

under certain circumstances, including newly discovered or changed facts, a change in applicable law, a change in a class determination, or a finding that the prior determination was erroneous.

The proposal further incorporated certain statutory provisions under which information that has been claimed or determined to be entitled to confidential treatment may nonetheless be publicly released in some situations, including releases made to Congress, pursuant to a court order, to the Secretary of Transportation or to other Executive agencies in accordance with applicable law, with the consent of the submitter, and to contractors (subject to certain conditions).

The agency's existing regulation also listed three additional situations under which information determined to be confidential may nonetheless be disclosed to the public. The proposed rule explained that the Cost Savings Act and the Vehicle Safety Act have been repealed and their pertinent provisions have been codified under title 49 of the United States Code. Accordingly, the NPRM proposed to modify part 512 in a manner consistent with these statutory changes. We are adopting these revisions.

VI. Early Warning Reporting Information

The NPRM sought public comment on how the agency should handle the data to be submitted under the new early warning reporting regulation. Although the final rule prescribing the early warning reporting requirements had not yet been issued, the agency received numerous comments with regard to that data.

Some business interests argued that the TREAD Act itself prohibits the disclosure of any early warning reporting information under Exemption 3 of the Freedom of Information Act (FOIA). Others argued that Exemption 4 of the FOIA, applicable to confidential business information, governs whether the information should be disclosed. All business interests contended that release of the early warning data is likely to cause substantial competitive harm and many pointed out that disclosure is likely to impair the agency's ability to obtain the material in the future. Public Citizen, while agreeing that Exemption 4 is applicable, argued that all the data should be released because it is summary in nature, is important to the identification of potential defects and is often released in the course of individual defect determinations.

As the Court of Appeal for the District of Columbia Circuit recently noted, the

Freedom of Information Act is premised on public access to information within enumerated bounds ensuring that the government's proper functions are not impeded:

"Public access to government documents" is the "fundamental principle" that animates FOIA. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989). "Congress recognized, however, that public disclosure is not always in the public interest." *CIA v. Sims*, 471 U.S. 159, 166-67 (1985). Accordingly, FOIA represents a balance struck by Congress between the public's right to know and the government's legitimate interest in keeping certain information confidential. *John Doe Agency*, 493 U.S. at 152. To that end, FOIA mandates disclosure of government records unless the requested information falls within one of nine enumerated exemptions, see 5 U.S.C. 552(b). While these exemptions are to be "narrowly construed," *FBI v. Abramson*, 456 U.S. 615, 630 (1982), courts must not fail to give them a "meaningful reach and application," *John Doe Agency*, 493 U.S. at 152. The government bears the burden of proving that the withheld information falls within the exemptions it invokes. 5 U.S.C. 552(a)(4)(b).

See Center for National Security Studies, et. al. v. U.S. Department of Justice, 331 F.3d 918 (D.C. Cir. 2003).

We have determined that the confidentiality of the early warning submissions should be reviewed under Exemption 4 of FOIA relating to confidential business information. Below we briefly set forth the early warning reporting requirements and the arguments made in favor and against disclosure. We then apply the principles set forth in *National Parks & Conservation Ass'n v. Morton (National Parks)*, 498 F.2d 765 (D.C. Cir. 1974), and its progeny to each element of the early warning reporting information.

A. Summary of the Early Warning Reporting Requirements

The bulk of the early warning reporting requirements apply to larger manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires (*see* 49 CFR part 579). In general, vehicle manufacturers must submit quarterly reports with regard to the following categories of vehicles, if they produce 500 or more vehicles of a category annually: light vehicles, medium-heavy vehicles and all buses, trailers, and motorcycles. The reporting information required of these manufacturers is summarized below:

- **Deaths.** These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified

in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in foreign countries that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

- **Injuries.** These manufacturers must report certain specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.

- **Property damage.** These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that occurred in the United States that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.

- **Consumer complaints.** These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems that occurred in the United States. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.

- **Warranty claims information.** These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they receive that are related to problems with certain specified components and systems that occurred in the United States. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.

- **Field reports.** These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems that occurred in the United States. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.

- **Production.** These manufacturers must report the number of vehicles, child restraint systems, and tires, by make, model, and model year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

In addition, these manufacturers must submit to the agency, on a one-time basis, historical data relating to the number of warranty claims/adjustments and field reports for each calendar quarter during the three-year period