SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes to comply with DFARS drafting conventions.

List of Subjects in 48 CFR Parts 206, 217, 219, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR parts 206, 217, 219, and 252 as follows:

■ 1. The authority citation for 48 CFR parts 206, 217, 219, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

206.303–1 [Amended]

■ 2. Amend section 206.303–1 in paragraphs (b) introductory text and (b)(1) by removing ''sole source'' and adding ''sole-source'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

■ 3. Amend section 217.172 by revising paragraph (f)(2) to read as follows:

217.172 Multiyear contracts for supplies.

* * * * *

(f) * * *

(2) In addition, for contracts equal to or greater than $750 million, the head of the contracting activity must determine that the conditions required by paragraphs (h)(2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (h)(2) of this section.

* * * * *

PART 219—SMALL BUSINESS PROGRAMS

219.808–1 [Amended]

■ 4. Amend section 219.808–1 in the introductory text by removing ''sole source'' and adding ''sole-source'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.225–7003—

■ a. By revising the provision heading and date;

■ b. In paragraphs (b) introductory text and (b)(2) introductory text, by removing ''offeror'' wherever it appears and adding ''Offeror'' in its place; and

■ c. In paragraphs (d) introductory text and (e), by removing ''offeror'' and adding ''Offeror'' in its place.

The revisions read as follows:

252.225–7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

* * * * *

REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (JAN 2025)

* * * * *

[FR Doc. 2024–31569 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2022–0030]

RIN 0750–AL67

Defense Federal Acquisition Regulation Supplement: Update of Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software (DFARS Case 2022–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012, which addresses the validation of proprietary data restrictions.

DATES: Effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: David Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 89 FR 31686 on April 25, 2024, to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81). Section 815(b) amended 10 U.S.C. 2321 (currently 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. Two respondents submitted public comments in response to the proposed rule. DoD also held a public meeting on May 17, 2024.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Proposed Rule

There are no significant changes from the proposed rule.

B. Analysis of Public Comments

1. Technical Data or Software Delivered, Furnished, or Otherwise Provided to the Government

Comment: The respondents suggested that the revisions to the clauses at DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, to consistently reference technical data and computer software ''delivered or otherwise provided to the Government'' should be removed from the final rule. The existing clause language already references technical data delivered, software delivered, technical data required to be delivered, and software required to be delivered. Respondents assert that the phrase ''otherwise provided to the Government'' is ambiguous and inconsistent with existing statutes. The respondents also asserted that this language may result in a potential chilling effect on the relationship between Government and contractors.

Response: References to technical data and computer software ''delivered or otherwise provided'' to the Government appear multiple times in the current contract clauses at DFARS 252.227–7013, Rights in Technical Data—Other Than Commercial Products and Commercial Services, and DFARS 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer

Software Documentation. These references cover technical data and computer software ''delivered or otherwise furnished'', ''delivered or otherwise provided'', and ''delivered, furnished, or otherwise provided'' to the Government, and both clauses reference the validation clauses. In addition, DFARS 252.227–7019(e) currently references ''software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract.'' Accordingly, these revisions ensure consistency with existing language in DFARS 252.227–7019, 252.227–7013, and 252.227–7014, and clearly signals the scope of the validation clauses. The Government therefore declines the suggestion to remove these revisions from the final rule.

2. Changes To Align With Statutory Language Related to Restrictions Asserted

Comment: A respondent suggested that the replacement in several places in the DFARS of the phrase ''restrictive markings'' with the phrase ''asserted restriction'' is unnecessary for statutory alignment and may result in confusion.

Response: The underlying statutes (10 U.S.C. 3781–3786) repeatedly reference challenge, justification, and validation of ''restriction[s] asserted'' and ''asserted restriction[s].'' The statutes do not refer to restrictive markings. The final rule aligns the clauses with the underlying statutory language, and it creates consistent nomenclature and syntax throughout the clauses. The final rule references validation of ''asserted restrictions'', rather than validation of restrictive markings (which is inconsistent with the statutory language and more likely to be confused with the separate procedures for ensuring conformity of those markings). Rather than the confusing syntax of ''striking'' an asserted restriction, the final rule references striking ''restrictive markings.''

3. Definition of Fraud

Comment: The respondents requested clarification with respect to when a use or release restriction would be considered ''fraudulently asserted.'' In addition, the respondents proposed specific requirements and limitations for the Government when invoking this exception to the six-year challenge period.

Response: As stated in the proposed rule, the statutory revisions being implemented in DFARS Case 2022–D016 do not establish a specialized definition of ''fraudulently asserted'' or a knowledge requirement. The respondents proposed requirements and limitations on this exception to the six-year challenge period. The respondents did not provide, and DoD is not aware of, either an existing statute, policy, or regulation that includes the proposed requirements or limitations, or evidence of congressional intent to impose the proposed requirements or limitations.

As with other instances of the term fraud in the Federal Acquisition Regulation and DFARS, DoD relies upon the common meaning of the terminology used in the statute and regulatory implementation, informed by applicable procurement statutes, other applicable statutes, and case precedent. In addition, the existing validation procedures require the Government to state the specific grounds for challenging the asserted restriction, which includes the grounds for invoking the exception to the six-year challenge period. Such grounds are subject to review by a court of competent jurisdiction or the Armed Services Board of Contract Appeals.

4. Applicability to Commercial Products or Commercial Services

Comment: One respondent recommended revisions to the proposed language in DFARS 252.227–7037(e)(1) to clarify whether sufficient information to reasonably demonstrate funding for the development of commercial products or commercial services must be provided with every challenge.

Response: The original language indicates that challenges will ''[s]tate the specific grounds for challenging the asserted restriction including, for commercial products or commercial services, sufficient information to reasonably demonstrate that the commercial product or commercial service was not developed exclusively at private expense.'' This requirement related to commercial products or commercial services is not optional, and the proposed revision was not intended to change this requirement. For the sake of clarity, the final rule reverts to the original language.

5. Question About Other Rulemaking Case

Comment: A respondent requested that DoD expedite the issuance of proposed rule for DFARS Case 2023–D022, Definition of Subcontract.

Response: This comment is outside the scope of this rule, which implements section 815(b) of the NDAA for FY 2012.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule amends the clauses at DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software, and DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data. However, this final rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The clause will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products including COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

This final rule includes changes to lengthen the validation period for asserted restrictions from three years to six years. This final rule also provides an exception to the prescribed time limit for validation of asserted restrictions if the technical data or computer software involved are the subject of a fraudulently asserted restriction. Therefore, the final rule may increase the number of challenges to which contractors must respond. However, DoD cannot quantify the estimated number of the additional challenges at this time.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* and is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81), which addresses the period for validation of proprietary data restrictions. The objective of the rule is to implement section 815(b), which amended 10 U.S.C. 2321 (currently 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. This rule will ensure that the Government has adequate opportunity to challenge discrepancies or inaccuracies in contractor assertions of data and software rights.

The public comments raised no significant issues in response to the initial regulatory flexibility analysis.

This rule applies to small entities that have contracts with DoD requiring delivery of data, including technical data and computer software. DoD obtained data for fiscal years 2020 through 2022 from the Procurement Business Intelligence Service for all contracts and modifications that include one or more of the following DFARS clauses: 252.227–7013, Rights in Technical Data—Other Than Commercial Products or Commercial Services; 252.227–7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation; 252.227–7015, Technical Data—Commercial Products and Commercial Services; and 252.227–7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program. DoD awarded on average 54,255 contract actions per year that included one or more of the listed clauses to 9,550 unique entities, of which 28,657 contract awards (53 percent) were made to 6,033 unique small entities (63 percent).

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this final rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0369, entitled DFARS Subpart 227.71, Rights in Technical Data; and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, the Defense Acquisition Regulations System amends 48 CFR part 252 as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 252.227–7019—

■ a. By revising paragraph (b);

■ b. In paragraph (d)(2)(i)(B) by revising the second sentence;

■ c. In paragraph (e)(1) by revising the second sentence;

■ d. In paragraph (f)(1)(ii) by removing ''within 60 days'' and adding ''in writing within 60 days'' in its place;

■ e. In paragraph (g)(3)(i)(B) by removing ''government'' and adding ''Government'' in its place.

The revisions read as follows:

252.227–7019 Validation of Asserted Restrictions—Computer Software.

* * * * *

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any asserted restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered, required to be delivered, or otherwise provided to the Government under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a request for information under paragraph (d) of this clause or a challenge under paragraph (f) of this clause.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(B) * * * If the Contractor fails to correct or strike the unjustified marking and return the corrected software to the Contracting Officer within 60 days following receipt of the software, the Contracting Officer may correct or strike the marking at the Contractor's expense;

* * * * *

(e) * * *

(1) * * * Except for software that is publicly available, has been furnished to the Government without restrictions, has been otherwise made available without restrictions, or is the subject of a fraudulently asserted use or release restriction, the Government may exercise this right only within 6 years after the date(s) the software is delivered or otherwise furnished to the Government, or 6 years following final payment under this contract, whichever is later.

* * * * *

■ 3. Amend section 252.227–7037—

■ a. By revising the section heading and the clause heading and date;

■ b. By revising paragraphs (c), (d), (e)(1) introductory text, and (e)(1)(iii);

■ c. In paragraph (e)(4) by removing ''restrictive markings'' and adding ''asserted restrictions'' in its place;

■ d. By revising paragraph (g)(1);

■ e. In paragraph (g)(2)(i) by removing ''restrictive marking'' and ''In order to'' and adding ''asserted restriction'' and ''To'' in their places, respectively;

■ f. By revising paragraphs (g)(2)(ii) through (iv);

■ g. In paragraph (h)(1)(i) by removing ''marking'' and adding ''marking that is based on the asserted restriction'' in its place;

■ h. By revising paragraphs (h)(1)(ii) and (i); and

■ i. In paragraph (k) by removing ''restrictive markings'' and ''subcontractors'' and adding ''restrictions'' and ''subcontractor'' in their places, respectively.

The revisions read as follows:

252.227–7037 Validation of Asserted Restrictions on Technical Data.

* * * * *

VALIDATION OF ASSERTED RESTRICTIONS ON TECHNICAL DATA (JAN 2025)

* * * * *

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its asserted restrictions on the rights of the Government and others to use, duplicate, release, or disclose technical data delivered, required to be delivered, or otherwise provided to the Government under the contract or subcontract. Except as provided in paragraph (b) of this clause, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such asserted restrictions in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any asserted restriction on the right of the United States or others to use, disclose, or release technical data. If, upon review of the explanation submitted, the Contracting Officer cannot determine the basis of the asserted restriction, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any asserted restriction on technical data delivered, to be delivered, or otherwise provided to the Government under the contract or subcontract (*e.g.,* a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that reasonable grounds exist to question the current validity of the asserted restriction and that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer will follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the asserted restriction would make impracticable the subsequent competitive acquisition of the item or process to which the technical data relates, the Contracting Officer may challenge the validity of the asserted restriction as described in paragraph (e) of this clause.

(e) * * *

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the asserted restriction is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor making the asserted restriction. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will—

* * * * *

(iii) State that a Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a prior asserted restriction identical to the current asserted restriction, within the 3-year period preceding the current challenge, shall serve as justification for the current asserted restriction if the prior validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

* * * * *

(g) * * *

(1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the asserted restriction, the Contracting Officer will issue a final decision to the Contractor or subcontractor that sustains the validity of the asserted restriction and that states that the Government will continue to be bound by the asserted restriction. The Contracting Officer will issue this final decision within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The Contracting Officer will provide notification of any longer period for issuance of a final decision within 60 days after receipt of the response to the challenge notice.

* * * * *

(2) * * *

(ii) The Government agrees that it will continue to be bound by the asserted restriction for a period of 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Court of Federal Claims, it will provide a notice of intent to file suit to the Contracting Officer within 90 days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the 90-day period, the Government may cancel or ignore the restrictive markings that are based on the asserted restrictions, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the asserted restriction where a notice of intent to file suit in the United States Court of Federal Claims is provided to the Contracting Officer within 90 days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive marking that is based on the asserted restriction, if the Contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the filing of a suit in the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the asserted restrictions where an appeal or suit is filed pursuant to the Contract Disputes statute until final disposition by an agency Board of Contract Appeals or the United States Court of Federal Claims. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Court of Federal Claims, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its asserted restrictions are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) * * *

(1) * * *

(ii) If the asserted restriction is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the asserted restriction, unless special circumstances would make such payment unjust.

* * * * *

(i) *Duration of right to challenge.* (1) The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within 6 years of final payment on a contract or within 6 years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure, or use of technical data at any time if such technical data—

(i) Are publicly available;
(ii) Have been furnished to the United States without restriction;
(iii) Have been otherwise made available without restriction; or
(iv) Are the subject of a fraudulently asserted use or release restriction.
(2) Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes ''validation'' as addressed in 10 U.S.C. 3785(c).

* * * * *

[FR Doc. 2025–00722 Filed 1–16–25; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA–2024–0034]

RIN 2130–AC98

Accident/Incident Investigation Policy for Gathering Information and Consulting With Stakeholders

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; withdrawal.

SUMMARY: FRA is withdrawing the direct final rule titled ''Federal Railroad Administration Accident/Incident Investigation Policy for Gathering Information and Consulting with Stakeholders,'' (the Rule) which was published on October 1, 2024.

DATES: Effective on January 17, 2025, FRA withdraws the direct final rule published at 89 FR 79767 on October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Rick Huggins, Supervisory Railroad Security Specialist, Office of Railroad Safety, FRA, telephone: 202–465–6922 or email: *ricky.huggins@dot.gov;* or Senya Waas, Senior Attorney, Office of the Chief Counsel, FRA, telephone: 202–875–4158 or email: *senyaann.waas@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2024, FRA published the Rule in the **Federal Register** amending 49 Code of Federal Regulations (CFR) 225.31 to, in accordance with Section 22417 of the Infrastructure Investment and Jobs Act (IIJA), create a standard process for investigators to use during accident and incident investigations conducted under that section.[1] This process was to be used to determine when it was appropriate to collect information and the appropriate method for gathering that information about an accident or incident under investigation from railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary. The process was also to be used to determine when it was appropriate to consult with railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary, for technical expertise on the facts of the accident or incident under investigation. *See* Public Law 117–58, Section 22417, Nov. 15, 2021, 135 Stat. 748.

The Rule generated two adverse, substantive comments. Accordingly, as described in more detail below, FRA has decided to withdraw the Rule.

II. Reasons for Withdrawal

FRA is withdrawing the Rule, which took effect on November 15, 2024. FRA received two adverse, substantive comments which opposed the Rule. There were no comments submitted in support of the Rule.[2]

Commenters objecting to the Rule stated that the Rule was insufficient as it needed to be expanded to include the outside review of accidents/incidents by professionals, such as physicists or highly-qualified industrial engineers, as independent reviews of findings.

Commenters also alleged that FRA's outreach to the Class I railroads was limited and insufficient, and nonexistent to short line railroads. As such, it was the position of the commenters that FRA did not account for how the Rule would fully affect the railroad industry in the following ways: (1) FRA's ''catch-all'' provision for determining which accidents trigger the information gathering and stakeholder consultation requirements is vague and fails to properly implement the IIJA mandate; (2) FRA's description of ''stakeholders'' fails to properly implement the IIJA mandate; (3) FRA fails to explain substantive regulatory changes in 49 CFR 225.31(a); (4) loopholes allow for information to be shared with third parties during an investigation; (5) it is unclear how FRA's web-based document sharing site will protect against the disclosure of confidential information; (6) there are no protections against post-investigation disclosures of confidential information; (7) the identity of a stakeholder should not be kept confidential from other stakeholders; (8) FRA's investigation policy would create untenable conflicts with NTSB practice in situations where NTSB and FRA conduct overlapping investigations; (9) FRA improperly limits the basis for restricting stakeholder access to an accident site; (10) FRA does not have the authority to grant a stakeholder ''virtual'' access to railroad property; (11) the investigation policy will result in undue delays in clearing accident sites; (12) FRA adopts an incident command model but fails to provide details on its structure and tasks; and (13) FRA underestimates the cost of compliance of the new regulation.

Given the extent of the commenters' substantive issues with the Rule, FRA is withdrawing the Rule at this time in order to re-assess its components and work further with stakeholders to evaluate potential changes.

III. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094 and DOT Regulatory Policies and Procedures

This withdrawal is a non-significant regulatory action within the meaning of Executive Order (E.O.) 12866, as amended by E.O. 14094, ''Modernizing Regulatory Review [3]'' and DOT's Order, ''Rulemaking and Guidance Procedures,'' DOT 2100.6A (June 7, 2021).[4] FRA made this determination because the economic effects of this regulatory action will not exceed the $100 million annual threshold as defined by E.O. 12866.

[1] 89 FR 79767. A correction to the Rule was published on October 28, 2024 (89 FR 85450).

[2] As stated in the Rule: ''If FRA receives an adverse, substantive comment on any of the provisions, it will publish in the **Federal Register** a timely withdrawal, informing the public that the direct final rule will not take effect.'' 89 FR 79767 at 79768.

[3] 88 FR 21879 (Apr. 6, 2023) available at *https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review.*

[4] DOT–2100.6A-Rulemaking and Guidance (Jun. 7, 2021) available at *https://www.transportation.gov/sites/dot.gov/files/2021-08/Final-for-OST-C-210407-001-signed.pdf.*