

The Deputy Administrator of the National Highway Traffic Safety Administration, Sophie Shulman, signed the following Final Rule on December 9, 2024, which the Agency is submitting for publication in the Federal Register. While NHTSA has taken steps to ensure the accuracy of this Internet version of the Final Rule, it is not the official version of the Final Rule. Please refer to the official version in a forthcoming Federal Register publication, which will appear on the Government Printing Office's FDSys website (www.gpo.gov/fdsys/search/home.action) and on Regulations.gov (<http://www.regulations.gov/>) in Docket No. NHTSA-2023-0014.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 513

Docket No. NHTSA-2023-0014

RIN 2127-AL85

Implementing the Whistleblower Provisions of the Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule addresses an important source of motor vehicle safety information and fulfills a requirement in the Motor Vehicle Safety Whistleblower Act (Whistleblower Act) that NHTSA promulgate regulations on the requirements of the Act, in complement to NHTSA's existing whistleblower program. The Whistleblower Act authorizes the Secretary of Transportation to pay an award, subject to certain limitations, to eligible whistleblowers who voluntarily provide original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301, which is likely to cause unreasonable risk of death or serious physical injury, if the information provided leads to the successful resolution of a covered action. This final rule defines certain terms important to the operation of the whistleblower program, outlines the procedures for submitting original information to NHTSA and applying for awards, discusses NHTSA's procedures for making decisions on award applications, and generally explains the

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scope of the whistleblower program to the public and potential whistleblowers.

DATES:

Effective date: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

Any petitions for reconsideration should refer to the docket number set forth above (NHTSA-2023-0014) and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dylan Voneiff, Office of the Chief Counsel, National Highway Traffic Safety Administration (telephone: (202) 763-8536), email: dylan.voneiff@dot.gov; or Daniel Rabinovitz, Office of the Chief Counsel, National Highway Traffic Safety Administration (telephone: (202) 366-5263), email: daniel.rabinovitz@dot.gov.

The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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I. Executive Summary

The Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94, established important protections and incentives for motor vehicle safety whistleblowers. The Motor Vehicle Safety Whistleblower Act (Whistleblower Act), Sections 24351-25352 of the FAST Act, amended the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) to authorize the Secretary of Transportation (the Secretary) to pay an award, subject to certain limitations, to eligible whistleblowers who voluntarily provide original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any

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notification or reporting requirement of 49 U.S.C. Chapter 301, which is likely to cause unreasonable risk of death or serious physical injury, if that information leads to the successful resolution of a covered action. Pub. L. 114-94, §§ 24351-52, 129 Stat. 1716 (2015) (codifying “Whistleblower incentives and protections” at 49 U.S.C. 30172).

In addition to the statutory whistleblower protections and incentives added by the FAST Act, Congress required NHTSA to promulgate whistleblower regulations.¹ NHTSA’s notice of proposed rulemaking (NPRM), published on April 14, 2023,² proposed definitions of certain terms important to the operation of the whistleblower program, outlined the procedures for submitting original information to NHTSA and applying for awards, discussed NHTSA’s procedures for making decisions on award applications, and generally explained the scope of the whistleblower program to the public and potential whistleblowers.

NHTSA received 14 comments on the NPRM. The proposal garnered comments from whistleblower counsel and advocates, vehicle manufacturers, industry associations, and individuals. These comments are available in the docket for this rulemaking.³ After considering the public comments, the Agency is issuing this final rule and generally adopting the proposal without significant change.

II. Final Rule and Responses to Comments

In the NPRM, NHTSA proposed adding a new part to its regulations, 49 CFR part 513, to further implement the whistleblower program established by the Whistleblower Act and codified

¹ See 49 U.S.C. 30172(i).

² 88 Fed. Reg. 23276 (Apr. 14, 2023).

³ <https://www.regulations.gov/document/NHTSA-2023-0014-0001>.

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at 49 U.S.C. 30172. The proposal defined certain terms important to the operation of the whistleblower program, outlined the procedures for submitting original information to NHTSA and applying for awards, discussed the Agency's procedures for making decisions on award applications, and generally explained the scope of the whistleblower program to the public and potential whistleblowers. The proposed rule sought to help facilitate the Agency's identification of information provided by whistleblowers to ensure that whistleblowers receive the protections accorded under the statute and to inform the public of those limited circumstances where information that could reasonably be expected to reveal the identity of the whistleblower may be disclosed. NHTSA sought comments on all aspects of the NPRM.

In response to the NPRM, NHTSA received comments from whistleblower counsel and advocates, vehicle manufacturers, industry associations, and members of the general public. Whistleblower counsel and advocates submitting comments were Cohen Milstein Sellers & Toll PLLC (Cohen Milstein); Constantine Cannon LLP (Constantine Cannon); Kohn, Kohn, and Colapinto (Kohn); and the National Whistleblower Center. The individual vehicle manufacturers that commented were Ford Motor Company (Ford) and Hyundai Motor America (Hyundai). The industry associations that submitted comments were the Alliance for Automotive Innovation (Auto Innovators) and the vehicle supplier industry association Motor & Equipment Manufacturers Association (MEMA). NHTSA also received comments from some individuals.

Generally, most commenters shared their support for the creation of a new part to NHTSA's regulations governing NHTSA's whistleblower program. Commenters addressed many aspects of the rule, including the definitions of certain terms, procedures for submitting

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information and making a claim for an award, eligibility requirements for an award and award determinations. The order of the topics or comments discussed in this document is not intended to reflect the significance of the comment raised or the standing of the commenter. Additionally, this summary of the comments is intended to provide both a general understanding of the overall scope and themes raised by the commenters, as well as give some specific descriptions to provide context.

Whistleblower counsel and advocates generally commented in support of broadening the definition of “whistleblower,” “independent knowledge or analysis,” and “covered action.” These commenters proposed relaxing internal reporting requirements and more specifically defining protections against retaliation. Additionally, these commenters proposed removing agency discretion for granting an award.

Generally, vehicle manufacturers and industry associations commented in support of restricting the definition of whistleblower and the definition of independent knowledge or analysis. Additionally, these commenters suggested broadening disqualifications for an award. Specifically, these commenters proposed stricter internal reporting requirements and proposed eliminating exceptions to these requirements.

Finally, most individual commenters expressed general support for the goals and content of the proposed rule. Individual commenters focused on the definition of whistleblower and the definition of employee. Additionally, individual commenters expressed concerns about the formalized process to be eligible for an award and the Agency's discretion in granting an award.

This final rule generally adopts the proposal without substantive change. In response to

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comments, NHTSA has clarified in this final rule the timing for submitting an award claim. In the NPRM, NHTSA proposed a potential whistleblower must file a claim for a whistleblower award by completing the WB-AWARD form and submitting it to NHTSA no later than ninety (90) calendar days from the date of the Notice of Covered Action. This final rule specifies that if the ninetieth day falls on a weekend or federal holiday, the claim deadline is the next business day. NHTSA has also clarified in this final rule that the criminal exclusion is limited to criminal violations decided by a United States federal or state court—not by a foreign tribunal.

While NHTSA also agreed with many other issues raised by commenters, for the reasons discussed below, it does not believe those issues warrant additional or changed regulatory text. After consideration of the comments, NHTSA believes this final rule appropriately balances the need to provide additional guidance on aspects of the statute and Agency's processes, while leaving room for flexibility and case-by-case considerations. As NHTSA has learned through working with numerous whistleblowers since enactment of the FAST Act in 2015, each matter involves unique circumstances. NHTSA will continue to consider these issues as it implements its whistleblower program with the benefit of these new rules and will make future refinements through rulemaking or guidance as necessary and appropriate.

NHTSA maintains information about its whistleblower program on its website, <https://www.nhtsa.gov/laws-regulations/whistleblower-program>, which it will continue to update with additional information and developments.

A. General (§ 513.1)

Proposed rule § 513.1 provided a general description of NHTSA's whistleblower

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program. Specifically, it stated that Part 513 describes the whistleblower program that the Agency has established to implement the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. 30172; explained the procedures that the potential whistleblower will need to follow to be eligible for an award; and discusses the circumstances under which information that may reasonably be expected to reveal the identity of a whistleblower may be disclosed by NHTSA. Additionally, it cautioned potential whistleblowers to read the procedures carefully because failure to take required steps within the time frames described could result in disqualification from receiving an award.

NHTSA received no comments on proposed § 513.1. NHTSA is adopting § 513.1 as proposed.

B. Definitions (§ 513.2(b))

i. Collected Monetary Sanctions

The NPRM contained a proposed definition clarifying that the term “collected monetary sanctions” means monies, including penalties and interest, ordered or agreed to be paid and that have been collected by the United States pursuant to the authority in 49 U.S.C. 30165 or under the authority of 49 U.S.C. 30170. This proposed definition sought consistency with the express terms of the statute, which provides: “Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.” 49 U.S.C. 30172(b)(2).

Prior to publication of the NPRM, stakeholders advocated for court ordered restitution to parties other than the United States to be considered monetary sanctions under the regulation.

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The NPRM proposed that “collected monetary sanctions” cannot reasonably be construed to include such restitution intended to directly compensate victims and other affected third parties (as opposed to penalties paid to the United States).

Commenters Kohn and Constantine Cannon proposed that Congress intended for “collected monetary sanctions” to include restitution intended to directly compensate victims or other third parties. Kohn suggested that restitution required by statute is congressional allocation of monies owed to the United States and thus should be considered money collected and allocated by the United States. Kohn proposed that Congress could have decided to allocate those funds in a different way and thus any sanction paid as the result of an enforcement action must be considered a “collected monetary sanction.”

NHTSA declines to change its proposed definition. The FAST Act, section 31202, appropriates to the Highway Trust Fund amounts equivalent to “covered motor vehicle safety penalty collections.” The section defines “covered motor vehicle safety penalty collections” as any amount collected in connection with a civil penalty under 49 U.S.C. 30165, “reduced by any award authorized by the Secretary of Transportation to be paid to any person in connection with information provided by such person related to a violation of Chapter 301 of such title which is a predicate to such civil penalty.” Based on this section of the FAST Act, it is NHTSA’s view that whistleblowers are paid out of the money collected from a paid Safety Act penalty or fine, which is further discussed below with respect to the definition of “covered action.” The Safety Act does not give NHTSA authority to reallocate money collected as restitution intended to directly compensate victims or other third parties. Additionally, Congress neither created a victim

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allocation fund like that created by the Dodd-Frank Act nor did Congress include restitution in its definition of “monetary sanctions” as it did in the Dodd-Frank Act.⁴ It is NHTSA’s view that “collected monetary sanctions” does not include restitution intended to directly compensate victims or other third parties because those funds are not “collected” by NHTSA.

Additionally, Kohn proposed that any monetary performance obligations, including agreements to pay a certain amount towards a performance obligation,⁵ should be included in the definition of collected monetary sanctions. Kohn suggested that exclusion of money used to satisfy performance obligations would give discretion to NHTSA to manipulate a whistleblower’s eligibility and the amount of an award. Kohn asserted that this exclusion sends the wrong message and is counter to legislative intent because it gives money back to the wrongdoer and blocks a whistleblower from obtaining a larger award.

NHTSA does not find this suggestion persuasive. NHTSA does not view performance obligations as constituting a “collected” monetary sanction. Additionally, NHTSA disagrees that exclusion of money used to satisfy performance obligations is in any way a pretext for allowing NHTSA to block whistleblowers from receiving a larger award. Unlike “collected” monetary sanctions, money used to satisfy performance obligations may be an important component of a resolution, helping to ensure that a regulated entity sufficiently addresses ongoing and

⁴ See 7 U.S.C. 26(a)(3); 12 U.S.C. 5497(b)(d)(1).

⁵ See *In re Hyundai Motor America, Inc. RQ17-004, NHTSA Recall No. 15V-568, NHTSA Recall No. 17V-226, Consent Order, Para. 21*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/rq17-004_hyundai_consent_order_executed_11272020.pdf (consent order including performance obligations to invest in safety data analytics and development of a testing laboratory); see also *In Re Daimler Trucks North America LLC, AQ18-002 Consent Order, Para. 12(c)*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/aq18-002_consent_order_executed.pdf (consent order including performance obligations to invest in safety data analytics infrastructure).

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sustainable compliance with the Safety Act and NHTSA's safety regulations. If there is a collection of the performance obligation amounts in the form of a monetary payment to the United States government as a result of a violation of a consent order, NHTSA agrees that amount is then considered a "collected" monetary sanction. Likewise, in those cases where the agreement specifies that if the total performance amount is not spent and the company is liable for a payment to NHTSA for the balance of the unspent performance amount,⁶ and the company pays such amount to NHTSA, that is considered a "collected" monetary sanction.

Similarly, "deferred penalties" or "abeyance amounts" agreed to be paid as a monetary penalty in the event that the company violates the consent order, the Safety Act, or the regulations thereunder are "collected monetary sanctions" if and when the deferred penalty or abeyance amount is actually paid to the United States government.

These views are consistent with the statutory requirement that: "Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment." 49 U.S.C. 30172(b)(2). Penalties allocated to performance obligations and deferred penalties that have not been paid to the United States government are neither "collected" nor "available for [] payment."

ii. Contractor

The NPRM contained a proposed definition of "contractor" as an individual presently or formerly providing goods or services to a motor vehicle manufacturer, part supplier, or

⁶ See *In re Kia Motors America, RQ17-003, NHTSA Recall 17V-224, Consent Order, Para. 26*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/rq17-003_kia_consent_order_executed_11272020.pdf.

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dealership pursuant to a contract. NHTSA continues to believe that the definition must include both present and former contractors to maximize the reach and effectiveness of the whistleblower program. For example, if a company terminates a contractor after the contractor reports safety issues, it would not serve the purpose of the Whistleblower Act to bar such a contractor from an award simply because the contractor no longer works for the company. Additionally, whether a contractor is currently or formerly employed has no bearing on whether the contractor has information that might assist NHTSA's vehicle safety work.

One commenter asked if the above definition of "contractor" includes independent contractors. The definition is inclusive of independent contractors and there is no restriction or minimum on how long they worked for or with the motor vehicle manufacturer, part supplier, or dealership.

iii. Covered Action and Related Administrative or Judicial Action

NHTSA's proposed definitions of "covered action" and "related administrative or judicial action" are based on the definition found in 49 U.S.C. 30172(a)(1). The proposed definition of "covered action" includes any administrative or judicial action, including any related administrative or judicial action brought by the Secretary, NHTSA, or the U.S. Attorney General (Attorney General) under 49 U.S.C. Chapter 301, or the regulations in Chapter 301 that in the aggregate results in monetary sanctions exceeding \$1,000,000. Additionally, the proposed rule explains that the more than \$1,000,000 threshold can be satisfied if the total amount of monetary sanctions paid by multiple defendants or parties and collected by the United States totals more than \$1,000,000 from the covered action. The proposed definition of "related administrative or

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judicial action” includes “an action that was brought under 49 U.S.C. Chapter 301 by the U.S. Department of Justice, the U.S. Department of Transportation, or the Agency, and is based on the original information provided by the whistleblower.”

NHTSA explained in the NPRM that since the statute specifies that an action is brought by the Secretary or Attorney General “under this chapter,” the statute is referring solely to 49 U.S.C. Chapter 301 and the regulatory obligations promulgated under 49 U.S.C. Chapter 301, as the Whistleblower Act was codified as part of 49 U.S.C. Chapter 301.

Some commenters supported NHTSA’s proposed definition. Hyundai agreed that covered actions and related administrative and judicial actions should arise directly under Chapter 301 and the parenthetical phrase “including any related administrative and judicial action” does not encompass actions outside of Chapter 301.

Conversely, some commenters disagreed with this definition and proposed “related administrative and judicial action” to include *any* related administrative or judicial action, even those not under Chapter 301. Constantine Cannon asserted that interpreting “related” action to mean a subset of “any administrative or judicial action” makes the phrase superfluous and pointed to other areas of the statute that define related action to include actions taken outside of Chapter 301.

NHTSA disagrees that its reading of the statute renders the word “related” superfluous. An example of related actions under the Vehicle Safety Act might be a civil penalty action for a reporting violation of 49 U.S.C. 30166 and a criminal action with respect to the same reporting, pursuant to 49 U.S.C. § 30170(a). Moreover, as stated in the NPRM, despite 49 U.S.C.

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30172(c)(2)(A)'s mandate that no award shall be made to any whistleblower who is convicted of a criminal violation "related to the covered action" for which the whistleblower would otherwise receive an award, NHTSA does not believe the use of the word "related" in that context is relevant to the scope of a related action under 49 U.S.C. 30172(a)(1). The purpose of the criminal conviction provision in section 30172(c)(2)(A) is to ensure that a whistleblower cannot benefit from their own wrongdoing. That provision is not limited to a related action "under this chapter" and thus has a different (broader) scope based on the plain text of the statute.

The National Whistleblower Center proposed regulatory language that covered actions under the Whistleblower Act include federal enforcement actions outside of Chapter 301. The National Whistleblower Center also proposed a requirement that NHTSA work and coordinate with the U.S. Department of Labor, the U.S. Securities and Exchange Commission (SEC), the Internal Revenue Service, the U.S. Commodity Futures Trading Commission (CFTC), the U.S. Environmental Protection Agency, the Federal Trade Commission, and/or the U.S. Department of Justice on any matters related to the Whistleblower Act that may also implicate the violation of laws enforced by these agencies. To further support these proposals, a few commenters pointed to the SEC and CFTC's ability to include actions brought by other agencies under their definitions of "covered action." NHTSA does not find these proposals persuasive.

Unlike the Whistleblower Act, the SEC and CFTC's governing statutes include a definition of "related action."⁷ Both of these definitions of "related action" specifically incorporate by reference actions brought by other specified, federal agencies. The Whistleblower

⁷ See 7 U.S.C. § 26(a)(5); 15 U.S.C. § 78u-6(a)(5).

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Act does not contain a definition of related action or any reference to actions other than those brought under Chapter 301.⁸ “[R]elated action” under 49 U.S.C. Chapter 301 is given effect by considering two actions under 49 U.S.C. Chapter 301. For example, if NHTSA pursues two separate enforcement actions for violations of 49 U.S.C. Chapter 301, or regulations thereunder, against two different companies (for example, a supplier and a vehicle manufacturer) based on the same facts provided by a whistleblower, in that case, the two separate actions would be related.⁹

NHTSA continues to believe that the plain language of the statute is clear and that NHTSA does not have discretion under the statute to consider actions taken under other statutes (such as separate criminal statutes) as part of a “covered action,” even if such actions involve vehicle safety issues and/or are based on facts common to an action taken under 49 U.S.C. Chapter 301.

Kohn outlined concerns that the Department of Justice has a historical preference for bringing actions under Title 18 and the exclusion of monetary sanctions from actions brought under Title 18 will dissuade whistleblowers from coming forward. Similarly, Cohen Milstein, along with other commenters, voiced concerns that a whistleblower would lose incentive to

⁸ Similarly, a few commenters also proposed that the barriers to NHTSA’s acquisition of information from other agencies, such as information regarding whether whistleblower information was used to bring an administrative action, cannot restrict the definition of “covered action.” Again, commenters point to the SEC and CFTC’s ability to obtain information from other agencies to support this assertion. NHTSA believes the plain language of its governing statute is determinative of the definition of “covered action” and, as described, unlike the Dodd-Frank Act, the Whistleblower Act does not mandate coordination with agencies other than DOJ, when necessary.

⁹ NHTSA’s first whistleblower award was given to a whistleblower who provided information that led to enforcement actions resulting in consent orders with two companies (Hyundai Motor America, Inc. and Kia Motors America, Inc.). See https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-02/whistleblower-decision-letter-RQ17-003-Kia-RQ17-004-Hyundai_web.pdf.

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report if an award is dependent on how the government chooses to pursue a wrongdoer.

Although NHTSA acknowledges these concerns, the plain language of the statute does not allow NHTSA to include every action under Title 18 or otherwise broaden the reach of the statute.

Additionally, a few commenters argued the specific fund from which NHTSA is obligated to pay a whistleblower should not constrict the definition of "covered action." However, NHTSA does not believe that the existence of a particular fund is what is restricting the definition of "covered action." Rather, NHTSA continues to believe that a whistleblower cannot be issued an award percentage of monies paid by a company for criminal violations of statutes other than the Safety Act. Such a reading would be inconsistent with the requirement of the statute that the action be brought "under this chapter." For example, a criminal action for wire fraud under 18 U.S.C. 1343 is not an action under the Safety Act (49 U.S.C. Chapter 301). However, a criminal action brought under 49 U.S.C. 30170, the criminal penalties provision of the Safety Act, would constitute an action "under this chapter."¹⁰

In sum, a covered action does not include any action brought by the U.S. Department of Justice under any statute other 49 U.S.C. Chapter 301.

iv. Dealership

NHTSA proposed to define "dealership" using a broader definition than the statutory definition of "dealer" found in 49 U.S.C. 30102(a)(2). Specifically, NHTSA proposed a

¹⁰ Section 30170(a)(1) provides for criminal liability for falsifying or withholding information. It states: "A person who violates section 1001 of title 18 with respect to the reporting requirements of section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or serious bodily injury to an individual (as defined in section 1365(g)(3) [1] of title 18), shall be subject to criminal penalties of a fine under title 18, or imprisoned for not more than 15 years, or both."

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“dealership” means a person selling and distributing motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale. The definition is not limited to a dealership selling new motor vehicles, as in the statutory definition of “dealer.” For example, an employee of a used car dealer could identify and bring to the Agency’s attention a safety defect in a vehicle that has not been timely recalled.

Auto Innovators proposed that dealership should only include those with a franchise relationship to the manufacturer and whose products are being reported to NHTSA. Auto Innovators stated it does not believe dealerships without a franchise relationship will likely possess original information.

NHTSA disagrees. A dealership without a franchise relationship can obtain information gained from experiences, communications, and observations. For example, individuals who work at a dealership without a franchise relationship work with motor vehicles and motor vehicle equipment on daily basis and receive purchaser complaints and ready vehicles and vehicle parts for sale. Additionally, some of these dealerships specialize in a particular make and model of a car and would be able to detect issues with the motor vehicles or motor vehicle parts that are likely to cause a risk to motor vehicle safety. Therefore, NHTSA disagrees with Auto Innovators’ proposal and believes a limited definition of dealership would not serve the purpose of the Whistleblower Act and would inhibit the reporting of potential safety defects that are likely to cause unreasonable risk of death or serious physical injury.

v. Employee

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The proposed definition of "employee" defined "employee" as an individual presently or formerly employed by a motor vehicle manufacturer, part supplier, or dealership. The proposed definition included both present and former employees to maximize the reach and effectiveness of the whistleblower program. As noted above, it would not serve the purpose of the Whistleblower Act to bar a former employee from an award simply because he or she no longer works for the motor vehicle manufacturer, part supplier, or dealership.

The comments all favored the proposed definition of employee to include owners of a motor vehicle manufacturer, part supplier, or dealership. However, Auto Innovators proposed owners of these businesses should not be allowed to benefit if they are reporting their own misconduct or the misconduct of the business enterprise that they own. Constantine Cannon addressed Auto Innovators concern by pointing to proposed § 513.7, on whistleblower ineligibility, which bars whistleblowers who deliberately or substantially contribute to the alleged violation. NHTSA agrees with this view. Further, Auto Innovators proposed a definition of owner that specifies whether the term owner includes anyone with an ownership interest in a business regardless of the size of their interest or the size of their share of a publicly traded company. NHTSA disagrees with a need to define "owner." Rather, it is NHTSA's position that an owner in this context is generally someone who both owns at least part of a company and holds a permanent employment position or manages at least one employee (e.g., an owner does not need to be involved in a company's day-to-day operations, but instead can have some sort of limited managerial relationship with the person who manages a company's day-to-day operations).

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For example, as proposed by Kohn, owners of dealerships are in an excellent position to gather customer complaints that have a significant impact on public safety. Similarly, NHTSA believes partial owners of businesses who manage employees and oversee operations can learn about and witness safety defects within the supply chain that were not otherwise reported to NHTSA.

Constantine Cannon also proposed the definition of employee should include employees of an automaker's foreign parent company. NHTSA agrees but does not find a need to change the proposed definition to encompass these individuals. The definition of whistleblower under 49 U.S.C. 30172(a)(6) is not limited to those in the United States. The definition in 49 U.S.C. 30172(a)(6) specifies that a whistleblower is an individual who, among other requirements, is an "employee or contractor of a motor vehicle manufacturer, part supplier, or dealership." The definitions of motor vehicle manufacturer, part supplier, and dealership found in 49 U.S.C. 30102 are also not restricted to only businesses based in the United States. Thousands of motor vehicles and motor vehicle parts are imported and used in the United States every year. Potential whistleblowers who are currently or formerly employed outside the United States might possess vital information related to potential safety defects which are likely to cause unreasonable risk of death or serious physical injury. For example, NHTSA relied upon information from and issued an award to a whistleblower working in South Korea who supplied NHTSA with information in connection to Hyundai Motor America, Inc. and Kia Motors America, Inc.'s violations of the

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Safety Act.¹¹ Therefore, it is imperative for NHTSA's safety mission to include those employed outside the United States within the scope of the definition of "employee." NHTSA has not limited the definition of employee to individuals within the United States and does not find a change to be necessary.

Finally, individual commenters proposed including relatives of employees and contractors and specifying whether there is a minimum time requirement to be considered an employee. NHTSA does not believe that relatives of employees and contractors meet the definition of "whistleblower" found in 49 U.S.C. 30172(a)(6). Congress specifically and unambiguously defined a "whistleblower" as an employee or contractor and made no mention of those related to an employee or contractor. NHTSA also does not believe that there needs to be a minimum time requirement that an individual worked at a motor vehicle manufacturer, part supplier, or dealership for that individual to be considered an employee. Since no time limitation was specified in the definition, NHTSA finds a change to be unnecessary.

vi. Independent Knowledge or Analysis

NHTSA proposed a definition of "independent knowledge or analysis" because Section 30172(a)(3)(A) states that original information is information that "is derived from *independent knowledge or analysis* of an individual" (emphasis added). The proposed definition defines "independent knowledge" as factual information in the potential whistleblower's possession that is not generally known or available to the public and is not already known to NHTSA. Publicly

¹¹ See Yang, Heekyong, *Hyundai Motor whistleblower, \$24 mln in hand, plans to help others speak up*, Reuters, Nov. 14, 2021, <https://www.reuters.com/business/autos-transportation/hyundai-motor-whistleblower-24-mln-hand-plans-help-others-speak-up-2021-11-12/>; see also NHTSA Makes Its First Ever Whistleblower Award, Nov. 9, 2021, <https://www.nhtsa.gov/press-releases/first-whistleblower-award>.

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available sources include both sources that are widely disseminated, such as corporate press releases and filings, and media reports, as well as sources that, while not widely disseminated, are generally available to the public, such as court filings and documents obtained through Freedom of Information Act requests.

The proposed definition does not require that a potential whistleblower have direct, first-hand knowledge of potential violations. The proposed definition states that the potential whistleblower may gain independent knowledge from the potential whistleblower's experiences, communications and observations in the potential whistleblower's business or social interactions.

MEMA disagreed with the proposed definition's inclusion of those without direct, first-hand knowledge of potential violations. MEMA proposed that those without first-hand knowledge would be unable to assess a potential safety violation resulting in the circumvention of internal processes and communications between part manufacturers and original equipment manufacturers (OEMs). NHTSA disagrees. Those without "first-hand" knowledge, such as an employee of a used-car dealership, may still have the requisite expertise to conduct their own personal analysis and identify a potential safety violation. They might get regular complaints about a particular issue or conduct repairs related to a particular issue on a regular basis.

However, only those individuals who are employees or contactors of a motor vehicle manufacturer, part supplier, or dealership could be eligible for an award if they meet the other requirements of 49 U.S.C. 30172 and regulations thereunder.

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The proposed definition of “independent knowledge or analysis” further provided that information will not be considered to have been derived from an individual’s “independent knowledge or analysis” in some situations.

The first proposed exclusion was for information that was obtained solely through a communication that is subject to attorney-client privilege or the work product doctrine. When describing the proposed exclusion, the NPRM recognized that there are some exceptions to various privileges, such as Federal Rule of Civil Procedure 26(b)(3) (providing that materials prepared in anticipation of litigation may be discovered by an adverse party if the party shows “substantial need” and “undue hardship”), and the crime-fraud exception to the attorney-client privilege.

Several commenters proposed that all information that would be admissible in an administrative, civil, or criminal proceeding should be considered information upon which a reward can be based. Kohn supported this by stating NHTSA’s proposed exclusion will encourage corporations to abuse attorney-client privilege. Auto Innovators proposed that NHTSA should establish a process to isolate information while a privileged information determination is made. The National Whistleblower Center proposed a definition excluding information subject to attorney-client or work-product privilege unless it would otherwise be permitted by applicable state attorney conduct rules or rules approved by the Secretary. Similarly, Constantine Cannon proposed that NHTSA use the same definition used by the SEC and CFTC, which includes exclusions for communications subject to attorney-client privilege or in connection with the legal representation that a putative whistleblower has been providing to an

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employer or firm, unless disclosure is authorized by the applicable federal or state attorney conduct rules.

NHTSA has determined that, pursuant to the District of Columbia Rules of Professional Conduct, attorneys in its Office of the Chief Counsel may not review materials protected by attorney-client privilege. This determination is based on our understanding of the District of Columbia Bar's Ethics Opinion 318: Disclosure of Privileged Material by Third Party.¹² The exclusion is not intended to preclude an individual who has independent knowledge or analysis of potential Safety Act violations from becoming a whistleblower if that person chooses to consult with an attorney or is an attorney. Rather, this exclusion prohibits an employee or contractor from revealing attorney-client privileged or work product information that they learned of solely through a privileged communication. Thus, NHTSA believes the proposed definition remains appropriate and is adopting it in this final rule.

The second proposed exclusion is for information that was obtained in a means or manner that is determined by a United States federal court or state court to violate applicable federal or state criminal law.

Some commenters disagreed with excluding information if the information was obtained in a means or manner found to be illegal by a state court. The National Whistleblower Center proposed language that limits excluded information to information obtained by means or in a manner determined by a United States federal court to violate federal or state criminal law. Kohn

¹² D.C. Bar, Formal Op. 318 (2002) (discussing ethical obligations when privileged material may have been taken without authority).

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proposed removing the exclusion of information obtained in violation of state law because of the possibility of preemption and the differences between state and federal law.

NHTSA disagrees with this proposal. NHTSA believes information obtained in violation of state law should be excluded. NHTSA does not want to encourage employees to obtain information for NHTSA by any means or manner. For example, theft is generally a charge brought under state law rather than federal law. NHTSA does not want to encourage potential whistleblowers to illegally obtain information. In these cases, preemption would generally not be at issue.

In the NPRM, NHTSA urged potential whistleblowers to use caution when providing NHTSA with information covered by a legally binding order or a confidentiality agreement. NHTSA's NPRM recommended that those potential whistleblowers consult with private counsel before submitting such information to NHTSA.

Kohn disagreed with the Agency's proposed suggestion for potential whistleblowers under binding nondisclosure agreements to consult private counsel before providing NHTSA with information. Kohn proposed this suggestion will make whistleblowers think that they are forced to hire private counsel. Similarly, Kohn proposed that the regulations should prohibit private contracts, employment agreements or settlement agreements from interfering with a whistleblower's disclosure to NHTSA. NHTSA disagrees with Kohn on these issues.

NHTSA is obligated to adhere to and support a whistleblower's statutory protections, but NHTSA's attorneys do not represent whistleblowers. Whistleblowers should be aware that "[t]o the extent protective orders, settlement agreements, or other confidentiality provisions prohibit

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motor vehicle safety-related information from being transmitted to NHTSA, such limitations are contrary to established principles of public policy and law, including Rule 26 of the Federal Rules of Civil Procedure and its state corollaries which require a showing of good cause to impose confidentiality.”¹³ However, NHTSA cannot advise a whistleblower that the agreement they are bound by lacks good cause to impose confidentiality. Therefore, if a whistleblower needs legal advice, they should obtain their own private legal counsel. NHTSA continues to suggest that potential whistleblowers who are aware of material protected by a protective order should not provide the documents subject to the order to NHTSA; whistleblowers should inform NHTSA about the existence of such documents without revealing the substance of the material under the protective order.

The NPRM also asked if commenters had suggestions for additional exclusions, including those similar to the exclusions under “independent knowledge” or “independent analysis” within the SEC and CFTC whistleblower programs. One example of a potential exclusion mentioned in the NPRM was excluding information obtained solely because the potential whistleblower is an officer, director, trustee or partner of an entity or a person whose principal duties involve compliance or internal audit responsibilities. The National Whistleblower Center (NWC) proposed that an officer, director, trustee, partner of an entity, or auditor of or within an entity who learns about information from another individual within the entity should generally be excluded from the rule because they lack original information from

¹³ *NHTSA Enforcement Guidance Bulletin 2015–01: Recommended Best Practices for Protective Orders and Settlement Agreements in Civil Litigation*, 81 Fed. Reg. 13026 (Mar. 11, 2016).

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independent knowledge. Specifically, the NWC proposed that these individuals should be excluded from the rule if they learned about the subject information via an entity's normal processes for identifying, reporting, and addressing potential violations. Additionally, the NWC proposed that individuals whose duties include audits and internal investigations into possible violations also be excluded from the rule.

Conversely, Kohn agreed with NHTSA's proposal to not exclude a potential whistleblower solely because the potential whistleblower was or is an officer, director, trustee or partner. Additionally, Kohn supported NHTSA's proposal to include those participating in or observing internal audit processes. Kohn reasoned that auditors can be pressured to water down reports and this allowance would deter companies from enforcing this pressure. After consideration of the comments, NHTSA has decided it should not exclude officers, directors, trustees or partners. NHTSA believes officers, directors, trustees, partners, and persons whose principal duties involve compliance or internal audit responsibilities all have the potential to learn important information concerning vehicle safety. Furthermore, NHTSA disagrees with the NWC's proposed exclusion because NHTSA believes such individuals may have information that is not generally known or available to the public and is not already known to NHTSA. Excluding such individuals could prevent such valuable safety information from reaching the Agency. Consequently, NHTSA will not exclude such individuals.

However, as discussed above, any illegal action by these persons to obtain the information excludes them from receiving a whistleblower award.

vii. Original Information

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Proposed § 513.2(b) defined “original information” as information that is derived from the independent knowledge or analysis of an individual, is not known to the Secretary or Agency from any other source, unless the individual is the original source of the information; and is not exclusively derived from an allegation made in a judicial or an administrative action, in a governmental report, a hearing, an audit, or an investigation, or from the news media, unless the individual is a source of the information. Proposed § 513.2(b) required that original information be provided to the Agency for the first time after December 4, 2015.

Thomas Kowalick commented, disagreeing with the Agency's proposed prohibition on information provided to the Agency prior to December 4, 2015. However, December 4, 2015 is the date on which Congress enacted the FAST Act. Consequently, this limitation in 513.2(b) is based on the rule of construction contained in Section 24352(b) of the FAST Act. Other commenters supported NHTSA's proposed limitation.¹⁴

The Agency also is making minor edits to the definition of “original information that leads to a successful resolution” for clarity.

viii. Potential Whistleblower

To differentiate from the statutory definition of “whistleblower” that contains a number of prerequisites that need to be met to fall under the definition, NHTSA proposed the term “potential whistleblower” for the sake of clarity. The proposed definition of potential whistleblower refers to an employee or contractor of a motor vehicle manufacturer, part supplier,

¹⁴ Kohn, again, noted their disagreement with the Agency's proposed definition of independent knowledge. *See* NHTSA's analysis of this comment under the discussion of “Independent Knowledge or Analysis.”

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or dealership submitting information to the Agency in accordance with and pursuant to Part 513. Potential whistleblowers will be treated as receiving the whistleblower protections set forth in 49 U.S.C. 30172(f).

Commenters agreed with NHTSA's proposal to treat potential whistleblowers as subject to the protections in 49 U.S.C. 30172(f). Kohn disagreed with limiting a potential whistleblower to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership. Kohn proposed that anyone who submits information to NHTSA should be considered a potential whistleblower and NHTSA's determination with respect to whether or not a potential whistleblower is eligible should be a separate analysis. NHTSA disagrees with this proposal. NHTSA will not be able to determine whether a person is a "whistleblower" until, at the very least, that person submits information to the Agency and it is evaluated. 49 U.S.C. 30172 limits whistleblower protections to "any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership." NHTSA does not have the authority to broaden that definition and does not want to encourage people who do not qualify to submit information to NHTSA's whistleblower program. For example, a significant quantity of information that NHTSA receives on vehicle safety issues comes from ordinary vehicle owners and that information is not appropriate for handling under the whistleblower program. NHTSA cannot reasonably consider anyone who submits information to the agency to be a whistleblower, and doing so would divert resources from and adversely impact legitimate whistleblowers. The definition of potential whistleblower as requiring someone to meet the basic requirement of being an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, in accordance with the

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statutory definition, appropriately protects those individuals for whom the statutory protections were designed.

ix. Whistleblower

Proposed § 513.2(b) defined “whistleblower” as any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Agency original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement set forth in 49 U.S.C. Chapter 301 or regulations thereunder, which is likely to cause unreasonable risk of death or serious physical injury.¹⁵

Commenters generally supported NHTSA’s proposed definition of whistleblower. Auto Innovators proposed that the regulatory definition should not include entities not covered by the statutory definition of whistleblower such as advocacy groups, media reporters, industry trade associations, or third parties. NHTSA has concluded that the proposed scope was appropriate and consistent with the statute. While NHTSA requested comment on whether employees of trade groups should be included in the definition, after consideration of the comments, NHTSA believes that such an expansion would not be consistent with the statutory definition. However, as NHTSA explained in the NPRM, employees and contractors working for companies within a trade group’s membership are eligible to be whistleblowers, provided that they fall into the definition of motor vehicle manufacturer, part supplier, or dealership.

¹⁵ This definition of whistleblower follows the definition found in 49 U.S.C. 30172(a)(6) except that the proposed rule uses the term “Agency” and clarifies that “any violation or alleged violation of any notification or reporting requirements of this chapter” refers to 49 U.S.C. Chapter 301 and regulations promulgated thereunder for clarity.

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Thomas Kowalick proposed that the definition should only include individuals and not entities. NHTSA agrees. The proposed definition and statutory definition uses the word "employee," which denotes a single person, and based on this context it would likewise be anomalous to interpret "contractor" to encompass multi-person entities. Therefore, NHTSA does not believe this comment warrants a change.

In the NPRM, NHTSA specifically requested comment on whether a whistleblower must provide original information related to the company that employed or contracted with the whistleblower or whether the employee or contractor of any motor vehicle manufacturer, part supplier, or dealership can report original information regarding any motor vehicle manufacturer, part supplier or dealership (not just the one that employed them or that they were contractors of). Kohn supported NHTSA's proposal that competitors, partners, employees of another separate corporate entity should be entitled to an award under the plain meaning of the statute. NHTSA received no other comments in response to this question.

C. Procedures for Submitting Original Information (§ 513.4)

NHTSA proposed requiring potential whistleblowers to submit information on a standardized form—the proposed WB-INFO form. Proposed § 513.4(a) stated that the standard form must be submitted either by email to NHTSA's established account (NHTSAWhistleblower@dot.gov), which is monitored by NHTSA's Office of the Chief Counsel, or by any such method that the Agency may expressly designate on its website. On the WB-INFO form, a potential whistleblower must declare, under penalty of perjury, at the time the

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potential whistleblower submits information on the WB-INFO form that the information is true and correct to the best of the potential whistleblower's knowledge and belief.¹⁶

Proposed § 513.4(c) provided that a potential whistleblower may submit original information to the Agency anonymously through use of a legal representative. The legal representative must submit the information on behalf of the potential whistleblower pursuant to the procedures specified in 513.4(a).

Kohn commented in support of NHTSA's proposed procedures but objected to requiring that the timing of the submission of a WB-INFO form be determinative of qualification for an award. However, NHTSA's proposed regulations do not specify when the WB-INFO form must be submitted to NHTSA.¹⁷ Therefore, NHTSA agrees with Kohn and will not require the timing of the WB-INFO form to be determinative of qualification for an award, subject to other provisions of the statute and regulations. For example, if a whistleblower initially reaches out to NHTSA without submitting a form (because the person is unaware of the Agency's regulation), the whistleblower can still be eligible for an award if they subsequently submit the WB-INFO form to NHTSA.

In the NPRM, NHTSA proposed that a whistleblower or the whistleblower's legal representative must be the one to directly provide the information to NHTSA. This proposal was

¹⁶ As stated in the NPRM, the purpose of requiring a sworn declaration on the WB-INFO form is to help deter the submission of false and misleading information and mitigate the potential harm to companies and individuals that may be caused by false or spurious allegations of wrongdoing.

¹⁷ Kohn proposed that NHTSA take into consideration the case *Whistleblower 21276-13W v. Commissioner*, where the United States Tax Court held IRS regulations do not require Form 211 to be filed prior to providing information to the IRS to qualify for an award under 26 U.S.C. § 7623. 144 T.C. 290 (2015), United States Tax Court, Docket Nos. 21276-13W, 21277-13W (June 2, 2015). However, NHTSA's final rule does not require that a potential whistleblower submit a WB-INFO form to NHTSA prior providing NHTSA any information.

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based on the statutory requirement that a whistleblower voluntarily provide information to the Secretary. NHTSA also requested comments on whether it should allow non-attorneys to submit information on behalf of a potential whistleblower. Kohn disagreed with requiring the whistleblower or their legal representative to make the submission. Kohn proposed that the statutory definition of original information implies that third parties who learned the information from a whistleblower can report the information to NHTSA, and those whistleblowers should be eligible for an award. Kohn proposed that NHTSA allow whistleblowers to submit information through third parties such as “news media, referrals from Congress or other investigatory agencies, civil society organizations, [or] international anti-corruption or law enforcement authorities.” Further, Kohn proposed that whistleblowers in countries outside the United States, especially in countries with no whistleblower protections, should not be ineligible for a whistleblower award because they used a third party, such as an advocacy group, to relay the information to NHTSA. NHTSA agrees with Kohn with respect to a whistleblower not being disqualified if the whistleblower is initially represented by an advocacy group. Rather, as long as it is clear that an advocacy group is making a submission on behalf of an individual, a whistleblower’s eligibility will not be affected. However, to be eligible for an award, NHTSA believes it is important that a whistleblower subsequently contact NHTSA directly about the subject information (in other words, the whistleblower must submit the WB-INFO form). That will help ensure that the Agency can follow up on issues and has the direct, unfiltered perspective of that person.

Similarly, Kohn commented that NHTSA should not require that a whistleblower submit

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a WB-INFO form to be eligible for a whistleblower award. Kohn pointed to news sources and congressional testimony regarding whistleblowers who shared original information with news media and non-governmental safety organizations rather than directly to NHTSA. Kohn argued that NHTSA will likely continue to obtain useful, original information from these third-party sources where a whistleblower did not go through NHTSA's formal procedures. To support this proposal, Kohn pointed to a whistleblower in the Takata case's interaction with the press alongside that individual's reports to the Department of Justice and the Federal Bureau of Investigation (FBI).

NHTSA disagrees with this proposal. 49 U.S.C. 30172(a)(6) defines a "whistleblower" as someone who "voluntarily *provides to the Secretary* original information." (emphasis added). Congress mandated that a whistleblower provide the information to NHTSA to receive a whistleblower award. Further, if a whistleblower provides information to a news source, there is no guarantee that NHTSA will be able to obtain that person's contact information. This is especially true if the source is anonymous. Nothing in this rule prevents a whistleblower from going to the press, the Department of Justice, the FBI, or other authorities in conjunction with a report to NHTSA. If a potential whistleblower goes to one of these other entities first, NHTSA hopes that the other entity would direct the whistleblower to submit information directly to NHTSA. If NHTSA receives a potential whistleblower's contact information from another government agency, news organization, law enforcement authorities, advocacy organizations, or a similar third-party, NHTSA intends to attempt to contact the potential whistleblower and provide them information about how to submit a WB-INFO form.

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D. Confidentiality (§ 513.5)

Consistent with the protections for whistleblowers in 49 U.S.C. 30172(f), NHTSA's proposed § 513.5(a) explained that notwithstanding 49 U.S.C. 30167, the Secretary and any officer or employee of the U.S. Department of Transportation shall not disclose any information, including information provided by a whistleblower to the Secretary, that could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of 5 U.S.C. 552a, with certain exceptions as provided by statute.

In the NPRM, NHTSA stated it is the Agency's view that if an individual is not a whistleblower, as defined by the statute, the Agency is not bound by the limitations contained in 49 U.S.C. 30172(f). However, it is the Agency's intent to generally afford potential whistleblowers confidential protections, unless otherwise waived or permitted or required by law. NHTSA recognizes that potential whistleblowers often put themselves at risk of significant consequences, and thus maintaining their confidentiality is of the utmost importance.

In the NPRM, NHTSA proposed that an individual discloses information relating to a motor vehicle defect, noncompliance, or violation of notification or reporting requirement that is not likely to cause unreasonable risk of death or serious physical injury, then that person is not a whistleblower and is not entitled to the statutory protection contained in 49 U.S.C. 30172.¹⁸

Commenters disagreed with NHTSA's proposal to not afford the protections of 49 U.S.C. 30172(f) to whistleblowers whose information relates to a motor vehicle defect, noncompliance, or violation of notification or reporting requirement that is not likely to cause unreasonable risk

¹⁸ This includes a reporting individual who is an employee or contractor of a motor vehicle manufacturer.

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of death or injury. Commenters argue this exclusion is too subjective and will prevent potential whistleblowers from coming forward with information. Commenters argue potential whistleblowers will fear losing protections following an agency determination that submitted information is not likely to cause unreasonable risk of death or injury. Kohn claims this policy is also counter to the Whistleblower Act and will result in whistleblowers choosing not to report information to NHTSA for fear of exposure.

NHTSA disagrees with these commenters. Under 49 U.S.C. 30172(a)(6), Congress defined a whistleblower, in section 30172, among other specifications, as someone who submits original information “relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter, *which is likely to cause unreasonable risk of death or serious physical injury*” (emphasis added). Further, under 49 U.S.C. 30172(f), Congress limited confidentiality protections to persons who meet the definition of whistleblower. Therefore, NHTSA is only authorized to afford those legal protections to those who submit information “relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter, *which is likely to cause unreasonable risk of death or serious physical injury.*” See 49 U.S.C. 30172(a)(6) (emphasis added).

As discussed in the NPRM, unlike other entities that have a policy and practice to treat all information obtained during an investigation as confidential and nonpublic,¹⁹ NHTSA generally

¹⁹The SEC and CFTC both have this practice. See, e.g., *Final Rule, Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34332 (June 13, 2011); *Final Rule, Whistleblower Incentives and Protection*, 76 Fed. Reg. 53172, 53184 (Aug. 25, 2011).

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makes information on safety-related defect investigations for which it has not received a request for confidential treatment under 49 CFR part 512 publicly available. The Agency posts materials such as Information Requests, Special Orders, and answers thereto on its website, www.nhtsa.gov. Further, NHTSA also makes publicly available various consumer complaints that it receives through a variety of sources, including calls to its vehicle safety hotline, which are transcribed, and submissions of Vehicle Owner Questionnaires (VOQs) through its website.²⁰ Further, if an employee is worried about sharing information with NHTSA for fear of retaliation, 49 U.S.C. 30171 put in place protections for employees of motor vehicle manufacturers, part suppliers, and dealerships to protect the employees from discrimination or discharge for, among other things, providing to the employer or the Secretary information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301. The language in 49 U.S.C. 30171 does not restrict these protections only to those submitting information of a violation “*which is likely to cause unreasonable risk of death or serious physical injury.*”²¹ Finally, § 513.6(b) gives the agency the ability to waive this requirement for good cause shown. NHTSA will therefore consider these issues on a case-by-case basis.

Commenters either supported or did not comment on the remainder of the proposed provisions related to confidentiality.

²⁰ NHTSA redacts Personally Identifiable Information (PII) from publicly available documents.

²¹ Employees may file a complaint with the Secretary of Labor alleging such discharge or discrimination. The Secretary of Labor is required to notify in writing the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person. 49 U.S.C. 30171(b).

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E. Prerequisites to the Consideration of an Award (§ 513.6)

Proposed § 513.6 summarized the general prerequisites for persons to be considered for the payment of an award, based on the statutory language of 49 U.S.C. 30172(b)(1) and the definition of a whistleblower under 49 U.S.C. 30172(a)(6), but added the word “potential” in front of the terms “motor vehicle defect” and “noncompliance.” Under proposed § 513.6(a), subject to the eligibility requirements in these rules, NHTSA may, but is not required to, authorize payment of an award to one or more persons who provide a voluntary submission to the Agency that contains original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301 or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, and the original information in that submission leads to the successful resolution of a covered action. In the NPRM, NHTSA asked for proposals of any other prerequisites for an award.

Kohn commented on Hyundai's proposed definition of “voluntary” submitted to NHTSA prior to the publication of the NPRM. Specifically, Kohn agreed a person should not be considered voluntarily providing information if that person previously received a subpoena or a demand that relates to the same subject matter. However, Kohn proposed exceptions to the exclusion including “friendly” subpoenas, subpoenas after the whistleblower's information “is published in the news media, presented to Congress or another federal or state agency, provided to the victims of an auto accident, set forth in testimony in any proceeding, or otherwise voluntarily presented prior to obtaining a subpoena,” and subpoenas after voluntarily providing

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“information to an organizations compliance program, legal organization and/or supervisory personnel within the company.” The National Whistleblower Center also proposed language that defines a voluntary submission as information provided before a request, inquiry, or demand that relates to the inquiry is directed at the potential whistleblower or anyone representing the potential whistleblower.

NHTSA believes that whether information submitted after the potential whistleblower receives a subpoena or a demand related to the subject matter is “voluntarily provide[d]” to NHTSA depends on the particular circumstances. Like the SEC, NHTSA believes a whistleblower award should not be made available to an individual who makes a whistleblower submission after being asked to provide information on a matter during the course of an investigation or inquiry by that agency.²² Similar to the SEC, NHTSA believes “[o]nly a request that is directed to the individual involved (or the individual’s representative) will preclude that individual from subsequently making a ‘voluntary’ submission of the requested information or closely related information.”²³ If an individual is part of a group or division within a company that receives a request, they are not precluded from making a whistleblower submission so long as the information they are providing to NHTSA meets the definition of “original information.” The prohibition on those who receive direct, individual requests for information is restricted to requests from NHTSA. NHTSA considers a potential whistleblower who gave information to another government agency, by compulsion or voluntarily, as generally not relevant to whether

²² See Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34307 (June 13, 2011).

²³ See Proposed Rules for Implementing the Whistleblower Provisions of Section 21 F of the Securities Exchange Act of 1934, 75 Fed. Reg. 70490 (Nov. 17, 2010).

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that individual voluntarily shared information with NHTSA.²⁴

Additionally, Kohn proposed a mandatory payment of an award if all the proposed requirements are met. NHTSA disagrees and believes there may be instances when a person who meets the requirements of § 513.6 is disqualified from an award or otherwise should not receive an award. *See* 49 U.S.C. 30172(c)(1)(A), (2).²⁵ Related issues are further discussed with respect to the provisions on award determinations in § 513.10,

F. Whistleblowers Ineligible for an Award (§ 513.7)

The NPRM recited the categories of individuals who are ineligible for an award. Proposed § 513.7 was based on statutory construction as well as the statutory provisions contained in 49 U.S.C. 30172(c)(2) and (g).

Of the categories of individuals who are ineligible for an award proposed by the NPRM, commenters only discussed whistleblowers who are convicted of a criminal violation related to the covered action and those who failed to internally report a violation through a company's internal reporting mechanism. Commenters disagreed about the scope of criminal violations included in proposed § 513.7(a). Additionally, commenters disagreed about whether a potential whistleblower should be required to use a company's internal reporting mechanisms before reporting information to NHTSA to be eligible for an award.

Proposed § 513.7 stated a whistleblower is ineligible for an award if the whistleblower is

²⁴ This includes those who receive a subpoena from the Department of Justice. NHTSA notes that the receipt of a subpoena is indicative that a person may have relevant information, and not whether that person is a target of an investigation or otherwise suspected of wrongdoing. Other provisions of this final rule adequately inhibit wrongdoers from receiving a whistleblower award.

²⁵ Other comments related to § 513.6 are addressed in the discussion of the definition of original information.

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“convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award.” In the NPRM, NHTSA asked for comment regarding whether it should limit the criminal conviction bar to only those cases decided by a U.S. federal or state court or whether it should consider convictions issued by courts in other countries. Commenters disagreed about whether to include convictions issued by courts or tribunals in other countries.

Hyundai proposed a broadening of the definition of criminal violations in the proposed rule. Hyundai's proposal includes disqualifying those convicted in foreign tribunals and those who obtained information by a means or manner that is determined by a foreign court to be in violation of laws in the appropriate jurisdiction. Conversely, Constantine Cannon and Kohn propose the exclusion be limited to cases decided by U.S. federal or state courts. Both commenters point to NHTSA's unfamiliarity with foreign laws and the markedly different procedures and rights afforded to those in foreign countries. After considering these comments NHTSA believes the exclusion should be limited to those criminal violations decided by a U.S. federal or state court and will add clarifying language to the final rule.²⁶ Congress did not expressly state the scope of the exclusion. Therefore, the most logical reading of the statute is that it is referring to the United States. Moreover, expanding the exclusion to those criminal convictions decided by tribunals outside of the United States would potentially discourage whistleblowers by creating legal uncertainty.

²⁶ In 49 U.S.C. 30172(c)(2), Congress used very similar language as in 7 U.S.C. 26(c)(2). The CFTC interpreted this language to mean only criminal violations determined by a United States court. *See Whistleblower Incentives and Protection*, 76 Fed. Reg. 53172 (Aug. 25, 2011).

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Additionally, Constantine Cannon proposed the removal of the requirement for a whistleblower to disclose on proposed WB-AWARD form information about whether the potential whistleblower is currently the subject or target of a criminal investigation connected to the information at issue. Constantine Cannon asserted that this requirement departs from congressional intent to only bar individuals who are convicted of criminal violations rather than those investigated. Constantine Cannon adds that a whistleblower may be unaware if there is an investigation and be unable to provide that information. NHTSA disagrees. As stated in the NPRM, NHTSA understands some potential whistleblowers might not know if they are under investigation. However, NHTSA continues to believe this information, to the extent known, would benefit the agency. Filling in that portion of the WB-AWARD form does not automatically disqualify a potential whistleblower from receiving an award. NHTSA generally anticipates waiting until those disclosed, applicable investigations are closed before issuing a decision on an award. If a potential whistleblower discloses an investigation or some other piece of information that is not related to a criminal investigation connected to the information at issue, NHTSA will determine on a case-by-case basis whether that information disqualifies a potential whistleblower from being eligible for an award.

Finally, Hyundai requested to expand the exclusion of information obtained by unlawful means to include civil unlawful conduct to account for prosecutorial discretion. NHTSA disagrees. In 49 U.S.C. 30172(c)(2), Congress explicitly directs NHTSA to make no award to whistleblowers who are “convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award.” In light of the plain text reference to a

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criminal conviction, the provision as proposed is appropriate and would avoid incentivizing companies from suing potential whistleblowers.

Commenters were also split on whether a whistleblower should be required to use a motor vehicle manufacturer, parts supplier, or dealership's internal reporting mechanism. Commenters also proposed different assurances that a motor vehicle manufacturer, parts supplier, or dealership's internal reporting mechanism contains protections against retaliation and the adequacy of those protections.

Kohn commented that written protections from retaliation for internal reporting are not enough. Rather, Kohn proposed a requirement for confidential internal reporting mechanisms that prohibit corporate attorneys from learning the identity of a whistleblower—to guarantee complete confidentiality of a whistleblower. Additionally, Kohn argues a whistleblower who works with the government for many years on a successful enforcement action should not be barred from an award because they did not abide by internal reporting requirements.

NHTSA believes that these comments are largely outside the scope of this rulemaking. 49 U.S.C. 30172(c)(2)(E) does not address requirements for internal reporting mechanisms. Rather, it describes the circumstances when a whistleblower can use reporting mechanisms that are in place. NHTSA's rule is consistent with the statute and NHTSA reiterates that the statute and associated regulatory provision allow for circumstances when internal reporting is not required, including for good cause shown. NHTSA believes these provisions strike the appropriate balance that the statute intended by incentivizing the use of internal reporting mechanisms in appropriate circumstances.

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MEMA and Hyundai both proposed that internal reporting should always be required for a potential whistleblower to be eligible for an award. MEMA proposed a broader internal reporting requirement that would require whistleblowers to report the information to the manufacturer prior to providing the information to NHTSA. MEMA explained that this requirement would give manufacturers the opportunity to rectify an issue without having to burden NHTSA. Hyundai proposed a similar broadening of the reporting requirement and proposed a waiting period requiring a whistleblower to give a manufacturer a discrete amount of time to report an issue to NHTSA before the whistleblower can contact NHTSA. Hyundai argued that this waiting period will give a manufacturer the opportunity to assess if a safety issue exists and, if appropriate, issue a recall. This waiting period, Hyundai comments, would prevent a whistleblower from internally reporting an issue and reporting it to NHTSA in quick succession. If a company does not have a formal requirement, Ford proposed the burden should be on the whistleblower to show NHTSA in writing a reasonable attempt was made to bring the information to persons in the company.

Conversely, the National Whistleblower Center proposed language that further restricts the internal reporting requirement, excluding the internal reporting requirement if no such mechanism exists or, like in the proposed regulation, the whistleblower reasonably believes an internal report would result in retaliation.

NHTSA disagrees with expanding the internal reporting requirement. The proposed requirement in the NPRM comes from the statutory language used in 49 U.S.C. 30172(c)(2)(E). That statutory language requires potential whistleblowers to use internal reporting requirements

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only when they are in place and have mechanisms to protect employees from retaliation.

Therefore, NHTSA disagrees with proposals expanding this internal reporting requirement outside the statutory language and requiring internal reporting when no mechanism is in place.

Congress carved out an exception to this requirement for potential whistleblowers who have a reasonable belief that an internal report would lead to retaliation. Therefore, it would be contrary to this exception to always require internal reporting even when no mechanism is in place to protect whistleblowers from retaliation.

Additionally, NHTSA disagrees with Hyundai's proposed, discrete waiting period for manufacturers to report an issue to NHTSA before a potential whistleblower may contact the Agency. The fact that NHTSA is also aware of a potential safety issue does not impact a manufacturer's ability to expeditiously address it.

Further, Kohn, Ford, and the National Whistleblower Center proposed more specifically defining an internal report. Kohn proposed that NHTSA include more specifications on what an internal report must include. For example, Kohn proposed that NHTSA clarify whether the information internally reported must match what is reported to NHTSA. Ford proposed a requirement that internal reporting must be in writing so that the whistleblower can provide documentation of internal reporting to NHTSA. The National Whistleblower Center proposed a specific definition for "internal reporting mechanism" that includes a program widely publicized to employees that is independent of any legal department of the employer that can provide investigatory procedures, burdens of proof, and relief consistent with the Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 49 U.S.C. 30171. Additionally, Ford proposed

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that NHTSA should clarify how it will consider whether an internal reporting mechanism has protections against retaliation.

NHTSA believes that these issues are best suited to case-by-case evaluations and declines to further define these issues in the final rule. NHTSA agrees that the issue internally reported must generally match what is reported to NHTSA. It is likely that the information reported will not be identical, however, since additional context may be needed to explain the issue to the Agency. Additionally, the potential whistleblower may have additional information to report to the Agency based on how the internal report was handled. Whether or not a whistleblower has a reasonable belief that retaliation could occur or that the issue was already known to the company will likewise be handled on a case-by-case basis, given the fact-specific nature of those issues. Additionally, NHTSA disagrees that a specific format for an internal report should be required. Although written documentation would be helpful for evaluating whether or not a potential whistleblower complied with internal reporting requirements, NHTSA does not believe such a requirement is necessary. For example, NHTSA is aware that some companies provide a telephone hotline for reporting potential safety issues. Use of such a provided mechanism would generally be sufficient to constitute an internal report.

In addition, Kohn proposed that NHTSA adopt a number of blanket exemptions to the internal reporting requirement including: (1) if the whistleblower is not an employee of the entity at issue; (2) if the entity does not have an internal reporting program that guarantees confidentiality, is not independent from line-management, is not managed by an arm of the Office of General Counsel, and has independent authority to report to the company's Chief

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Executive Office, Board of Directors, or Audit Committee; and (3) if the whistleblower is located in a country that lacks legal protections for internal whistleblowers at least as effective as 49 U.S.C. 30171 and 29 CFR 1988. Further, Kohn proposed that NHTSA create requirements that lawyer-managed compliance programs be managed in an ethical manner.

Similarly, the National Whistleblower Center proposed a subjective test to determine if a whistleblower has a reasonable belief of retaliation. Additionally, the National Whistleblower Center proposed language that exempts the internal reporting requirement when: (1) the employer has been found to have obstructed justice within the last five years prior to the whistleblower report; (2) the whistleblower reasonably believes the information was already internally reported or subject of an internal investigation, or was otherwise already known to the employer, or constitutes an immediate threat to public safety, or the violation was willfully committed; and (3) if the disclosure of the whistleblower is covered under the obstruction of justice laws, including 18 U.S.C. 1513(e), or if the whistleblower first provides the information to any law enforcement officer as a result of voluntary testimony in a grand jury or federal court proceeding concerning a potential criminal violation of an auto safety law.

After consideration of these comments, NHTSA again believes these issues are best suited for case-by-case evaluation. While these types of considerations may support a potential whistleblower's reasonable belief that an internal report would have resulted in retaliation, was not necessary because it was already reported or known to the company, or otherwise constitute good cause for not requiring an internal report, NHTSA believes the proposed regulatory language appropriately balances providing guidance on these considerations with flexibility to

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consider the unique circumstances of each matter. Every situation is different and NHTSA does not want to discourage potential whistleblowers from reporting if their particular situation does not neatly fit into one of the proposed blanket exceptions, or to incentivize companies to take a “check the box” approach to designing an appropriate internal reporting mechanism and safeguards against retaliation.

Ford proposed creating a presumption that an internal reporting mechanism protecting a whistleblower's confidentiality protects whistleblowers against retaliation. Additionally, Ford proposed clarification that a whistleblower's submitted information based on independent analysis should be subject to the internal reporting requirement. NHTSA declines to adopt these changes. Protecting confidentiality does not necessarily mean that a company is protecting a potential whistleblower from retaliation. For example, a potential whistleblower might be assured their name will not be reported, but the information they provide might indicate who reported that information. In that situation, assurance of confidentiality does not ensure that individual will not be retaliated against. Moreover, a potential whistleblower should not have to keep their identity confidential to be protected from retaliation and the ability of employees to openly speak up about potential safety issues advances vehicle safety.

NHTSA also believes the proposed regulation adequately addresses all types of information, including independent analysis. For example, independent analysis logically would not be already known to the company unless reported. However, a potential whistleblower that has conducted independent analysis may have a reasonable belief that disclosure would result in retaliation. These issues are best addressed by a case-by-case consideration of the circumstances.

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NHTSA also wants to note that if retaliation does take place, a potential whistleblower should file a claim with the Occupational Safety and Health Administration (OSHA).²⁷ Retaliation includes such actions as firing or laying off, demoting, denying overtime or promotion, or reducing pay or hours.²⁸

G. Provision of False Information (§ 513.8)

Proposed § 513.8 tracked the language of 49 U.S.C. 30172(g), which states that a person who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any writing or document knowing it to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award and shall be subject to prosecution under 18 U.S.C. 1001.

NHTSA received no comments on proposed § 513.8. NHTSA is adopting this rule as proposed.

H. Procedures for Making a Claim for a Whistleblower Award (§ 513.9)

Proposed § 513.9 included a description of steps a whistleblower is required to follow to make an application for an award. The proposed process would begin with the Agency posting a "Notice of Covered Action" (Notice) on NHTSA's website whenever any administrative or judicial action, including any related administrative or judicial action, brought by the U.S. Department of Transportation, NHTSA, or U.S. Department of Justice under 49 U.S.C. Chapter 301 in the aggregate results in collected monetary sanctions exceeding \$1,000,000. The proposed

²⁷ See <https://www.dol.gov/general/topics/whistleblower>.

²⁸ See 15 U.S.C. 2087. If a claim is filed under 15 U.S.C. 2087, it needs to be filed within 180 days of the occurrence of the discriminatory action.

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Notice is published subsequent to a final judgment, order, or agreement that alone, or in the aggregate, results in collected monetary sanctions exceeding \$1,000,000. For clarity, NHTSA will only post a Notice of Covered Action for any such action after the effective date of this rule.²⁹

Hyundai commented generally in support of the procedures in proposed § 513.9. Kohn proposed an agency obligation to notify known whistleblowers about a “Notice of Covered Action” that is related to the information provided by that whistleblower. Additionally, Kohn proposed an agency requirement, like that of the IRS, whereby NHTSA must submit a form stating whether or not the investigators relied on information from an individual resulting in an enforcement action. Kohn and the National Whistleblower Center proposed a deadline for NHTSA to make a preliminary award determination within 180 days of the posting of the notice and a final decision within one year of the publication of the Notice.

NHTSA intends to inform known whistleblowers or their counsel of the Notice, but does not believe that it is necessary to codify. NHTSA disagrees with submitting a form stating whether or not the investigators relied on information from an individual resulting in an enforcement action. NHTSA is a much smaller organization than the IRS and does not believe that the burden of preparing such a form is outweighed by the benefit.

Also, NHTSA disagrees with the proposed requirement to impose a particular deadline on issuing an award decision after the Notice. The length of time to complete the Agency's

²⁹ NHTSA also posts information on civil penalties collected on its website at <https://www.nhtsa.gov/laws-regulations/civil-penalty-settlements>.

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assessment may depend on multiple factors, including whether follow-up is needed to clarify issues raised by the award claim and the complexity of the legal and factual issues involved, as well as agency resources and priorities. Additionally, due to its size, NHTSA does not have a dedicated whistleblower office.

Kohn supported the allowance of emailed filings and the proposed WB-AWARD form. Kohn also agrees that all persons meeting the requirements should be eligible for an award regardless of citizenship. These comments are consistent with the rule as proposed.

The NPRM proposed that a claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim, including any attachments, for an award based on that action, or the claim will be barred. However, Kohn proposed that if the 90th day falls on a weekend or federal holiday, the deadline should be the next business day. NHTSA agrees and has changed the regulatory text to ensure clarity on this issue.

I. Award Determinations (§ 513.10)

Proposed § 513.10 described the award determination process. 513.10(b) implements 49 U.S.C. 30172(c), as delegated to the NHTSA Administrator, and provides that the determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Administrator. NHTSA requested comment regarding whether the Agency should limit its discretion and, if so, in what way.

Although 49 U.S.C. 3017(c) provides the Secretary with discretion as to whether to make an award, Constantine Cannon, Cohen Milstein, and Kohn commented that § 513.10 should make awards mandatory. Commenters pointed to a few mandatory award programs and their

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success to support this proposal. Commenters proposed a mandatory award program is needed because it will incentivize whistleblowers who fear losing their livelihood to report information. Additionally, commenters suggested mandatory financial incentives help potential whistleblowers partner with counsel they would not otherwise be able to afford to represent them through the legal process. Constantine Cannon claimed the rare and unusual circumstances presented by NHTSA in the NPRM where an award would be denied have never occurred and should not be used as reason to retain discretion. Similarly, Cohen Milstein argues the occurrences listed by NHTSA in the NPRM are already contemplated and addressed by 49 U.S.C. 30172(c)(2)(A) and (B), which expressly limit award disqualification to situations where a whistleblower's own violations relate to the violations that are subject of the enforcement action. Cohen Milstein also proposed the statutory floor of a whistleblower award at 10% would be redundant if the Administrator had discretion to award no award at all. Additionally, Kohn argued judicial review is not enough to prevent the abuse of discretion to deny rewards for any reason because courts will not overturn denials.

After consideration of the comments, NHTSA believes that it is important to retain discretion. The reward mandates found in the False Claims Act and the Dodd-Frank Act use different language from that found in 49 U.S.C. 30172(c). 49 U.S.C. 30172(c) explicitly provides discretion to determine “*whether, to whom, or in what amount to*” make a whistleblower award (emphasis added). Congress explicitly gave NHTSA discretion it gave neither under the False

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Claims Act nor under the Dodd-Frank Act.³⁰ Therefore, a complete elimination of that discretion, as proposed by commenters, would be inconsistent with the language of the Whistleblower Act. Further, NHTSA does not believe the statutory floor of 10% is redundant if NHTSA has the discretion to not make an award. NHTSA believes the 10% is a statutory floor if NHTSA decides to make an award. As described in the NPRM, this discretion would allow NHTSA to retain the ability to address rare circumstances. NHTSA does not believe this discretion should be a meaningful consideration for prospective whistleblowers. NHTSA likewise has discretion as to whether or not to pursue an enforcement action, and if so, the appropriate penalty.

One individual commenter and Ford suggested the Agency develop a well-defined award matrix and include in § 513.10(a) the factors considered when determining whether, to whom, and in what amount to make an award. The National Whistleblower Center proposed such language that specifically outlines when the Secretary may increase or decrease the percentage of the award paid to the whistleblower. Proposed factors to consider that may lead to an increase in percentage include (1) the significance of the information, (2) assistance provided by the whistleblower, (3) law enforcement interest, (4) participation in internal compliance systems and reporting mechanisms, (5) whether the whistleblower resides outside the United States, (6) the

³⁰ See 31 U.S.C. § 3730(d) (“If the Government proceeds with an action brought by a person under [the False Claims Act], such person *shall*, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim”) (emphasis added); see also 7 U.S.C. 26 (“[T]he Commission . . . *shall* pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to— (A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and (B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.”) (emphasis added); see also 29 U.S.C. 7623(b)(1) (“If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual *shall* . . . receive as an award. . .” (emphasis added)).

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extent to which the award will encourage non-US citizens to provide information, and (7) whether the whistleblower promptly contacted federal or state law enforcement. Proposed factors to consider that may decrease a whistleblower award include (1) culpability, (2) an unreasonable reporting delay, and (3) interference with internal compliance and reporting mechanisms. These factors are similar to those found in the False Claims Act and the Dodd-Frank Act.

NHTSA disagrees that adopting a formalized matrix or factors beyond those already proposed is necessary or appropriate at this time. 49 U.S.C. 30172(c) already contains some of the factors proposed by the National Whistleblower Center, including the significance of information,³¹ assistance provided by the whistleblower,³² and participation in internal compliance systems and reporting mechanisms.³³ These factors give guidance both to NHTSA and stakeholders, while retaining flexibility to consider the unique circumstances of each case. NHTSA also specifically disagrees with adding an award factor that directs NHTSA to consider law enforcement interest. This is a factor found in the CFTC's regulations, 17 CFR 165.9(3)(b), which states, "the Commission will assess its programmatic interest in deterring violations of the Commodity Exchange Act by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws." NHTSA believes this is goal is already encompassed in consideration of the "public interest" found in proposed § 513.10(b)(5). Further, NHTSA disagrees with considering whether the whistleblower resides outside the United States and the extent to which the award will encourage non-U.S. citizens to provide information. Non-

³¹ See 49 U.S.C. 30172(c)(1)(B)(ii).

³² See *id.* 30172(c)(1)(B)(iii).

³³ See *id.* 30172(c)(1)(B)(i).

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U.S. citizens are eligible for whistleblower awards and NHTSA does not believe that this is relevant to the amount of the award. Many vehicles and parts are manufactured outside the United States and many companies that sell in the United States also conduct business around the world. Thus, whistleblowers outside the United States have information highly relevant to NHTSA's vehicle safety work. As explained above, NHTSA has already made a whistleblower award to an individual who was employed in South Korea, which led to one of the largest enforcement actions in NHTSA's history. Additionally, the NPRM already included a factor regarding the statutory purpose of incentivizing whistleblowers. NHTSA does not believe there is a need to bifurcate that factor into incentivizing U.S. citizens specifically. Finally, NHTSA disagrees with enumerating factors for decreasing a whistleblower award. Many of these factors already will lead to disqualification of a whistleblower from receiving an award as mentioned in the above discussion of proposed § 513.7. Each whistleblower award application will contain a unique set of facts and circumstances that NHTSA will consider.

In the NPRM, NHTSA noted, in making a determination of a whistleblower award, the Agency anticipates reviewing relevant materials such as the claimant's WB-AWARD form, other filings or submissions from the potential whistleblower, materials from NHTSA staff, sworn declarations, and any other materials that may be relevant to the determination. In the NPRM, NHTSA requested comment on whether it should review information from outside persons, such as the company that was liable for the civil penalties. In the NPRM, NHTSA stated its tentative view that outside parties should not be able to insert themselves into the award process and submit information during the award determination.

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Commenters generally agreed with NHTSA's tentative view that the Agency should not review information from outside persons, such as the company that was liable for the civil penalties. Commenters agreed that NHTSA's confidentiality obligations prohibit sharing with third parties a whistleblower's contribution to a successful action. Additionally, Constantine Cannon and Kohn suggested it would be unfair to a whistleblower to have to litigate with a third party whether the whistleblower deserved an award. Further, Kohn proposed that allowing information from outside persons would offer a company an opportunity to submit derogatory information about the whistleblower. NHTSA agrees with commenters and therefore will not generally consider submissions of information from outside persons or third parties when making an award determination. This determination does not preclude the Agency from considering investigative material, much of which likely came from the company liable from the civil penalty or other outside sources. Moreover, this determination does not preclude the Agency from following up, as appropriate, should it need additional information to consider the award claim.

J. Appeals of Award Determinations (§ 513.11)

In accordance with 49 U.S.C. 30172(h)(2), the proposed § 513.11 outlined the procedures for a claimant to appeal any award determination made by the Administrator under § 513.10. Proposed § 513.11(a)(2) provided that if any claimant appeals within 30 days after a final award determination is issued by the Administrator, no payments with respect to the covered action will be made to any whistleblower in the action until the appealed award determination action is concluded. NHTSA requested comment on this position.

Most commenters supported or had no comments regarding the proposed § 513.11.

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However, Cohen Milstein commented that § 513.11 is too broad and NHTSA should not withhold uncontested portions of a whistleblower award during an appeal. Cohen Milstein proposed that even with multiple whistleblowers contesting an award amount, there is no reason to withhold a minimum uncontested amount to each whistleblower.

However, NHTSA disagrees and believes that finality is important before initiating payment. As stated in the NPRM, NHTSA is constrained by the statute as to what percentage of the collected monetary sanctions in a covered action it may award to all whistleblowers. Any appeal could affect the amount paid. For example, if a court found that the Agency erroneously determined an individual eligible, it is possible even the uncontested portion of an award would be invalidated.

K. Form WB-INFO (Appendix A)

The Agency proposed to include form WB-INFO in Appendix A to part 513 to capture basic information about a potential whistleblower, the potential whistleblower's legal representative (if applicable), the motor vehicle manufacturer, part supplier or dealership about whom the concern is raised, the potential whistleblower's current employer and address, and the potential whistleblower's relationship to the company about which the concern is raised.

Auto Innovators proposed a new field on the form explaining why the information relates to a matter that is likely to cause unreasonable risk of death or serious injury. Auto Innovators reasoned this proposal will allow NHTSA to quickly determine whether the submitted information is appropriate for the whistleblower program.

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NHTSA disagrees, as this determination is more appropriately made by NHTSA and the information already required by the form will inform that issue.

L. Form WB-RELEASE (Appendix B)

In the NPRM, NHTSA proposed form WB-RELEASE in Appendix B for those whistleblowers who wish to provide prior written consent for the Agency to disclose information that could reasonably be expected to reveal the whistleblower's identity. NHTSA requested comment on whether the form WB-RELEASE should be prescribed by regulation, whether it would be better to specify the content of the form (and not the form itself), or whether the Agency should take a different approach.

Kohn objected to the release form because of concerns that a potential whistleblower may interpret the release form as something that must be done to please investigators and investigators may use the form without considering specific circumstances. Kohn proposed any waiver of confidentiality should be done on a case-by-case basis and points to the IRS, SEC, and CFTC programs that do not use a similar form.

Due to the way NHTSA investigates, in the course of an inquiry or analysis surrounding a whistleblower's allegations, it may become necessary for NHTSA to reveal information that reasonably could be expected to reveal the whistleblower's identity to persons or their counsel or agents at the organization or institution against whom such allegations are made. Such information could also be revealed to other entities if necessary for NHTSA to gather needed information on the alleged safety issue or misconduct that the whistleblower has brought to the Agency's attention. The WB-RELEASE form provides whistleblowers a way to provide such

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consent. Consent is voluntary, as expressly indicated on the form. The Agency may request that a whistleblower provide such consent, as such consent may facilitate NHTSA's review of the information.

M. Form WB-AWARD (Appendix C)

The NPRM also proposed WB-AWARD in Appendix C to part 513. Proposed form WB-AWARD, and the instructions thereto, requested basic information about a claimant and the claimant's legal representative (if applicable), the issue/information submitted by the claimant, information regarding the Notice of Covered Action, information on how the claimant acquired the original information, as well as other information relevant to the claimant's eligibility for an award. Specifically, the form asks whether the potential whistleblower is the subject or target of a criminal investigation connected to the information at issue.

Constantine Cannon proposed the removal of the requirement for a whistleblower to disclose on proposed WB-AWARD form information about whether the potential whistleblower is currently the subject or target of a criminal investigation connected to the information at issue. Constantine Cannon suggested the disclosure is contrary to Congress's intent because Congress mandated a bar for those convicted of criminal violations, not individuals being investigated for a criminal violation. Similarly, Constantine Cannon proposed that a person might not know if they are the subject of a criminal investigation and therefore be unable to honestly respond to the question on the WB-AWARD form.

NHTSA disagrees. The requirement makes the Agency aware of criminal investigations, to the extent known to the claimant. The regulations still only bar a person from receiving an

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award if they are convicted rather than if they are only investigated. A potential whistleblower will not be barred from receiving an award because they did not disclose a criminal investigation of which they were unaware. NHTSA is adopting the form as proposed, without substantive change.

III. Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, Executive Order 14094, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, Executive Order 14094, and the Department of Transportation's regulatory policies and procedures. This final rule is nonsignificant under E.O. 12866 and E.O. 14094 and was not reviewed by the Office of Management and Budget (OMB). It is also not considered "of special note to the Department" under DOT Order 2100.6A, Rulemaking and Guidance Procedures.

This action adds part 513 to implement the whistleblower program. This is a program for whistleblowers to voluntarily submit information to NHTSA and potentially receive monetary awards. The rule formalizes certain procedures for the whistleblower program, including through the use of forms to help provide guidance to whistleblowers, organize information submitted to the Agency, and ensure the Agency receives the information needed to make determinations on whistleblower awards. Because the Agency expects any costs, benefits, or savings associated with this rulemaking to be minimal, we have not prepared a separate

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economic analysis for this rulemaking.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, NHTSA has evaluated the effects of this action on small entities. I certify that this final rule is not expected to have a significant economic impact on a substantial number of small entities. The rules apply only to those employees and contractors of motor vehicle manufacturers, part suppliers, or dealerships who provide information to the Agency relating a potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301 (or regulation thereunder), which is likely to cause unreasonable risk of death or serious physical injury. Companies and other entities are not eligible to participate in the program as whistleblowers. Consequently, the persons that are subject to this final rule are not "small entities" for the purposes to the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this action.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. In accordance with 49 CFR 1.81, 42 U.S.C. § 4336, and DOT NEPA Order 5610.1C, NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4) (planning and administrative activities, such as promulgation of rules, that do not involve or lead directly to construction). This rule is not anticipated to result in any environmental impacts and there are no extraordinary circumstances present in connection with this rulemaking.

This rule defines certain terms important to the operation of the whistleblower program,

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outlines the procedures for submitting original information to NHTSA and applying for awards, discusses NHTSA's procedures for making decisions on award applications, and generally explains the scope of the whistleblower program to the public and potential whistleblowers. NHTSA's decisions on who qualifies as a whistleblower and who is eligible to receive a whistleblower award would constitute separate agency actions that are independent of this final rule. Similarly, the information that NHTSA will receive from whistleblowers under this final rule will already exist, and therefore, will be independent of this final rule. Finally, all current and former employees or contractors who are potential whistleblowers under this rule will choose to submit information voluntarily to NHTSA. Consequently, this rule is not expected to significantly affect the quality of the human environment.

Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with states, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that this action would not have "federalism implications" because it would not have "substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government," as specified in section 1 of the Executive Order. This rule generally applies to employees and contractors of motor vehicle manufacturers, part suppliers, or dealerships. Thus, Executive Order 13132 is not implicated and consultation with state and local officials is not required.

Unfunded Mandates Reform Act

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The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This final rule does not result in the expenditure by state, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Pursuant to this Order, NHTSA notes as follows: This final rule implements the whistleblower program, including outlining the procedures for submitting original information, applying for awards, the Agency's procedures for making decisions on the claims, appeals of such decisions, and payment of the award. It discusses communications with individuals reporting safety information and protections afforded related to the whistleblowers' identity. The statute was effective upon enactment.

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The rule will not have retroactive effect. Under the rule of construction contained in Section 24352(b) of the FAST Act, information submitted by a whistleblower in accordance with the requirements at 49 U.S.C. 30172 does not lose its status as original information solely because the whistleblower submitted the information prior to the effective date of these regulations if that information was submitted after the date of enactment of the FAST Act. In accordance with section 24352(b) of the FAST Act, the statute does not retroactively qualify information submitted prior to the enactment of the FAST Act as original information eligible for whistleblower protection or monetary award. The rule likewise does not have retroactive application to information submitted prior to enactment of the FAST Act.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Regulation Identifier Number

The DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center

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publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. The Information Collection Request (ICR) for a proposed new information collection described below has been forwarded to OMB for review and comment.

NHTSA did not receive any comments that directly addressed its PRA analysis or its burden estimates discussed in the NPRM. As described above, this final rule requires the same information to be collected as was proposed in the NPRM. However, NHTSA did receive one comment about a voluntary potential burden that is separate from NHTSA's three required forms. This comment addressed the Agency's proposed suggestion for potential whistleblowers under binding nondisclosure agreements to consult private counsel before providing information to NHTSA. We discuss that comment and potential burden below.

The titles for the collection of information are forms: (1) WB-INFO, (2) WB-RELEASE, and (3) WB-AWARD. Under § 513.4 and § 513.9, these forms are necessary to implement section 30172 of the Safety Act.

The WB-INFO form allows a whistleblower to provide information to the Agency and its

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staff relating to general information about the whistleblower, information about the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised, the type and source of information being reported, the individual's legal representative (if applicable), the information about any potential motor vehicle defect, potential noncompliance, or violation or alleged violation of any notification or reporting requirement of Chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, and additional information.

Form WB-RELEASE provides a means for a whistleblower to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal the whistleblower's identity.

The WB-AWARD form allows the claimant to provide information related to the claimant's eligibility for an award.

Summary of the Collection of Information:

Form WB-INFO, which would be submitted pursuant to § 513.4, requests the following information:

- (1) Background information regarding the person submitting the form, including the person's name, contact information and occupation and the person's relationship to the company about whom the concern is raised;
- (2) Information about the motor vehicle manufacturer, part supplier or dealership about which the concern is raised;
- (3) If the person is represented by a legal representative, the name and contact

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information for the person's legal representative (in cases of anonymous submissions the person must be represented by a legal representative);

(4) Information regarding the issue involving a motor vehicle manufacturer, part supplier, or dealership, including the date of the alleged issue, whether the conduct is on-going, and whether the person or their counsel had any prior communication with NHTSA;

(5) Whether the allegation is related to a potential safety-related defect or noncompliance with an applicable Federal Motor Vehicle Safety Standard, and if so a detailed description of the allegation and how the allegation affects vehicle/system/component performance and/or compliance, and the make, model, model year, part number, component number, etc., if known;

(6) Whether the allegation is related to any violation or alleged violation of any notification or reporting requirement of the Safety Act, and if so, a description of the notification or reporting issue, including all facts pertinent to the alleged violation;

(7) A description of supporting materials in the whistleblower's possession and the availability and location of other additional supporting materials;

(8) A description of how the person learned about or obtained the information submitted, and, if any information was obtained from a public source, a description of that source;

(9) Identification of documents or other information in the submission that the person believes could reasonably be expected to reveal the person's identity and the basis for that belief;

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- (10) Whether the person or legal representative of the person has taken any other action regarding the issue, and if so, a description;
- (11) Whether the person acquired the information through a means or manner that has been determined by a United States federal court or a state court to violate applicable federal or state criminal law, and if so, details regarding that determination;
- (12) Whether the person acquired the information solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine;
- (13) Any other relevant information;
- (14) A declaration, signed under penalty of perjury under the laws of the United States, that the information provided to NHTSA is true and correct to the best of the person's knowledge, information and belief and acknowledgement from the person that they may be subject to prosecution and ineligible for a whistleblower award if, in their submission of information, their other dealings with NHTSA, or their dealings with another authority in connection with a related action, they knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry; and
- (15) If represented by a legal representative, the legal representative's certification certifying that the legal representative has verified the identity of the individual who completed form WB-INFO by viewing that individual's valid, unexpired government issued identification, reviewed the individual's WB-INFO form for accuracy, and that the information

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contained therein is true and correct to the best of the legal representative's knowledge, information and belief; that the legal representative will retain an original, signed copy of the form with section F filled out by their client in their file; and that the legal representative has obtained the whistleblower's non-waivable consent to provide NHTSA with the whistleblower's original signed WB-INFO form in the event that NHTSA requests it.

Form WB-RELEASE requests the following information:

- (1) Background information regarding the whistleblower submitting the WB-RELEASE form, including the person's name and address;
- (2) The name of the motor vehicle manufacturer, part supplier and/or dealership to which the whistleblower's issue or information relates;
- (3) An acknowledgment that the person consents to disclosure of information that could reasonably be expected to reveal the person's identity; and
- (4) Signature of the whistleblower and date.

Form WB-AWARD, which would be submitted pursuant to § 513.9 requires the following information:

- (1) The claimant's name, address and contact information;
- (2) If the person is represented by a legal representative, the name and contact information for the legal representative;
- (3) Details concerning the issue, including the manner in which the information was submitted to NHTSA, the date when the information was submitted, the form in which it was submitted, and the name of the motor vehicle manufacturer, part supplier and/or

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dealership to which the issue or information relates;

(4) Information concerning the Notice of Covered Action to which the claim relates, including the date of the Notice, the Notice Number, and the Case name and number; and information regarding related actions, if applicable;

(5) Information relating to the claimant's eligibility for an award, including whether the person acquired the information solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine; whether the person acquired the original information by a means or manner that was determined by a United States federal court or state court to violate applicable federal or state criminal law; and whether the person is currently a subject or target of a United States federal or state criminal investigation or has been convicted of a criminal violation by a United States federal or state court in connection with the allegations or conduct the person submitted to NHTSA. If any of the circumstances noted above were applicable, the person is requested to provide an explanation;

(6) An explanation of the reasons that the person believes an award in connection with the person's submission of information to NHTSA is warranted, including any information that might be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. 30172 and 49 CFR part 513; and

(7) A declaration by the claimant under penalty of perjury under the laws of the United States that the information provided in the WB-AWARD form is true and correct to the best of the person's knowledge, information and belief and acknowledgement from the person that they may be subject to prosecution and ineligible for a whistleblower award if, in their

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submission of information, their other dealings with NHTSA, or their dealings with another authority in connection with a related action, they knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Description of the Need for the Information and Use of the Information:

The collection of information on form WB-INFO will be used to permit the Agency and its staff to collect information from whistleblowers regarding any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act or regulation thereunder for which NHTSA has enforcement authority. NHTSA investigators consider information provided by whistleblowers, which may lead to formal actions like an investigation, recall, or civil penalty enforcement action. If this information leads to a successful resolution of a covered action resulting in monetary sanctions collected by the United States in excess of \$1,000,000, a whistleblower would be eligible for an award.

The WB-RELEASE form will provide a means for the whistleblower to provide consent for the Agency to disclose information that could reasonably be expected to reveal the identity of the whistleblower. Being able to disclose this information may allow the Agency to open a public investigation or proceed more efficiently with an investigation into the whistleblower's allegations. This form is not required.

The WB-AWARD form will permit the Agency to collect information relating to a

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claimant's eligibility for an award, the claimant's position on why they should receive an award, and the claimant's view on the criteria for determining the amount of an award. This information would allow the Administrator to determine claims for whistleblower awards.

Finally, there is a potential limited number of respondents who may need to consult with private counsel about a binding nondisclosure agreement prior to the potential whistleblower submitting a WB-INFO form to NHTSA. This is an optional, voluntary step that some potential whistleblowers may choose to take so they can receive legal advice with respect to whether a confidentiality agreement with their employer prohibits them from submitting information to NHTSA.

Affected Public:

The likely respondents to form WB-INFO are those employees or contractors of motor vehicle manufacturers, part suppliers, and dealerships who wish to provide the Agency staff with information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act or regulation thereunder that is likely to cause unreasonable risk of death or serious physical injury.

The likely respondents to form WB-RELEASE are those individuals who wish to provide prior written consent to NHTSA for disclosure of information that could reasonably be expected to reveal that individual's identity.

The likely respondents to form WB-AWARD will be those individuals who have provided the Agency with original information by filing a WB-INFO form, and who believe they are eligible for an award under 49 CFR part 513.

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The potential likely respondents who may need to consult with private counsel prior to submitting a WB-INFO form to NHTSA are those individuals who signed a binding nondisclosure agreement.

Estimated Number of Respondents for Form WB-INFO:

Since the enactment of the FAST Act in 2015, NHTSA has received approximately 300 submissions that it has considered potential whistleblower submissions.³⁴ The Agency estimates that there will be approximately 50 individuals per fiscal year who may wish to file such form. The Agency estimated the number of individuals based on the current number of whistleblower submissions and the Agency's view that submissions will increase once the whistleblower reward program is more widely known, after the rules are promulgated and additional whistleblower awards are made.

Frequency of Form WB-INFO:

The Agency expects that the individual will complete one form detailing all potential issues they are aware of.

Number of Responses for Form WB-INFO: The Agency anticipates there will be approximately 50 individuals per fiscal year who may wish to file such a form. NHTSA assumes half of this number will have a legal representative.

³⁴ Because there has not been a required method or form of submission, NHTSA has taken a broad view of what is considered whistleblower information. Such information comes from a variety of sources, such as Vehicle Owner Questionnaires ("VOQ"), information provided by telephone, and information submitted by letter or email to the Agency. NHTSA has taken this broad view not only to review and track the information submitted, but also to better protect the confidentiality of those who have provided whistleblower information to the Agency.

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Estimated Total Annual Burden Hours for Form WB-INFO:

NHTSA estimates an average of 10 burden hours per individual who completes the WB-INFO form, and 20 hours per individual who has a legal representative complete the WB-INFO form. The completion time will depend largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations. The Agency estimates that the total annual PRA burden of form WB-INFO is 750 hours per year (25 respondents who use a legal representative \times 20 hours) plus (25 respondents who fill out their own form \times 10 hours).

Estimated Total Annual Burden Cost for Form WB-INFO:

NHTSA estimates the total annual burden cost for the Form WB-INFO to be \$266,000. NHTSA bases the estimate on the following:

Costs for Legal Representatives to Fill out the Form WB-INFO:

Under the final rule, a potential whistleblower who discloses their identity may elect to retain a legal representative, while an anonymous potential whistleblower is required to retain a legal representative. The Agency expects that in most of those instances where a legal representative is retained, the whistleblower/claimant's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a whistleblower/claimant is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program.

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Therefore, the Agency believes that most persons will not incur any direct expenses for attorneys' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. The Agency believes that approximately half of potential whistleblowers will have a legal representative submit the forms. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive approximately 50 WB-INFO forms annually;
- (ii) Of these approximately 50 WB-INFO forms, potential whistleblowers will have a legal representative submit approximately 25 WB-INFO forms;
- (iii) Legal representative cost will be on average \$532³⁵ per hour; and
- (iv) Legal representatives will bill on average 20 hours to review materials and complete form WB-INFO.³⁶

Based on those assumptions, the Agency estimates that each year the cost of legal representative time for completion of the forms will be \$266,000 for the completion of form WB-INFO (($\$532 \times 20 \text{ hours}$) $\times 25$ respondents).

Costs of Submission

The Agency anticipates that the vast majority of whistleblowers/claimants will submit the

³⁵ This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015-2021, assuming that an attorney with 11-15 years of experience assists the whistleblower. *See* <https://www.justice.gov/file/1461316/download>.

³⁶ The Agency expects that counsel will need to expend additional time to gather information from the whistleblower or review sources of information needed to complete the forms, which is why this estimate is higher than the estimate to just complete the form.

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forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is \$0.00.

Estimated Number of Respondents for Form WB-RELEASE:

The Agency estimates that it will receive 45 WB-RELEASE forms per year.

Frequency of Form WB-RELEASE:

The Agency expects that an individual will complete one form per year.

Number of Responses for Form WB-RELEASE:

The Agency anticipates there will be approximately 45 individuals per fiscal year who may wish to file a form WB-RELEASE.

Estimated Total Annual Burden Hours for Form WB-RELEASE:

The Agency estimates that it will take 15 minutes per individual to complete the form, and the Agency estimates that it would receive 45 WB-RELEASE forms per year. The Agency anticipates that potential whistleblowers will complete and submit for themselves 20 WB-RELEASE forms annually and that legal representatives will submit on their client's behalf 25 WB-RELEASE forms annually. Thus, the Agency estimates that that estimated annual PRA burden of form WB-RELEASE is 11.25 hours per fiscal year (45 respondents \times 15 minutes/60).

Estimated Total Annual Burden Cost for Form WB-RELEASE:

NHTSA estimates the total annual burden cost for the Form WB-RELEASE to be \$3,325.

The Agency bases the estimate on the following:

Involvement and Cost of Legal Representatives:

Under the Final Rule, a potential whistleblower who discloses their identity may elect to

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retain a legal representative, while an anonymous potential whistleblower is required to retain a legal representative. The Agency expects that in most of those instances where a legal representative is retained, the potential whistleblower's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a potential whistleblower is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for attorneys' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive 45 WB-RELEASE forms annually;
- (ii) Potential whistleblowers will have a legal representative submit approximately 25 WB-RELEASE forms annually;
- (iii) Attorney cost will be on average \$532³⁷ per hour; and
- (iv) Attorneys will bill on average 15 minutes to complete form WB-RELEASE.

³⁷ This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015-2021, assuming that an attorney with 11-15 years of experience assists the whistleblower. *See* <https://www.justice.gov/file/1461316/download>.

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Based on those assumptions, the Agency estimates that each year the cost of attorney time for completion of the forms will be \$3,325 for the completion of form WB-RELEASE (($\$532 \times 15 \text{ minutes}/60$) $\times 25$ respondents).

Costs of Submission

The Agency anticipates that the vast majority of potential whistleblowers will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is \$0.00.

Estimated Number of Respondents for Form WB-AWARD:

Each individual who has submitted a form WB-INFO and wishes to be considered for an award under the program would be required to provide a WB-AWARD form to the Agency. A claimant could only submit a WB-AWARD form after there has been a "Notice of Covered Action" published on the Agency's website pursuant to § 513.9. The Agency estimates that it will post approximately 1-2 such Notices each year. The Agency bases this estimate by looking at the enforcement actions resulting in civil penalties exceeding \$1,000,000 over the last several years, not including deferred penalties not collected or performance amounts. In some years, the Agency did not collect any civil penalties exceeding \$1,000,000. In another year, the Agency had several instances where it collected more than \$1,000,000 in civil penalties in connection with an enforcement action. The Agency believes that as this whistleblower program grows, more actionable submissions will be made and, as a consequence, the Agency will have more actions resulting in collected monetary sanctions exceeding \$1,000,000.

Considering the estimate of the anticipated yearly covered actions, and the Agency's

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experience to date, the Agency estimates that it would receive approximately 2 WB-AWARD forms each year.³⁸

Frequency of Form WB-AWARD:

The Agency expects that the individual will complete one form.

Number of Responses for Form WB-AWARD:

The Agency anticipates there will be approximately 2 individuals per fiscal year who may wish to file such.

Estimated Total Annual Burden Hours for Form WB-AWARD:

The collection is estimated to involve approximately 10 burden hours per individual seeking to be considered for an award under the Agency's whistleblower program. The Agency estimates that the estimated annual PRA burden of form WB-AWARD is 20 hours per fiscal year (2 respondents × 10 hours).

Estimated Total Annual Burden Cost for Form WB-AWARD:

The Agency estimates the total annual burden cost for the Form WB-AWARD to be \$10,640. The Agency bases the estimate on the following:

Involvement and Cost of Legal Representatives

Under the final rule, a potential whistleblower who discloses their identity may elect to retain a legal representative, while an anonymous potential whistleblower is required to retain a legal representative. The Agency expects that in most of those instances where a legal

³⁸ While it is unlikely that there will be whistleblower information provided in connection with every Notice of Covered Action posted by the Agency, this estimate calculates burden hours as if there were one claim for each Covered Action.

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representative is retained, the potential whistleblower/claimant's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf.

The Agency also expects that in the vast majority of cases in which a potential whistleblower/claimant is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for legal representatives' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. However, the Agency does believe that all individuals submitting a WB-AWARD form will use a legal representative. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive approximately 2 WB-AWARD forms annually;
- (ii) Claimants will have a legal representative submit 2 WB-AWARD forms annually;
- (iii) Legal representative cost will be on average \$532³⁹ per hour; and
- (iv) Legal representatives will bill on average 10 hours to complete a form WB-

AWARD.

Based on those assumptions, the Agency estimates that each year the cost of legal

³⁹ This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015-2021, assuming that an attorney with 11-15 years of experience assists the whistleblower. *See* <https://www.justice.gov/file/1461316/download>.

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representatives' time for completion of the forms will be \$10,640 for the completion of form WB-AWARD (($\$532 \times 10$ hours) \times 2 respondents).

Costs of Submission

The Agency anticipates that the vast majority of claimants will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is \$0.00.

Mandatory Collection of Information

As proposed in the NPRM, a person will be required to complete and submit a WB-INFO form and to submit a WB-AWARD form to qualify for a whistleblower award.

Optional Annual Burden Cost Associated with Collection of a WB-INFO Form

Consulting with private counsel about a nonbinding disclosure agreement is a voluntary, optional burden cost; however, it is a voluntary burden cost that some potential whistleblowers might need to take prior to submitting a WB-INFO form to NHTSA.

As discussed above, NHTSA received a comment from Kohn that disagreed with NHTSA's suggestion in the NPRM that potential whistleblowers under binding nondisclosure agreements consult private counsel before submitting a WB-INFO form to NHTSA. As noted above, NHTSA is obligated to adhere to and support a whistleblower's statutory protections, but NHTSA's attorneys do not represent whistleblowers. Therefore, if a whistleblower needs legal advice, they should obtain their own private legal counsel.

Estimated Number of Respondents Consulting Private Counsel About a Binding

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Nondisclosure Agreement:

The Agency estimates that five potential whistleblowers per year will consult private counsel about a binding nondisclosure agreement with their employer. This estimate is based on the approximately 50 individuals per year who may submit whistleblower information to the Agency. This estimate is also based on potential whistleblowers who consider submitting information to the Agency but choose not to submit information to the Agency after consulting with private counsel about a binding nondisclosure agreement with their employer.

Estimated Total Annual Burden Hours for Respondents Consulting Private Counsel About a Binding Nondisclosure Agreement:

The Agency estimates that each private counsel will take approximately two hours to review a binding nondisclosure agreement, and the Agency estimates that five potential whistleblowers may consult with private counsel about a binding nondisclosure agreement per year. Thus, the Agency estimates that the estimated annual PRA burden of consulting with private counsel about a binding nondisclosure agreement is 10 hours per fiscal year (five respondents × two hours).

Estimated Annual Cost of Respondents Consulting Private Counsel About a Binding Nondisclosure Agreement:

NHTSA estimates the total annual burden cost for respondents consulting with private counsel about a binding nondisclosure agreement to be \$5,320. The Agency bases the estimate on the following:

Involvement and Cost of Legal Representatives:

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To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive 50 whistleblower submissions annually;
- (ii) Five potential whistleblowers will consult with private counsel about a binding nondisclosure agreement annually;
- (iii) Attorney costs will be on average \$532 per hour; and
- (iv) Attorneys will bill on average two hours to review a binding nondisclosure agreement.

Based on those assumptions, the Agency estimates that each year the cost of attorney time for consultation about a binding nondisclosure agreement will be \$5,320 ($(\$532 \times \text{two hours}) \times \text{five respondents}$).

List of Subjects in 49 CFR Part 513

Administrative procedure and practice, Appeal procedures, Claims, Investigations, Imports, Lawyers, Motor vehicle safety, Privacy, Reporting and record keeping requirements, Tires, Whistleblowing.

For the reasons discussed in the preamble, NHTSA adds 49 CFR part 513 to read as follows:

PART 513- WHISTLEBLOWER PROGRAM

Sec.

513.1 General.

513.2 Definitions

513.3 Representation.

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- 513.4 Procedures for submitting original information.
- 513.5 Confidentiality.
- 513.6 Prerequisites to the consideration of an award.
- 513.7 Whistleblowers ineligible for an award.
- 513.8 Provision of false information.
- 513.9 Procedures for making a claim for a whistleblower award.
- 513.10 Award determinations.
- 513.11 Appeals of award determinations.
- 513.12 Procedures applicable to the payment of awards.

Appendix A- Form WB-INFO

Appendix B- Form WB-RELEASE

Appendix C- Form WB-AWARD

Authority: 49 U.S.C. 322 and 49 U.S.C. 30172; delegation of authority at 49 CFR 1.95.

§ 513.1 General.

This part 513 describes the whistleblower program established by the Agency to implement the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. 30172, explains procedures that a potential whistleblower must follow to be eligible for an award, and the circumstances under which information that may reasonably be expected to reveal the identity of a whistleblower may be disclosed by the National Highway Traffic Safety Administration (NHTSA). Potential whistleblowers should read these procedures carefully because failure to take required steps in a timely fashion in conformance with these rules may result in disqualification from receiving an

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award. Questions about the whistleblower program or these rules should be directed to the NHTSA Office of the Chief Counsel at NHTSAWhistleblower@dot.gov. Unless expressly provided for in this part, no person is authorized to make any offer or promise, or otherwise bind the Agency with respect to the payment of any award or the amount thereof, and any such offer or promise will not be honored.

§ 513.2 Definitions.

(a) *Statutory definitions.* All terms used in this part have the same meaning as in 49 U.S.C. 30102(a) or (b), unless otherwise defined in this part.

(b) *Other terms.* As used in this part:

Administrative action. The term “administrative action” means all or a portion of an action, other than a judicial action, brought by the NHTSA or the U.S. Department of Transportation under 49 U.S.C. Chapter 301 that may result in civil penalties or other monetary payment paid to and collected by the United States government. It specifically includes settlement agreements and consent orders that are entered into by the Agency.

Agency. The term “Agency” refers to the National Highway Traffic Safety Administration (NHTSA).

Collected monetary sanctions. The term “collected monetary sanctions” means monies, including penalties and interest, ordered or agreed to be paid and that have been collected by the United States, pursuant to the authority in 49 U.S.C. 30165 or under the authority of 49 U.S.C. 30170.

Contractor. The term “contractor” means an individual presently or formerly providing

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goods or services to a motor vehicle manufacturer, part supplier, or dealership pursuant to a contract.

Covered action. The term “covered action” means any administrative or judicial action, including any related administrative or judicial action brought by the Secretary, NHTSA, or the Attorney General under 49 U.S.C. Chapter 301, or a regulation thereunder, that in the aggregate results in monetary sanctions exceeding \$1,000,000. The over \$1,000,000 threshold can be satisfied if the total amount of monetary sanctions paid by multiple defendants or parties and collected by the United States totals more than \$1,000,000 in the covered action.

Dealership. The term “dealership” means a person selling and distributing motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

Employee. The term “employee” means an individual presently or formerly employed by a motor vehicle manufacturer, part supplier, or dealership.

Independent knowledge or analysis. The term “knowledge” as used in this part means factual information in the potential whistleblower’s possession that is not generally known or available to the public and is not already known to NHTSA. The potential whistleblower may gain independent knowledge from the potential whistleblower’s experiences, communications, and observations in the potential whistleblower’s business or social interactions. As used in this part, “analysis” means the potential whistleblower’s examination and evaluation of information that may be generally or publicly available, but which reveals information that is not generally known or available to the public. This analysis must be the potential whistleblower’s own

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analysis, whether done alone or in combination with others.

NHTSA will not consider the potential whistleblower's information to be derived from the potential whistleblower's independent knowledge or analysis if the potential whistleblower obtained the information:

(i) Solely through a communication that was subject to the attorney-client privilege or work product doctrine; or

(ii) By a means or in a manner that has been determined by a United States federal court or state court to violate applicable federal or state criminal law.

Motor vehicle defect. The term "motor vehicle defect" means a defect in a motor vehicle or item of motor vehicle equipment.

Noncompliance. A "noncompliance" occurs when a motor vehicle or item of motor vehicle equipment does not comply with an applicable Federal Motor Vehicle Safety Standard.

Original information. The term "original information" means information that—

(i) Is derived from the independent knowledge or analysis of an individual;

(ii) Is not known to the Secretary or Agency from any other source, unless the individual is the original source of the information;

(iii) Is not exclusively derived from an allegation made in a judicial or an administrative action, in a governmental report, a hearing, an audit, or an investigation, or from the news media, unless the individual is a source of the information; and

(iv) Is provided to the Agency for the first time after December 4, 2015.

Original information that leads to a successful resolution. The Agency will consider that

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the potential whistleblower provided original information that “leads to” a successful resolution of a covered action in the following circumstances:

(i) The potential whistleblower gave the Agency original information that was sufficiently specific, credible and timely to cause the Agency to open an investigation, reopen an investigation that the Agency had closed, continue an investigation the Agency would not have continued but for the information, or to inquire concerning a different potential violation of Chapter 301, or a regulation thereunder, as part of a current investigation, and the U.S.

Department of Transportation, Agency, or U.S Department of Justice brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the potential whistleblower’s original information; or

(ii) The potential whistleblower gave the Agency original information about conduct that was already under investigation by the Agency and the potential whistleblower’s information significantly contributed to the success of the covered action and the U.S. Department of Transportation, Agency, or U.S. Department of Justice brought a judicial or administrative action that achieves a successful resolution based in whole or in part on conduct that was the subject of the potential whistleblower’s original information.

Part supplier. The term “part supplier” means a manufacturer of motor vehicle equipment.

Potential whistleblower. The term “potential whistleblower” refers to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership submitting information to the Agency in accordance with and pursuant to this part.

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Related administrative or judicial action. The term “related administrative or judicial action” means an action that was brought under 49 U.S.C. Chapter 301 by the U.S. Department of Justice, the U.S. Department of Transportation, or the Agency and is based on the original information provided by the whistleblower.

Secretary. The term “Secretary” means the Secretary of Transportation.

Successful resolution. A successful resolution, when referring to any administrative or judicial action brought by the Secretary, Agency, or the Attorney General relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement under 49 U.S.C. Chapter 301, or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, includes any settlement of the action by the U.S. Department of Transportation, Agency or the U.S. Department of Justice or final decision or judgment in whole or in partial favor of the Agency, the U.S. Department of Transportation, or the U.S. Department of Justice.

Whistleblower. The term “whistleblower” means any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Agency original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301, or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury.

§ 513.3 Representation. A whistleblower or potential whistleblower may be represented by a legal representative.

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§ 513.4 Procedures for submitting original information.

(a) A potential whistleblower's submission must be made by completing a WB-INFO form and submitting it to the Office of the Chief Counsel, National Highway Traffic Safety Administration, by email to NHTSAWhistleblower@dot.gov or other submission method expressly designated on NHTSA's website for such submissions.

(b) By completing the WB-INFO form, the potential whistleblower must declare under penalty of perjury at the time the whistleblower submits information pursuant to paragraph (a) of this section that the information is true and correct to the best of the potential whistleblower's knowledge and belief.

(c) A potential whistleblower may provide original information to the Agency anonymously through use of a legal representative. The legal representative must submit the information on behalf of the potential whistleblower pursuant to the procedures specified in paragraph (a) of this section. Prior to the legal representative's submission, the potential whistleblower must provide the legal representative with a completed WB-INFO form that the potential whistleblower has signed under the penalty of perjury. When the legal representative makes the submission on behalf of the potential whistleblower, the legal representative must certify that the legal representative:

- (1) Has verified the potential whistleblower's identity;
- (2) Has verified that the potential whistleblower is an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership;

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(3) Has reviewed the potential whistleblower's signed WB-INFO form for accuracy and that the information contained therein is true and correct to the best of the legal representative's knowledge, information and belief; and

(4) Has obtained the potential whistleblower's non-waivable consent to provide the Agency with the original WB-INFO form for the potential whistleblower in the event that the Agency requests it.

(d) If a potential whistleblower submitted original information to the Agency after December 4, 2015 but before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of this section.

§ 513.5 Confidentiality.

(a) *In General.* Notwithstanding 49 U.S.C. 30167, the Secretary and any officer or employee of the U.S. Department of Transportation shall not disclose any information, including information provided by a whistleblower to the Secretary, that could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of 5 U.S.C. 552a, unless:

(1) Disclosure is required to a defendant or respondent in connection with a public proceeding instituted by the Secretary, the Agency, or any entity described in paragraph (c);

(2) The whistleblower provides prior written consent for the information to be disclosed;

or

(3) The Secretary, or other officer or employee of the U.S. Department of Transportation,

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receives the information through another source, such as during an inspection or investigation under 49 U.S.C. 30166, and has the authority under other law to release the information.

(b) *Use by Attorney General.* Notwithstanding paragraph (a) of this section, nothing in this section is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(c) *Availability to Federal Government Agencies.* Notwithstanding paragraph (a) of this section, without the loss of its status as confidential in the hands of the Administrator, all information referred to in paragraph (a) of this section may, in the discretion of the Administrator, when determined by the Administrator to be necessary or appropriate to accomplish the purposes of 49 U.S.C. Chapter 301, be made available to the U.S. Department of Justice or an appropriate department or agency of the federal government, acting within the scope of its jurisdiction, provided that each entity shall maintain information as confidential in accordance with the requirements of paragraph (a).

(d) *Redaction.* When disclosing any information under paragraph (a) of this section, the Secretary and any officer or employee of the U.S. Department of Transportation shall take reasonable measures not to reveal the identity of the whistleblower by taking measures not to reveal the whistleblower's name, and redacting the whistleblower's name when information is disclosed under paragraph (a).

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(e) *Section 552(b)(3)(B)*. The identity of the whistleblower and the information provided to Secretary by the whistleblower shall be considered exempt from disclosure under the provisions of 5 U.S.C. 552 to the fullest extent permitted by law.

(f) *The whistleblower*. The person should self-identify as a whistleblower at the time the person first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. Chapter 301 or a regulation thereunder by submitting a WB-INFO form. If the person is represented by a legal representative, that legal representative should identify the client as a whistleblower at the time the legal representative first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. Chapter 301 or regulation thereunder on behalf of the legal representative's client in the WB-INFO form.

§ 513.6 Prerequisites to the consideration of an award.

(a) Subject to the eligibility requirements described in this part, NHTSA may, but is not required to, authorize payment of an award to one or more persons who:

- (1) Provide a voluntary submission to the Agency;
- (2) Provide in that submission original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301 or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury; and

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(3) The original information provided in that submission leads to the successful resolution of a covered action.

(b) To be eligible, the person must have given the Agency original information in the form and manner that the Agency requires in § 513.4. The Agency may, for good cause, waive this requirement.

§ 513.7 Whistleblowers ineligible for an award.

No award under § 513.10 shall be made:

(a) If the amount of monetary sanctions collected in a covered action does not exceed \$1,000,000;

(b) To any whistleblower who is convicted of a criminal violation by a United States federal or state court related to the covered action for which the whistleblower otherwise could receive an award under this part;

(c) To any whistleblower who, acting without direction from an applicable motor vehicle manufacturer, part supplier, or dealership, or agent thereof, deliberately causes or substantially contributes to the alleged violation of a requirement of 49 U.S.C. Chapter 301 or a regulation thereunder;

(d) To any whistleblower who submits information to the Agency that is based on the facts underlying the covered action submitted previously by another whistleblower;

(e) To any whistleblower who fails to provide the original information to the Agency in the form required by § 513.4 without good cause shown;

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(f) To any whistleblower who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(g) If the applicable motor vehicle manufacturer, parts supplier, or dealership has an internal reporting mechanism in place to protect employees from retaliation, to any whistleblower who fails to report or attempt to report the information through such mechanism, unless:

(1) The whistleblower reasonably believed that such an internal report would have resulted in retaliation, notwithstanding 49 U.S.C. 30171(a);

(2) The whistleblower reasonably believed that the information:

(A) was already internally reported;

(B) was already subject to or part of an internal inquiry or investigation; or

(C) was otherwise already known to the motor vehicle manufacturer, part supplier, or dealership; or

(3) The Agency has good cause to waive this requirement.

§ 513.8 Provision of false information. A person who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18.

§ 513.9 Procedures for making a claim for a whistleblower award.

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(a) Whenever any administrative or judicial action, including any related administrative or judicial action, brought by the U.S. Department of Transportation, Agency, or U.S.

Department of Justice under 49 U.S.C. Chapter 301 in the aggregate results in collected monetary sanctions exceeding \$1,000,000, the Agency will publish on the Agency's website a "Notice of Covered Action." Such Notice will be published subsequent to a final judgment, order, or agreement that alone, or in the aggregate, results in collected monetary sanctions exceeding \$1,000,000. A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim, including any attachments, for an award based on that action, or the claim will be barred. The claim is deemed filed on the date that it is received by the Agency.

(b) To file a claim for a whistleblower award, the claimant must complete the WB-AWARD form and submit it no later than ninety (90) calendar days from the date of the Notice of Covered Action to NHTSA's Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov or another method expressly designated on NHTSA's website. If the ninetieth day falls on a weekend or federal holiday, the claim deadline is the next business day.

(c) If the claimant provided original information anonymously pursuant to §513.4, the claimant must disclose the claimant's identity on the WB-AWARD form and the claimant's identity must be verified in a form and manner that is acceptable to the Agency prior to the authorization of payment of any award to such claimant.

(d) If a claimant filed a claim for a whistleblower award after December 4, 2015 (the date of the enactment of the FAST Act) but before [INSERT DATE 30 DAYS AFTER DATE OF

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PUBLICATION IN THE FEDERAL REGISTER], the claim submission will be deemed to meet the requirements of § 513.9.

§ 513.10 Award determinations.

(a) Once the time for filing any appeals of the covered action (and all related actions) has expired, or where an appeal has been filed, after all appeals in the covered action and related actions have concluded, and over \$1,000,000 in monetary sanctions have been collected, the Agency will evaluate all timely whistleblower award claims submitted on a WB-AWARD form in accordance with the criteria set forth in this part. The Agency may require the claimant to provide additional information relating to the claimant's eligibility for an award or satisfaction of any of the conditions for an award.

(b) The determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Administrator. In determining whether to grant an award to a whistleblower eligible for an award and the amount of an award, the Administrator shall take into consideration, as appropriate:

(1) Whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership;

(2) The significance of the original information provided by the whistleblower to the successful resolution of the covered action;

(3) The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action;

(4) The statutory purpose of incentivizing whistleblowers; and

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(5) The public interest or such additional factors as the Administrator considers relevant.

(c) If the Administrator determines that an award is warranted, the Administrator shall determine the amount of such award or awards to one or more whistleblowers. Whistleblower awards shall be in an aggregate amount equal to—

(1) Not less than 10 percent, in total, of monetary sanctions collected in the covered action; and

(2) Not more than 30 percent, in total, of monetary sanctions collected in the covered action.

(d) Following the Administrator's determination, the Agency will send each whistleblower claimant an Order setting forth whether the claim is granted or denied, and if granted, setting forth the award amount. If the Administrator determines that an award is warranted, in no event will the total amount awarded to all whistleblowers in the aggregate be less than 10 percent or greater than 30 percent of the amount of monetary sanctions collected in the covered action.

(e) No contract with the Agency is necessary for a whistleblower to receive an award.

§ 513.11 Appeals of award determinations.

(a) A claimant may appeal any determination made by the Administrator under § 513.10 to an appropriate court of appeals of the United States not later than 30 days after the Order is issued by the Administrator.

(1) If no claimant files an appeal within 30 days after the Order is issued by the Administrator, no appeals are permitted with respect to the claim that is the subject of the Order.

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(2) If any claimant appeals within 30 days after the Order is issued by the Administrator, no payments with respect to the covered action will be made until the appealed award determination action is concluded.

(b) These rules do not entitle claimants to obtain from the Agency any privileged materials such as pre-decisional, attorney-client privileged, attorney work product privileged, or internal deliberative process materials related to the Administrator's Order and/or any privileged material relating to whether, to whom, and in what amount to make a whistleblower award.

(c) The Agency may make redactions to the materials constituting the record as necessary, including but not limited to making redactions to comply with statutory restrictions, the Agency's enforcement and regulatory functions and regulations, and to comply with requests for confidential treatment from law enforcement, regulatory authorities, or persons submitting information to the Agency pursuant to 49 CFR part 512.

(d) Pursuant to 49 U.S.C. 30172(h)(3), the court shall review the determination made by the Administrator in accordance with 5 U.S.C. 706.

§ 513.12 Procedures applicable to the payment of awards.

(a) A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction upon which the award is based is collected in the covered action.

(b) Payment of a whistleblower award for a monetary sanction collected in connection with a covered action shall be made within a reasonable time following the later of:

(1) The date on which the monetary sanction totaling over \$1,000,000 is collected; or

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(2) The completion of the appeals process for all award determination claims arising from the Administrator's Order relating to the covered action.

Appendix A to Part 513- Form WB-INFO

OMB Number: 2127-0767
Exp. [DATE]
NHTSA Form 1684

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)**

**FORM WB-INFO
WHISTLEBLOWER SUBMISSION**

See Privacy Act Statement, Submission Procedures, and Completion Instructions below.

A. INFORMATION ABOUT YOURSELF			
1. Last Name		2. First Name	3. M.I.
4. Street Address			5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. Email Address	13. Preferred Method of Communication
14. Occupation			
15. Current Employer Name			
16. Current Employer Address			
17. Your relationship to the company about whom the concern is raised:			
B. INFORMATION ABOUT THE MOTOR VEHICLE MANUFACTURER, PART SUPPLIER, OR DEALERSHIP ABOUT WHICH THE CONCERN IS RAISED			
1. Company Name			

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2. Street Address			
3. City	4. State/Province	5. ZIP/Postal Code	6. Country
7. Do you or did you work for the motor vehicle manufacturer, part supplier or dealership about which the concern is raised? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide dates. If no, please identify what motor vehicle manufacturer, part supplier or dealership you work or worked for:			
8. Does this motor vehicle manufacturer, part supplier or dealership have an internal reporting mechanism? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I Don't Know			
9. If the answer to number 8 above is yes, did you report this issue through the internal reporting mechanism? <input type="checkbox"/> Yes. Date Reported: _____ <input type="checkbox"/> No. Reason for not reporting _____			

C. LEGAL REPRESENTATIVE INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)			
1. Legal representative's Name			
2. Firm Name			
3. Street Address			
4. City	5. State/Province	6. ZIP/Postal Code	7. Country
8. Telephone	9. Email address		

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D. TELL US ABOUT THE ISSUE INVOLVING THE MOTOR VEHICLE MANUFACTURER, PART SUPPLIER, OR DEALERSHIP

1. Date (NHTSA Reg. 2023-0014):	2. Is the conduct ongoing? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I Don't Know
3a. Have you or your legal representative had any prior communication with the NHTSA concerning this matter? <input type="checkbox"/> Yes <input type="checkbox"/> No 3b. If yes, provide the name of the NHTSA staff member(s) with whom you or your legal representative communicated and date of such communication:	
4a. Is your allegation related to a potential safety-related defect or a noncompliance with an applicable Federal Motor Vehicle Safety Standard? <input type="checkbox"/> Yes <input type="checkbox"/> No 4b. If yes, please provide a detailed description of allegation and a detailed description of how the allegation affects vehicle/system/component performance and/or compliance. Please include the make, model, model year, part number, component number, etc. if known	
5a. Is your allegation related to any violation or alleged violation of any notification or reporting requirement of the Safety Act? <input type="checkbox"/> Yes <input type="checkbox"/> No 5b. Provide a description of the notification or reporting issue. State in detail all facts pertinent to the alleged violation.	
6. Describe all supporting materials in your possession and the availability and location of any additional supporting materials not in your possession. If necessary, please use additional sheets.	

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E. ADDITIONAL INFORMATION (USE ADDITIONAL SHEETS IF NECESSARY)

1. Describe how you learned about or obtained the information that supports your allegations. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible.

2. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity could be reasonably expected to be revealed if the documents or information were disclosed to a third party.

3a. Have you or your legal representative taken any other action regarding the issue or your allegations? Yes No
3b. If "Yes," please provide details. Use additional sheets, if necessary.

4. Did you acquire the information through a means or manner that has been determined by a United States federal court or a state court to violate applicable federal or state criminal law? Yes No

If the answer to this question is yes, please contact NHTSA's Office of the Chief Counsel before you submit this form.

5. Did you acquire the original information that you are submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine? Yes No

If the answer to this question is yes, please contact NHTSA's Office of the Chief Counsel before you submit this form.

6. Provide any additional information that you think may be relevant. Attach additional sheets if necessary.

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F. PROSPECTIVE WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true and correct to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the National Highway Traffic Safety Administration, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Print Name

Signature

Date

G. CERTIFICATION OF LEGAL REPRESENTATIVE OF ANONYMOUS WHISTLEBLOWER (IF APPLICABLE)

I certify that I have reviewed this form for accuracy and that the information contained herein is true and correct to the best of my knowledge, information and belief.

I further certify that I have verified the identity of the person on whose behalf this form is being submitted by viewing the person's valid, unexpired government issued identification (*e.g.*, driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the person, in my records.

I further certify that I have obtained the person's non-waivable consent to provide the National Highway Traffic Safety Administration with the original signed WB-INFO form in the event that the National Highway Traffic Safety Administration requests it.

Print Name of Legal representative and Law Firm, if Applicable

Signature

Date

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration (NHTSA) inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, or a legal representative acting on such person's behalf, who wishes to provide NHTSA with information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements of 49 U.S.C. Chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury. The information provided will allow the Agency to evaluate the claim and elicit information relevant to whistleblower eligibility requirements. This information may be

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disclosed to the U.S. Department of Justice or an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction, consistent with the confidentiality requirements set forth in 49 U.S.C. § 30172(f). NHTSA may also disclose information that could reasonably be expected to reveal the identity of a whistleblower in certain limited situations, including when the whistleblower provides prior written consent. *Id.*

Furnishing the information contained in this form is voluntary but a decision not to do so will result in you not being eligible for award consideration.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov.

Notice of Whistleblower Rights and Protections

This brief description will provide you with an overview of the whistleblower rights and protections.

Whistleblowers, as that term is defined in 49 U.S.C. § 30172(a)(6), have a right to keep their identity confidential in most situations. 49 U.S.C. § 30172(f). Generally speaking, any information which reasonably could be expected to reveal the identity of a whistleblower may be disclosed only under limited circumstances. One circumstance where NHTSA could reveal such information is if the whistleblower gives prior written consent. 49 U.S.C. § 30172(f)(1)(B).

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public access to records of the Federal Government. Individuals can obtain information from many categories of records of the Government--not just materials that apply to them personally. NHTSA must honor requests under the FOIA, with some exceptions. Information that could reasonably be expected to reveal the identity of a whistleblower is exempted from FOIA disclosure by statute. *See* 49 U.S.C. § 30172(f)(3); 5 U.S.C. § 552(b)(3)(B).

NHTSA may disclose information that could reasonably be expected to reveal the identity of a whistleblower if it follows the provisions of 5 U.S.C. § 552a (the Privacy Act of 1974). 49 U.S.C. § 30172(f)(1). The Privacy Act prohibits the disclosure of information from a system of records (where information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) absent the written consent of the subject individual, unless the disclosure is pursuant to one of the twelve statutory conditions.

Furthermore, under 49 U.S.C. § 30171, employees providing certain motor vehicle safety information have protections from discrimination. Under 49 U.S.C. § 30171(a)(1), a motor vehicle manufacturer, parts supplier or dealership may not discharge an employee or otherwise discriminate against the employee because the employee provided, caused to be provided, or is

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about to provide (with knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act (49 U.S.C. Chapter 301).

General Information

- To be eligible for an award under NHTSA's whistleblower program, you must first provide us with your information through one of two ways. After completing this WB-INFO form, send it to NHTSA electronically to NHTSAWhistleblower@dot.gov, or submit it by any such method that the Agency may expressly designate on its website (<https://www.nhtsa.gov/laws-regulations/whistleblower-program>).
- Submitting your information is the first step. If the information you submit leads to the successful resolution of a covered action that in the aggregate results in collected monetary sanctions exceeding \$1,000,000, you will have an opportunity at a later date to submit a claim for an award. That is a separate process and is described in our whistleblower rules at 49 C.F.R. Part 513.
- You have the right to submit information anonymously. If you are submitting information anonymously, you must be represented by a legal representative in this matter and Sections C and G of this form must be completed. Otherwise, you may, but are not required to, have a legal representative. If you are submitting information anonymously, please skip Part I of these instructions and proceed directly to Part II. Otherwise, please begin by following the instructions in Part I.

Part I: Instructions for filers who are disclosing their identity to NHTSA

- You are required to complete Sections A, B, D, E, and F of this form. If you are represented by a legal representative in this matter, you must also complete section C. Specific instructions for answering these questions can be found in Part IV below.
- If you are represented, your legal representative does not need to complete Section G.
- You will need to submit the WB-INFO form in accordance with the Submission Procedures in 49 C.F.R. Part 513.

Part II: Instructions for anonymous filers

- If you are submitting information anonymously, you must be represented by a legal representative on this matter.
- You are required to complete Sections A, B, C, D, E, and F of this form and give the signed original to your legal representative. Specific instructions for answering these

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questions can be found in Part IV below.

- Your legal representative must retain your signed original WB-INFO form.

Part III. Instructions for legal representatives representing anonymous filers

- Obtain a completed and signed original WB-INFO form, filled out in accordance with the Part II above. You must retain this signed original in your records.
- You must prepare a WB-INFO form, completing Sections B, C, D, and E with your client's information. You must also sign the declaration in Section G.
- You will need to submit the WB-INFO form you completed in accordance with submission procedures in 49 C.F.R. Part 513.

Part IV. Instructions for Completing Form WB-INFO

Section A: Information About Yourself

Questions 1-16: Please provide the following information about yourself:

- Last name, first name, and middle initial;
- Complete address, including city, state/province, zip/postal code, and country;
- Your telephone number, and if available, an alternate number where you can be reached;
- Your email address (to facilitate communications, you are strongly encouraged to provide your email address);
- Your preferred method of communication;
- Your occupation;
- Your current employer;
- Your current employer's address; and
- Your relationship to the company about whom the concern is raised.

Section B: Information About the Motor Vehicle Manufacturer, Part Supplier, or Dealership About Which the Concern is Raised

Questions 1-7: Please provide the following information about the motor vehicle manufacturer, part supplier, or dealership about which the concern is raised:

- Company name of the motor vehicle manufacturer, part supplier or dealership;
- Complete address of the motor vehicle manufacturer, part supplier, or dealership, including city, state/province, zip/postal code, and country; and
- Complete whether you work or worked for the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised. If yes, please provide dates that you work or worked for the company. If no, provide the name of the motor vehicle manufacturer, part supplier, or dealership you work or worked for.

Question 8: Please check the correct box stating whether the motor vehicle manufacturer, part supplier, or dealership about which the concern was raised has or had an internal

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reporting mechanism. The choices are yes, no, and I don't know.

Question 9: If you checked the "yes" box in response to the question of whether the motor vehicle manufacturer, part supplier or dealership had an internal reporting mechanism, please provide the following information:

- If you reported the issue through your company's internal reporting mechanism, check the box "yes" and provide the date that you reported to the internal reporting mechanism.
- If you did not report the issue through your company's internal reporting mechanism, check the box "no" and provide your reason for not reporting to the internal reporting mechanism.

Section C: Legal representative Information. Complete this section only if you are represented by a legal representative in this matter. If you are submitting your information anonymously and you want to be considered for an award under NHTSA's whistleblower program, you must be represented by a legal representative, and this section must be completed.

Questions 1-9: Provide the following information about the legal representative representing you in this matter:

- Legal representative's name;
- The legal representative's firm's name;
- The firm's complete address, including city, state, and zip code;
- Your legal representative's telephone number; and
- Your legal representative's email address.

Section D: Tell Us About the Issue Involving the Motor Vehicle Manufacturer, Part Supplier, or Dealership:

Question 1: Please provide the date that the alleged conduct began.

Question 2: Check the option that best describes whether the alleged conduct is ongoing.

Question 3a: Indicate whether you or your legal representative have had any prior communication with the National Highway Traffic Safety Administration ("NHTSA") concerning this matter.

Question 3b: If you answered "yes" to Question 3a, provide the name of the NHTSA staff member(s) with whom you or your counsel communicated and date of such communication.

Question 4a: Check the option that best describes whether your allegation is related to a potential safety-related defect or noncompliance with an applicable Federal Motor Vehicle Safety Standard (FMVSS).

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Question 4b: If you answered "yes" to Question 4a, provide a detailed description of the allegation and a detailed description of how the allegation affects vehicle/system/component performance and/or compliance. Please include the make, model, model year, part number, component number, etc. if known.

Question 5a: Check the option that best describes whether your allegation is related to any violation or alleged violation of any notification or reporting requirement of the Safety Act.

Question 5b: If you answered "yes" to Question 5a, provide a description of the notification or reporting issue. State in detail all facts pertinent to the alleged violation.

Question 6: Describe all supporting materials in your possession and the availability and location of additional supporting materials not in your possession. Attach additional sheets if necessary.

Section E: Additional Information

Question 1: Describe how you learned about or obtained the information that supports your allegations. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

Question 2: Identify with particularity any documents or information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity could be reasonably expected to be revealed if the documents or information are disclosed to a third party.

Question 3a: Check the option that best describes whether you or your legal representative have taken any other action regarding the issue or your allegations.

Question 3b: If your answer to Question 3a was "Yes," provide details. Use additional sheets if necessary.

Question 4: Check the option that best describes whether you acquired information through a means or manner that has been determined by a United States federal court or a state court to violate applicable federal or state criminal law. The question also contains a statement that if the answer to this question is yes, to please contact NHTSA's Office of the Chief Counsel before you submit this form.

Question 5: Check the option that best describes whether you acquired the original information that you are submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine. The question also contains a statement that if the answer to this question is yes, to please contact NHTSA's

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Office of the Chief Counsel before you submit this form.

Question 6: Provide any additional information that you think may be relevant. Attach additional sheets if necessary.

Section F: Prospective Whistleblower's Declaration

This is to be completed and signed by the person submitting the information.

Section G: Legal representative Certification

This is to be completed and signed by a legal representative for an anonymous person submitting information. If you have a legal representative and are not submitting this form anonymously, this section does not need to be completed.

Appendix B to Part 513- FORM WB-RELEASE

OMB Number: 2127-0767
Exp. [DATE]
NHTSA Form 1684

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)**

**FORM WB-RELEASE
WHISTLEBLOWER RELEASE FORM**

See Notice of Whistleblower Rights and Protections, Privacy Act Statement, Submission Procedures, and Completion Instructions below.

A. Information			
1. Last Name	2. First Name	3. M.I.	
4. Street Address		5. Apartment/Unit #	
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Name of the motor vehicle manufacturer, part supplier, and/or dealership to which this issue relates:			

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B. Release

I understand that in the course of an inquiry or analysis surrounding my allegations, it may become necessary for NHTSA to reveal information that reasonably could be expected to reveal my identity to persons or their counsel or agents at the organization or institution against which such allegations are made or other entities.

CONSENT - I have read and understand the above information and authorize NHTSA to reveal any information that could reasonably be expected to reveal my identity to persons at the organization or institution against which my allegations are made, or their agents or counsel, to governmental entities outside the United States and to other persons or entities that NHTSA determines should have access to this information to assist in NHTSA's analysis, inquiry or investigation. **I further understand that I am not required to consent to this release, and do so voluntarily.**

C. Prospective Whistleblower's Signature

Signature

Date

Notice of Whistleblower Rights and Protections

This brief description will provide you with an overview of the whistleblower rights and protections.

Whistleblowers, as that term is defined in 49 U.S.C. § 30172(a)(6), have a right to keep their identity confidential in most situations. 49 U.S.C. § 30172(f). Generally speaking, any information which reasonably could be expected to reveal the identity of a whistleblower can be disclosed only under limited circumstances. One circumstance where NHTSA could reveal such information is if the whistleblower gives prior written consent. 49 U.S.C. § 30172(f)(1)(B).

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public access to records of the Federal Government. Individuals can obtain information from many categories of records of the Government--not just materials that apply to them personally. NHTSA must honor requests under the FOIA, with some exceptions. Information that could reasonably be expected to reveal the identity of a whistleblower is exempted from FOIA disclosure by statute. *See* 49 U.S.C. § 30172(f)(3); 5 U.S.C. § 552(b)(3)(B).

NHTSA may disclose information that could reasonably be expected to reveal the identity of a whistleblower if it follows the provisions of 5 U.S.C. § 552a (the Privacy Act of 1974). 49 U.S.C. § 30172(f)(1). The Privacy Act prohibits the disclosure of information from a system of records (where information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) absent the written consent of the subject individual, unless the disclosure is pursuant to one of twelve statutory

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conditions.

Furthermore, under 49 U.S.C. § 30171, employees providing certain motor vehicle safety information have protections from discrimination. Under 49 U.S.C. § 30171(a)(1), a motor vehicle manufacturer, parts supplier or dealership may not discharge an employee or otherwise discriminate against the employee because the employee provided, caused to be provided, or is about to provide (with knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act (49 U.S.C. 30101 et. seq.).

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration (“NHTSA”) inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who wishes to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal their identity. Furnishing this form is voluntary.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email at NHTSAWhistleblower@dot.gov, or a NHTSA attorney with whom you have previously been in contact.

General Information and Submission Procedures

- This form should be used by persons that want to provide prior written consent to the Agency to disclose information which could reasonably be expected to reveal their identity.
- You must sign the WB-RELEASE form as the prospective whistleblower.
- You must submit your form to NHTSA in one of following ways: by emailing it to NHTSAWhistleblower@dot.gov or by any such method that the Agency may expressly designate on its website (<https://www.nhtsa.gov/laws-regulations/whistleblower-program>).

Instructions for Completing Form WB-RELEASE

Section A: Information

Questions 1-9: Please provide the following information about yourself:

- last name, first name, and middle initial; and
- Complete address, including city, state/province, zip/postal code, and country.

Question 10: Please provide the name of motor vehicle manufacturer, part supplier and/or dealership to which the issue relates.

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Section B: Release

Check the box before the word “**CONSENT**” to indicate your consent to allow the Agency to reveal any information that could reasonably be expected to reveal your identity to persons at the organization or institution against which your allegations are made, or their agents or counsel, to governmental entities outside the United States and to other persons or entities that NHTSA determines should have access to this information to assist in NHTSA’s analysis, inquiry or investigation.

This section also informs you that you are not required to consent to this release and that you do so voluntarily.

Section C: Prospective Whistleblower’s Signature

This section must be signed and dated by the prospective whistleblower.

Appendix C to Part 513- Form WB-AWARD

OMB Number: 2127-0767
Exp. [DATE]
NHTSA Form 1684

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)**

**FORM WB-AWARD
WHISTLEBLOWER AWARD APPLICATION**

See Privacy Act Statement, Submission Procedures, and Completion Instructions below.

A. CLAIMANT’S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)			
1. Last Name	2. First Name	3. M.I.	
4. Street Address		5. Apartment/Unit #	
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. Email Address	13. Preferred Method of Communication
B. LEGAL REPRESENTATIVE INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)			

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1. Legal Representative's Name			
2. Firm Name			
3. Street Address			
4. City	5. State/Province	6. ZIP/Postal Code	7. Country
8. Telephone	9. Email Address		

C. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Did you acquire the original information that you submitted to NHTSA solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine?

Yes No

2. Did you acquire the original information that you submitted to NHTSA by a means or manner that was determined by a United States federal court or state court to violate applicable federal or state criminal law?

Yes No

3. Are you currently a subject or target of a criminal investigation in the United States, or have you been convicted of a criminal violation by a United States federal or state court, in connection with the allegations or conduct that you submitted to the NHTSA?

Yes No

4. Indicate whether any of the factors in 49 CFR 513.7 apply, which could make you ineligible for an award.

Yes No

5. If you answered “Yes” to any of Questions above, provide details. Use additional sheets, if necessary.

D. ISSUE DETAILS

1. How did you submit original information to NHTSA?

By email to NHTSAWhistleblower@dot.gov

Other: _____

2. Date(s) that you submitted the information:

3. Name of motor vehicle manufacturer, part supplier and/or dealership to which this issue relates

E. NOTICE OF COVERED ACTION AND RELATED ACTION

1. Date of relevant Notice of Covered Action

2. Notice Number

3. Case Name

4. Case Number

5. Date of relevant Notice of Covered Action for any related action

6. Notice Number of Related Action

7. Case Name of Related Action

8. Case Number of Related Action

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F. AWARD JUSTIFICATION

Explain the basis for your belief that you should receive an award in connection with your submission of information to NHTSA. Specifically address how you believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. § 30172 and 49 C.F.R. Part 513. Use additional sheets, if necessary.

G. CLAIMANT'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true and correct to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information or other interactions with the National Highway Traffic Safety Administration, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Print Name

Signature

Date

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration ("NHTSA") inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, or a legal representative acting on such person's behalf, who wishes to apply for a whistleblower award for providing original information that led to the successful resolution of a covered action. The information provided will allow the Agency to evaluate the claim and elicit information relevant to whistleblower eligibility requirements. Furnishing the information is voluntary but a

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decision not to do so will result in you not being eligible for award consideration.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov or a NHTSA attorney with whom you have previously been in contact.

General Information

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to NHTSA. To be eligible for an award, you must meet all the requirements set forth in 49 U.S.C. § 30172 and the rules thereunder, as contained in 49 CFR Part 513.
- You must sign the WB-AWARD form as the claimant. If you provided your information to NHTSA anonymously, you must now disclose your identity on this form and your identity must be verified in a form and a manner that is acceptable to the Agency prior to the payment of any award.
- Your WB-AWARD form, and any attachments thereto, must be received by NHTSA within ninety (90) days of the date of the Notice of Covered Action to which the claim relates.
- You must submit your form to NHTSA in one of following two ways: emailing it to NHTSAWhistleblower@dot.gov or by any such method that the Agency may expressly designate on its website (<https://www.nhtsa.gov/laws-regulations/whistleblower-program>).

Instructions for Completing Form WB-AWARD

Section A: Claimant's Information

Questions 1-13: Please provide the following information about yourself:

- Last name, first name, and middle initial;
- Your complete address, including city, state/province, zip/postal code, and country;
- Your telephone number, and if available, an alternate number where you can be reached;
- Your email address (to facilitate communications, you are strongly encouraged to provide your email address); and
- Your preferred method of communication.

Section B: Legal representative Information. Complete this section only if you are represented by a legal representative in this matter. If you are not represented by a legal representative in this matter, leave this Section blank.

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Questions 1-9: Provide the following information about the legal representative representing you in this matter:

- Your legal representative's name;
- The firm name;
- Your legal representative's complete address, including city, state, and zip code;
- Your legal representative's telephone number; and
- Your legal representative's email address.

Section C: Eligibility Requirements and Other Information

Question 1: Indicate whether you acquired the original information that you submitted to NHTSA solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine.

Question 2: Indicate whether you acquired the original information that you submitted to NHTSA by a means or manner that was determined by a United States federal court or state court to violate applicable federal or state criminal law.

Question 3: Indicate whether you are currently a subject or target of a criminal investigation in the United States or whether you have been convicted of a criminal violation by a United States federal or state court in connection with the allegations or conduct that you submitted to NHTSA.

Question 4: Indicate whether any of the factors in 49 CFR 513.7 apply, which could make you ineligible for an award.

Question 5: If you answered "yes" to Questions 1, 2, 3, or 4 above, provide details. Use additional sheets if necessary.

Section D: Whistleblower Information Details

Questions 1-3: Provide the following information about the whistleblower information that you submitted to NHTSA:

- Select the method by which you submitted original information to NHTSA. If you selected "Other" describe how you submitted the information;
- Provide the date that you submitted the original information to NHTSA; and
- Provide the name of the motor vehicle manufacturer, part supplier, and/or dealership to which the issue relates.

Section E: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a "Notice of Covered Action" on NHTSA's website. This notice is published whenever a judicial

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or administrative action brought under 49 U.S.C. Chapter 301 by NHTSA, the U.S. Department of Transportation, or the U.S. Department of Justice results in collected monetary sanctions exceeding \$1,000,000.

A Notice of Covered Action is published on NHTSA's website subsequent to the entry of a final judgment, order or agreement that by itself, or collectively with other judgments, orders or agreements previously entered in the action, results in collected monetary sanctions exceeding the \$1,000,000 threshold.

Question 1: Provide the date of the Notice of Covered action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3: Provide the case name referenced in the Notice of Covered Action.

Question 4: Provide the case number referenced in the Notice of Covered Action.

Question 5: Provide the date of the relevant Notice of Covered Action for any related action.

Question 6: Provide the notice number of the related action.

Question 7: Provide the case name of the related action.

Question 8: Provide the case number of the related action.

Section F: Award Justification

Use this section to explain the basis for your belief that you should be granted an award in connection with your submission of information to NHTSA. Specifically address how you believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. § 30172 and 49 C.F.R. Part 513.

49 U.S.C. § 30172(c) provides that in determining an award made under 49 U.S.C. § 30172(b), the Secretary shall take into consideration: (i) if appropriate, whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership; (ii) the significance of the original information provided by the whistleblower to the successful resolution of the covered action; (iii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action; and (iv) such additional factors as the Secretary considers relevant.

Section G: Claimant's Declaration

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This section must be completed and signed by the claimant.

Issued in Washington, DC on _____ under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

Billing Code: 4910-59-P

[Signature Page for Implementing the Whistleblower Provisions of the Vehicle Safety Act; Final Rule]