numbers (cumulative total vehicles or equipment manufactured annually), incidents involving death or injury based on claims and notices, property damage claims, consumer complaints, warranty claims paid, and field reports (collectively ''early warning data'') on a quarterly basis. *See* 49 CFR 579.21–26. The information is submitted electronically to the agency in a standardized format.[6]

The EWR rule did not address the confidentiality of EWR data, but noted that this issue would be considered as

[1] Pub. L. No. 89–563, 80 Stat. 718. This preamble will use the current citations to the United States Code. In 1994, the Safety Act, as amended, was repealed, reenacted, and recodified without material change as part of the recodification of Title 49 of the United States Code. *See* Pub. L. No. 103–272, 108 Stat. 745, 1379, 1385 (1994) (repealing); *id.* at 745, 941–73 (1994) (reenacting and recodifying without substantive changes).

[2] Pub. L. No. 93–492, 88 Stat. 1470 (1974).

[3] *United States* v. *General Motors Corp.,* 574 F. Supp. 1047, 1049 (D.D.C. 1983).

[4] Background information on this matter is available through NHTSA's defects investigation Web site at *http://www-odi.nhtsa.dot.gov/cars/problems/defect/defectsearch.cfm*. Enter ''EA00023'' in the ''NHTSA Action Number'' box and click on ''search''.

[5] Thereafter, NHTSA published amendments to the EWR rule. As used herein, the references to the EWR rule are to the rule as amended. The reader should note that the discussion of the EWR rule in this notice is a summary. The full text of the rule and associated **Federal Register** notices should be consulted for a full description.

[6] Subsequently, in response to petitions for reconsideration, the rule was amended but these amendments are not germane to the rulemaking at hand.

part of the proposed amendments to NHTSA's confidential business information rule. *See* 67 FR at 45866, n.6. The agency addressed the confidentiality of EWR data in its July 2003 final rule on Confidential Business Information (CBI) rule. 49 CFR part 512, 68 FR 44209 (July 28, 2003). In addition to establishing revised general requirements governing claims of confidentiality and NHTSA rulings on these claims, the CBI rule addressed the confidentiality of EWR data. The CBI rule established a new Appendix C setting forth class determinations treating EWR information on production numbers (excluding light vehicles), consumer complaints, warranty claims, and field reports as confidential. 49 CFR part 512 App. C. Other EWR data were not specifically covered by the CBI rule. The agency based these class determinations on the substantial competitive harm and impairment standards of Freedom of Information Act (FOIA) Exemption 4. *See* 5 U.S.C. 552(b)(4); 49 CFR part 512 App. C.

In April 2004, NHTSA responded to petitions for reconsideration of the July 2003 CBI rule. 69 FR 21409 (April 21, 2004). The agency amended the rule by adding two class determinations to Appendix C based on FOIA Exemptions 4 and 6. One class determination, based on Exemption 4, covered common green tire identifiers submitted by tire manufacturers under 49 CFR 579.26(d).[7] The Exemption 6 class determination covered the last six (6) characters of vehicle identification numbers (VINs) contained in EWR death and injury reports submitted to NHTSA. *See e.g.*, 49 CFR 579.21(b)(2).

Public Citizen challenged the legality of Appendix C to 49 CFR part 512. In a March 31, 2006 decision, the United States District Court for the District of Columbia ruled that NHTSA had the authority to promulgate the rule making categorical confidentiality determinations for classes of EWR data. *Public Citizen, Inc.* v. *Mineta,* 427 F. Supp. 2d 7, 12–14 (D.D.C. 2006). The District Court also concluded, however, that NHTSA had not provided adequate notice and opportunity to comment on those determinations at the time of the proposed rule, *id.* at 14–17. The Court remanded the matter to NHTSA but did not address the parties' other claims. *Id.* Thereafter, intervenor Rubber Manufacturers Association (RMA) filed a motion to amend the judgment to address its claim that the disclosure of EWR data was precluded by a specific disclosure provision in the TREAD Act, 49 U.S.C. 30166(m)(4)(C).[8] RMA asserted that this provision met the requirements of FOIA Exemption 3, which allows the withholding of information prohibited from disclosure by another statute. 5 U.S.C. 552(b)(3).

In a supplemental memorandum opinion filed on July 31, 2006, the Court accepted RMA's argument that it should consider the Exemption 3 claim, but held that the TREAD Act's disclosure provision was not an Exemption 3 statute. *See Public Citizen, Inc.* v. *Mineta,* 444 F. Supp. 2d 12 (D.D.C. 2006). On August 24, 2006, RMA filed a motion seeking either a judgment under Federal Rule of Civil Procedure 54(b) or certification of interlocutory appeal under 28 U.S.C. 1292(b) of the District Court's decision regarding Exemption 3. On September 5, 2006, the District Court granted RMA's motion. On September 28, 2006, RMA filed a Notice of Appeal of the Judgment of July 31, 2006 and associated orders.

In light of the District Court's decisions, NHTSA is proposing a rule to address the confidentiality of EWR information through specific class determinations based on FOIA Exemptions 4 and 6. Our proposal, which sets forth determinations largely similar to our prior determinations, addresses the District Court's notice and comment concerns.

II. Information Submissions Before and After the EWR Rule Became Effective

A. Pre-TREAD Act Transmissions of Information to NHTSA

Prior to the enactment of the TREAD Act, NHTSA received information on potential and actual safety-related defects in motor vehicles through several primary mechanisms. First, vehicle owners submitted complaints (also known as vehicle owner questionnaires (VOQs)) [9] to NHTSA's Office of Defects Investigation (ODI). These complaints tended to identify problems consumers had experienced in their vehicles. Second, manufacturers provided copies of technical service bulletins and other communications transmitted to more than one manufacturer, dealer or owner. *See* 49 U.S.C. 30166(f); 49 CFR 579.5 (2002–2005), 573.8 (1995–2001). Third, manufacturers submitted information to the agency during investigations of particular vehicles and equipment (such as tires) undertaken by ODI. Finally, manufacturers submitted reports that certain motor vehicles and equipment contained safety-related defects pursuant to 49 CFR part 573 (Defect and Non-Compliance Responsibility and Reports) after determining that such a defect exists. *See* 49 U.S.C. 30118(c).

On average, during the five years preceding the TREAD Act, ODI conducted approximately 83 investigations of potential safety related defects per year. On average, 64 of these were first stage investigations known as Preliminary Evaluations (PEs). The remaining ones were second-stage investigations—Engineering Analyses (EAs).

During the five (5) years following enactment of the TREAD Act, these numbers have remained roughly the same, with the agency conducting approximately 84 investigations annually (66 PEs, 28 EAs). In most of these investigations, ODI issued information requests to manufacturers. A review of the submissions received from manufacturers over a recent one-year period revealed that nearly every PE or EA submission to the agency involved a request for confidential treatment.[10]

B. The Early Warning Reporting Requirements

The TREAD Act dramatically changed the nature and amount of information manufacturers submit to NHTSA. The EWR rule requires specified manufacturers to submit a broad array of information on each make and model of vehicle and child seat, and substantial tire line that they manufacture. The EWR requirements apply mainly to larger manufacturers of motor vehicles and tires, and all manufacturers of child restraint systems (*see* 49 CFR part 579). In general, vehicle manufacturers who annually produce 500 or more vehicles in a category must submit quarterly reports with regard to the following categories of vehicles: light vehicles, medium-heavy vehicles and buses, trailers, and motorcycles. The reporting information required of these manufacturers is summarized below:

- *Production.* These manufacturers must report the number of vehicles, child restraint

[7] The term ''common green tires'' refers to ''tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.'' 49 CFR § 579.4.

[8] In reference to information provided by manufacturers pursuant to the EWR rule, 49 U.S.C. § 30166(m)(4)(C) states: ''Disclosure. None of the information collected pursuant to the final rule promulgated under paragraph (1) [the EWR rule] shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.''

[9] *See http://www-odi.nhtsa.dot.gov/ivoq/.*

[10] Out of 276 requests for confidential treatment we received from July 1, 2005 through June 30, 2006, approximately 30% (83) involved requests related to a PE (52) or EA (31). These numbers do not include requests related to other enforcement-related activities, such as compliance investigations or recall-related queries.

systems, and tires, by make, model, and model (or production) year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

- *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.
- *Property damage.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.
- *Warranty claims information.* These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they pay that are related to problems with certain specified components and systems. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.
- *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.
- *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in a foreign country that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.
- *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.

C. Manufacturer Submissions of EWR Information

EWR reporting was phased-in, with the first quarterly EWR reports submitted on or about December 1, 2003. Field reports (copies of non-dealer reports) were first submitted on or about July 1, 2004. 68 FR 35145, 35148 (June 11, 2003) (specifying deadline submissions for EWR reports). Since the EWR rule's data submission requirements began in December 2003, manufacturers have submitted large amounts of information. Over 500 manufacturers have regularly submitted reports and collectively submitted thousands of reports, making the volume of the incoming data extensive. NHTSA has received reports on more than 8 million consumer complaints, 138 million warranty claims, and nearly 5 million field reports (all aggregated) from light vehicle manufacturers. Other manufacturers have also provided a large volume of aggregated data for the agency to analyze: heavy and medium bus manufacturers—over 246,000 consumer complaints, nearly 7 million warranty claims, and nearly 245,000 field reports; trailer manufacturers—nearly 66,000 consumer complaints, over 1.2 million warranty claims, and over 18,000 field reports; motorcycle manufacturers—over 35,000 consumer complaints, over 687,000 warranty claims, and over 91,000 field reports; tire manufacturers—over 1 million warranty claims; and child restraint manufacturers—nearly 43,000 warranty claims and over 7,000 field reports.

III. The Proposed Rule on the Confidentiality of EWR Information

A. Class Determinations Based on FOIA Exemption 4

In view of the Court's decision in *Public Citizen, Inc.* v. *Mineta,* NHTSA is initiating a new rulemaking proceeding and proposing to adopt class determinations that address the confidential treatment of certain EWR information. In general, NHTSA is proposing to adopt the class determinations promulgated in 2003 and 2004.[11] The new class determinations we are proposing for EWR data are based on FOIA Exemption 4 and would be set out in a new Appendix C to 49 CFR part 512, which would read as follows:

Appendix C—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579 subpart C, will cause substantial competitive harm and will impair the government's ability to obtain this information in the future if released:

(1) Reports and data relating to warranty claim information;

(2) Reports and data relating to field reports, including dealer reports, product evaluation reports, and hard copies of field reports; and

(3) Reports and data relating to consumer complaints.

(b) In addition, the Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm if released:

(1) Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR 579.4(c); and

(2) Lists of common green tire identifiers.

1. Basis for Exemptions

Consistent with our prior approach, the agency proposes creating categories based on Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). Under Exemption 4, the standard for assessing the confidentiality of required submissions of information is whether disclosure is likely either to cause substantial competitive harm to the originating entity or to impair the government's ability to obtain necessary information in the future. *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974). Meeting the competitive harm standard requires that there be ''actual competition and a likelihood of substantial competitive injury'' from disclosure of the information. *CNA* v. *Donovan,* 830 F.2d 1132, 1152 (D.C. Cir. 1987). Assessing the effect of disclosure under the impairment prong requires a ''rough balancing'' of the extent of impairment and the information's importance against the public's interest in disclosure. *Washington Post* v. *Dep't of Health and Human Services,* 690 F.2d 252, 269 (D.C. Cir. 1982).

We note that motor vehicle and motor vehicle equipment manufacturers who are required to submit EWR data operate in a highly competitive business environment. *See http://stats.bls.gov/oco/cg/cgs012.htm* (generally describing the nature of the motor vehicle and parts industry). In light of the highly competitive environment in which these manufacturers operate, the comprehensive EWR data that they submit possess commercial value to the submitting manufacturers, competitors, and others such as suppliers who are interested in these types of data. These data are standardized and, as discussed above, the EWR reports contain identical informational elements for

[11] Minor changes from the 2003 rule, as amended in 2004, are reflected in this proposed new Appendix C. One change parallels proposed changes to the EWR rule involving the identification of product evaluation reports. The proposed changes to the EWR regulation were published on September 1, 2006. 71 FR 52040. Another change to Part 512 is the relocation of Appendix C's subparagraph addressing common green tires.

each regulated manufacturer category under the EWR rule. *See* 49 CFR part 579 subpart C. These reports are submitted pursuant to standardized electronic reporting templates that are used repeatedly from reporting period to reporting period. Each manufacturer in a regulatory category reports on the same systems and components and provides a snapshot of that manufacturer's experience for each of the standard informational elements.

Further, as we explain below, under the TREAD Act, manufacturers need only produce that information which they already collect. In light of this fact, on balance, the disclosure of certain categories of EWR information (consumer complaints, warranty claims, and field reports) is more likely to cause manufacturers to scale back their collection efforts, which would impair the agency's ability to obtain EWR data in future submissions, than if the information were not disclosed. Without the collection of comprehensive data by manufacturers, the effectiveness of the EWR program would be adversely impacted.

Additionally, as reflected by the number of EWR submissions when compared to the number of confidentiality requests that manufacturers submit to the agency in the course of defect investigations noted above, if NHTSA were to attempt to process individualized requests for confidentiality of individual EWR submissions, the agency would be overwhelmed. A huge backlog would develop and grow. During the time that NHTSA was processing these requests for confidentiality, nothing would be released. The situation would be similar to the substantial FOIA request backlog experienced at some agencies. Moreover, submissions would not be released until the individual processing was completed. The net effect would be to hamper agency efforts to address these claims for confidential treatment expeditiously and likely divert resources from other efforts, including pursuing other enforcement activities. The District Court recognized this possibility when it ruled that categorical rules that address the confidentiality of EWR data are necessary ''to allow the agency to administer the EWR program effectively,'' *Public Citizen,* 427 F. Supp. 2d at 13, and that the agency was ''justified in making categorical rules to manage the tasks assigned to it by Congress under the TREAD Act.'' *Id.*

In the recent *Public Citizen* case, the parties submitted briefs on NHTSA's authority to issue categorical determinations. The court accepted NHTSA's position that the agency had the authority to do so. *Id.*

2. Proposed Class Determinations on the Confidentiality of EWR Data

Based on NHTSA's authority, as recently confirmed in the District Court's decision, to make categorical class determinations, we are proposing to create such classes based on Exemption 4 for the EWR data categories listed below.

a. Production Numbers

The EWR rule requires certain manufacturers to submit the number of vehicles, tires and child restraint systems, by make, model, and model (or production) year, produced during the model year of the reporting period and the prior nine model years (prior four years for child restraint systems and tires). *See* 49 CFR 579.21–26.

Production figures for models of motor vehicles, other than light vehicles, and for tires and child restraints are not publicly available.[12] As noted above, NHTSA proposes to include EWR production figures, other than for light vehicles, in a class determination of confidentiality based on the competitive harm prong of *National Parks.* EWR production data reveal a variety of valuable information, including a company's production capacity, the sales and market performance of its individual products,[13] and the success of its marketing strategies. This market-related information would be valuable to the reporting manufacturer's competitors, who commonly want to know how well products sell, including how well their competitors' products have been and are selling. The competitors would use the production information in their own product planning and marketing. For example, the release of this EWR production information would likely have the following impacts: (1) Medium-heavy vehicle manufacturers would use a rival's production information to monitor the competitor's production capacity (which would reveal that competitor's capacity to manufacture certain products) and, separately, suppliers would use the information to gain a competitive advantage over a submitter during pricing negotiations, in instances such as when they could determine that they are the sole supplier; (2) bus manufacturers would use production information to chart the overall market and the strengths and weaknesses of the reporting entity's business within specific makes and models; (3) because product plans are based upon an evolution of production direction and experience, disclosure of motorcycle production information would expose manufacturers' future plans to competitors; (4) child restraint manufacturers would use production data to assess their competitors' production capabilities, sales and market performance through means otherwise unavailable without considerable market research expense; and (5) the disclosure of tire production numbers by brand and size would result in competitive harm to the manufacturers by revealing specific and critical information about those companies' sales and marketing strategies. We note that in the context of individual investigations, the agency has generally granted confidential treatment to production data on child restraints and tires submitted to NHTSA but released past light vehicle production numbers, which, as noted above, are generally available to the public and have generally not been granted confidential status.

b. Consumer Complaints

The EWR rule requires larger volume vehicle manufacturers and all child restraint manufacturers to submit the number of consumer complaints received broken out, for each make and model, by specific categories such as system component, fire and rollover—all of which are binned by code. 49 CFR 579.4, 579.21–26. Consumer complaints are defined by the regulation as:

> [A] communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer Web site that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but

[12] The basis for excluding EWR production data on light vehicles (''any motor vehicle, except a bus, motorcycle, or trailer, with a gross vehicle weight rating of 10,000 lbs or less,'' 49 CFR § 579.4) from the proposed class determination on confidentiality is that those data are publicly available. Information that is already publicly available cannot be withheld by an agency under Exemption 4. *Niagara Mohawk Power Corp.* v. *Dep't of Energy,* 169 F.3d 16, 19 (D.C. Cir. 1999). We note that more detailed production data on light vehicles, such as detailed production information by engine and transmission combination, is not publicly available and has been granted confidentiality.

[13] *See, e.g. http://www.claritas.com/claritas/Default.jsp?ci=2&pn=cs_bmwusa.*

not including a claim of any kind or a notice involving a fatality or injury.[14]

NHTSA proposes to include EWR consumer complaint data in a class determination of confidentiality based on both the competitive harm and impairment prongs of *National Parks*. The commercial value of consumer complaint data is well-recognized. Complaint data are a valuable data source used by companies to help them identify areas of concern, including product performance, to consumers and provide guidance on where to allocate their limited resources.[15] The disclosure of EWR complaint numbers would provide competitors with aggregated data on the performance of entire product lines and key, individual systems and/or components. In view of the competitive value of these data, NHTSA has tentatively concluded that the release of EWR consumer complaint data would cause substantial harm to the competitive position of the manufacturer that collected and reported them.

Companies may receive customer input and feedback on product performance in a variety of ways and establish differing practices for the receipt of customer complaints, which are taken into account by the definition of consumer complaint. To obtain these data, companies may, for example, increase the staff available at their toll-free telephone numbers or create web-based systems through which consumers can make complaints instantly by electronic mail. More consumer input channels increase the robustness of the available data. In addition to providing valuable information to the company, consumer complaints provide feedback on product performance that can be valuable to NHTSA in identifying problems, including potential defects that may point to the presence (or absence) of a safety problem. The agency seeks to ensure that it receives as much information as possible to identify possible defect trends.

Under the early warning reporting provisions of the Safety Act, however, NHTSA may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer. 49 U.S.C. 30166(m)(4)(B). In other words, NHTSA may require manufacturers to submit reports based on information that they have collected but may not require manufacturers to collect information not otherwise collected.

In view of the fact that the quantity and comprehensiveness of the EWR consumer complaint data depend in substantial part on the willingness of manufacturers to collect this information through a broad and multi-input approach, NHTSA does not want to take steps that discourage the collection efforts. NHTSA is concerned that the routine disclosure of EWR consumer complaint information would discourage these efforts, and ultimately reduce the amount of information manufacturers collect. This would impair our ability to obtain this information in the future for analysis. It would adversely impact not only the EWR program as a whole, but a reduction in complaint data would also significantly impact individual investigations in which ODI routinely considers and follows up on such data. The disclosure of these data, however, would be of limited value to the public. Complaint data frequently involves issues that are not safety-related. On balance, the importance of the information to the agency's ability to help it identify potential safety defects and the associated impairment outweigh the smaller interest in its public disclosure. Thus, the agency proposes to withhold these data under Exemption 4.

c. Warranty Claims

Under the EWR rule, manufacturers of more than 500 vehicles per year and tire manufacturers must report warranty claims (warranty adjustments for tire manufacturers) they paid for specified components and systems broken down by component, make, model and model year. 49 CFR 579.21–26. Repairs made outside of warranties that are covered by ''good will'' are also reported under warranty claims and warranty adjustments.[16] 49 CFR 579.4.

Manufacturers of child restraint systems must combine these data with the number of reportable consumer complaints. The warranty information is reported on a detailed make/model basis and categorized with reference to the twenty-two categories defined in the EWR regulation.

NHTSA proposes to include EWR warranty data in a class determination of confidentiality based on both the competitive harm and impairment prongs of *National Parks*. Warranty claims data generally reflect a repair paid for by a manufacturer under a warranty. The commercial value of warranty complaint data is well known. Warranty data are a valuable data source used by companies in identifying problem trends early in the life of a vehicle or equipment, before the expiration of the warranty. The EWR warranty data provide comprehensive, competitively valuable information about the field experience of components and systems across all makes and models. Many components and systems are updated over time to incorporate new technologies or to achieve cost savings. They may be provided by different suppliers. The manufacturer's warranty experience with various components and systems is a valuable dataset.[17] The disclosure of EWR warranty numbers would provide competitors with aggregated data on the performance of entire product lines and key, individual systems and/or components. Competitors would use this information to assess the in-use performance of parts and systems. It would be used in purchasing, pricing, and sourcing decisions, all of which would be likely to have competitive impacts. Accordingly, NHTSA has tentatively concluded that the release of the EWR warranty data would cause substantial harm to the competitive position of the manufacturer that collected and reported them.

Warranties vary in length (*e.g.*, years, miles) and scope (*e.g.*, 3 years/36,000

[14] 49 CFR § 579.4(c).

[15] *See e.g.*, John Goodman & Steve Newman, Six Steps to Integrating Complaint Data into QA Decisions, 36 Quality Progress, Issue 2 (Feb. 1, 2003) (stressing the importance of complaint data in helping to identify issues with products and the data's effectiveness in assisting companies with resource allocation decisions to address quality assurance issues) and Edward Bond & Ross Fink, Meeting the Customer Satisfaction Challenge, 43 Industrial Management, Issue 4 (July 1, 2001) (noting the importance of measuring customer satisfaction, describing customer complaints as a data source to a company that can create a ''big benefit'' from small changes, and emphasizing the need for companies to make it convenient for consumers to complain). Both articles are available in Docket No. NHTSA–2002–12150, Item No. 65.

[16] These data include ''good will'' repairs that are conducted and paid for by the manufacturer outside of the warranty. ''Good will'' means ''the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.'' 49 CFR § 579.4.

[17] Published reports illustrate the extent to which the industry as a whole relies on and uses sensitive warranty information. For example, GM uses its warranty data to help it pinpoint problem areas and to help it reduce its warranty costs. *See, e.g.*, Gregory L. White, GM Takes Tips from CDC to Debug its Fleet of Cars, Wall St. J., April 8, 1999, at B1 (noting GM's adaptation of the epidemiological system used by the Centers for Disease Control and Prevention to warranty issues) and A Message to Dealers Regarding the Ford Recall of Firestone Wilderness AT Tires and General Motors Continued Use of Firestone Tires on its Vehicles, (May 25, 2001) (stating that GM and Firestone tire engineers ''are on site at GM's tire and wheel laboratory two days a week'' to ''monitor tire warranty data''). Both of these documents are available in Docket No. NHTSA–2002–12150, Item No. 65.

miles vs. 4 years/50,000 miles). Other things being equal, we believe that companies with more generous warranty and good will programs will have a higher number of warranty claims than those with more limited policies. The more generous the warranty policies (such as longer warranty coverage), the more warranty data that will be subject to disclosure to NHTSA.

Because of the data's commercial value and the manner in which they can be used, the disclosure of this information would reduce the willingness of manufacturers to maintain extensive warranty programs including extended warranties and good will, which could ultimately reduce the availability of robust warranty information in the future. ODI would have substantially less information to analyze in investigating potential defects.[18] Also consumers would receive fewer free repairs under warranty programs, which in addition to being economically disadvantageous, would in some instances adversely affect motor vehicle safety because vehicles would not be repaired. However, the EWR information would not be useful to the public in comparing vehicles or equipment because of the differences in warranty terms and corporate warranty practices—which would could cause the public to derive incorrect conclusions from the information. The rough balancing under the impairment prong weighs in favor of withholding this information, as the public interest favoring disclosure is small and the adverse effects accompanying disclosure are substantial. Thus, the agency proposes to withhold EWR warranty information under Exemption 4.

d. Field Reports

Field reports are communications from a manufacturer's representative or dealer about a malfunction or performance problem. 49 CFR 579.4. The EWR rule requires manufacturers of specified vehicles and child restraints to provide information on field reports and copies of non-dealer field reports. In general, as in other categories of EWR data, the field report data are provided by make, model and model year and, further, by numerous specified systems and components. 49 CFR 579.21–25.

Field reports reflect the in-use experience of a manufacturer's product, collected by the company at its expense and with the intent of identifying problems with its products. The nature, quality and quantity of field reports vary, with reports from some companies reflecting their pursuit of detailed feedback, and those from others yielding less information. For others, a field report is more akin to a technical investigation into a problem detected through warranty, consumer complaint or other information available to the company.

NHTSA proposes to include EWR field report information in a class determination of confidentiality based on both the competitive harm and impairment prongs of *National Parks*. Field report information would identify systems and components that have experienced malfunction or performance issues, in quantitative terms in all products. More particularly, the field reports would reveal specific problems associated with particular components and systems. Overall, the information would reveal aspects of a vehicle's performance (whether potentially safety-related or not) that a manufacturer deems important in its commercial efforts. If EWR field report information were disclosed, the reporting manufacturer's competitors would have access to comprehensive data involving malfunction or performance issues covering all products. Such information, if publicly released, would be of substantial value to competitors, who could avert similar issues or improve their products without the need to invest in market research, engineering development, or actual market experience. NHTSA has tentatively concluded that their release would cause substantial harm to the competitive position of the manufacturer that collected and reported them.

Manufacturers' decisions to obtain field reports are discretionary and practices vary among manufacturers. The disclosure of field report data would discourage manufacturers from initiating field reports. This would lead to fewer and less reliable field reports available to the agency in the future to identify potential safety defects promptly. Field reports are particularly valuable in identifying areas of potential concern to manufacturers. Some of these reports have also been indicative of potential defect trends. Since the agency can require only that manufacturers submit information about, and copies of, those field reports that companies choose to prepare and/or obtain, there is a substantial risk that the agency's ability to obtain this information in the future would be impaired, which would adversely affect the program's effectiveness. *See* 49 U.S.C. 30166(m)(4)(B). By contrast, the value of these data would be limited to the public. The technical data and reports of the number of field reports would not readily identify safety-related issues. As such, the agency does not believe that these data and numbers would contain information that would be informative to the public with regard to vehicle safety. In balancing the interests in disclosure, the agency has tentatively concluded that the impacts to the agency's ability to identify safety defects from these technically-rich reports—as well as the competitive impacts to submitters—outweigh the interest the public has in disclosure of this information. Consequently, the agency proposes to withhold this information under Exemption 4.

e. Common Green Tire Identifiers

The EWR rule requires certain tire manufacturers to provide a list of common green tire data. 49 CFR § 579.26(d). ''Common greens'' are tires ''that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.'' 49 CFR 579.4(c). NHTSA proposes to include EWR common green tire data in a class determination of confidentiality based on the competitive harm prong of *National Parks*. The common green tire information reveals the identities of tires that share the same internal specifications and relationships between manufacturers and private brand name owners. Tire manufacturers previously indicated that these data are particularly valuable because they permit competitors to assess individual manufacturer capabilities and marketing strategies. 69 FR at 21417.

f. Other Issues To Be Considered

In addition to comments on the above, we seek comments on the proposed approach. This includes whether the proposed categories for certain EWR data (*i.e.*, those data covering non-light vehicle production, consumer complaints, warranty claims, field reports, and common green tires) should be held confidential by class determinations based on Exemption 4. For example, we invite commenters to

[18] Manufacturers may choose to make available to their customers warranties of longer duration and broader mileage (*e.g.*, a company may offer a 5-year/50,000 mile warranty or a 3-year/36,000 mile warranty), making more warranty claims information subject to disclosure to the agency. DaimlerChrysler, for example, lengthened its engine warranty period to gain in the competitive market. *See, e.g.*, Jeff Green, DC Emphasizes Warranty, Bloomberg, Sept. 6, 2002, available at *http://www.theautochannel.com*. Not only do warranties differ by manufacturer, they also differ based on the targeted market (*e.g.* luxury v. non-luxury) and on system components and 2003 Manufacturers' Warranties, available at *www.enterprise.com*. Both items are docketed in Docket No. NHTSA–2002–12150, Item No. 65.

provide information relating to whether the release of this information would provide competitors with valuable information relating to the business of the reporting entity, such as marketing, performance problems and/or costs, to the extent that the disclosure would cause or be likely to cause the data submitter substantial competitive harm. We are also interested in whether the disclosure of the information covered by our proposed classes would significantly discourage manufacturers from continuing to obtain and manage this information as they do now.

Commenters may also address different approaches. We invite comments that address the practical concerns of such potential approaches. For example, if NHTSA were to adopt presumptive class determinations for each of the EWR data categories, what are the relative merits of each proposed class within the context of the large volume of information generated by EWR requirements, and the manner in which the agency can address the confidentiality of these materials in an efficient and consistent manner.[19]

Commenters should also, where appropriate, indicate and demonstrate how the restrictions imposed by Congress in 49 U.S.C. 30166(m)(4)(B) would affect the agency's ability to continue collecting EWR data if they are subject to routine disclosure. Supporting facts in favor or against each class should be included as appropriate.

B. EWR Class Determination Based on FOIA Exemption 6

NHTSA receives VIN information under the EWR rule in reports on incidents involving deaths and injuries. *See e.g.* 49 CFR 579.21(b)(2). NHTSA is proposing to create a class determination that would apply to the last six (6) characters of the unique seventeen (17) character vehicle identification number (VIN) contained in EWR death and injury reports. This proposal is grounded on Exemption 6 of the FOIA, which protects information that would result in a clearly unwarranted invasion of privacy if disclosed. *See* 5 U.S.C. 552(b)(6). *See also Center for Auto Safety* v. *NHTSA*, 809 F. Supp. 148 (D.D.C. 1993).

Factually, this proposed exemption is based on the risk that the disclosure of a full VIN could enable an individual to discern personal information involving a vehicle owner that could result in an unwarranted invasion of his or her privacy. With respect to EWR submissions, NHTSA had previously issued a determination that the last six (6) characters in the seventeen-character VIN should be protected, as a class, from public disclosure under FOIA Exemption 6, 5 U.S.C. 552(b)(6). 69 FR at 21416. When coupled with publicly-available data bases, the disclosure of a complete VIN can lead to the discovery of personal information (e.g., name and address) about the owner of a vehicle associated with a death or injury.[20] The first 11 characters of the VIN reveal the make, model, model year, and engine of the vehicle, but the last six identify the specific vehicle. We are concerned that release of VINs where there has been a death or an injury reported under the EWR program would result in communications and inquiries from third parties that would invade personal privacy.

Since the public can still determine a vehicle's make and model using the first 11 characters of the VIN, which would be released, members of the public with an interest in motor vehicle safety can still ascertain whether a particular type of vehicle may be involved in a potential vehicle safety issue. As discussed above, however, the revelation of the complete VIN is accompanied by the risk of an invasion of privacy. On balance, the agency tentatively believes that that interest in protecting the risk of invading individuals' privacy outweighs the public's interest in this information and the agency has tentatively concluded that this information merits withholding under FOIA Exemption 6.[21]

This new class determination would be set out in a new Appendix D, which would read as follows:

Appendix D—Vehicle Identification Number Information

The Chief Counsel has determined that the disclosure of the last six (6) characters, when disclosed along with the first eleven (11) characters, of vehicle identification numbers reported in information on incidents involving death or injury pursuant to the early warning information requirements of 49 CFR Part 579 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

This proposal would apply as a rule to only those VINs that are provided in EWR submissions and would not apply as a rule to the agency's treatment of VINs in other instances.

We seek comment on the appropriateness of our proposal, as well as variations on this proposal related to the confidentiality of all or parts of VINs.

IV. Exemption 3

In its comments in the course of the earlier EWR CBI rulemaking, and the memoranda it filed with the District Court in the *Public Citizen* case, the RMA asserted that Exemption 3 of the FOIA covered all EWR submissions, including requests for the confidentiality of EWR information not within the scope of Appendix C to Part 512 as promulgated in 2003 and amended in 2004 and individual requests for confidentiality. The District Court rejected the contention that Exemption 3 applies to the EWR data, concluding that the disclosure provision affecting EWR data, 49 U.S.C. 30166(m)(4)(C),[22] did not qualify as an Exemption 3 statute because the provision does not prescribe a formula to enable the agency to determine precisely whether the disclosure of the data would be helpful in carrying out the recall notification and remedy provisions of the Safety Act. It also noted that the provision did not refer to particular matters that must be withheld. *See Public Citizen*, 444 F. Supp. 2d at 12.

RMA filed a notice of appeal of the District Court's Judgment. The contention that NHTSA is precluded by statute from releasing the early warning data is within the scope of this notice. Should the Court of Appeals reverse the District Court on this issue and decide that Exemption 3 does apply to EWR data, the agency may proceed to issue a final rule exempting EWR data from disclosure in a manner consistent with the Court of Appeal's decision or terminate the EWR Appendix C portion of this rulemaking as unnecessary.

V. Other EWR Data

We are not proposing to include property damage claims and notices of

[19] ''Binding'' determinations would alleviate the need for submitters to provide a formal written request for confidentiality and supporting justification, whereas ''presumptive'' determinations would require submitters to provide a written request and supporting justification pursuant to 49 CFR Part 512.

[20] NHTSA has previously documented that full VINs can be used to ascertain personal information on individual vehicle owners. *See* Docket No. NHTSA–2002–12150, Item No. 64 (listing various publicly available Web sites by which VIN information can be used to reveal personal information).

[21] *See generally Horowitz* v. *Peace Corps*, 428 F.3d 271, 278–79 (D.C. Cir. 2005) (discussing balancing required under Exemption 6 and indicating that ''seemingly innocuous information'' can be subject to the Exemption's protection).

[22] The provision, 49 U.S.C. § 30166(m)(4)(C), provides as follows:

Disclosure. None of the information collected pursuant to the final rule promulgated under paragraph (1) [i.e. early warning reporting rule] shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

death, personal injury or property damage as part of our class determinations based on Exemption 4. These items involve a collection of information, many pieces of which are publicly available. In the particular circumstances of these data, we do not believe that the disclosure of this collected information would likely provide information that would be used competitively and result in substantial competitive harm. These kinds of claims tend to be more historical, rather than predictive, when compared to the other types of information required by the EWR regulation, with any apparent trends arising over longer periods of time. We consider it unlikely that information about claims of death, personal injury or property damage will be valuable to competitors such as in cross-company comparisons. We note also that manufacturers receive claims based on incidents occurring in the field, not as the result of proactive efforts to obtain data or customer feedback. They are required under 49 CFR Part 576 to retain this information and do not have the option to refuse to amass it.

Therefore, other than within the context of the Exemption 3 discussion above and except to the extent that the EWR submissions contain personal information covered by Exemption 6, these data categories lie outside the scope of this rulemaking.

VI. Identifying Confidential Information Located in Electronic Files

We are also proposing to clarify NHTSA's Confidential Business Information rule, 49 CFR 512.6, regarding data claimed as confidential that are submitted in electronic form. The current regulation states requirements for paper submissions. *See* 49 CFR 512.6(a), (b)(1) and (2); *see also* 49 CFR § 512.8. It then states that if submitted in electronic format, a comparable method to of identifying the information claimed to be confidential may be used. If submitted on CD–ROM or other format, the item containing the information shall be labeled as containing confidential information. 49 CFR 512.6(c).

Some CD–ROMs that are submitted to us are not labeled or indelibly marked as confidential on the disk itself. We propose to require that the medium (e.g., the disk itself and not the plastic enclosure for the disk) be permanently labeled with the submitter's name, the subject of the information and the word ''Confidential.'' This is already the routine practice with some manufacturers. In addition, during our reviews of claims for confidential treatment, we often find that CD–ROMs do not properly designate the information that the submitters claim to be confidential. More particularly, individual files submitted electronically (e.g., pdf format) on CD–ROMs often contain documents in which each page claimed to be confidential is not labeled as confidential. Also, while a page may contain some information that is not confidential (e.g., identical information is publicly available) and some information that is within the claim for confidentiality under section 512.8, the submitter does not enclose each item of information that is claimed to be confidential within brackets. Today's proposal would require that the CD–ROM be marked permanently as confidential and that each page that contains confidential material be so marked. Also, the proposal would require that where only part of the information is within the scope of the claim, that part of the information be separately enclosed within brackets. Our proposed clarification seeks to minimize inadvertent disclosure of materials that are subject to a claim of confidentiality and eliminate any ambiguity on the scope of the claim in our review of these types of submitted documents.

During our reviews of claims for confidential treatment, we also find that files within CD–ROMs do not contain page numbers. Electronic submissions sometimes contain large numbers of files and folders. Not infrequently, these files contain numerous pages. When we deny a request for confidentiality for a particular page, we need to identify it with particularity. Individual pages within individual electronic files that lack page numbers ordinarily cannot be readily identified. In these instances, there are substantial implementation problems in identifying what page(s) are within the scope of the agency's grant of a request for confidentiality and what page(s) that are within the scope of the agency's denial. To eliminate these problems, we are proposing to add a provision requiring the inclusion of a sequential numeric or alpha-numeric system that would identify each page contained in an electronic submission. This may be added to the pages before they are scanned or in the course of the preparation of the CD–ROM. We note that the courts require page numbers in appendices. *See e.g.*, Federal Rule of Appellate Procedure 30.

The proposal also provides that electronic media may be submitted only in commonly available and used formats. This would include formats such as pdf, Word documents and Excel spreadsheets. From time-to-time, manufacturers submit information in proprietary or uncommon data bases. We have been unable to open and review these items and accordingly have denied the associated requests for confidentiality.

Finally, we would clarify that requests for confidential treatment for information submitted to the agency must provide the information claimed as confidential in a physical medium such as a CD–ROM. There have been occasions where manufacturers have attempted to submit information claimed as confidential via e-mail. Not only was this not allowed under the existing regulations, but tracking requests for confidential treatment submitted in this manner is very difficult and far more prone to error than a physical submission. This affects the agency's ability to provide timely responses to these requests and the Chief Counsel's office's ability to transmit the information to the relevant office within NHTSA. In addition, the Department of Transportation limits the overall amount of e-mail information that an individual may maintain, and this presents problems. It also creates storage issues. To ensure our ability to properly track and handle this information, our proposal would require that the information be placed on appropriate physical media, such as CDs, when requesting confidential treatment.

These changes would be included in a new § 512.6(c) which would replace § 512.6(b)(3). The proposed § 512.6(c) would read as follows:

(c) Submissions in electronic format

(1) Persons submitting information under this Part may submit the information in electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, the information shall be submitted in a physical medium such as a CD–ROM. The exterior of the medium (e.g., the disk itself) shall be permanently labeled with the submitter's name, the subject of the information and the word ''CONFIDENTIAL''.

(2) Pages and materials claimed to be confidential must be designated as provided in paragraphs (b)(1) and (b)(2) of this section. Files and materials that cannot be marked internally, such as video clips or executable files, shall be renamed prior to submission so the characters ''Conf'' or the word ''Confidential'' appear in the file name.

(3) Each page within an electronic file that is submitted for confidential treatment must be individually numbered in the order presented with a sequential numeric or alpha-numeric system that separately identifies each page contained in that submission.

(4) Electronic media may be submitted only in commonly available and used formats.

VII. Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the Chief Counsel (NCC–110) at the address given at the beginning of this document under the heading **FOR FURTHER INFORMATION CONTACT**: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2001–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

VIII. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

IX. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735 (Oct. 4, 1993)), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures (44 FR 11034 (Feb. 26, 1979)). This rulemaking action is not significant under E.O. 12866, ''Regulatory Planning and Review'' or the Department's regulatory policies and procedures. There are no new significant burdens on information submitters or related costs that would require the development of a full cost/benefit evaluation. As indicated in the preamble, this document proposes primarily to remedy a technical deficiency identified by a Federal court and does not raise any new legal or policy issues. This proposed rule does not present novel policy issues. Instead, it involves issues that have been subject to past notice and comment and have also been previously addressed in prior court proceedings.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would impose no

additional reporting obligations on small entities beyond those otherwise required by the Safety Act and the early warning reporting regulation. This proposed rule addresses the agency's treatment of early warning reporting data and would clarify procedures for all submitters, including small entities, with regard to confidentiality. The rule would protect certain categories of early warning reporting information from disclosure.

In addition, small entities, which generally submit items in hard copy format, are expected to and may continue to do so. Those wishing to submit information in electronic format would be able to do so using the procedures that we are clarifying in this proposal. Therefore, a regulatory flexibility analysis is not required for this proposed action.

C. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). This action would not have ''federalism implications'' because it would not have ''substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government,'' as specified in section 1 of the Executive Order.

E. Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposal would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

F. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

NHTSA notes that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

G. Paperwork Reduction Act

The existing requirements of Part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR part 1320. Accordingly, the existing part 512 regulation was submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). At the time that we submitted the prior requirements of part 512, these requirements were approved through January 31, 2008. This proposal does not revise the existing currently approved information collection under part 512. Instead, the proposal contains the same requirements as before and only clarifies procedures as to electronically-submitted items to the agency for which confidentiality is sought. It does not require electronic submissions.

H. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This proposed action does not meet either of these criteria.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and record keeping requirements.

In consideration of the foregoing, the National Highway Traffic Safety Administration proposes to amend 49 CFR Chapter V, Code of Federal Regulations, by amending part 512 as set forth below.

PART 512—CONFIDENTIAL BUSINESS INFORMATION

1. The authority citation for part 512 continues to read as follows:

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166, 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

2. Section 512.6 is amended by removing paragraph (b)(3) and adding a new paragraph (c) to read as follows:

§ 512.6 How should I prepare documents when submitting a claim for confidentiality?

* * * * *

(c) *Submissions in electronic format.* (1) Persons submitting information under this Part may submit the information in electronic format. Except for early warning reporting data submitted to the agency under 49 CFR part 579, the information shall be submitted in a physical medium such as a CD–ROM. The exterior of the medium (*e.g.*, the disk itself) shall be permanently labeled with the submitter's name, the subject of the information and the word ''Confidential''.

(2) Pages and materials claimed to be confidential must be designated as provided in paragraphs (b)(1) and (b)(2) of this section. Files and materials that cannot be marked internally, such as video clips or executable files, shall be renamed prior to submission so the characters ''Conf'' or the word ''Confidential'' appear in the file name.

(3) Each page within an electronic file that is submitted for confidential treatment must be individually numbered in the order presented with a sequential numeric or alpha-numeric system that separately identifies each page contained in that submission.

(4) Electronic media may be submitted only in commonly available and used formats.

* * * * *

3. Appendix C to part 512 is revised to read as follows:

Appendix C to Part 512—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR part 579, subpart C, will cause substantial competitive harm and will impair the government's ability to obtain this information in the future if released:

(1) Reports and data relating to warranty claim information;

(2) Reports and data relating to field reports, including dealer reports, product evaluation reports, and hard copies of field reports; and

(3) Reports and data relating to consumer complaints.

(b) In addition, the Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm if released:

(1) Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR § 579.4(c); and

(2) Lists of common green tire identifiers.

4. Appendix D to part 512 is redesignated as Appendix E to part 512 and a new Appendix D to part 512 is added to read as follows:

Appendix D to Part 512—Vehicle Identification Number Information

The Chief Counsel has determined that the disclosure of the last six (6) characters, when disclosed along with the first eleven (11) characters, of vehicle identification numbers reported in information on incidents involving death or injury pursuant to the early warning information requirements of 49 CFR part 579 will constitute a clearly unwarranted invasion of personal privacy within the meaning of 5 U.S.C. 552(b)(6).

Issued on: October 26, 2006.

Anthony M. Cooke,

Chief Counsel.

[FR Doc. E6–18285 Filed 10–30–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102006A]

New England and Mid-Atlantic Fishery Management Councils; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The New England and Mid-Atlantic Fishery Management Councils (Councils) will convene public hearings and seek public comment on a draft amendment to all the fishery management plans (FMPs) under their purview. The omnibus amendment would establish standardized bycatch reporting methodology (SBRM) for each FMP, as required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The public hearings will be on November 14, 2006, in Gloucester, MA, and December 12, 2006, in New York City, NY. Written comments must be received at the appropriate address, e-mail address, or fax number (see **ADDRESSES**) by 5 p.m., local time, on December 29, 2006.

ADDRESSES: NMFS and the Councils will accept comments at two public hearings. For specific locations, see **SUPPLEMENTARY INFORMATION**. You may submit comments on the draft amendment by any of the following methods:

- E-mail: *SBRMcomment@noaa.gov*
- Through the Federal eRulemaking portal: *http://www.regulations.gov*. Reference I.D. 102006A.
- Mail: Patricia A. Kurkul, Regional Administrator, NOAA Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester MA 01930. Mark the outside of the envelope: ''Comments on SBRM Amendment.''
- Fax: (978) 281–9135, Attention: Patricia A. Kurkul.

Copies of the draft SBRM amendment and the public hearing document may be obtained by contacting the NMFS Northeast Regional Office at the above address. The documents are also available via the internet at: *http://www.nero.noaa.gov/nero/regs/com.html*.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, (978) 281–6283.

SUPPLEMENTARY INFORMATION: Section 303(a)(11) of the Magnuson-Stevens Act requires each FMP to include provisions establishing ''a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.'' The Councils and NMFS are considering an omnibus amendment to establish an SBRM or modify existing SBRMs under every Northeast Region FMP. The purpose of the amendment is to explain the methods and processes by which bycatch is currently monitored and assessed for Northeast Region fisheries, to determine whether these methods and processes need to be modified and/or supplemented, to establish standards of precision for bycatch estimation for all Northeast Region fisheries and, thereby, to document the SBRM established for all fisheries managed through the FMPs of the Northeast Region. The scope of the omnibus amendment is limited to those fisheries prosecuted in the Federal waters of the Northeast Region and managed through an FMP developed by either the Mid-Atlantic or New England Council.

Alternatives under consideration in the omnibus SBRM amendment address bycatch reporting and monitoring mechanisms, analytical techniques and allocation of at-sea fishery observers, establishment of a target level for precision of bycatch estimates, and requirements for reviewing and reporting on the efficacy of the SBRM. NMFS and the Councils will consider all comments received on the draft SBRM amendment and the alternatives for incorporation into the final document until the end of the comment period on December 29, 2006. The public will have several additional opportunities to comment on the SBRM. The final amendment will be considered for approval by the Councils at public meetings in February of 2007. Once submitted to NMFS, the final SBRM Amendment will be made available for public review and comment, and regulations will be proposed for review and comment in March 2007.

Meeting Dates, Times, and Locations

The public hearings have been scheduled to coincide with the date and location of New England and Mid-Atlantic Fishery Management Council meetings.

Tuesday, November 14, 2006, at 5:30 p.m. – Tavern on the Harbor, 30 Western Ave., Gloucester, MA 01930, telephone: (978) 283–4200.

Tuesday, December 12, 2006, at 7 p.m. – Skyline Hotel, 725 10th Ave, New York, NY 10019, telephone: (212) 586–3400.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids at the Gloucester, MA, meeting should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Requests for such services at the New York, NY, meeting should be directed to M. Jan Saunders, (302) 674 2331 extension 18. Requests for accessibility accommodations must be received at