

Timeline: Ford Explorer and Early Warning Reporting Data

2000

August 9

Bridgestone/Firestone recalls 14.4 million tires – the second largest tire recall in U.S. history – in response to tread separation incidents that led to fatal crashes, predominantly of Ford Explorers. According to the government crash database, the Fatality Analysis Reporting System, 173 people died in 133 Ford Explorer tire-related crashes since July 1994.*

September 1

NHTSA issues a consumer advisory recommending that owners replace certain models and sizes of Firestone tires that were not part of the August 9 recall because the claims rates are as high or higher than the recalled tires. Firestone refuses to recall the approximately 1.4 million tires but offers to replace tires for customers who are concerned.

September 6

Senate Appropriations Subcommittee on Transportation summons NHTSA and representatives of Ford Motor Company and Bridgestone/Firestone for an accounting of the delay in notifying the public and addressing the defect.

September 12

Senate Commerce Committee holds hearings into the recall of 14.4 million Firestone tires and to examine and improve the policies for the National Highway Traffic Safety Administration to detect defects and enhance the obligation of industry to provide safe vehicles to consumers. This hearing, and others held in the U.S. House of Representatives, eventually results in the wide-ranging safety legislation, the Transportation Safety Enhancement, Accountability and Documentation (TREAD) Act.

October 11

In less than a month, Congress passes the TREAD Act

October 20

Joan Claybrook, executive director of Public Citizen, raises concern in a letter to Secretary of Transportation Rodney Slater that the information gathered under TREAD will not be released to the public under Exemption 3 of FOIA. (Exemption 3 states that information is not public under FOIA if Congress specifically passes a law preventing its release.) [Docket 12150 Final Rule]

October 27

NHTSA's Chief Counsel and Acting General Counsel respond to Claybrook's concerns. They agree that Exemption 3 does not apply to TREAD Act data. The agency would continue to assess the confidentiality of TREAD information under Exemption 4 of the Freedom of Information Act, the Trade Secrets Act and the agency's regulations concerning the treatment of confidential business information. [Docket 8677-5]

* The crashes involved Ford Explorer and its model twins, Mercury Mountaineers and Mazda Navajos.

November 1

President Clinton signs the TREAD Act and directs NHTSA to “implement the information disclosure requirements of the [TREAD] Act in a manner that assures maximum public availability of information.”

2001**January 22**

NHTSA begins process of establishing a regulation regarding the Early Warning Reporting data provision of the TREAD Act. NHTSA reiterates position that the disclosure section on the rule would not change the agency’s current information release policies. According to the Federal Register notice announcing that NHTSA would soon move to create a rule: “The primary differences between pre-TREAD Act and post-TREAD Act reporting are likely to be in the mechanisms for reporting and amount of information reported.” [Docket 2001-8766]

May 22

Ford announces an Owner Notification Program to replace 13 million 15- 16- and 17-inch Wilderness ATs on its vehicles. Ford concluded that it does not have sufficient confidence in the future performance of some of the Wilderness AT tires and that it will take the precautionary measure of replacing all Wilderness AT tires on its customers vehicles, regardless of size or build date and plant of manufacture.

October 4

NHTSA makes an initial determination that a defect related to motor vehicle safety exists in certain P235/75R15 and P255/70R16 Firestone Wilderness AT tires manufactured before May 1998 that are installed on sport utility vehicles.

October 15

Firestone disagrees with NHTSA initial decision but agrees to recall of an estimated 2.8 million Wilderness AT 235/75R15 P255/70R16 tires produced July 1994-April 1998, and installed on SUVs.

December 21

After accepting a year’s worth of public comments, NHTSA publishes a Notice of Proposed Rulemaking (NPRM) for TREAD Early Warning Reporting data. On the subject of public disclosure, the rule grants manufacturers the right to petition the agency to grant confidentiality for some information under the Confidential Business Information regulation. However, the rule makes clear that most of the information submitted would be public, and that the agency didn’t expect to receive many requests for confidentiality:

“It is expected that the types of information that manufacturers would be required to submit to the agency under this NPRM would include information about claims and notices that allege death or injury; numbers of property damage claims, consumer complaints, warranty claims, and field reports. They would also have to submit documents related to customer satisfaction

campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or equipment, as well as certain field reports. Historically, these types of information generally have not been considered by the agency to be entitled to confidential treatment...” [Docket 2001-8766]

December 31

After two massive tire recalls, two replacement campaigns and sweeping legislation to correct problems, FARS data shows that an additional 39 people have lost their lives in tire-related Ford Explorer rollovers, since the first recall in August 2000. The death toll stands at 212 since July 1994.*

2002

April 30

In response to changes in case law and the TREAD Act, NHTSA proposes to amend its Confidential Business Information regulation. The original rule was crafted in 1981 and underwent revisions in 1982 and 1989. It proposes to designate certain types of information collected under TREAD as presumed not to cause competitive harm if disclosed, and would therefore be public: consumer complaints, warranty claims, property damage reports. “Although the agency routinely protects the name and other identifying information about individuals who may be identified in these documents, the agency has consistently not granted confidential treatment for this type of information. The agency frequently receives requests for confidential treatment for these types of materials, and consistently denies such requests.” The NPRM also asks the public to comment on the confidentiality of manufacturers’ reports on incidents involving deaths or injuries and copies of field reports. [Docket 12150-NRPM]

July 10

NHTSA publishes a final rule for TREAD Early Warning Reporting data. Disclosure provision is unchanged from proposed rule. [Docket 2002-8766-471]

December 31

Death toll for tire-related, Ford Explorer fatal crashes since July 1994 stands at 237, according to FARS.*

2003

July 28

NHTSA issues a Final Rule on Confidential Business Information. Once again, NHTSA says that TREAD is not confidential under the Exemption 3 statute. Instead, NHTSA says that it would consider the confidentiality of TREAD early warning information under Exemption 4 to FOIA-- information that may cause competitive harm. (NHTSA rejects a request from the Alliance of Automobile Manufacturers that it continue “automatically to treat such information

* The crashes involved Ford Explorer and its model twins, Mercury Mountaineers and Mazda Navajos.

as confidential pending judicial review. The agency will make the information publicly available, consistent with its administrative decision, unless ordered otherwise by a court of competent jurisdiction.”)

However, using Exemption 4, NHTSA does an about-face on the types of information that would automatically be presumed confidential because their public release would cause competitive harm. It determines that warranty claims information and consumer complaints collected under TREAD are confidential, as well as field and dealer reports and production numbers of child restraint systems, tires and vehicles other than light vehicles. Death, injury and property damage information, under the Final Rule, is considered public. [Docket 12150_Fnl_R1]

December 1

First Early Warning Reporting data is due from manufacturers.

December 31

Death toll for Ford Explorer, tire-related crashes stands at 286, according to FARS.*

2004

February 27

The *Washington Post* reports that the Early Warning Data Reporting system is working. NHTSA officials claim that the new early warning system allowed the agency to flag six crashes involving Firestone Steeltex tires. Firestone subsequently recalled 297,000 tires. [20040227_Wash_Post]

March 22

Public Citizen sues Secretary of Transportation Norman Mineta over the Confidential Business Information (CBI) regulations. The suit claims that NHTSA’s July 2003 rule deviated substantially from its initial proposal by broadly determining that whole classes of tire data are confidential. The Rubber Manufacturers Association files a cross claim.

March 24

QCS Corp., contemplating a research project using the EWR death and injury data, contacts NHTSA about their availability, after reading a Reuters news agency story that the data were now available. NHTSA spokesman Rae Tyson informs QCS Corp. in a telephone conversation that the data are publicly available on the Internet.

April 2

NHTSA’s Defects Assessment Chief, Mr. Jonathan White writes to QCS Corp. that “The agency did intend to have the information available in March, however, there have been several petitions to reconsideration of the confidentiality rules (49 CFR Part 512) to either rescind or extend the information available. Until these petitions are resolved, the agency is unable to publish the information.” [20040402_White]

April 5

Injury Prevention, a peer-reviewed journal, publishes “Improving Surveillance for Injuries Associated with Potential Motor Vehicle Safety Defects” by Whitfield and Whitfield of QCS Corp. This article concludes: “Innovative statistical techniques can help to prevent future, costly, vehicle safety surveillance failures. Such techniques must be consistently applied to data with sufficient detail, coverage, timely availability, and accessibility to researchers.”

April 21

NHTSA responds to petitions for reconsideration for Final Rule and reaffirms that the TREAD statute does not make the EWR data automatically exempt from the scope of FOIA. NHTSA adds another class of information that should be considered confidential under Exemption 4: lists of common green tire identifiers. [Docket 2001-12150-66]

June 3

Bridgestone/Firestone asks for reconsideration of NHTSA’s decision to deny the tiremaker’s earlier request for a stay on the release of EWR deaths and injuries data. Bridgestone/Firestone has argued that all EWR data should be confidential under Exemption 3, and asks that NHTSA withhold the data pending the outcome of *Public Citizen v. Mineta*. [20041001_NHTSA]

September 23

The Department of Transportation’s Inspector General issues a report that ARTEMIS, NHTSA’s internal EWR database, is unable to actually analyze the data for the very purpose it was intended to serve:

“Although ARTEMIS became fully operational in July 2004, it does not have the advanced analytical capabilities originally envisioned to help point analysts to potential safety defects... While ARTEMIS will automatically point analysts to deaths that manufacturers report so that trends in small numbers of fatalities can be detected, ARTEMIS will not, as currently developed, link deaths to an alleged defect or identify relationships between the categories of EWR information. In short, ARTEMIS cannot perform more advanced trend and predictive analyses that were originally envisioned as being needed to identify defects warranting investigation.” [20040923_Audit]

September 24

NHTSA denies a *Detroit Free Press* FOIA for EWR death and injury data. On this day, the *Free Press* reports, “Until last week, the government said it had made or would make available to the public the new vehicle safety data, including details on the make, model and year of a vehicle in which someone died or was injured, and what vehicle part or system may have caused the crash. But following a Freedom of Information Act request by the Free Press, NHTSA last week acknowledged this information was not available – as it had said earlier. It also acknowledged it would not be made public until it deals with the lawsuit filed in June by the Rubber Manufacturers Association, a group that represents tire makers such as Bridgestone, Goodyear and Continental.” [20040924_Det_Fr_Prs]

October 1

NHTSA decides to grant Bridgestone/Firestone an “administrative stay” on releasing any Early Warning Reporting death and injury data that the company has submitted and is expecting to submit pending the outcome of *Public Citizen v. Mineta*, over the issue of whether EWR data is confidential under FOIA Exemption 3. [20041001_NHTSA]

December 31

There are now 340 Ford Explorer, tire-related rollover fatalities in FARS since July 1994.*

2005**December 31**

QCS Corp. sends NHTSA a FOIA request for deaths and injuries claims data related to Explorer/tire incidents and asks for expedited treatment (10 calendar days) based on imminent threat to life and safety. FARS Death toll for Ford Explorer, tire-related rollovers since July 1994 at 396. [20051231_QCS]

2006**February 3**

NHTSA denies QCS Corp.’s FOIA request, because, it says, the EWR information it seeks is the subject of Public Citizen’s pending lawsuit. [20060203_NHTSA]

February 25

QCS Corp. writes to NHTSA again, requesting an expedited appeal. QCS argues that there is no legal basis for NHTSA to issue a stay of its obligation to comply with FOIA. Further, QCS is asking for Ford deaths and injuries EWR data. Deaths and injuries claims had been deemed public by NHTSA and the Ford Motor Company was not a party in *Public Citizen v. Mineta*. [20060225_QCS]

March 30

U.S. District Court Judge Robert Leon rules on Public Citizen’s lawsuit regarding the Confidential Business Information regulation. Leon kicks NHTSA’s final rule on the confidentiality of TREAD records back to the agency. Judge Leon finds that NHTSA does have the right to designate certain classes of information as confidential. However, Leon also finds that the agency “pulled a switcheroo” when it published its final rule, by designating as confidential certain types of information that were never mentioned in the proposal, without allowing adequate opportunity for public comment. [20060330_Pblc_Ctzn_v_Nrmn_Mnt]

April 5

Following Judge Leon’s decision, QCS presses its FOIA request for the Ford EWR death and injuries data. [20050405_QCS]

* The crashes involved Ford Explorer and its model twins, Mercury Mountaineers and Mazda Navajos.

July 30

Judge Leon finds that the TREAD Act does not qualify as a withholding statute under FOIA Exemption 3. The Rubber Manufacturers Association subsequently appeals. [20060730_Pblc_Ctz_v._Nrmn_Mnt]

September 1

Even though the public has only seen some summaries of TREAD Early Warning Reports in connection with defect investigations since manufacturers began submitting the data three years ago, NHTSA asks the public to comment on a proposal to eliminate the requirement that manufacturers submit records known as product evaluation reports – reports by non-technical employees of an automaker who lease or use a new vehicle for personal use subject to the condition that they provide written evaluations of the vehicles. (The agency also proposes to reduce the categories from the list of fire precursors that manufacturers are required to report and to add an unknown category to fuel type for manufacturers of medium and heavy trucks.) [Docket 2006-25653_NRPM]

October 31

Following Judge Leon's order, NHTSA publishes another Notice of Proposed Rulemaking notifying the public that it intends to make certain classes of Early Warning Reporting data collected under the TREAD Act confidential under FOIA Exemption 4: Warranty claims, field reports, consumer complaints and some production numbers. [Docket 2006-26140]

November 14

NHTSA denies QCS Corp. appeal of FOIA request, again citing the pending appeal by the RMA in *Public Citizen v. Mineta*. [20061114_NHTSA]

2007

January 15

According to FARS and news accounts, the number of known deaths caused by tire-related Ford Explorer crashes stands at 420. *More than half of all fatalities occurred after the ATX and Wilderness ATs were recalled in August 2000.* *

* The crashes involved Ford Explorer and its model twins, Mercury Mountaineers and Mazda Navajos.