

This class determination remains applicable insofar as it does not conflict with *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). The Agency is in the process of evaluating whether any changes need to be made to its regulations and guidance to conform with this recent U.S. Supreme Court decision and will update class determinations, as appropriate.

US EPA ARCHIVE DOCUMENT

CLASS DETERMINATION 2-77
CONFIDENTIALITY OF BUSINESS INFORMATION SUBMITTED IN APPLICATIONS
FOR LIGHT DUTY MOTOR VEHICLE CERTIFICATIONS THROUGH MODEL YEAR 1978

Each year manufacturers of light duty motor vehicles are required to submit applications to the Environmental Protection Agency (EPA), Office of Mobile Source Air Pollution Control (MSAPC) for a certificate of conformity to the regulations applicable to new motor vehicles. The information to be included in the applications is specified in advisory circulars issued by MSAPC and is submitted by the manufacturers in order to obtain certification. Without certification, the manufacturer cannot market new motor vehicles.

EPA has received claims from manufacturers that the information in the applications is entitled to confidential treatment. EPA also has received requests from the public for copies of the applications.

The applications consist of two parts. Part I of the application is a declaration of intention by a manufacturer to seek certification of new motor vehicles in conformance with 40 CFR Part 86. The information in Part I is the primary source of information about the manufacturer's intended product line. It is submitted well before introduction of new motor vehicles. Part II of the application is a request for issuance of Certificates

of Conformity for new motor vehicles in conformance with 40 CFR Part 86. It is submitted closer to the date on which certification is desired.

MSAPC has asked for a class determination concerning the entitlement of the information in the applications to confidential treatment under EPA's regulations on confidentiality of business information (40 CFR Part 2, Subpart B). Under 40 CFR 2.207 I have authority to issue class determinations concerning entitlement of business information to confidential treatment.

In the case of applications for certification of light duty motor vehicles, I have found:

(1) EPA possesses applications for past years and will continue to acquire applications for future years.

(2) The information contained in the applications is of the same character each year with only slight modifications that can be dealt with individually. It is proper to treat all of the applications as in the same class for purposes of this determination.

(3) A class determination would serve a useful purpose in that it will remove the necessity of clearing all of the information in each application prior to its being made available to the public.

This determination covers applications for model years 1975, 1976, 1977, and 1978. Earlier model year applications are also covered to the extent that similar information is included in them. I have determined that the information in the applications will be treated as follows:

I. I have determined that the information set out below is never entitled to confidential treatment because release would not cause any harm to the competitive position of any manufacturer. Even if a manufacturer makes a claim of confidential treatment concerning the information, it will not be honored.

A. In Part I of the application:

1. All information under "Technical Representatives."
2. All information under "Mailing Information."
3. All information under "Statement of Business Confidentiality," except substantiation materials (See III), (on 1977 and 1978).
4. All information under "Fuel Analysis."
5. All information under "Testing Procedures" (on 1975).
6. All information under "Procedures" (on 1976, 1977, and 1978).
7. The following information under "Data Reporting Procedures:"
 - a. From the "Maintenance Log," the various I.D. and serial numbers, the "Date", "Odometer Miles," "System Miles," and "Report No."
 - b. From the "Tentative Vehicle Test Schedule," all information except "Engine Family."

In addition, I have determined that any data which concerns actual emissions from vehicle models or prototype test vehicles is never entitled to confidential treatment. Under section 208 of the Clean Air Act emission data are not entitled to confidential treatment. Emission data may be released at any time. No claims of confidentiality made for such data will be honored.

B. In Part II of the application:

1. All information under "Certificate Information."

II. I have determined that the information set out below may be entitled to confidential treatment until the date on which the vehicle model in question is introduced to the public market. This information will only be given confidential treatment if the manufacturer (1) asserts that the information is entitled to confidential treatment, (2) has not waived or withdrawn that assertion, and (3) can show, to EPA's satisfaction, that the manufacturer has maintained the information in confidence, the information cannot be readily obtained by others by legitimate means, and disclosure of the information to the public would be likely to cause substantial harm to the manufacturer's competitive position.

Prior to introduction of the vehicle model to the public market, manufacturers keep information about new models secret. Manufacturers submit this information to EPA well in advance of marketing new vehicles. If a manufacturer's competitors were able to acquire this information prior to introduction, they would be likely to use the information to increase their market share and decrease the market share of the manufacturer. This would be likely to cause substantial competitive harm to the manufacturer. For these reasons, if the manufacturer makes the representations set out above to EPA's satisfaction, I have determined that the information is entitled to confidential treatment until the date of introduction, unless EPA becomes aware that the particular information has become generally available to the manufacturer's competitors.

Because the information consists of engineering details or other information about the vehicle models that the manufacturer plans to market, once the vehicle model in question has been marketed most of the information will be available to the public through examination and testing of the vehicle model. Any information not readily available through examination is background information, the release of which would not be likely to cause substantial competitive harm. If a manufacturer makes a claim of confidential treatment after the date on which the vehicle model in question is introduced to the public market, it will not be honored.

A. In Part I of the application:

1. All information under the following subsections except blueprints (see III):

a. "Engine Family Description for Four-Stroke Cycle Reciprocating Engines."

b. "Engine Family Description for Two-Stroke Cycle Reciprocating Engines."

c. "Engine Family Description for Rotary Engines."

d. "Evaporative Emission Family Description" (on 1978).

e. "Schematic Examples" (on 1978).

2. All information under "Engine Family Sales" except "Projected Sales (Units)" and "Family Sales Total" (See III).

3. All information under "Evaporative Family Sales" except "Projected Sales (Units)" and "Family Sales Total" (See III) (on 1978).

4. All information under "Optional Equipment."

5. All information under "Vehicle Description" except "Projected Sales (Units)" (See III).

6. All information under "Fleet Vehicles."
7. All information under "Fuel Filler Inlet."
8. The following information under "Data Reporting Procedures:"
 - a. The "Vehicle Log Sheet."
 - b. The "Vehicle Data Sheet."
 - c. Information not already covered by I.A.7.a above in the "Maintenance Log."
 - d. Information not already covered by I.A.7.b above in the "Tentative Vehicle Test Schedule."
9. All information under "Telephone Log."
10. All information under "Proposed Maintenance to be Performed on Test Vehicles."

B. In Part II of the application:

1. All information under "Statement of Compliance."
2. All information under "Certification Data."
3. All information under "Maintenance Instructions."
4. All information under "Label."
5. All information under "Supplementary Information."

III. There are certain items of information supplied by manufacturers to EPA on the applications that may be entitled to confidential treatment beyond the date on which the vehicle model is introduced to the public market. These will only be entitled to confidential treatment before and after introduction of the vehicle model if the manufacturer (1) asserts that the information is entitled to confidential treatment, (2) has not waived or withdrawn that assertion, and (3) can show, to EPA's satisfaction, that the manufacturer has maintained the information in confidence, the

information cannot be readily obtained by others by legitimate means, and disclosure of the information to the public both before and after introduction of the vehicle model would be likely to cause substantial harm to the manufacturer's competitive position.

A. The following items are examples of this type of information:

1. Blueprints may have been submitted to supplement the engineering information in the various engine family descriptions. If release of the blueprints would disclose information that would not be apparent from examination or testing of the vehicle in question or other information released after introduction in accordance with this determination, the blueprints are entitled to confidential treatment.

2. Under "Engine Family Sales," "Evaporative Family Sales" and "Vehicle Description," if projected sales figures and family sales figures are released they might disclose the nature or validity of the manufacturer's techniques of market analysis and sales projections, the manufacturer's marketing strategy, or the manufacturer's sales and income projections. They are entitled to confidential treatment.

3. Under the "Statement of Business Confidentiality," if there is information given in substantiation of the business confidentiality claim that is not otherwise available from inspection or testing of the vehicle model after introduction or from information released to the public under this determination or by other lawful means, the information is entitled to confidential treatment.

I have determined that, if the manufacturer makes the above representations to EPA's satisfaction, there would be a

likelihood of substantial competitive harm to the manufacturer and that the information would be entitled to confidential treatment until such time as it becomes public information or the likelihood of competitive harm ceases.

MSAPC may make information contained in applications available to the public in accordance with the above determinations. It is incumbent upon MSAPC to give all manufacturers notice of the contents of this determination and to give each manufacturer the opportunity to assert claims of confidentiality and make supporting arguments for any claims in accordance with the above determinations prior to release of any information in applications.

A handwritten signature in cursive script, reading "G. William Frick". The signature is written in dark ink and is positioned above a horizontal line.

G. William Frick
General Counsel (A-130)

31 MAR 1977

Date