to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Sandy River	Corporate limits, 26.46 mi above mouth.	576
	Confluence with Tug and Levisa Forks.	577
Tug Fork	Louisa-Fort Gay toll bridge.	577
Mill Creek	Norfolk and Western Ry	578
	Cedar Heights Rd.	578

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: April 11, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-13935 Filed 5-24-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3714]

Proposed Flood Elevation Determinations for Vernon County, Wis; Correction

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 61963 of the FEDERAL REGISTER of December 7, 1977.

EFFECTIVE DATE: December 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

The following correction is made:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Fork Kickapoo River.	Salem Ridge Road	874

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: April 11, 1978.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-13936 Filed 5-24-78; 8:45 am]

[4910-14]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 78-048]

DRAWBRIDGE OPERATION REGULATIONS

Pequonnock River, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The city of Bridgeport, Connecticut, has requested that the operation regulations for the Grand Street drawbridge be amended to no longer require openings of the draw at any time. Presently, the draw is required to open upon at least 24 hours notice. The draw was last opened in 1961. This action would save the cost of maintaining the operating machinery.

DATE: Comments must be received before June 27, 1978.

ADDRESS: Comments should be submitted to the Commander (oan), Third Coast Guard District, Governors Island, New York, N.Y. 10004.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0942.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Third Coast Guard District.

The Commander, Third Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Stephen H. Barber, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE PROPOSED REGULATIONS

The reach of the Pequonnock River above the Grand Street bridge has not been used by vessels which required openings of this bridge since 1961 or for at least 16 years. For this reason the Coast Guard is considering allowing the draw to remain permanently closed.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by revising § 117.130(a)(5) to read as follows:

§ 117.130 Pequonnock River, Yellow Mill Channel, and Johnson Creek, Bridgeport, Conn.; bridges.

(a) * * *

(5) *Grand Street Bridge.* The draw need not open for the passage of vessels.

* * * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended and OMB Circular A-107.

Dated: May 19, 1978.

O. W. SILER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 78-14709 Filed 5-24-78; 8:45 am]

[4910-14]

[33 CFR Part 117]

[CGD 78-061]

DRAWBRIDGE OPERATION REGULATIONS

Wading River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Burlington County Board of Chosen Freeholders requests regulations to govern the operation of their County Road 542 bascule bridge across Wading River, mile 5.0, New Jersey. The present regulations require this bridge to open on signal. The proposed regulations would require at least 24 hours' notice for an opening. A review of the logs submitted by the applicant shows a total of nine openings were provided in the last five years, broken down as follows: 1973—4 openings; 1974—2 openings; 1975—0 openings; 1976—3 openings; 1977—0 openings. These openings were solely for recreational craft. This change will relieve the bridge owner of the responsibility of having a drawtender present at all times.

DATE: Comments must be received before June 27, 1978.

ADDRESS: Comments should be submitted to and are available for examination at the office of the Commander (oan), Third Coast Guard District, Governors Island, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0942.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Third Coast Guard District, will forward any comments received with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and recommend a course of final action to the Commandant on this proposal. The proposed regulations may be changed in the light of comments received.

DRAFTING INFORMATION: The principal persons involved in drafting this proposal are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Stephen H. Barber, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations be amended by adding a new subparagraph (9) to § 117.225(f) to read as follows:

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(9) Wading River, Burlington County Road 542, N.J., The draw shall open on signal if at least 24 hours' notice is given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5)).

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: May 19, 1978.

O. W. SILER,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 78-14707 filed 5-24-78; 8:45 am]

[33 CFR Part 183]

[CGD 77-191]

BOATS AND ASSOCIATED EQUIPMENT

Raceboat; Safety and Labeling Exemptions

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This advance notice solicits public participation in the formulation of a proposed rule that would exempt raceboats from the manufacturer requirements of Part 183 of Title 33 of the Code of Federal Regulations. Regulations issued under the authority of the Federal Boat Safety Act of 1971 require builders of boats under 20 feet to display capacity information listing maximum persons capacity, maximum horsepower capacity, maximum weight capacity and to provide flotation. There are also requirements regarding construction of the electrical systems and fuel systems for gasoline-powered inboard boats. Many builders of raceboats have petitioned for, and have been granted, relief from these requirements. The Coast Guard believes that the arguments presented by these petitioners have general applicability to all builders of raceboats, and therefore may justify a general exemption.

DATES: Comments must be received on or before August 23, 1978.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/81), (CGD 77-191), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Capt. George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written data, views, or arguments. Written comments should include the docket number (CGD 77-191), the name and address of the person submitting the comments, and the specific question to which each comment is addressed.

DRAFTING INFORMATION

The principal persons involved in drafting this notice are: Mr. Lysle B. Gray, Project Manager, and Lt. G. S. Karavitis, Project Attorney, Office of Boating Safety.

DISCUSSION

Many raceboats fall within the definition of "boat" as used in the Federal Boat Safety Act of 1971. The Act states, in part, that a boat is any vessel used primarily for noncommercial purposes. The Coast Guard has promulgated a series of regulations concerning safe loading, safe powering, flotation, and display of capacity information for boats less than 20 feet in length. There are also regulations applicable to the fuel systems and electrical systems on inboard boats powered by gasoline engines. These regulations detail manufacturer requirements intended to protect the public from safety hazards that the Coast Guard has identified in the design and construction of boats, as well as to provide information about the safe operating capacities of boats.

Some manufacturers build boats which are used solely for racing. Many of these boats are not suitable for operation by the average boater. Raceboats are not designed to meet the hazards encountered by the recreational boater who may be operating in a variety of water environments out of the presence of other vessels which could render assistance. The typical raceboat is operated at high speeds on a specified course under organized and supervised conditions. This is usually in the presence of safety patrols, with rescue craft available in case of emergency. In addition, the organizations which conduct boat races have their own rules governing the construction of raceboats. These rules are enforced by inspections of the raceboats prior to each series of races.

The National Boating Safety Advisory Council which was established under the authority of the Federal

Boat Safety Act of 1971, has discussed the question of exempting raceboats from the regulations. The Council recommended that raceboats could be exempted from regulation if a suitable warning label was posted in each boat to inform the user or a prospective buyer that the raceboat did not comply with Coast Guard regulations. The Coast Guard agrees with this concept. This advance notice of proposed rulemaking is being issued to seek public assistance in developing a rule which defines the term "raceboat," and which specifies the wording of a warning label to be placed on raceboats or to suggest alternative approaches to this problem. Comments are specifically requested in the following areas of interest:

A. Definition of Raceboat

Raceboats are not always readily identifiable by their form or shape, or on the basis of power or performance. Some classes of raceboats are specially built family runabout ski boats whose external appearance is indistinguishable from their recreational counterparts. On the other hand, some recreational boats are designed and built to imitate the appearance of popular raceboats. These boats, however, are not intended for use as raceboats, but intended for recreational use. An example is the popular "SK" or "Ski" boat. For this reason, it is desirable to have a definition of raceboats. In suggesting a definition of raceboats, it should be kept in mind that a "boat" is a vessel used for noncommercial purposes. Thus, any raceboat used for commercial purposes is not subject to construction regulation and need not be excepted.

QUESTIONS

(1) How can the Coast Guard define the term "raceboat" so that there can be a common and consistent understanding among Coast Guard enforcement personnel, boat manufacturers, and boat operators or buyers as to what boats are intended to qualify for the exemption?

(2) What, if any, difficulties might be encountered in attempting to apply and enforce a definition of "raceboat"?

B. Labels

A key element in the approval of the raceboat proposal by the National Boating Safety Advisory Council was the provision that a raceboat would be required to have a warning label. This label would be required to be permanantly displayed on a boat in a conspicuous place. The label is intended to provide sufficient warning to any purchaser or user that the boat is constructed for a specialized purpose. The raceboat label would indicate that the boat did not comply with certain construction safety standards.

QUESTIONS

(1) Would a warning label on a raceboat provide adequate protection to the boat buyer and user?

(2) If not, what alternative approach should be used?

C. Content of Labels

During discussions with the National Boating Safety Advisory Council and with state boating law enforcement authorities, a proposal was developed for a label having the following general form:

WARNING—RACEBOAT. DOES NOT COMPLY WITH U.S. COAST GUARD MANUFACTURER CONSTRUCTION STANDARDS. THIS BOAT AND ITS OPERATION MUST COMPLY WITH ALL OTHER BOATING LAWS AND REGULATIONS.

QUESTIONS

(1) Are there any changes in the text of the proposed warning label that should be considered?

(2) Does this label adequately warn persons of the hazards of using a raceboat?

(3) Is the label understandable?

(4) What problems might be created by use of this label?

D. Boating Law Enforcement

The raceboat problem was discussed informally with a group of six state boating law administrators. Their views varied concerning the impact of the proposed label on enforcement of boating safety laws. Some anticipated difficulties, while others expected no change, or even an improvement in enforcement.

QUESTIONS

(1) What would be the effect on enforcement of boating safety laws if manufacturers were permitted to sell raceboats which do not comply with the construction requirements of 33 CFR Part 183 if they labeled the boats with a warning?

(2) Should there be any penalty if a manufacturer affixed raceboat warning labels to boats which were, in fact, not designed for racing?

(3) What, if any, sanctions should be used to prevent operators from using a raceboat for some other purpose not associated with boat races?

(4) What changes in state boating laws might be necessary or desirable if boats are sold with a raceboat label similar to the proposal?

E. Impact on Consumers and Boating Safety

Some persons have expressed concern that the raceboat label might become a status symbol which would lead to misuse by both the boat builders and certain boat buyers. The possession and use of a raceboat might appeal to some persons who are not capable of using it properly or safely. It is argued that boat manufacturers would use the raceboat label as a means to avoid the expense of complying with safety standards when building recreational boats. Certain types of operators who tend to be reckless, might purchase such boats, not for racing in sanctioned races, but for recreational use.

QUESTIONS

(1) To what extent, and in what manner, is it likely that consumers may purchase raceboats for recreational use?

(2) Should boats defined as "raceboats" and having a warning label be prohibited from being used other than in races or race related activities?

(3) What would be the reaction of the typical boat buyer if a manufacturer placed a raceboat label on a boat intended to be sold for recreational use?

(4) How can the Coast Guard control the use of raceboat labels by manufacturers?

(5) Should the Coast Guard devise a system to revoke an individual manufacturer's right to use the raceboat label?

(6) What actions by the manufacturer should be considered grounds for revocation?

(7) Will insurance companies provide coverage for a raceboat being used as a recreational boat?

(Sec. 5(a), Sec. 6, 85 Stat. 215 (46 U.S.C. 1454, 1455); 49 CFR 1.46(n)(1).)

Dated: May 17, 1978.

O. W. Siler,
Admiral, U.S. Coast Guard,
Commandant.

[FR Doc. 78-14674 Filed 5-24-78; 8:45 am]

[4910-59]

National Highway Traffic Safety Administration

[49 CFR Part 512]

[Docket No. 78-10; Notice 1]

CONFIDENTIAL BUSINESS INFORMATION

Notice of Proposed Rulemaking

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking and invitation for financial assistance in the preparation of comments.

SUMMARY: This notice proposes procedures by which the National Highway Traffic Safety Administration will consider claims that information submitted to it should be considered confidential business information. The notice also proposes the form and content requirements for asserting a claim that information submitted to the

agency is confidential business information, and states the circumstances under which the agency may disclose information which is claimed to be confidential business information. Finally, the notice proposes several class determinations relating to confidentiality. These procedures will clarify and expedite the processing of information for which confidential treatment is requested. The notice is issued in response to problems posed by a rising number of requests for confidential treatment of information submitted to the agency.

DATE: Comments on this notice must be received by July 10, 1978. Applications for financial assistance to aid in the preparation of comments on this notice must be received on or before June 9, 1978.

ADDRESSES: Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that ten copies be submitted. Applications for financial assistance should be submitted to Ms. Jeanette Feldman, Public and Consumer Affairs, National Highway Traffic Safety Administration, Room 5232, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

David A. Zisser, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-9511.

SUPPLEMENTARY INFORMATION: In recent months, the activities of the National Highway Traffic Safety Administration, especially in the area of automotive fuel economy, have resulted in a marked increase in claims for confidential treatment of information obtained by the agency. This increased incidence of claims for confidential treatment of information has created a need for a procedural regulation setting out how the agency will consider claims for confidentiality, and the circumstances under which the agency may release information which is claimed to be confidential. This proposed regulation addresses that need.

The proposed regulation would apply to all information obtained by the agency for any purpose and from any source. In general, the proposed regulations sets out how a claim for confidential treatment of information should be asserted and supported (§ 512.4), and the legal standards the agency will apply in evaluating such claims (§ 512.5). In addition, the proposed regulations specify the notice which will be afforded submitters of information regarding any action on their claim for confidentiality, including notice of the agency's determination to release information (§§ 512.4, 512.6, 512.7, and 512.8). Finally, the proposed regulation specifies the circumstances in which the agency may release information which is confidential or which is claimed to be confidential (§§ 512.8 and 512.10). Section 512.8 is particularly important since it enables the Administrator to release confidential business information to the public if that information is relevant to an agency proceding, such as rulemaking.

The agency believes that expeditious decisions on claims for confidentiality will benefit both the agency and the submitters of information. Therefore, in most cases the agency will make its confidentiality determinations within ten working days of receipt of the information. Moreover, the determination of confidentiality will be made on the basis of the justification for confidentiality submitted at the time of asserting the claim for confidentiality, and the agency will not, except in special circumstances, consider additional support for claims of confidentiality made at a later time.

In the past, some submitters of information supplied a complete justification for a claim for confidential treatment in bits and pieces in the course of an extended correspondence with the agency. The agency wishes to make clear that that ad hoc, time consuming, and expensive process will no longer be allowed under this proposed regulation. The agency has indicated the type of information that is necessary to support a claim for confidential treatment of information. The agency has made clear that supplemental justification will not be considered absent special circumstances, and has made clear that a submitter's complete justification must be made at the time of the submission of the information claimed to be confidential. The agency recognizes that it may be burdensome for a submitter of information to fully justify the claims for confidentiality at the time of the submission of the information. However, a full justification at the outset is necessary for the agency to make an orderly and prompt determination. Morever, the agency believes that requiring a full justification for confidentiality will reduce the number of specious claims that may be made. Finally, the agency notes that in many cases of legitimate claims for confidential treatment of information, the information in question will fall within a class of information found, under these regulations, to be presumptively confidential, and will not require a justification for confidential treatment.

With respect to information obtained under National Traffic and Motor Vehicle Safety Act of 1966 as amended, and Titles I, IV and V of the Motor Vehicle Information and Cost Savings Act, as amended, the proposed regulation allows the Administrator to release admittedly confidential information, in certain specified circumstances, when it is determined to be in the public interest to do so. For example, the Administrator may determine that release of certain confidential business information is necessary to allow a meaningful opportunity for public comment on a rule. This discretionary release authority is given explicity to the Administrator In both the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and in Titles I, IV, and V of the Motor Vehicle Information and Cost Saving Act, as amended. The agency realizes that release of competitively harmful information can create hardship for the submitter of the information. Therefore, the Administrator will consider carefully both the public interests and the private harms attendant to the release of such information. In addition, the submitter of confidential information which the Administrator contemplates releasing will receive reasonable advance notice of that contemplated release. Further, the submitter and other interested persons will have an opportunity to comment on the harm that will result and the public interest that will be served, and will be permitted to suggest ways to release the information in a way that will eliminate or reduce the private harm, without sacrificing the public benefits.

The proposed regulation provides somewhat different substantive standards for determining confidentiality for information obtained in connection with Title V of the Motor Vehicle Information and Cost Savings Act, as amended, (relating to automotive fuel economy) than are provided for information obtained in connection with other agency tasks. Section 505 (d)(1) of the Cost Savings Act (15 U.S.C. 2005 (d)(1)) establishes the substantive standard for confidentiality for information obtained in connection with Title V. The proposed regulation reflects that standard. For other information, the agency is proposing the substantive standards for confidentiality that are developed by judicial interpretation of the Freedom of Information Act (5 U.S.C. 552), See, e.g., *National Parks and Conservation Association* v. *Morton*, 162 U.S. App. D.C. 223, 498 F. 2d 765 (1974).

Support for a claim for confidential treatment of information must describe how the submitter of the information ensures the secrecy of the information. In addition, the submitter must inform the agency of the instances known to the submitter where that information has become available to persons or organizations other than

the submitter. Furthermore, the submitter of information must certify under oath that the submitter has made diligent efforts to determine whether the information has become available to parties other than the submitter, and that all such known instances have been indicated to the agency. These requirements are designed to prevent a situation where confidential status is claimed for information that is not secret. It is elementary that the secrecy of information is an indispensible element of its eligibility for confidential treatment. However, in the past, some submitters of information have requested confidential treatment for information that is not secret. This practice not only creates needless work for the agency, but sometimes may result in some undeserving information obtaining confidential status.

The agency does not take the position that knowledge by any persons other than the submitter of information necessarily vitiates a claim for confidential status for that information. There are situations where information can be made known to persons other than the submitter of the information and still be secret, such as when information has been disclosed to a government agency or another business, such as a supplier, which has agreed to keep the information confidential. The agency does believe that all known cases of disclosure of the information, both authorized and unauthorized, must be considered by the agency in determining whether any legitimate interest in the confidentiality of the information has been compromised. Therefore, all known disclosure of information must be made known to the agency for evaluation.

The agency believes that this certification requirement is a reasonable one. Submitters of information are not required to state under oath that there have been no inadvertent or unauthorized disclosures of information claimed to be confidential. Rather, submitters of information are required to certify only that a diligent effort has been made to determine whether inadvertent or unauthorized disclosure has occurred, and to identify known instances of such disclosure. Submitters need make no representations with respect to unknown instances of inadvertent or unauthorized disclosure of information that are not discoverable by the exercise of due diligence. However, submitter will be required to notify the agency of instances of disclosure which become known after the required certification.

The proposed regulation provides for determinations of elements of confidentiality for certain types of information on a class basis. These classes will establish rebuttable presumptions relating to confidentiality, which will in turn alleviate at least part of the burden of supporting a claim for confidentiality. Although making class determinations relating to business confidential information is a difficult undertaking (as evidenced by the fact that few agencies make such determinations), the agency believes that to the extent that such meaningful classes can be identified and described, class determinations will ease the burdens of both the agency and submitter of information in making and processing claims for confidential treatment of information. It should be noted that the fact that an item of information may fall within a class that makes it presumptively confidential in no way limits the authority of the Administrator to release that information pursuant to §§ 512.8 or 512.10 of this part. Moreover, confidentiality may be claimed for information not falling within a class if the submitter of the information complies fully with section 512.4 of this part.

Initial class determinations, which are proposed in Appendix B, establish classes of information whose disclosure would, the agency concludes result in significant competitive damage, or would likely result in substantial competitive harm, as appropriate, if disclosed to the public. The effect of claiming confidentiality for information falling in one of these classes is to remove the necessity for making a showing of substantial competitive harm, or significant competitive damage, under § 512.4(b) (6) or (7). With respect to the information obtained by the agency in connection with Title V of the Motor Vehicle Information and Cost Savings Act, the Center for Auto Safety has argued that such information may be withheld as confidential business information only if disclosure would result in significant damage to the automobile industry, rather than to a particular manufacturer. That position is based upon an interpretation of section 505(d)(1) of the Cost Savings Act, which governs the withholding of information obtained under Title V. Section 505(d)(1) provides in relevant part, that information subject to it may be withheld from public disclosure as confidential business information only if disclosure of the information "would result in significant competitive damage." It is argued that this language, which does not specify competitive damage to the person submitting the information, is intended to authorize withholding information only if disclosure would damage competition, and not the competitive position of a particular person or company. The agency rejects that interpretation, and believes that "significant competitive damage" within the meaning of section 505(d)(1) can mean damage to the competitive position of a single person or manufacturer.

The agency notes the courts, in interpreting the confidential business information exemption of the Freedom of Information Act, 5 U.S.C. 552(b)(4), have clearly found that harm to a single person is sufficient to invoke the protection of that exemption. See, e.g., *National Parks and Conservation Association* v. *Morton*, 162 U.S. App. D.C. 223, 498 F. 2d 765 (1974), where the court stated that information may be withheld as confidential business information if its disclosure would be likely to "cause substantial harm to the competitive position of the person from whom the information was obtained." The agency believes that Congress wished to incorporate into section 505(d)(1) a meaning similar to that contained in those judicial statements, where harm to the competitive position of a single manufacturer was sufficient to allow confidentiality. Congress did not expressly state that the only damage that could justify withholding information was damage to an entire industry. Indeed, Congress used the term "competitive damage", which seems to focus on an individual, rather than a term such as "damage to competition" which goes beyond harm to an individual to harm an industry. Moreover, the agency notes that where Congress clearly intended the impact of actions under Title V on the competitive structure of the automotive industry to be considered, Congress provided that the Federal Trade Commission, an agency with substantial expertise in matters concerning the competitive structure of industries, perform a review. See section 508(b)(4) of the Cost Savings Act. Since there is no provision in section 505(d)(1) for an FTC review of the competitive effects of releasing business information, the agency believes that Congress did not intend an evaluation of the effect on the competitive structure of the industry to be necessary to support a claim of confidentiality.

The classes of information proposed in Appendix B are types of information which, if released to the public, would, in the agency's opinion, result in significant competitive damage, or would likely result in substantial competitive harm. The classes are intended to include only information which is sufficiently specific so that a competitor of the submitter of the information would gain a large competitive advantage over the submitter if the information became publicly known. Class 1, which relates to blueprints, reflects a judgment that blueprints or drawings which do not contain production process data, such as specificiations, or which have as their subject items in the public domain for more than five years, or have as their subject things that could be easily manufactured without access to the blue-

prints or drawings, are not sufficiently sensitive to warrant a presumption that their release would harm the competitive position of the submitter or anyone else. The agency chose the five year period because that period represents the average design cycle for automobiles. Information falling in classes 2 and 3, future model specific product plans and model specific projections of future sales mix, would presumptively result in harm to the submitter if released. However, the agency believes that projections of product plans or sales mix more than three years into the future are often insufficiently specific, or if specific, are often insufficiently reliable to presumptively result in harm or damage to the submitter's competitive position. The agency chose the three year period for product plans and mix projections because three years represents the normal planning cycle when a manufacturer must settle upon reasonably certain plans. Of course, any submitter is free to claim confidential status for any type of blueprints, or for projections which extend further than three years in the future, although the submitter will have to make all the showings required in § 512.4.

Although only three classes of information, the disclosure of which would presumptively result in adverse competitive consequences, have been proposed at this time, the agency contemplates that additional classes of information may be established in the future. Therefore, the agency solicits comments regarding other potential classes of information the release of which might be deemed presumptively harmful, such as projections of investment levels relating to particular programs, cost information (both actual and projected), or studies of demand elasticities.

Finally, in § 512.10, the proposed regulation allows the agency to release any information, including confidential business information, in certain circumstances, or to certain persons. These situations are limited to cases where the submitter of the information has consented to its relase, or where the recipient of the information would be bound to maintain its confidentiality, such as another Federal agency, or a contractor, or where the agency would have no authority to refuse to release the information, such as when the information is requested by the Congress, or when the release is ordered by a Federal court. This section in no way limits or otherwise affects the discretionary release authority contained in section 512.8. Rather, § 512.10 only allows the agency to release information in the limited circumstances in which release of the information would not compromise an interest in confidentiality, or where the agency would not have the authority to refuse to release information.

Because Part 512 is procedural, it is exempt from the notice and comment provisions of the Administrative Procedure Act. 5 U.S.C. 553(b)(A). However, in light of the great interest in the agency's treatment of confidential information shown by both potential submitters of information, and the general public, the agency has determined that the public interest would best be served by waiving the notice and comment exemption in this instance, and issuing Part 512 as a notice of proposed rulemaking.

The economic impacts of this proposal have been considered and agency Administration has determined there is no significant economic impact.

It is the judgment of this agency, based on available information, that no significant environmental impact would result from execution of this action.

In consideration of the foregoing, it is proposed that Title 49, Code of Federal Regulations, be amended by adding a new Part 512, Confidential Business Information, to read as set forth below.

Interested persons are invited to submit comments on the proposal. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

NHTSA invites all qualified individuals and organizations financially unable to participate in this proceeding to apply for financial assistance. All applications submitted before the deadline specified at the beginning of this notice will be examined by an evaluation board, composed of NHTSA and Department of Transportation officials, to determine whether each applicant is eligible to receive funding. Consideration of late applications is at the discretion of the evaluation board.

In general, an applicant is eligible if (1) it represents an interest whose representation can reasonably be expected to contribute to a full and fair determination of the issues in the proceeding, (2) its participation is reasonably necessary to represent that interest, (3) it can competently represent that interest, and (4) it lacks sufficient resources to participate in the absence of such assistance. If more than one applicant representing the same or similar interest is deemed eligible, the board will either select the applicant which can make the strongest presentation or select more than one applicant if the eligible applicants seek to represent significantly different points of view or proposals. Compensation is available only for reasonable out-of-pocket expenses necessary to the applicant's participation, to the extent the agency's budget for this purpose will permit. Payment is made as soon as possible after the selected applicant has completed its work and submitted a claim.

Each applicant should specify in its application which rulemaking actions and issues it proposes to address it its application for funding is approved, and the nature of its proposed work product. Applicants must submit as part of their application all information required by Section 5 of the financial assistance regulations which governed the operation of last year's public participation demonstration programs. 42 FR 2864 (January 13, 1977). Failure to submit the required information may result in delays in evaluation and possible disqualification of the application.

The lawyer principally responsible for the development of this proposal is David A. Zisser.

The lawyer principally responsible for the development of Appendix B is Bruce C. Buckheit.

Issued on May 19, 1978.

HOWARD J. DUGOFF,
Acting Administrator, National Highway Traffic Safety Administration.

Sec.
512.1 Purpose and scope.
512.2 Applicability.
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512.4 Asserting a claim for confidential treatment of information.
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512.6 Determination of confidential treatment.
512.7 Modification of determinations.
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512.9 Class determinations.
512.10 Disclosure of information in certain circumstances.

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec., 112, Pub. L. 89-563, 80 Stat. 725, amended Pub. L. 91-265, 84 Stat. 262 (15 U.S.C. 1401); sec. 119, Pub. L. 89-563, 80 Stat. 728, (15 U.S.C. 1407); sec. 104, Pub. L. 92-513, 86 Stat. 950, (15 U.S.C. 1914); sec. 204, Pub. L. 92-513, 86 Stat. 957;

(15 U.S.C. 1944); sec. 408, Pub. L. 92-513 as added Pub. L. 94-364, 90 Stat. 985 (15 U.S.C. 1990d), sec. 505 Pub. L. 94-163, 89 Stat. 908 (15 U.S.C. 2005), delegation of authority at 49 CFR 1.50.

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which the NHTSA will consider claims that information submitted to the NHTSA, or which the NHTSA otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies, in accordance with its terms, to all information which is submitted to the NHTSA, or which the NHTSA otherwise obtains, except as provided in paragraph (b).

(b) Information received as part of the procurement process, is subject to the Federal Procurement Regulations, 41 CFR, Chapter 1, as well as this part. In any c ase of conflict between the Federal Procurement Regulations and this part, the provisions of the Federal Procurement Regulations prevail.

§ 512.3 Definitions.

"NHTSA" means the National Highway Traffic Safety Administration.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration.

"Chief Counsel" means the Chief Counsel of the National Highway Traffic Safety Administration.

"Confidential business information" means information described in 5 U.S.C. 552(b)(4).

§ 512.4 Asserting a claim for confidential treatment of information.

(a) Any person submitting information to the NHTSA and requesting that it be withheld from public disclosure as confidential business information shall—

(1) Stamp or mark "confidential" or some other term which clearly indicates the presence of information claimed to be confidential, on the top of each page containing information claimed to be confidential.

(2) Mark each item of information which is claimed to be confidential and which appears on a page marked in accordance with paragraph (a)(1) of this section, with brackets "[]".

(3) If an entire page is claimed to be confidential, indicate clearly that the entire page is claimed to be confidential.

(4) Submit the documents containing allegedly confidential information directly to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, D.C.

(5) In the case of a document containing information which is claimed to be confidential submitted in connection with a NHTSA activity for which there is a public file or docket, simultaneously submit to the NHTSA a copy of the document from which information claimed to be confidential is deleted, for placement in the public file or docket pending the determination of the claim for confidential treatment.

(6) Simultaneously submit to the NHTSA in writing the name, address, and telephone number of a representative for receipt of notice under this part.

(b) For each item of information marked confidential in accordance with paragraph (a) of this section, the submitter of the information shall submit information supporting the claim for confidential treatment to the NHTSA with the item. Such supporting information must show—

(1) That the information claimed to be confidential is a trade secret, or commercial or financial information.

(2) Measures taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to any person, company, or organization other than the submitter of the information.

(3) Insofar as is known by the submitter of the information, the extent to which the information has been disclosed, or otherwise become available, to persons other than the submitter of the information, and why such disclosure or availability does not compromise the confidential nature of the information.

(4) Insofar as is known by the submitter of the information, the extent to which the information has appeared publicly, regardless of whether the submitter has authorized that appearance or confirmed the accuracy of the information (include citations to such public appearances, and an explanation of why such appearances do not compromise the confidential nature of the information).

(5) Prior determinations of the NHTSA or other Federal agencies or Federal courts relating to the confidentiality of the information, or similar information, including class determinations under this part (include any written notice or decision connected with any such prior determination, or a citation to any such notice or decision, if published in the FEDERAL REGISTER).

(6) Except for information submitted to the agency in connection with the NHTSA's functions under Title V of the Motor Vehicle Information and Cost Savings Act, as amended, whether the submitter of the information asserts that disclosure would be likely to result in substantial competitive harm, what the harmful effects of disclosure would be, why the effects should be viewed as substantial, and the causal relationship between the effects and disclosure.

(7) For information submitted to the agency in connection with the NHTSA's functions under Title V of the Motor Vehicle Information and Cost Savings Act, whether the submitter of the information asserts that disclosure would result in significant competitive damage, what that damage would be, why that damage should be viewed as significant, and the causal relationship between the damage and disclosure.

(8) If information is voluntarily submitted, within the meaning of section 512.5(a)(2) of this part, why disclosure by the NHTSA would be likely to prevent the NHTSA from obtaining information in the future.

(9) The period of time for which confidentiality is claimed (permanently or until a certain date or the occurence of a certain event) and why earlier disclosure would result in the harms set out in paragraphs (b), (6), (7), or (8) of this section as the case may be.

(c)(1) If any element of the showing to support a claim for confidentiality required under paragraph (b) of this section is presumptively established by a class determination affecting the information for which confidentiality is claimed, the submitter of information need not establish that element again under paragraph (b).

(2) If the Chief Counsel believes that information which a submitter of information asserts to be within a class of information set out in Appendix B is not within that class, the Chief Counsel—

(A) Notifies the submitter of the information that the information does not fall within the class as claimed, and briefly explains why the information does not fall with the class, and

(B) Affords the submitter of the information a reasonable amount of time, not less than 10 working days, to comply fully with paragraph (b) of this section.

(d) Information in support of a claim for confidentiality submitted to the NHTSA under paragraph (b) of this section must consist of objective data to the maximum extent possible. To the extent that opinions are given in support of a claim for confidential treatment of information, the submitter of the information shall submit in writing to the NHTSA the basis for the opinions, and the name, title, and credentials showing the expertise of the person supplying the opinion.

(e) The submitter of information for which confidential treatment is requested shall submit to the NHTSA with the request a certification in the form set out in Appendix A from the submitter, or an agent of the submitter, that a diligent inquiry has been made to determine that the informa-

tion has not been disclosed, or otherwise appeared publicly, except as indicated in accordance with paragraph (b) (3) and (4) of this section.

(f) A single showing in support for a claim that information is confidential, in accordance with paragraph (b) of this section, may be used to support a claim for confidential treatment of more than one item of information claimed to be confidential. However, general or nonspecific assertions or analyses may be insufficient to form an adequate basis for the agency to find that information may be afforded confidential treatment, under section 512.3, and may result in the denial of a claim for confidentiality.

(g) Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter of the information is responsible for obtaining all information or certifications from the third party necessary to comply with paragraph (b).

(h) A submitter of information shall promptly amend supporting information provided under paragraph (b) if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

(i) Noncompliance with this section may result in a waiver or denial of a claim for confidential treatment of information. However, failure to provide the certification required in paragraph (e) of this section shall result in a denial of the claim. Noncompliance with paragraph (h) of this section may subject a submitter of information to civil or criminal penalties.

(1) If the provisions of paragraph (a) of this section are not complied with at the time the information is submitted to the NHTSA so that the NHTSA is not aware of a claim for confidentiality, or the scope of a claim for confidentiality, the claim for confidentiality is waived unless the agency is notified of the claim before the information is disclosed to the public. Placing the information in a public docket or file is disclosure to the public within the meaning of this part, and any claim for confidential treatment of information so disclosed is precluded.

(2) A request that information be afforded confidential treatment may be denied if the submitter of the information does not provide with the request all of the supporting information required in paragraph (b) of this section, and will be denied if the information provided is insufficient to establish that the information may be afforded confidential treatment under the substantive tests set out in section 512.3. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information, and may allow the submitter additional time to supplement the showing, but is under no obligation to provide either notice or additional time to supplement the showing.

(j) Information received that is identified as confidential and whose claim for confidentiality is supported in accordance with this section will be kept confidential until a determination of its confidentiality is made under section 512.6 of this part. Information will not be publicly disclosed except in accordance with this part.

§ 512.5 Substantive standards for affording information confidential treatment.

(a) Information obtained by the NHTSA, except for information obtained by the NHTSA under Title V of the Motor Vehicle Information and Cost Savings Act, may be afforded confidential treatment if it is:

(1) A trade secret, or

(2) Commercial or financial information; and

(3) Not already publicly available; and

(4) Information, which if disclosed, would be likely to result in substantial competitve harm to the submitter of the information, or

(5) Voluntarily submitted, and failure to afford the information confidential treatment would impair the ability of the NHTSA to obtain similar information in the future. Information whose production the NHTSA could not compel by compulsory process is voluntarily submitted information within the meaning of this part.

(b) Information obtained by the NHTSA under Title V of the Motor Vehicle Information and Cost Savings Act may be afforded confidential treatment if it is:

(1) A trade secret, or

(2) Commerical or financial information; and

(3) Not already publicly available; and

(4) Information, which if disclosed, would result in significant competitive damage.

§ 512.6 Determination of confidentiality.

(a) The decision of whether an item of information may be afforded confidential treatment under this part is made by the Office of Chief Counsel.

(b) The determination of confidentiality is made within ten working days of the Chief Counsel's receipt of the information and knowledge that the information is claimed to be confidential if—

(1) The information relates to a rulemaking proceeding for which a public docket has been established,

(2) The information relates to a petition before the NHTSA for which a public docket has been established,

(3) The information relates to a proceeding under Part B of Subchapter I of the National Traffic and Motor Vehicle Safety Act,

(4) The information relates to an investigation or proceeding by the NHTSA to enforce any regulation or standard, or

(5) The information is received under a reporting requirement established by the NHTSA.

(c) If information does not come under paragraph (b) of this section when received by the NHTSA, but is later determinded to be information described in paragraph (b), the determination of confidentiality is made within ten working days after it is determined that the information is information described in paragraph (b).

(d) For information not described under paragraph (b) of this section, the determination of confidentiality is made within ten working days after the NHTSA receives a request for that information under the Freedom of Information Act.

(e) The timing requirements prescribed in paragraphs (b), (c), and (d) of this section may be extended by the Chief Counsel for good cause shown on the Chief Counsel's own motion, or on request from any person. An extension of the timing requirement of paragraph (d) is made only in accordance with 5 U.S.C. 552. Any extension of time is accompanied by a written statement setting out the reasons for the extension.

(f) A person submitting information to the NHTSA with a request that the information be withheld from public disclosure as confidential business information is given notice of the Chief Counsel's determination regarding the request.

(1) If a request for confidentiality is granted, the submitter of the information is notified in writing that the information is being kept confidential and the length of time during which the information will be kept confidential.

(2) If a request for confidentiality is denied in whole or in part, the submitter of the information is notfied in writing of that denial, and is informed that the information will be placed in a public docket on a specified date, which is no less than ten working days after the submitter of the information has received notice of the denial of the request for confidential treatment if practicable, or some earlier date if the Chief Counsel determines that the public interest requires that the information be placed in a public file on such earlier date.

(g) A submitter of information whose request for confidential treatment is denied may petition for reconsideration of that denial only on the basis of information or arguments that were not available at the time the

originial request for confidentiality was made. The Chief Counsel may postpone placing the information in a public file in order to allow additional time to consider the petition for reconsideration. Petitions for reconsideration under this section shall be addressed to the Chief Counsel.

(h) If information which has been a subject of a confidentiality determination under this section is requested under the Freedom of Information Act, the Office of Chief Counsel advises the office processing that request whether the information has been determined to be confidential.

§ 512.7 Modification of confidentiality determinations.

(a) A determination that information is confidential business information remains in effect in accordance with its terms, unless modified by a later determination based upon—

(1) Newly discovered or changed facts,

(2) A change in the applicable law,

(3) A class determination under section 512.9 of this part, or

(4) The initial determination's being clearly erroneous.

(b) If the NHTSA believes that an earlier determination of confidentiality should be reconsidered based on one or more of the factors listed in paragraphs (a)(1)–(4) of this section, the submitter of the information is notified in writing of the NHTSA's intention to reconsider that earlier determination, and the reasons for that reconsideration, and is given an opportunity to comment which is not less than ten working days from the receipt of notice under this paragraph.

§ 512.8 Discretionary release of confidential business information.

(a) Information that has been determined or claimed to be confidential business information under § 512.6 of this part may be disclosed to the public by the Administrator notwithstanding such determination or claim if disclosure would be in the public interest as follows:

(1) Information obtained under Part A, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under that part.

(2) Information obtained under Part B, Subchapter I of the National Traffic and Motor Vehicle Safety Act, relating to defects relating to motor vehicle safety, and failures to comply with applicable motor vehicle safety standards, may be disclosed if the Administrator determines that disclosure is necessary to carry out the purposes of that Act.

(3) Information obtained under Titles I, IV, or V of the Motor Vehicle Information and Cost Savings Act may be disclosed when that information is relevant to a proceeding under the title under which the information was obtained.

(b) No information is disclosed under this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice is given at least ten working days before the day of intended release, although the Administrator may provide shorter notice is the Administrator finds that such shorter notice is in the public interest. The notice under this paragraph includes a statement of the Administrator's reasons for considering the disclosure of information under this section, and affords the submitter of the information an opportunity to comment on the contemplated release of information. The Administration may also give notice of the contemplated release of information to other persons, and may allow such other persons the opportunity to comment.

§ 512.9 Class determinations.

(a) The Chief Counsel may issue a class determination relating to confidentiality under this section if the Chief Counsel determines that one or more characteristics common to each item of information in that class will in most cases necessarily result in identical treatment for each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. The Chief Counsel obtains the concurrence of the Office of the General Counsel, United States Department of Transportation, for any class determination that has the effect of raising the presumption that all information in that class is eligible for confidential treatment. Class determinations are published in the FEDERAL REGISTER.

(b) A class determination clearly identifies the class of information to which it pertains.

(c) A class determination may state that all of the information in the class—

(1) Is or is not governed by a particular section of this part, or by a particular set of substantive criteria under this part,

(2) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment,

(3) Satisfies one or more of the applicable substantive criteria, or (4) Satisfies one of the substantive criteria during a certain period, but will be ineligible for confidential treatment thereafter.

(d) Class determinations will have the effect of establishing rebuttable presumptions, and do not conclusively determine any of the factors set out in paragraph (c) of this section.

§ 512.10 Disclosure of information in certain circumstances.

(a) Notwithstanding any other provision of this part, information which has been determined to be confidential business information, or which has been claimed to be confidential business information, may be disclosed—

(1) To Congress or the Comptroller General,

(2) Pursuant to court order,

(3) To the Office of the Secretary, United States Department of Transportation,

(4) With the consent of the submitter of the information,

(5) To other Federal agencies, in accordance with applicable law, or

(6) To contractors, if necessary for the performance of a contract with the Administration. In such instances, the contract limits further release of the information to named employees of the contractor with a need to know and provides that unauthorized release constitutes a breach of the contract for which the contractor may be liable to third parties.

APPENDIX A

AFFIDAVIT IN SUPPORT OF REQUEST FOR CONFIDENTIALITY

I, _____, being duly sworn, depose and say:

(1) That I am (official) and that I am authorized by (company) to execute documents on behalf of (company):

(2) That the information contained in (*pertinent document[s]*) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) [as incorporated by reference in and modified by § 505(d)(1) of Title 5 of the Motor Vehicle Information and Cost Savings Act.]

(3) That I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (*company*).

(4) That based upon such inquiries to the best of my knowledge the information for which (company) has claimed confidential treatment has never been released or become available outside the (company) except as hereinafter specified:

(5) That I make no representations beyond those contained in this affidavit and in particular I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure except as stated in Paragraph 4; and

(6) That the information contained in the enumerated paragraphs of this affidavit is true and accurate to the best of my information, knowledge and belief.

_____

(Official)

APPENDIX B

CLASS DETERMINATIONS

The Administration has determined that the following types of information would

presumptively result in significant competitive damage or would be likely to result in substantial competitive harm if disclosed to the public—

(1) Blueprints and engineering drawings containing process of production data before the public availability, or within five years of the public availability, of the subject of the blueprints or engineering drawings, where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future model specific product plans, projected not more than three years into the future;

(3) Model specific projections of future sales mix, projected not more than three years into the future;

[FR Doc. 78-14572 Filed 5-24-78; 8:45 am]

[4910-59]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 72-23; Notice 04]

SEAT BELT ASSEMBLY ANCHORAGES

Proposed Elimination of Certain Requirements

AGENCY: National Highway Traffic Safety Administration.

ACTION: Proposal.

SUMMARY: This notice proposes the amendment of Safety Standard No. 210, Seat Belt Assembly Anchorages, to eliminate the anchorage location requirements for passive seat belt assemblies that meet the frontal crash protection requirements of Safety Standard No. 208. The purpose of the proposed amendment is to give manufacturers wide latitude in passive belt design in order to facilitate the early introduction of passive restraints in passenger cars. Separate anchorage location requirements for passive seat belts will be incorporated into the standard following further agency research concerning the relationship between anchorage location and passive belt effectiveness, comfort, and convenience.

DATE: Comments to this proposal must be received no later than June 26, 1978. Proposed effective date: Upon publication of a final rule in the FEDERAL REGISTER.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

William Smith, Crash Worthiness Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-426-2242.

SUPPLEMENTARY INFORMATION: Safety Standard No. 210, Seat Belt Assembly Anchorages, specifies zones and acceptable ranges within which seat belt anchorages must be located. The purpose of the zone requirements is to ensure that the anchorages are in the proper location for effective occupant restraint and to reduce the likelihood of their failure. General Motors has petitioned the National Highway Traffic Safety Administration (NHTSA) to eliminate the forward boundary of the acceptable range for the location of the upper torso belt anchorage and the maximum angle limitation of the lower shoulder belt anchorage zone, for passive belt systems that meet the dynamic frontal crash protection requirements of Safety Standard No. 208. Letters have been received from Renault and Toyota in support of General Motors' petition.

By notice issued July 5, 1977, the Department amended Safety Standard No. 208 to require future passenger cars to be equipped with passive restraints, on a phased-in schedule beginning September 1, 1981 (42 FR 34289). General Motors has decided to voluntarily introduce passive belts as an option on one of its models in May 1978. The passive belt design that General Motors would like to use includes a window-frame shoulder belt anchorage location. The existing location requirements of Standard 210 will prevent this passive belt design on some 4-door vehicles, however, because the trailing edge of the front door window frame is outside the "acceptable range" for upper anchorages. Also, General Motors would like to move the lower anchorage of their passive belt outside the maximum angle limitation of the standard for purposes of comfort and convenience.

In order to facilitate the early introduction of passive restraints, the agency has determined that manufacturers should be given wide latitude in passive belt design. Experience with the Volkswagen Rabbit has shown that the use rate of passive belts can be around 70 percent, as opposed to the 20 percent use rate for conventional active seat belts. Further, the Volkswagen passive belt systems have proven to be extremely effective restraint systems. The passive-belt-equipped Rabbits have experienced a fatality rate of 0.78 deaths per 100 million miles traveled as opposed to a rate of 2.34 deaths per 100 million miles traveled for Volkswagen Rabbits equipped with conventional active seat belts. Therefore, early introduction of passive restraints is extremely desirable and should save many lives.

The zone location requirements for anchorages in Standard 210 were developed primarily for conventional active safety belt systems. Passive belt systems are a relatively new technology and current information indicates there will be a myriad of passive belt designs. The NHTSA is currently conducting research to determine the optimum anchorage locations for the various passive belt designs in terms of belt effectiveness and in terms of comfort and convenience for vehicle occupants. Until this research is completed and appropriate requirements for passive belts can be incorporated into Standard No. 210, it is the agency's opinion that the current anchorage location requirements should be eliminated for passive belts.

The agency emphasizes that even if this proposed amendment is ultimately adopted, passive belt systems would still have to meet all Standard 210 requirements except those relating to anchorage location. Further and more important, these belt systems will have to meet the dynamic frontal crash protection requirements of Standard 208. Likewise, it must be emphasized that the proposed exemption is purely an interim measure, until location requirements for passive belts have been formulated. New anchorage location requirements for passive belts, together with the frontal crash protection requirements of Standard 208 will ensure that passive belt systems are effective occupant restraint devices and that they are sufficiently comfortable and convenient that motorists will not be encouraged to defeat them.

The NHTSA Office of Passenger Vehicle Research has already initiated a research project to evaluate the effects of moving the upper anchorage of the Volkswagen Rabbit passive belt system in both the vertical and longitudinal directions. That office will also initiate a contract to evaluate the passive belt systems on any other vehicle that may be introduced in the near future. The NHTSA invites all comments suggesting research or methodology for evaluating the effect of anchorage location as it relates to passive belt effectiveness, comfort, and convenience.

The proposed amendment would have no environmental or inflationary impact.

The engineer and lawyer primarily responsible for this notice are William Smith and Hugh Oates, respectively.

In consideration of the foregoing, it is proposed that Standard No. 210 (49 CFR 571.210) be amended to add the following sentence at the end of the text of S4.3:

§ 571.210 Standard No. 210; Seatbelt assembly anchorages.

* * * * *

S4.3 *Location.* * * * Anchorages for passive belt systems that meet the frontal crash protection requirements of Standard No. 208 are exempt from