



## QUALITY CONTROL SYSTEMS CORPORATION

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December 30, 2006

### VIA EMAIL

The Honorable Nicole Nason  
Administrator  
National Highway Traffic Safety Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

**Notice of Proposed Rulemaking; Confidential Business Information;  
Docket No. NHTSA-06-26140; Notice 1**

Dear Ms. Nason:

The National Highway Traffic Safety Administration (NHTSA) has asked for comments from the public on the Notice of Proposed Rulemaking (NPRM) regarding the confidentiality of certain information that manufacturers of motor vehicles and motor vehicle equipment submit to NHTSA pursuant to the Early Warning Reporting (EWR) rule.

Our published work related to this subject (and commentary from NHTSA) can be found from the following sources: Whitfield, R. A., and Alice K. Whitfield, "Improving Surveillance for Injuries Associated with Potential Motor Vehicle Safety Defects." *Injury Prevention*, April 2004, 10:88-92, <http://ip.bmjournals.com/cgi/content/full/10/2/88>; Carra J. Unwarranted Assumptions about FARS data [electronic response to Whitfield and Whitfield, Improving surveillance for injuries associated with potential motor vehicle safety defects] *injuryprevention.com* 2004, <http://ip.bmjournals.com/cgi/eletters/10/2/88#74>; and Whitfield, R. A., and Alice K. Whitfield, "Re: Unwarranted Assumptions about FARS Data," *InjuryPrevention.com*, 2004, <http://ip.bmjournals.com/cgi/eletters/10/2/88#88>).

According to the Notice, "[a]s a practical matter, if a manufacturer has not submitted a notice of a safety-related defect to NHTSA and if the agency has not received information that provides a sufficient basis for the opening of an investigation, it has been unlikely that NHTSA would investigate a potential problem. This practical limitation on NHTSA's investigations manifested itself in 2000. Under the limited level of reporting then

required, the agency lacked sufficient information to identify defects in Firestone tires mounted on Ford Explorers. Numerous fatalities occurred before NHTSA opened an investigation and Firestone conducted recalls.” Unfortunately, this background misstates the history of the original problem in a way that is important to any consideration of the newly proposed rule.

It was recognized six years ago that the failure to take timely action with regard to the Firestone/Explorer problem was not simply a lack of information. For example, at the first Congressional hearing into the scandal in 2000, Congressman Steve Largent posed the following to NHTSA’s Administrator, Dr. Sue Bailey: “I would suggest that maybe you had too much information. Because my question then goes back to this FARS, Fatality Accident Reporting System, that contains all vehicle-related fatalities reported to NHTSA by law enforcement... What the heck do you guys do with this data base that is reported to you by statute from all of the law enforcement agencies around the country? What do you do with this? Because in, let’s see, it says from 1998, from the end of 1998, you had information in that data base given to the National Highway Traffic Safety Administration that there were 29 fatalities from accidents in a Ford Explorer fitted with Firestone ATX, ATX II, or Wilderness tires. What is the problem there? You have all of this information from 1998, and yet it takes--you either ignore this or don’t look at it, or what happens to this information?”

Congressman Largent’s question is no less pertinent now – now that more than 400 fatalities have been recorded in tire-related, Ford Explorer, Mercury Mountaineer, and Mazda Navajo “loss of control” crashes. Most of these deaths have occurred after the signing of the TREAD Act. There has been no specific warning to the public from NHTSA regarding tire-related, loss of control crashes in the Explorer, despite the collection of EWR data for the past three years. I bring this to your attention because the new proposal to keep Early Warning Reporting data beyond public reach should be considered in the context of this failure to avert these latest deaths and injuries.

It is well worth considering how much of the current problem results from the Agency’s present practice to continue keeping nearly all of the Early Warning Reporting System data secret from the public. As far as I know, NHTSA was simply unaware of the continuing extent of tire-related, loss of control crashes of the Explorer before our docket submission, NHTSA-2002-12150-68. I believe we might have been able to bring the problem to light sooner if we had had access to the Early Warning Reporting data. After all, these data exist to provide an early warning.

While NHTSA lacked the EWR data six years ago, the Agency is now awash in information that is presumably related to potential vehicle and equipment defects. So it is regrettable that the Agency should now propose a rule to keep large categories of these data hidden from public scrutiny at the same time the Agency closes one investigation after another citing the scarce resources available to the Agency to fulfill its safety mission. Obviously the Agency and the public would benefit from outside assistance in analyzing the EWR information NHTSA now collects; keeping the Early Warning Reporting data secret will not yield this help.

The proposed rule makes brief mention of the need for the Agency to weigh the public interest in its consideration of Exemption 4 to the Freedom of Information Act. Yet commenters are never asked in this proposal the simple, direct question of how public dissemination of the Early Warning Reporting data could assist the Agency in its safety mission. Our company's own technical approach to this issue can be found in our 2004 article (see above) on injury surveillance. This approach may be readily applied to the Early Warning Reporting data. We are sure the Agency could also benefit from other scientific approaches to the issue. However, the potential utility of the Early Warning Reporting system will not be realized unless the Early Warning Reporting data are made accessible to independent review by researchers and consumers. That is why NHTSA was encouraged in 2002 by the Department of Transportation Inspector General to, "develop innovative techniques for collecting and analyzing information from a wider range of sources to help identify potential trends sooner." We are one such source but, as researchers, we need research data with which to work.

The potential beneficiaries from a new policy of disclosure are not limited to consumers or to NHTSA. Regrettably, the possibility that manufacturers themselves can reap a competitive benefit from an independent, scientific review of the Early Warning Reporting data is never considered in the proposal. Just as the public may be protected from dangerous products through the use of these data, manufacturers stand to benefit substantially from early detection of faulty product design, poor manufacturing practices, or inadequate product testing. While there is considerable attention in the proposal to the "business risks" that may come from the exposure of these problems, there is no mention whatsoever of the potential that businesses may learn in a more timely way from their own and from their competitors' safety-related mistakes. This benefit, too, is also part of the public interest that should be considered by NHTSA in the evaluation of any proposed rule but there is no mention of it in the NPRM.

I note that the justification to withhold certain production information based on a competitive harm theory is not accompanied by any empirical data in the NPRM on this subject. In fact, the finding that manufacturers would limit their efforts to collect consumer complaint information or to offer warranties should this information be subject to disclosure is contradicted by citations in the NPRM of the recognized importance of complaint and warranty data in helping manufacturers to identify quality issues with their products and manufacturers' present reliance on these data systems for product improvement.

The NPRM states that NHTSA is interested, "in whether the disclosure of the information covered by our proposed classes would significantly discourage manufacturers from continuing to obtain and manage this information as they do now." Of course, this "information" is information related to the safety of the manufacturers' own customers. It is hard to read statements from manufacturers that they would take steps to limit their collection of safety-related data as something other than threats against public health.

The conclusion that the EWR information would not be useful to the public in comparing vehicles or equipment because of the differences in warranty terms and corporate warranty practices is not based on any actual data or appropriate methodological approaches to this issue. If the data are of reasonably good quality, the data would certainly be useful to us.

The justification cited to withhold field reports is the most breathtaking in the whole proposal. I hope you will read it again: *"Such information, if publicly released, would be of substantial value to competitors, who could avert similar issues or improve their products without the need to invest in market research, engineering development, or actual market experience."* If this is in fact true, then it follows that consumers will not unnecessarily suffer injuries, deaths, or economic losses. That is NHTSA's safety mission. Similarly, an appropriate consideration of common green tire identifiers should include an evaluation of the usefulness to researchers and the general public of this information in the avoidance of deaths, injuries, and economic loss.

The proposal states, "Commenters may also address different approaches. We invite comments that address the practical concerns of such potential approaches." I am mindful of the problem that, "if NHTSA were to attempt to process individualized requests for confidentiality of individual EWR submissions, the agency would be overwhelmed." One possible solution is straightforward: NHTSA could propose a categorical presumption that none of the EWR safety data are in the scope of Exemption 4 to the Freedom of Information Act because that the obvious public interest in disclosure outweighs private interests in keeping the data secret.

The NPRM also proposes to treat the last six characters of the Vehicle Identification Number as a class presumed to be in the scope of Exemption 6 of the Freedom of Information Act. The justification for this proposal is that, “members of the public with an interest in motor vehicle safety can still ascertain whether a particular type of vehicle may be involved in a potential safety issue.” This justification is incorrect. Manufacturers frequently seek to limit safety-related defect recalls to vehicles falling within specific sequences of VIN serial numbers and consumers frequently complain to NHTSA about this practice. The appropriateness of these limitations cannot be ascertained by the public without disclosure of as much of the VIN as is consistent with the manufacturers’ own defect theories.

I hope you will find these comments helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. A. Whitfield". The signature is written in a cursive style with a prominent flourish at the end.

R. A. Whitfield,  
Director