Management Area from December 1 through April 30 each year for the protection of critical winter wildlife habitat. This closure may be opened April 15 if conditions and wildlife needs warrant.

33. You must not enter identified closure areas in the Perins Peak Wildlife Management Area from March 15 through July 31 each year for the protection of critical raptor habitat.

Exemptions

The following persons are exempt from this supplementary rule: any Federal, State, or local officers or employees acting within the scope of their official duties; members of any organized law enforcement, military, rescue, or fire-fighting force performing an official duty; and any persons who are expressly authorized or approved by the BLM Authorized Officer.

Enforcement

Any person who violates any part of this supplementary rule may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Colorado or local law.

(Authority: 43 U.S.C. 1733, 43 U.S.C. 1740; 43 CFR 8365.1–6)

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2024–30059 Filed 12–18–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[Docket No. FRA–2023–0021, Notice No. 2]

RIN 2130–AC94

Freight Car Safety Standards Implementing the Infrastructure Investment and Jobs Act

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

ACTION: Final rule.

SUMMARY: FRA is amending the Freight Car Safety Standards (FCSS) to implement section 22425 of the Infrastructure Investment and Jobs Act (Act). The Act places certain restrictions on newly built freight cars placed into service in the United States (U.S.) including limiting content that originates from a country of concern (COC) or is sourced from a state-owned enterprise (SOE) and prohibiting sensitive technology that originates from a COC or is sourced from a SOE. The Act mandates that FRA issue a regulation to monitor and enforce industry's compliance with the Act's standards.

DATES: The Final Rule is effective January 21, 2025.

ADDRESSES: *Docket:* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Check Kam, Mechanical Engineer, Office of Railroad Safety at (202) 366–2139, email: *check.kam@dot.gov;* or Michael Masci, Senior Attorney Adviser, Office of the Chief Counsel, telephone: (202) 302–7117, email: *michael.masci@dot.gov.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

CBP—Customs and Border Protection
CE—Categorical Exclusion
CFR—Code of Federal Regulations
COC—Country of Concern
DOT—Department of Transportation
EA—Environmental Assessment
EIS—Environmental Impact Statement
FCSS—Freight Car Safety Standards
FR—Federal Register
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
GS—General Schedule
IIJA—Infrastructure Investment and Jobs Act
IP—Intellectual Property
NAFTA—North American Free Trade Agreement
NEPA—National Environmental Policy Act
NPRM—Notice of Proposed Rulemaking
OMB—Office of Management and Budget
PRA—The Paperwork Reduction Act
RSA—Rail Security Alliance
RSEP—Railroad Safety Enforcement Procedures
RSIA—Rail Safety Improvement Act of 1988
SOE—State-Owned Enterprise
Umler—Universal Machine Language Equipment Register
U.S.—United States
U.S. DOC—United States Department of Commerce
U.S.C.—United States Code
USITC—U.S. International Trade Commission
USMCA—United States-Mexico-Canada Agreement
USTR—U.S. Trade Representative

Table of Contents for Supplementary Information

I. Executive Summary

Purpose of the Regulatory Action

FRA is issuing this rulemaking as required by the Act, as codified at 49 U.S.C. 20171.[1] The Act provides that a railroad freight car, wholly manufactured on or after the date that is 1 year after the date of issuance of regulations, may only operate on the U.S. general railroad system if: (1) the

[1] The Infrastructure Investment and Jobs Act (IIJA), Sec. 22425, Pub. L. 117–58, 135 Stat. 752 (Nov. 15, 2021) (codified at 49 U.S.C. 20171) and generally referred to in this rule as the Act, or section 20171).

railroad freight car is manufactured, assembled, and substantially transformed, as applicable, by a qualified manufacturer in a qualified facility; (2) none of the sensitive technology located on the railroad freight car, including components necessary to the functionality of the sensitive technology, originates from a COC or is sourced from a SOE; and (3) none of the content of the railroad freight car, excluding sensitive technology, originates from a country of concern (COC) or is sourced from a state-owned enterprise (SOE) that has been determined by a recognized court or administrative agency of competent jurisdiction and legal authority to have violated or infringed valid U.S. intellectual property rights of another including such a finding by a Federal district court under title 35 or the U.S. International Trade Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).[2]

The Act further provides percentage limitations on freight car contents so that not later than one year after the date of issuance of regulations, a newly manufactured railroad freight car, even if complying with the requirements in the preceding paragraph, may not operate on the U.S. general railroad system if more than 20 percent of the content of the railroad freight car, calculated by the net cost of all components of the car and excluding the cost of sensitive technology, originates from a COC or is sourced from a SOE. After three years from the date of issuance of regulations, the percentage may not be more than 15 percent.[3] See the notice of proposed rulemaking [4] (NPRM) for detailed discussion on the background of the Act and other relevant laws.

Summary of the Regulatory Action

The Act requires regulations to be issued to implement its mandate and for freight car manufacturers to certify that freight cars covered by the Act are in compliance.[5] FRA issued an NPRM on December 8, 2023,[6] proposing to codify a process for FRA to monitor and enforce compliance with the Act. This final rule adopts that proposal with minor clarifications. To carry out the Act's certification requirement, this rule requires railroad freight car manufacturers to electronically certify to FRA that each freight car complies with the Act before that car is operated on the U.S. general railroad system of transportation. The certification is required to identify each car being offered for operation and include the manufacturer's name and the name of the individual responsible for certifying compliance with the Act. In addition, this final rule requires manufacturers offering freight cars for service in the U.S. to maintain all records showing information to support certification, including content calculations, and such records are required to be made available to FRA upon request.

Fifteen comments to the NPRM were submitted to the docket for this rulemaking proceeding.[7] FRA reviewed all the comments, and in response, has incorporated portions of FRA's existing enforcement process into this final rule to clarify the process FRA will use to enforce the civil penalty fines provided in the Act. No other changes to the proposed rule text are provided in this final rule, but discussions are provided to help clarify: (1) the application of the Act's content limitation and sensitive technology prohibition requirements to freight car manufacturers; and (2) the implementation and enforcement of the Act's freight car compliance certification requirement and penalties.

Costs and Benefits of the Regulatory Action

This rule fulfills FRA's obligation to issue a rulemaking that implements the Act. In section ''V. A. Executive Order 12866 as Amended by Executive Order 14094'' of this rule, FRA describes the benefits and costs that are expected to come from issuing this regulation.

In the economic analysis section, FRA qualitatively explains the benefits expected to result from implementing the rule. Issuing the rule will protect the U.S. rail system from risks that come from manufacturing freight cars with sensitive technology and technological components, necessary to the functionality of the sensitive technology, from a COC or SOE such as potential vulnerabilities in information security. As such, this rule mitigates potential issues related to compromised national security and corporate espionage. Issuing the rule also fulfills FRA's duties required by the Act.

Over a 10-year period of analysis, FRA quantifies the following costs to the freight car manufacturing industry and FRA that come from issuing this rule: (1) limiting content sourced from COCs or SOEs; (2) prohibiting the use of sensitive technology from these sources; (3) industry compliance costs; and (4) government administrative monitoring and enforcement costs. As shown in Table 1, the cost from issuing the rule is approximately $143,600 (undiscounted), $130,300 (PV, 2%), $124,100 (PV, 3%), and $102,800 (PV, 7%). The annualized net costs are approximately $14,500 (PV, 2%) and $14,600 (PV, 3%).[8]

TABLE 1—INDUSTRY AND FRA BURDEN FROM ISSUING THE RULE, TOTAL COST, 2022 DOLLARS, ROUNDED ($100)

Entity	Cost			Annualized	
	Undiscounted	PV 2%	PV 3%	PV 2%	PV 3%
Industry	40,100	35,900	34,000	4,000	4,000
FRA	103,500	94,900	90,100	10,500	10,600
Total cost	143,600	130,300	124,100	14,500	14,600

II. Discussion of Comments on the NPRM

FRA reviewed all fifteen comments received in response to the NPRM. Comments generally raised issues related to the proposed: (1) application of the Act's content limitation and sensitive technology prohibition requirements to freight car manufacturers; (2) implementation of the Act's freight car compliance certification; and (3) process for enforcing the Act's requirements and penalties. In response to the comments, this final rule incorporates portions of FRA's existing enforcement process into

[2] 49 U.S.C. 20171(b)(1).

[3] *Id.* at (b)(2).

[4] 88 FR 85561 (Dec. 8, 2023).

[5] The Act requires certification to the ''Secretary of Transportation.'' Pursuant to 49 CFR 1.89(a), the Secretary has delegated that authority to FRA.

[6] 88 FR 85561.

[7] Docket No. FRA–2023–0021.

[8] All cost estimates are in 2022 dollars.

the FCSS [9] to help clarify the process FRA will use to enforce the civil penalties provided in the Act. Discussions are also provided in this section of this rulemaking to help clarify the other issues raised in the comments. In addition, other comments broadly expressed support [10] for the proposal or concern [11] about railroad safety, and although FRA considered these comments, FRA is not discussing those comments in this final rule because generally, they do not provide a basis for FRA to respond or are outside the scope of this rulemaking. Notably, FRA did not receive any comments in opposition to the proposals in the NPRM. For a complete list of comments please see the docket for this rulemaking.[12]

A. Comments About FRA's Proposed Application of the Act's Content Limitation and Sensitive Technology Requirements to Railroad Freight Car Manufacturers

The preamble to the NPRM provides FRA's understanding of how the Act applies to railroad freight car manufacturers.[13] It generally explains that the Act: (1) applies to manufacturers and not railroads and does not cover after-manufacture changes to railroad freight cars, including sensitive technology; (2) does not apply to railroad freight cars already placed in service in the U.S.; and (3) provides definitions for the terms ''sensitive technology'', COCs, and SOEs that are suitable for implementation of the Act.

1. The Act Does Not Regulate After-Manufacture Changes to Railroad Freight Cars, Including Content Limitations and Sensitive Technology

As discussed in the NPRM, FRA concluded that the Act regulates railroad freight cars by imposing requirements at the time of initial manufacture but does not require FRA to ensure that the requirements are met throughout the useful life of the equipment or at each re-entry into service following any changes to the railroad freight car including, repair, alteration, modification, rebuild, refurbishment, restoration, or reconstruction.[14] Several manufacturers, trade associations, Brotherhood of Locomotive Engineers and Trainmen (BLET), and Rail Security Alliance (RSA) [15] commented that the Act's sensitive technology prohibition should be extended beyond the time of initial manufacture to further protect against the potential influence from COCs and SOEs. The commenters agree with FRA's conclusion that the Act imposes requirements only at a car's time of initial manufacture, but they contend that extending the prohibition would be within the spirit of the Act. These comments generally expressed concern that aftermarket parts containing sensitive technology originating from SOEs and COCs could be controlled remotely and could be used to disrupt railroad operation. Trinity Industries and the Association of American Railroads commented agreeing with the proposed rule's conclusion that the Act's sensitive technology prohibition applies only at the time of initial manufacture and do not request any extension to aftermarket parts. As discussed in the NPRM, the Act expressly places requirements on the sensitive technologies installed on railroad freight car manufacturers at the time of the cars' initial manufacture and does not place on-going restrictions on the use of such technology (*e.g.,* aftermarket parts) on freight cars.[16] Without express Congressional intent to impose such ongoing restrictions, FRA is not extending the sensitive technology prohibitions to apply to freight cars after their time of initial manufacture.

2. The Act Does Not Apply to Railroad Freight Cars Already Placed in Service in the U.S.

One member of the public [17] commented that the Act's requirements should not apply to existing freight cars. As discussed in the NPRM, railroad freight cars that are currently in-use are not subject to the Act, including when parts are replaced during maintenance or repair; because the Act only imposes requirements on newly-manufactured freight cars.[18] With respect to applicability, the plain language states that only railroad freight cars that are wholly manufactured on or after a date that is one year after the issuance date are subject to Act's requirements.[19] The Act requires FRA to issue regulations to implement the requirements set forth in the Act. For purpose of this analysis, FRA proposed to define the date on which FRA promulgates regulations as the ''issuance date.'' Thus, if FRA promulgates regulations on June 1, 2025, only railroad freight cars that are wholly manufactured on or after June 1, 2026, are subject to the Act's requirements. Using this hypothetical issuance date of June 1, 2025, as an example, railroad freight cars manufactured prior to June 1, 2026, and new railroad freight cars that were partially manufactured prior to June 1, 2026, are not subject to the Act.

3. Definitions Provided by the Act for the Terms ''Sensitive Technology'', ''Component'', ''Country of Concern'', and ''State-Owned Enterprise'' Are Suitable for Implementing the Act

Several manufacturers, trade associations, BLET, and RSA [20] commented that FRA should revise the proposed definition for ''sensitive technology'' to expressly include only devices and components that are physically located on the freight car. As such, devices in such locations would be prohibited, if originating from a COC or sourced from a SOE.[21] FRA disagrees that the revision is needed and in this final rule adopts the proposed rule's definition, incorporating the Act's definition for the term ''sensitive technology.'' The NPRM adopted the definition of the term ''sensitive technology'' directly from the Act. The Act defines sensitive technology as ''any device embedded with electronics, software, sensors, or other connectivity, that enables the device to connect to, collect data from, or exchange data with another device.'' FRA finds this definition suitable for implementing the Act's requirement. When read alone, FRA agrees with the commenters that the definition does not clearly restrict sensitive technology to devices located on freight cars. However, the Act's prohibition of certain sensitive technology expressly identifies ''sensitive technology located *on the railroad freight car*'' and proposed § 215.401(a)(2), adopted in this final rule, makes clear that the prohibition applies to sensitive technology ''on the

[9] Adding §§ 215.409 through 215.421 to the rule text in this final rule.

[10] Alliance for American Manufacturing's comment and letter from U.S. Senators Tammy Baldwin, John Cornyn, and Paul Casey Jr.

[11] FRA–2023–0021–0002.

[12] Docket No. FRA–2023–0021, Notice No. 1.

[13] 88 FR at 85568.

[14] *Id.*

[15] Alliance for American Manufacturing; American Foundry Society, American Iron and Steel Institute, and Steel Manufacturers Association; Amsted Railway Company; BLET; Canadian Association of Railway Suppliers; FRA–2023–0021–0002; RSA; United Steelworkers; and Wabtec Corporation.

[16] 88 FR at 85564.

[17] FRA–2023–0021–002.

[18] 88 FR at 85565.

[19] 49 U.S.C. 20171(b)(1).

[20] Canadian Association of Railway Suppliers, American Foundry Society, American Iron and Steel Institute, and Steel Manufacturers Association, Trinity Industries, RSA, Greenbrier Companies, BLET, Railway Supply Institute (RSI), and Wabtec Corporation.

[21] The prohibition in 49 CFR 215.405(a)(2) would apply.

railroad freight car.'' As such, FRA finds that its conclusion (discussed in the NPRM [22]) that the Act's definition of ''sensitive technology'' is limited to devices located on freight cars is correct and as such, FRA does not find it necessary to revise the definition of ''sensitive technology.''

Several manufacturers, trade associations, BLET, and RSA [23] commented that FRA should revise the final rule to further clarify the term ''sensitive technology'' by expressly including microprocessors, short range wireless processors, and long-range wireless processors to ensure these devices (or components) would be prohibited, if originating from a COC or sourced from a SOE. The NPRM adopted the definition of the term ''sensitive technology'' directly from the Act and, in the preamble to the NPRM, FRA explained that as proposed, the sensitive technology prohibition would also apply to the components necessary to the functionality of the sensitive technology (*i.e.,* the *active* components that work with the sensitive technology).[24] Further, in the NPRM, FRA specifically listed ''*any type of processor,* transmitter, receiver, or data storage device'' as active components of sensitive technology.[25] As such, FRA finds that it is clear that various processors identified by the commenters are covered by the prohibition as proposed. The comments did not explain why such processors would not be covered by the proposed definition. Thus, FRA concludes it is not necessary to explicitly call out these types of active components in the definition of the term ''sensitive technology,'' and adopts the proposed definition.

Amsted Rail's comment suggests that FRA ''adopt a *de minimis* limitation of 3%–5% of total material cost only on the finished railcar as a clear definition of small parts'' to interpret the term ''component,'' as used in the Act. FRA declines to adopt a *de minimis* limitation, as it could be inconsistent with the definition provided by the Act. According to the Act, the term ''component'' means a part or subassembly of a railroad freight car.[26] The *de minimis* limitation suggested by Amsted Rail does not exclude parts or subassemblies from being included in the calculation. As such, part or subassembly of a finished car could be calculated in the 3%–5% of total material cost. In such a scenario, excluding the part or subassembly from the definition of ''component'' would be inconsistent with the express definition provided by the Act. Amsted Rail's comment did not address whether it would be possible to avoid any such inconsistencies.

A member of the public [27] commented that FRA should consult and coordinate with other relevant agencies and stakeholders to better refine and harmonize the proposed definitions for COC and SOE. The comment, however, does not express any concern with the proposed definitions, which are incorporated from the Act. FRA finds that the definitions are suitable for implementing the Act, and in this final rule, FRA adopts the definitions as proposed.

4. The Scope of the IP Violation or Infringement Prohibition Being Incorporated Into the Freight Car Safety Standards Is Intended To Be the Same as That Delineated in the Act

Wabtec Corporation and RSA commented on FRA's proposal for enforcing the Act's prohibition against railroad freight cars operating on the U.S. general railroad system of transportation if equipped with content originating from a COC or sourced from an SOE that has violated or infringed U.S. intellectual property (IP) rights.[28] The commenters: (1) request that this final rule clarify that any railroad freight cars equipped with IP subject to a violation or infringement that is not from a COC or SOE do not trigger the Act's IP violation or infringement prohibition; and (2) disagree with FRA's proposal that the duration of the IP violation or infringement prohibition is always permanent.

FRA agrees with the commenters that the IP violation or infringement prohibition applies only when the IP subject to the violation or infringement comes from a COC or SOE. The following example, provided in the NPRM, helps clarify this point. In 2009, the ITC issued a 10-year Limited Exclusion Order against two Chinese companies (Tianrui Group Company Limited and Tianrui Group Foundry Company Limited) and two U.S. companies (Standard Car Truck Company, Inc. and Barber Tianrui Railway Supply, LLC).[29] The ITC determined that the four respondents violated section 337 of the Tariff Act by misappropriating numerous Amsted trade secrets relating to the manufacture of cast steel railway wheels, importing into the U.S. cast steel railway wheels and substantially injuring, and threatening substantial injury to, Amsted's domestic cast steel railway wheel operations, which manufacture Amsted's Griffin® wheels.[30] The ITC determination excluded any such steel railway wheels from entering into the U.S. for ten years. On appeal, the Federal Circuit upheld the ITC's decision.[31] FRA understands that section 20171(b)(1)(C) [32] would prohibit a railroad freight car from operating on the U.S. general railroad system of transportation if equipped with the steel wheels that were the subject of this case, only if they are from a COC or SOE. Therefore, a railroad freight car equipped with the steel wheels sourced from the either of the two U.S. companies (not SOEs) in this example, are not covered by the Act's IP violation or infringement prohibition.

As discussed in the NPRM, FRA understands the plain language of the Act to permit permanent prohibition, because it does not expressly limit the duration of the IP violation or infringement prohibition or connect it to any penalty provided in a determination by the ITC, or other court or agency of competent jurisdiction and legal authority.[33] The commenters disagree, asserting that ''to the extent that the IP rights that were the subject of the violation have since lost their protected status other than through violation of law (*e.g.,* where such IP was protected by a patent that has expired or where a trade secret is no longer protected as such for example due to intentional disclosure), . . . the prohibition would no longer apply.'' However, the scope of the application of the Act's IP violation or infringement prohibition is not limited to a particular owner, operator, or IP (likely a component on the railroad freight car), it is tied to the railroad freight car. The Act provides that the entire railroad freight car ''may only operate on the United States general railroad system of transportation if . . . none of the content of the railroad freight car . . .'' satisfies the prohibition.[34] When the prohibition is

[22] 88 FR at 85562, 85567, and 85575.

[23] Canadian Association of Railway Suppliers, American Foundry Society, American Iron and Steel Institute, and Steel Manufacturers Association, RSA, BLET, RSI, and Wabtec Corporation.

[24] 88 FR at 85567.

[25] *Id.*

[26] 49 U.S.C. 20171(a).

[27] Docket number FRA–2023–0021–0003.

[28] 49 CFR 215.401(a).

[29] *See In the matter of Certain Cast Steel Railway Wheels,* et al. USITC Inv. No. 337–TA–655 (U.S. Intern. Trade Com'n), 2009 WL 10693128.

[30] *In the matter of Certain Cast Steel Railway Wheels,* et al. USITC Inv. No. 337–TA–655 (U.S. Intern. Trade Com'n), 2009 WL 4261206.

[31] *Tianrui Group Co. Ltd.* v. *Intl. Trade Comm'n,* 661 F.3d 1322 (Fed. Cir. 2011).

[32] Codified by this final rule at 49 CFR 215.401(a)(3).

[33] 88 FR at 85567.

[34] 49 U.S.C. 20171(b)(1).

triggered, it applies to the entire railroad freight car that is so equipped, until it is brought into compliance (*e.g.* removing the component that is subject to an IP violation or infringement). As such, the IP violation or infringement prohibition would be permanent, if the railroad freight car is not brought into compliance.

B. Comments About FRA's Proposal Implementing the Infrastructure Investment and Jobs Act's Freight Car Compliance Certification

The Act requires manufacturers to annually certify to FRA, as delegated by the Secretary, that any railroad freight cars it offers for operation on the U.S. general railroad system of transportation meet the requirements of the Act.[35] This rulemaking incorporates the certification requirement into the FCSS [36] and establishes a process for FRA to access necessary information to determine compliance with the Act.

1. The Act Requires Certain Information To Be Included in the Certification

As proposed in the NPRM, this final rule requires manufacturers' certifications to be submitted electronically to FRA's Office of Railroad Safety.[37] The certifications must include the manufacturer's name and address; the name, signature, and contact information for the person responsible for certifying compliance; and a car identification number for each car being certified. Manufacturers will be required to maintain records to support their compliance, and FRA must be able to access those records upon request.

Two manufacturers,[38] RSA, and RSI commented that FRA should impose a five-year limit to the recordkeeping requirement. FRA disagrees, because records may be needed to enforce the Act beyond a five-year period. The statute of limitations is five years for noncompliance with the Act, but as explained in section III. C. 4. ''Five-Year Statute of Limitations Applies to the Act'' below, the prohibition penalty may be initiated after more than three monetary penalty assessments under the Act. Each of the three penalties could take multiple years using the process provided in §§ 215.409 through 215.421, and the penalty assessments may occur years apart. As such, the enforcement process would likely extend well beyond five years, and FRA may need access to records beyond a five-year period to enforce the regulation.

Wabtec Corporation, RSA, and RSI commented that FRA should provide a standard certification form for manufacturers to certify compliance. FRA disagrees and adopts the certification requirements as proposed in the NPRM. These requirements provide FRA the information needed to implement the certification requirements and allow manufacturers flexibility to determine how best to comply. The information required in § 215.403 can be conveniently and adequately provided in different formats. If desired, the industry may expand upon the minimum certification requirements and create an industry-wide certification form.

2. The Act Requires Certification To Be Submitted Prior to Placing Freight Cars Into Service on the U.S. General Rail System

Two manufacturers,[39] RSA, and RSI informed FRA in their comments that it may not be convenient to certify compliance with the Act when they request FRA perform a sample car inspection. FRA understands that a sample car inspection is conducted when the sample railcar is fully built for inspection.[40] As such, it should be a convenient time to certify compliance. However, FRA expects manufacturers will develop their own process to ensure they comply with the certification requirements, including timely submissions to FRA.

C. Comments About FRA's Process for Enforcing the Act's Requirements and Penalties

Some manufacturers,[41] RSA, and RSI commented that FRA should revise the proposed rule [42] to clarify or add the following: (1) willful noncompliance should be required to establish a violation of the Act's requirements; (2) FRA's Chief Counsel should provide written notice of a probable violation, and an express process should be established for manufacturers facing prohibition through which manufacturers can defend their position and appeal a finding of noncompliance; (3) a process by which manufacturers can be reinstated after the prohibition is triggered; and (4) clarification of the five-year statute of limitations for enforcing identified violations. Generally, FRA expects violations of the Act to be rare; thus, FRA expects to address individual violations on a case-by-case basis. FRA agrees with the comments that an express process is warranted due to the severity of the potential penalties (the prohibition against offering cars for service in the U.S.) imposed by the Act. As discussed in the NPRM, FRA will use its Railroad Safety Enforcement Procedures (RSEP) (49 CFR part 209) to enforce the Act.[43] This final rule incorporates the RSEP into the FCSS to clarify how the RSEP will apply.[44]

In addition, Association of American Railroads (AAR) expressed its understanding that FRA's proposal to request documentation to determine whether a freight car is registered with the Umler system would be limited to information relevant to determining such registration. As discussed in the NPRM, FRA plans to request information to enforce the requirements of the Act. In doing so, FRA intends to request information relevant to determine compliance with the Act and treat any protected or sensitive information appropriately.

1. The Act Does Not Require a Finding of Willfulness To Establish a Violation

Wabtec Corporation and RSA commented that FRA should assess the Act's prohibition penalty against freight car manufacturers only when there is willful noncompliance with the Act's requirements. The commenters assert that the Act's language, ''[t]he Secretary of Transportation *may* [emphasis added] prohibit a railroad freight car manufacturer with respect to which the

[35] *Id.* at (c)(3).

[36] 49 CFR part 215.

[37] 88 FR at 85577.

[38] Trinity Industries and Wabtec Corporation.

[39] Trinity Industries and Wabtec Corporation.

[40] Most newly built freight cars are considered cars of special construction under the freight car safety standards and manufacturers request FRA to inspect the cars prior to entering service. According to 49 CFR 231.118, cars of construction not covered by the 18 types of cars identified in the regulation, relative to handholds, sill steps, ladders, hand brakes and running boards may be considered as of *special construction,* but shall have, as nearly as possible, the same complement of handholds, sill steps, ladders, hand brakes, and running boards as are required for cars of the nearest approximate type. To help ensure the complement of safety appliances satisfy the requirements for the nearest approximate type, manufacturers request that FRA perform a sample car inspection after the cars are built, before they enter service. This seems to be a convenient time to certify that the cars comply with the Act. Manufactures commented that this would not be a convenient time to certify the cars are compliant but did not provide a clear explanation.

[41] Trinity Industries, Greenbrier Companies, and Wabtec Corporation.

[42] 49 CFR 215.407.

[43] 88 FR at 85568.

[44] This final rule adds §§ 215.409 through 215.421 to incorporate the relevant provisions from appendix A and subpart B (hazmat) to 49 CFR part 209 to expressly provide procedures to implement § 215.407(a). Other portions of the RSEP are discussed in this section and will be used by FRA to determine when to initiate an enforcement action for a finding of noncompliance with the Act. Notably, any prohibition under § 215.407(b) requires assessment of three penalties under § 215.407(a), and will therefore, benefit from the process provided for § 215.407(a).

Secretary has assessed more than 3 violations under subparagraph (A) from providing additional railroad freight cars for operation on the United States general railroad system of transportation . . .,'' gives FRA some discretion to determine when to impose penalties. While FRA agrees the statutory language provides FRA discretion, FRA's RSEP provides the following criteria for FRA to use to determine which instances of noncompliance merit penalties: (1) the inherent seriousness of the condition or action; (2) the kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation; (3) any actual harm to persons or property already caused by the condition or action; (4) the offending person's (*i.e.,* railroad's or individual's) general level of current compliance as revealed by the inspection as a whole; (5) the person's recent history of compliance with the relevant set of regulations, especially at the specific location or division of the railroad involved; (6) whether a remedy other than a civil penalty (ranging from a warning on up to an emergency order) is more appropriate under all of the facts; and (7) such other factors as the immediate circumstances make relevant. The criteria provided by the RSEP are appropriate for FRA to enforce the Act's penalties tailored to the freight car manufacturer's relevant compliance record and the facts surrounding its noncompliance and promote rail safety. The commenters do not specifically address the RSEP criteria, but generally seem concerned with the severity of the penalties and seem to recommend a willfulness standard to safeguard against any potential shortcomings. FRA agrees with commenters that the Act's civil monetary penalties, potentially culminating in a prohibition on manufacturers from offering cars for service, are more severe than the typical civil penalties FRA assesses for violations of other Federal rail safety laws.

The RSEP explains FRA applies a willfulness standard for penalty assessments only when it is statutorily mandated. For example, FRA applies a willfulness standard for civil penalties assessed against individuals,[45] but does not require willfulness for suspensions or disqualifications of individuals. The willfulness standard for individual civil penalties described in the RSEP was statutorily mandated and created in response to an FRA proposal.[46] FRA proposed the willful act requirement for individuals because it ''believed then that it would be too harsh a system to collect fines from individuals on a strict liability basis, as the safety statutes permit FRA to do with respect to railroads.'' [47]

In contrast to the individual civil penalty provisions, the provisions in the Rail Safety Improvement Act of 1988 (RSIA) authorizing suspension or disqualification of an individual whose violation of Federal rail safety laws has shown that individual to be unfit for safety-sensitive service, do not require a showing of willfulness.[48] In the absence of a statutory requirement, FRA's implementing regulations for disqualification actions did not require a violation to be willful.[49]

Criminal penalties are the only provisions identified by the RSEP, other than individual civil monetary penalties, that require willfulness for assessment.[50] This willfulness requirement also arose under statute.[51] Accordingly, it is not established FRA practice to interpret a willfulness requirement where the statute does not expressly require one. FRA has, however, broadly incorporated willfulness as a factor for determining the penalty amount when not statutorily required. FRA's civil penalty schedules for regulated entities generally provide higher penalties for willful violations than non-willful violations. In other words, FRA uses willfulness to assess a higher monetary penalty rather than as a threshold requirement for a finding of a violation.[52]

For the forgoing reasons, FRA has found that willfulness is not required to support a violation of the Act's requirements. Without any evidence that Congress intended to apply a willfulness standard for the Act's requirements, per the RSEP, FRA will enforce the penalties using the same criteria as other civil monetary penalties assessed in FRA's safety program.

2. Process for Manufacturers To Defend Against and Appeal Findings of Noncompliance With the Act

Three manufacturers,[53] RSA, and RSI commented that FRA should revise the proposed rule to add a specific process for manufacturers to defend against and appeal FRA's findings of noncompliance with the Act and a requirement for FRA's Chief Counsel to provide written notice of a probable violation of the Act. The RSEP [54] explains that when a violation is committed, ''penalties are assessed by issuance of a penalty demand letter that summarizes the claims, encloses the violation report with a copy of all evidence on which FRA is relying in making its initial charge, and explains that the railroad may pay in full or submit, orally or in writing, information concerning any defenses or mitigating factors.'' Consistent with the RSEP, FRA expects to issue a penalty demand letter, as described in the RSEP, for any violation of the Act prior to assessing any civil penalties.

The RSEP also provides a process for respondents to defend against a finding of noncompliance with the Act when FRA indicates its intent to enforce a civil penalty. Specifically, ''[t]he railroad safety statutes, in conjunction with the Federal Claims Collection Act, authorize FRA to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors.'' [55] Once penalties have been proposed, the respondent is given a reasonable amount of time to investigate the charges and then make its case before FRA in an informal conference.[56]

3. Process for Railroad Freight Car Manufacturer To Be Reinstated After Being Prohibited Under the Act

Two manufacturers and RSA commented that FRA should clarify the process for freight car manufacturers to provide cars for operation on the U.S. rail system after being prohibited from doing so due to noncompliance with the Act.[57] According to the Act,[58] the prohibition continues until FRA determines: (1) such manufacturer is in compliance with the Act; and (2) all civil penalties assessed to such manufacturer pursuant to this section

[45] 49 CFR 209.409, 209.335(a); *see also* part 209, appendix A.

[46] Part 209, appendix A (*citing* RSIA, Pub. L. 100–342, enacted June 22, 1988).

[47] *Id.*

[48] Section 3(a) of the RSIA, Public Law 100–342.

[49] Subpart D of 49 CFR part 209, implementing the suspension and disqualification provisions of RSIA.

[50] 49 CFR 209.131.

[51] SAFETEA–LU, Public Law 109–59, 119 Stat. 1144 (as amended) (enacted as 49 U.S.C. 5124(a)).

[52] *See* part 209, appendix A: ''Although railroads are strictly liable for violations of the railroad safety laws and deemed to have knowledge of those laws, FRA's penalty schedules contain, for each regulation, a separate amount earmarked as the initial assessment for willful violations. Where FRA seeks such an extraordinary penalty from a railroad, it will apply the definition of 'willful' set forth [in appendix A to part 209].''

[53] Greenbrier Companies, Trinity Industries, and Wabtec Corporation.

[54] Appendix A to part 209.

[55] *Id.*

[56] Appendix A refers to this step in the process as an ''informal conference.'' The stated purpose is for the respondent to state their case.

[57] Greenbrier Companies and Wabtec Corporation.

[58] Section 20171(c) incorporated by this final rule into the regulation at 49 CFR 215.407(b).

have been paid in full. Remedial action may be considered mitigation during the civil penalty process, and evidence of completed remedial actions may help FRA determine compliance with the Act. FRA expects that during the course of any enforcement process, a manufacturer will submit evidence of appropriate corrective actions demonstrating that it has corrected the identified noncompliance and that it has come into full compliance with the Act and this regulation. Once FRA determines that a manufacturer has come into compliance and paid all relevant civil penalties, FRA will document that determination in writing.

To help further clarify the reinstatement process, this final rule is updating the term ''section'' in section 215.407(b)(1) to ''subpart.'' Section 20171(c)(4) states that a freight car manufacturer can resume providing cars for operation on the U.S. freight railroad interchange system when ''[s]uch manufacturer is in compliance with this section.'' The phrase, ''this section,'' refers to 49 U.S.C. 20171, which contains the Act's substantive requirements, including content limitations and certification. FRA's proposal, as indicated throughout the NPRM, intended to incorporate the statutory requirements into the regulation for the convenience of the regulated community without changing the substance. The proposed rule text incorporated the phrase, ''this section,'' from the Act into section 215.407(b)(1) without updating the reference to match the existing regulatory formatting and language. Within the existing regulatory formatting, the proper reference is to the ''subpart,'' referring to Subpart E—Manufacturing, which contains the same substantive requirements contained in 49 U.S.C. 20171. As such, FRA is changing the phrase ''this section'' to ''this subpart'' in the final rule's section 215.407(b)(1).

4. Five-Year Statute of Limitations Applies to the Act

RSA and Wabtec Corporation commented that FRA should clarify how the statute of limitations will apply to findings of noncompliance with the Act. The statute of limitations is generally five years for penalties enforced by FRA, including civil monetary penalties and prohibitions (such as forfeiture of the right to provide freight cars for operation on the U.S. rail system).[59] As such, enforcement must commence within five years from the date when the claim first accrued. When FRA enforces civil monetary penalties for noncompliance with the Act,[60] the date the claim first accrues is the date that the noncompliance occurred. When FRA enforces prohibitions for noncompliance with the Act,[61] the date the claim first accrues is the date that more than three civil monetary penalties are assessed.

III. Section-by-Section Analysis

This section-by-section analysis is intended to explain the rationale for each revised or new provision FRA is incorporating into the FCSS. The regulatory changes are organized by section number.

Section 215.5 Definitions

As proposed in the NPRM, FRA is incorporating several new defined terms into the FCSS, most pulled directly from the Act and some added, as necessary, to effectively implement the Act. FRA is also organizing the existing FCSS definitions along with the new definitions in alphabetical order to conform with FRA's other regulations. No changes are being made to the existing FCSS definitions. As also explained in the NPRM, the Act's definition for the term ''railroad freight car'' mirrors the definition for the same term in the current FCSS and accordingly, in this final rule, FRA is adopting that definition as proposed.

The rule text for this section is unchanged from the NPRM. See the NPRM for more detailed section-by-section analysis.[62] For discussion of comments received about the definition for the terms ''country of concern,'' ''sensitive technology,'' and ''state-owned enterprise'' in this section, see section II. A. 3. of this final rule. Although FRA is adopting each definition as proposed in the NPRM, FRA is reiterating the discussion of each definition below for the convenience of the reader.

Component is defined by the Act,[63] and FRA is adopting it in the FCSS. Although the definition does not identify specific parts and subassemblies of freight cars as ''components,'' FRA believes Congress intends this definition to include the major components of freight cars (*e.g.,* trucks, wheel sets, center sills, draft gears, couplers, walkways, running boards) when calculating content limitations under 49 CFR 215.401(b)(1). FRA does not intend the definition of ''component'' to include smaller parts that do not significantly impact manufacturing costs (*e.g.,* wear plates, roof liners, or small pieces of hardware such as screws).

Control is defined by the Act,[64] and FRA is adopting it in the FCSS. This definition relates to the definitions of ''qualified facility'' and ''qualified manufacturer'' discussed below.

Cost of sensitive technology is defined by the Act,[65] and FRA is adopting it in the FCSS.

Country of concern is defined by the Act [66] and FRA is adopting it in the FCSS.[67] As noted in the *Infrastructure Investment and Jobs Act Background* section in the NPRM, a country must meet all three criteria to qualify as a ''country of concern.'' Each of the criteria within the definition of ''country of concern'' are separated by ''and'' instead of ''or,'' meaning a country must meet all three criteria to meet the definition.[68] This term is separate and distinct from the terms ''foreign country of concern'' used in the CHIPS Act and implementing regulations to identify a country that is ''detrimental to the national security or foreign policy of the United States'' [69] or ''country of particular concern'' used in religious freedom designations made by the U.S. Department of State.[70]

First, to qualify as a ''country of concern'' under section 20171, the United States Department of Commerce (U.S. DOC) must have identified that country as a nonmarket economy country pursuant to the Tariff Act of 1930 *at the date* of enactment (*i.e.,* as of Nov. 15, 2021).[71] In 2021, when the Act became law, the U.S. DOC had named

[59] 28 U.S.C. 2462 (''Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.'').

[60] 49 CFR 215.407(a).

[61] *Id.*

[62] 88 FR at 85565.

[63] 49 U.S.C. 20171(a)(1).

[64] *Id.* at (a)(2).

[65] *Id.* at (a)(3).

[66] *Id.* at (a)(4).

[67] These same criteria are used to define ''country of concern'' in 49 U.S.C. 5323(u) (placing limitations on certain rolling stock procurements for public transportation that qualify for financial assistance), and the FTA has published Frequently Asked Questions Regarding Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 that discusses the criteria and the definition of ''country of concern.'' *https://www.transit.dot.gov/funding/procurement/frequently-asked-questions-regarding-section-7613-national-defense.*

[68] These criteria are discussed in section 20171(a)(4)(A)–(C).

[69] Pub. L. 117–167, 136 Stat 1380, 15 CFR 231.102.

[70] International Religious Freedom Act of 1998 (H.R. 2431) and its amendment of 1999 (Public Law 106–55) codified at 22 U.S.C. 73.

[71] 49 U.S.C. 20171(a)(4)(A).

eleven countries as nonmarket economy countries: Republic of Armenia, Republic of Azerbaijan, Republic of Belarus, People's Republic of China, Georgia, Kyrgyz Republic, Republic of Moldova, Republic of Tajikistan, Turkmenistan, Republic of Uzbekistan, and Socialist Republic of Vietnam [72] Accordingly, the countries that meet this first prong of the definition will not change.

Second, to constitute a ''country of concern,'' the U.S. Trade Representative (USTR) must also name that country on the priority watch list [73] in the most recent report required by the Trade Act of 1974.[74] In the most recently required report, the USTR identified seven countries on the priority watch list: Argentine Republic, Republic of Chile, People's Republic of China, Republic of India, Republic of Indonesia, Russian Federation, and Bolivarian Republic of Venezuela.[75]

Third, a country is deemed a ''country of concern'' only if it is subject to monitoring by the USTR under section 306 of the Trade Act of 1974.[76] Currently, the People's Republic of China is the only country subject to monitoring pursuant to section 306.

Accordingly, the People's Republic of China is currently the only country that meets all three criteria and therefore is the only ''country of concern'' as defined in the Act.

Net cost is defined by the Act based on its definition in the USMCA or any subsequent free trade agreement between the United States, Mexico, and Canada,[77] and FRA is adopting that definition in the FCSS. Currently, chapter 4 of the USMCA defines *net cost*.[78]

Qualified facility is defined by the Act,[79] and FRA is adopting it in the FCSS. When read in combination with the definition of the term *control* the Act provides, FRA finds that the Act intends for general corporate law principles to apply to determine whether a particular railroad freight car or component manufacturer is owned or controlled an SOE.[80]

Qualified manufacturer is defined by the Act,[81] and FRA is adopting it in the FCSS. For the purpose of this definition, a supplier, component and repair part manufacturer, or other entity may be a railroad freight car manufacturer, if it manufactures, assembles, of substantially transforms a freight car, as described in 49 CFR 215.401(a)(1). Like the definition of *qualified facility,* when read in combination with the Act's definition of the term *control,* FRA again finds that the Act intends for general corporate law principles to apply to determine whether a particular railroad freight car or component manufacturer is owned or controlled by an SOE.[82]

Sensitive technology is defined by the Act,[83] and FRA is adopting it in the FCSS. While FRA understands the list of devices included in this definition to be examples that can be considered sensitive technology, FRA is not currently aware of any additional devices that should be included in the list.

State-owned enterprise means—

(a) an entity that is owned by, or under the control of, a national, provincial, or local government of a country of concern, or an agency of such government; or

(b) an individual acting under the direction or influence of a government or agency described in paragraph (a) of this definition.[84]

This definition is provided by the Act and FRA is adopting it in the FCSS.

Substantially transformed is defined by the Act,[85] and FRA is adopting it in the FCSS. FRA understands that a manufacturing process which changes an article's name, character, or use will often result in a change in the article's tariff classification. Accordingly, FRA understands the Act's definition of *substantially transformed* to mean a manufacturing process that changes an article's name, character, or use. FRA notes that the U.S. Customs and Border Protection (CBP) is an implementing agency for USMCA and although CBP uses a slightly different definition of *substantially transformed* than that provided in the Act, CBP explains that substantial transformation ''occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process.'' [86] FRA finds that the definition of *substantially transformed* provided in the Act and CBP's definition of the same term are compatible in that a manufacturing process which changes an article's name, character, or use will often also result in a change in the article's tariff classification.

USMCA is defined by the Act,[87] and FRA is adopting it in the FCSS.

Section 215.401 Requirements for Railroad Freight Cars Placed Into Service in the United States

This section incorporates the requirements of 49 U.S.C. 20171(b)(1) into the FCSS. Section 20171(b)(1) provides that for a railroad freight car to operate on the U.S. general railroad system of transportation: (1) any car wholly manufactured after a certain date must be manufactured, assembled, and substantially transformed by a qualified manufacturer in a qualified facility; (2) none of the sensitive technology located on the car may originate from a COC or be sourced from a SOE; and (3) none of the content of the car (except sensitive technology) may originate from a COC or be sourced from a SOE with a history of problematic trade practices or respect for IP rights. These concepts are discussed further below.

Paragraph (a)(1) of 49 CFR 215.401 mirrors paragraph (b)(1)(A) of section 20171 and mandates that any railroad freight car to be operated on the U.S. general railroad system of transportation and wholly constructed one year from a final rule in this proceeding, must be manufactured, assembled, and substantially transformed by a qualified manufacturer or a qualified facility. The rule text for this section is unchanged from the NPRM. See the NPRM for more detailed section-by-section analysis.[88] For discussion of comments received about this section, see section II. A. of this final rule.

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[72] Int'l Trade Admin, *Countries Currently Designated by Commerce as Non-Market Economy Countries, https://www.trade.gov/nme-countries-list* (identifying the **Federal Register** notices wherein a country was designated as a non-market economy country).

[73] 19 U.S.C. 2242(g)(3).

[74] 49 U.S.C. 20171(a)(4)(B), 19 U.S.C. 2242.

[75] Office of the U.S. Trade Rep., *2024 Special 301 Report,* 5 (2024), (2024 Special 301 Report.pdf (ustr.gov)*).*

[76] 49 U.S.C. 20171(a)(4)(C), 19 U.S.C. 2416. *See* Office of the U.S. Trade Rep., *2024 Special 301 Report,* 44 (2024), *https://ustr.gov/issue-areas/intellectual-property/special-301/2023-special-301-review* (listing countries included on the priority watch list and whether such countries are subject to monitoring under section 306 of the Trade Act of 1974).

[77] 49 U.S.C. 20171(a)(5).

[78] *Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 (Rules or Origin) and Related Provisions in Chapter 6 (Textile and Apparel Goods) of the Agreement Between the United States of America, The United Mexican States, and Canada. https://ustr.gov/sites/default/files/files/agreements/usmca/UniformROO.pdf.*

[79] 49 U.S.C. 20171(a)(6).

[80] *See* 31 CFR 800.208 for examples of control.

[81] *Id.* at (a)(7).

[82] *See* 31 CFR 800.208 for examples of control.

[83] *Id.* at (a)(9).

[84] *Id.* at (a)(10).

[85] *Id.* at (a)(11).

[86] *https://www.trade.gov/rules-origin-substantial-transformation.*

[87] 49 U.S.C. 20171(a)(12).

[88] 88 FR at 85565.

Sensitive Technology Prohibition

As proposed in the NPRM and adopted in this final rule, paragraph (a)(2) of 49 CFR 215.401 mirrors paragraph (b)(1)(B) of section 20171 and addresses sensitive technology. This paragraph incorporates the Act's general prohibition on operating a freight car on the U.S. general railroad system of transportation, if any of its ''sensitive technology'' or ''components necessary to the functionality of the sensitive technology'' originates from a COC or is sourced from a SOE.

As noted above, the Act defines ''sensitive technology,'' but does not define what constitutes ''components necessary to the functionality of the sensitive technology.'' FRA understands this phrase to generally include the active components that work with the sensitive technology because they may also be able to collect and transmit data. Passive components are excluded from this phrase because they cannot collect or transmit data. Examples of *active* components include, but are not limited to, any type of processor, transmitter, receiver, or data storage device. While the *passive* components are still necessary for the device to function as a whole, these components do not play a vital role in the storage, collection, exchange, transmittal, or manipulation of any data. Examples of *passive* components include, but are not limited to, printed circuit boards, power supplies, temperature sensors, pressure gauges, resistors, capacitors, etc.

Intellectual Property Infringement Prohibition

As proposed in the NPRM and adopted in this final rule, paragraph (a)(3) of 49 CFR 215.401 mirrors paragraph (b)(1)(C) of section 20171 and addresses IP violation and infringement. This language forbids the inclusion in any railroad freight car of any content from a COC or a SOE ''that has been determined by a recognized court or administrative agency of competent jurisdiction and legal authority to have violated or infringed valid U.S. intellectual property rights of another.'' The Act includes both ''a finding by a Federal district court under title 35'' and a finding by the U.S. International Trade Commission (ITC) under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determinations sufficient to trigger the prohibition.

For the purposes of this requirement, the ITC makes a finding that an entity has violated or infringed valid U.S. IP rights when the ITC issues a final determination under section 337. Under ITC procedure, an administrative law judge, who concludes that an entity violated section 337 of the Tariff Act, first files an initial determination.[89] This initial determination becomes a final determination of the ITC 60 days after it is filed, unless the ITC orders review of the initial determination, in which case the ITC's ultimate finding would be the final determination.[90] These determinations are available on the ITC's website.[91] FRA does not anticipate tracking determinations on an ongoing basis; manufacturers seeking certification are responsible for researching determinations against their own suppliers.

Content Limitations

As proposed in the NPRM and adopted in this final rule, 49 CFR 215.401(b) mirrors section 20171(b)(2) and addresses content limitations from COCs and SOEs generally. Consistent with the Act, beginning 1 year after this regulation is issued, § 215.401(b)(1)(i) would initially prohibit newly manufactured freight cars from operating on the U.S. general railroad system of transportation if more than 20 percent of the car's content originates from a COC or is sourced from a SOE. After 3 years, paragraph (b)(1)(ii) reduces that threshold to no more than 15 percent. Cars not meeting these thresholds are noncompliant, and the manufacturer is subject to civil monetary penalties under § 215.407. Consistent with the Act, the percent of content is measured by the net cost of materials (excluding the cost of sensitive technology).[92] Paragraph (b)(2) of § 215.401 mirrors paragraph (b)(2)(B) of section 20171 and explains that the content limitations provided in the Act shall apply notwithstanding any apparent conflict with provisions of chapter 4 of the USMCA. Chapter 4 of the USMCA and the Act both establish rules for the country of origin for a product in international trade. This paragraph clarifies that compliance with chapter 4 of the USMCA does not constitute, or in any way affect, the content limitations in the Act, which apply independently.

Section 215.403 Certification of Compliance

This section incorporates the requirements of paragraph (c) of section 20171 and includes requirements designed to help FRA monitor and enforce the Act's standards. The rule text for this section is unchanged from the NPRM. See the NPRM for more detailed section-by-section analysis.[93] For discussion of comments received about this section, see section II. B. of this final rule.

Consistent with paragraph (c)(2) of section 20171, § 215.403(a) requires railroad freight car manufacturers to annually certify to FRA, as delegated by the Secretary of Transportation, that any railroad freight car it provides for operation in the United States meets the requirements of section 20171.

As proposed in the NPRM and adopted in this final rule, § 215.403(a)(1) requires railroad freight car manufacturers to submit a certification report to FRA, identifying and certifying compliance, for each freight car before it can operate on the U.S. general railroad system of transportation. Each certification report submitted to FRA may identify a single freight car or multiple freight cars based on the manufacturer's preference. For convenience, a manufacturer may submit its certification report directly to the Office of Railroad Safety along with any customary request to FRA for a sample base car inspection or safety appliance arrangement drawing review. Paragraph (a)(1)(i) requires the report to include a statement certifying compliance, the manufacturer's name and address, the individual responsible for certifying compliance with the Act and this rule, and the car identification number for each car being certified. Paragraph (a)(1)(ii) requires the freight car manufacturer to maintain all records showing the information, including calculations, made to support certification under this section and such records shall be made available to FRA upon request.

Section 215.405 Prohibition on Registering Noncompliant Railroad Freight Cars

This section incorporates the requirements in 49 U.S.C. 20171(c)(3)(B) into the FCSS. No substantive comments were received about this section, and the rule text for this section is unchanged from the NPRM. See the NPRM for more detailed section-by-section analysis.[94] FRA will review registration records when there is evidence of noncompliance with the Act. For example, when FRA determines a railroad freight car manufacturer is not in compliance with the Act's substantive requirements (*e.g.,* it is equipped with sensitive technology,

[89] 19 CFR 210.42(a)(1)(i).

[90] *Id.* at (h)(2).

[91] *https://usitc.gov/intellectual_property/337_determinations.htm.*

[92] The definition of ''net cost'' is provided in section 215.5 of this rule. For a discussion of ''net cost,'' see the section-by-section analysis above.

[93] 88 FR at 85565.

[94] 88 FR at 85565.

or 20 percent or 15 percent of its components, sourced from an SOE and operating on the U.S. general railroad system of transportation), FRA may request documentation to determine whether the freight car was registered with the Umler system. If the freight car was so registered, the freight car would also be in noncompliance with § 215.405.

Section 215.407 Civil Penalties

This section incorporates the requirements of 49 U.S.C. 20171(c)(4) into the FCSS. The Act specifies civil monetary penalty amounts for violations of its substantive requirements and specifies that the unit of violation is the freight car. As discussed in the NPRM, FRA anticipates utilizing the RSEP to enforce civil monetary penalties for noncompliance with the Act in a manner consistent with other civil monetary penalties enforced by FRA.[95] To help clarify the process, this final rule provides specific procedures in §§ 215.409 through 215.421 to enforce these civil monetary penalties. For discussion of comments received about this section, see section II. B. of this final rule.

Section 215.409 Demand Letter

Like the demand letter used in FRA's RSEP, § 215.409 establishes the demand letter requirements for the FCSS.[96] The demand letter serves to initiate the enforcement process by providing certain essential information to the manufacturer subject to the enforcement action.

Section 215.411 Reply

This section incorporates the Reply step from FRA's RSEP into the FCSS.[97] The reply provides the respondent with an opportunity to respond to the information provided in the demand letter described in § 215.409.

Section 215.413 Payment of Penalty; Compromise

This section incorporates payment and compromise procedures from FRA's RSEP into the FCSS.[98] This section provides the respondent with an opportunity to pay or negotiate penalties per § 215.407.

Section 215.415 Informal Response and Assessment

This section incorporates the informal response process from FRA's RSEP into the FCSS.[99] This section identifies the information needed for the respondent to informally reply to FRA's enforcement action. After consideration of an informal response, including any relevant information presented at a conference, FRA's Office of the Chief Counsel may dismiss the enforcement action in whole or in part. If the Office of the Chief Counsel does not dismiss the action in whole, the Office of the Chief Counsel may enter into a settlement agreement with the respondent or enter an order assessing a civil monetary penalty.

Section 215.417 Request for Hearing

This section incorporates the process to request a hearing from FRA's RSEP into the FCSS.[100] Specifically, this section provides the respondent an opportunity for a hearing. To use this option, the respondent must submit a written request to FRA's Office of the Chief Counsel and include the pertinent information identified in this section to allow the case to be assigned to the presiding officer.

Section 215.419 Hearing

This section incorporates the hearing process from FRA's RSEP into the FCSS.[101] This section generally describes how a hearing requested under § 215.417 will be conducted, and the roles of the presiding officer, FRA's Office of the Chief Counsel, and the respondent during the hearing.

Section 215.421 Presiding Officer's Decision

This section incorporates the language regarding the presiding officer's decision from FRA's RSEP into the FCSS.[102] Specifically, this section provides the decision options for the presiding officer. After consideration of the evidence of record, the presiding officer may dismiss the enforcement action in whole or in part. If the presiding officer does not dismiss the enforcement action in whole, the presiding officer will issue, and serve on the respondent, an order assessing a civil monetary penalty. The presiding officer's decision will include a statement of findings and conclusions, as well as the reasons therefor, on all material issues of fact, law, and discretion.

IV. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094

This rule is a non-significant regulatory action within the meaning of Executive Order (E.O.) 12866 (''Regulatory Planning and Review''), as amended by E.O. 14094, Modernizing Regulatory Review,[103] and DOT Order 2100.6A (''Rulemaking and Guidance Procedures''). This rule aims to enforce the Act's restrictions on content and technology originating from COCs and SOEs in newly built freight cars entering service on the U.S. general railroad system of transportation. Issuing this regulation authorizes FRA to monitor and enforce industry compliance with the Act. This section qualitatively explains benefits and quantitatively explains costs for the freight car industry and FRA associated with implementing this rule over a 10-year period, considering discount rates of 2 percent, 3 percent, and 7 percent.[104]

Summary of Public Comments Related to the Economic Analysis Presented in the NPRM

FRA received public comments related to the following points regarding the economic analysis presented in the NPRM.

(1) General Support for Economic and Security Impacts

A commenter commented on the rule's broader benefits, emphasizing its importance for national security, economic interests, and the reliability of the freight car industry, though without specific economic analysis points.

(2) Cost Benefit Agreement and Industry Implications

Trinity Industries, RSA, The Greenbrier Companies, and RSI supported the economic analysis, agreeing that the anticipated industry costs are modest. They highlighted that compliance obligations are an incremental addition, primarily aligning with the USMCA requirements. RSA noted this incremental compliance approach would have minimal additional impact.

[95] 49 CFR part 209.

[96] See subpart B and appendix A to 49 CFR part 209.

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

[102] *Id.*

[103] 88 FR 21879 (April 6, 2023) located at *https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review.*

[104] All costs are expressed in 2022 base year dollars.

(3) Railroad Burden Concerns

AAR expressed concerns about the burden on railroads, noting that railroads lack the means to independently verify manufacturer certifications through inspection and suggesting that the rule should not impose additional burdens on railroads. AAR also commented agreeing with the proposed rule's conclusion that the Act's sensitive technology prohibition applies only at the time of initial manufacture and do not extend to aftermarket parts.

Integration of Updated Analytical Standards in Final Rule

In preparing the final economic analysis for the rule to be issued prior to January 2025, FRA has taken steps to align its methodology with the guidance provided in the updated Circular A–4, issued by the Office of Management and Budget (OMB) on November 9, 2023. While the new Circular A–4's requirements formally apply to proposed rules submitted to OMB's Office of Information and Regulatory Affairs after February 29, 2024, and final rules submitted after December 31, 2024, FRA recognizes the value of incorporating its principles to enhance the quality and transparency of our analysis.

Discount Rates

Consistent with the new Circular A–4 guidance, FRA has used discount rates of 2 percent, 3 percent, and 7 percent for present value calculations in this analysis. These rates were selected to ensure our economic evaluation is consistent with current best practices and standards, improving the comparability and reliability of the findings.

In conclusion, while FRA's proposed rule was issued in December 2023 and not required to adhere to the new Circular A–4 guidelines, FRA has integrated its principles into the final economic analysis to enhance the quality, transparency, and comprehensiveness of the assessment. This approach not only aligns with emerging standards but also ensures a robust evaluation of the rule's impacts.

FRA has concluded that the Act does not impose a continuing obligation on manufacturers or railcar owners related to certifying content and technology limitations throughout the useful life of each freight car. As such, the rule does not require FRA to enforce the requirements set forth in the Act at all times a freight railcar is in service on the U.S. general railroad system of transportation. This rule only impacts original freight car manufacturers related to the initial entry of freight cars into service in the U.S. general railroad system of transportation.

Based on input from FRA subject matter experts in the Office of Motive Power and Equipment, this analysis estimates that the rule impacts six freight car manufacturers with manufacturing facilities within North America. This rule does not significantly impact any other entity. Over a 10-year period, this analysis estimates the impact of issuing this rule on the freight car manufacturing industry and FRA related to: (1) limiting content sourced from COCs or SOEs; (2) prohibiting the use of sensitive technology and components necessary to the functionality of the sensitive technology from a COC or a SOE; (3) compliance costs; and (4) government administrative costs associated with enforcing this rule. Additionally, this analysis provides a summary of the regulatory impact.

(1) Limit Content Sourced From COCs or SOEs

Based on conversations with RSA and FRA subject matter experts, all six freight car manufacturers currently comply with the 15 percent content limitation, which will be required three years after this rule's implementation date. Also, absent FRA issuing this rule, over the next 10 years, this analysis forecasts that no freight car manufacturer plans to change its materials sourcing whereby a freight car manufacturer would not be in compliance with the content limitation set forth in this rule. Lastly, this analysis does not anticipate any new freight car manufacturers entering the North American freight car industry over the next 10 years (during the period of analysis). Therefore, related to complying with the content limitation, issuing this rule does not result in any costs or benefits.

(2) Prohibit the Use of Sensitive Technology From COCs or SOEs

FRA understands the prohibition on the use of sensitive technology that originates from a COC or a SOE to also include any *active* technological components necessary to the functionality of the sensitive technology (excluding *passive* technological components) that originates from a COC or a SOE. Based on this understanding and input from the RSA and FRA subject matter experts, all six freight car manufacturers currently comply with the limitations on use of sensitive technological components as set forth in this rule. Also, absent FRA issuing this rule, over the next 10 years, this analysis forecasts that no freight car manufacturer plans to change its materials sourcing whereby a freight car manufacturer would not comply with the sensitive technology limitation set forth in this rule. Further, over the next 10 years (during the period of analysis), this analysis does not anticipate any new freight car manufacturer entering the North American freight car industry. Therefore, the provision that would prohibit the use of sensitive technology, or *active* technological components necessary to the functionality of the sensitive technology that originates from a COC or a SOE for freight cars entering service in the U.S. general railroad system of transportation would not result in any costs.

However, issuing this provision (prohibiting the use of sensitive technology from COCs or SOEs) may provide benefits. That is, issuing this rule mitigates concerns related to compromised national security and potential corporate espionage that exists if newly built freight cars with sensitive technology and *active* technological components necessary to the functionality of the sensitive technology from COC or SOE enter service into the U.S. general railroad system of transportation.

(3) Compliance Costs

Issuing this rule creates a few compliance burdens for freight car manufacturers including affirming compliance with this rule, submitting an annual certification, and participating in periodic audits.

Manufacturers Affirm Compliance Prior to a Freight Car Entering Service

Prior to a manufacturer providing a freight car for operation on the U.S. general railroad system of transportation, a manufacturer must affirm that the freight car is compliant with this regulation. Currently, FRA provides a courtesy safety appliance drawing review and/or sample car inspection to freight car manufacturers that request it for all freight cars they intend to manufacture for operation on the U.S. general railroad system.[105] FRA

[105] Most newly built freight cars are considered cars of special construction under the freight car safety standards and manufacturers request FRA to inspect the cars prior to entering service. According to 49 CFR 231.118, cars of construction not covered by the 18 types of cars identified in the regulation, relative to handholds, sill steps, ladders, hand brakes and running boards may be considered as of *special construction,* but shall have, as nearly as possible, the same complement of handholds, sill steps, ladders, hand brakes, and running boards as are required for cars of the nearest approximate

Continued

anticipates manufacturers may affirm compliance with the Act by certifying at the time of their safety appliance drawing review and/or sample car inspection.[106]

Based on input from FRA subject matter experts and previous submissions for safety appliance reviews and sample car inspection requests, this analysis estimates that each year manufacturers introduce approximately 35 freight car orders. An order can be of any type of car and of any quantity (as little as one car or thousands of cars on the order) and FRA expects one certification for each freight car order. FRA expects the number of annual freight car orders to remain constant over the period of analysis.

Based on FRA subject matter expert input, this analysis assumes that an administrative professional in the freight car manufacturer's contract office will draft the document affirming compliance with the Act (1 hour), and a vice-president of engineering would review and sign the letter (15 minutes).[107] Each year, the burden on manufacturers to affirm compliance with the Act for all newly built freight cars intended for operation on the U.S. general railroad system of transportation is estimated to be $3,438.[108] Over the 10-year period of analysis, the industry burden is approximately, $34,400 (undiscounted), $30,800 (PV, 2%), $29,200 (PV, 3%), and $23,600 (PV, 7%).

Cost for Railroads

There is no anticipated burden on railroads as a result of this rulemaking.

Periodic Audit of Freight Car Manufacturers

As part of FRA's enforcement of this rule, FRA expects to randomly audit freight car manufacturers to ensure compliance with the Act. Based on input from FRA subject matter experts, FRA will likely randomly audit one-third of the freight car manufacturers each year (approximately two freight car manufacturers each year). Based on FRA subject matter expert input, the likely audit process will consist of FRA selecting one freight car order from the manufacturer's product line and have the freight car manufacturer provide evidence of compliance. FRA will audit the bill of materials to determine if the manufacturer complied with this regulation. If the freight car manufacturer provides sufficient evidence to show its freight car is compliant with the rule, FRA will take no further action. Based on FRA subject matter expert input, FRA anticipates that the results of FRA's random audits will be that all freight car manufacturers are compliant with the rule.

Based on input from FRA subject matter experts, this analysis estimates that it will take four hours for a freight car manufacturer to retrieve existing information that shows compliance with this rule and provide it to an FRA inspector. This analysis placed a relatively low hourly burden for the periodic audit because this rule requires freight railroads to maintain records that show compliance. Thus, other than retrieving records that should already exist, freight car manufacturers will have no additional burden. With an estimated two audits per year, the audit burden for all freight car manufacturers is 8 hours or $566.[109] Over the 10-year period of analysis, the burden of periodic audits of freight car manufacturers is approximately $5,700 (undiscounted), $5,100 (PV, 2%), $4,800 (PV, 3%), and $3,900 (PV, 7%).

Total Cost and Benefit for Industry

As shown, in Table 2, over the 10-year period of analysis, the industry burden is approximately $40,100 (undiscounted), $35,900 (PV, 2%), $34,000 (PV, 3%), and $27,500 (PV, 7%) with annualized costs of $4,000 (PV, 2%), $4,000 (PV, 3%), and $4,000 (PV, 7%). The annualized discount rates are the same because the timing of cash flows are identical.

TABLE 2—FREIGHT CAR INDUSTRY, TOTAL COSTS, 2022 DOLLARS, ROUND ($100)

Type of cost	Cost			Annualized	
	Undiscounted	PV 2%	PV 3%	PV 2%	PV 3%
Compliance certification	34,400	30,800	29,200	3,400	3,400
Periodic audit	5,700	5,100	4,800	600	600
Total	40,100	35,900	34,000	4,000	4,000

FRA is issuing this regulation as required by the Act. In this economic analysis, FRA qualitatively explains the potential benefits that are expected to result from implementing the rule.

(1) Governmental Administrative Costs

Issuing this rule creates enforcement costs for FRA, including the review of freight car manufacturers certifying compliance, periodic audits of freight car manufacturers, and creating an annual report to Congress.

Review of Certification of Compliance Reports

Based on input from FRA subject matter experts, this analysis estimates that each year the total manufacture industry will introduce approximately 35 freight car orders and certify to FRA

type. To help ensure the complement of safety appliances satisfy the requirements for the nearest approximate type, manufacturers request that FRA perform a sample car inspection after the cars are built, before they enter service.

[106] A freight car manufacturer may also certify compliance with the Act by submitting an independent document to FRA for any build order (*e.g.,* for subsequent orders of the same car builds utilizing the same safety appliance arrangement that have already been reviewed and/or inspected by FRA). This analysis concluded that the cost to submit an independent document to affirm compliance with the Act follows similarly to including such affirmation along with safety appliance review and/or sample car inspection request package.

[107] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Statistics, May 2023 NAICS 336500 Railroad Rolling Stock Manufacturing ''Sales and Related Occupations'' $40.45 (mean wage), ''Top Executives'' ($62.74) [May 2023] *https://www.bls.gov/oes/current/naics4_336500.htm.* When estimating labor burden, this analysis added a compensation factor of 1.75, so the administrative employee's hourly burden rate is $70.79, and the VP of engineering's hourly burden rate is $109.80.

[108] Industry burden for affirming compliance, annual = Number of freight car orders introduced (35) * [time to write the document affirming compliance with the Act (1 hour) * administrative professional's hour compensation rate ($70.79) + time to review and sign the document (15 minutes) * VP of engineering compensation rate ($109.80)] = $3,438.

[109] Freight car manufacturers, participating in an audit, annual = Number of annual audits (2) * hours to prepare and participate in an audit (4 hours) * freight car administrative employee compensation rate ($70.78) = $566.

that its freight cars comply with this Act. FRA staff would spend approximately 30 minutes to review each of the 35 submissions. Therefore, FRA's annual burden related to reviewing the manufacturers is $2,201.[110] [111] Over the 10-year period of analysis, the total burden is approximately $22,000 (undiscounted), $19,700 (PV, 2%), $18,700 (PV), 3%), and $15,100 (PV, 7%).

FRA Periodic Audit of Freight Car Manufacturers

As explained in the above section that describes industry burden, each year FRA expects to audit approximately two freight car manufacturers as part of FRA's enforcement efforts. To minimize compliance costs, FRA will use FRA field staff who have duty stations in close proximity to the freight car manufacturing facility. However, based on subject matter expert input, in the first five years of implementation of the rule, FRA expects it would send both an FRA field inspector and an FRA headquarters employee to conduct an audit. Beginning in the sixth year, FRA expects that only FRA field inspectors will conduct audits.

Based on FRA subject matter expert input, FRA's burden related to periodic audits of freight car manufacturers is 20 hours for FRA headquarters staff (4 hours to prepare for an audit, 4 hours to conduct an audit, and 12 hours of travel time) and 12 hours for FRA field staff (4 hours to prepare for an audit, 4 hours to conduct an audit, and 4 hours travel time). In addition, FRA will incur travel expenses of $500 for FRA headquarters staff and $100 for FRA field staff per audit. In the first year of analysis, the cost related to conducting two audits is $8,651.[112] [113] Over the 10-year period of analysis, FRA's burden for conducting periodic audits is $51,300 (undiscounted), $47,600 (PV, 2%), $45,800 (PV, 3%), and $39,500 (PV, 7%).

Preparing an Annual Report to Congress

After the final rule becomes effective, FRA expects that it will prepare and submit an annual report to Congress that summarizes all certification submissions that FRA received from all the manufacturers during the calendar year. FRA anticipates that it may include this report within its existing Fiscal Year, Enforcement Report to Congress. Based on input from subject matter experts, FRA expects that it will take staff approximately 24 hours to prepare and submit an annual report with an associated cost of $3,019.[114] Over the 10-year period of analysis, the costs of preparing and submitting annual reports to Congress is $30,200 (undiscounted), $27,100 (PV, 2%), $25,600 (PV), 3%), and $20,700 (PV, 7%).

Total FRA Burden

As shown, in Table 3, over the 10-year period of analysis, FRA's enforcement burden is approximately $103,500 (undiscounted), $94,4000 (PV, 2%), $90,100 (PV, 3%), and $75,300 (PV, 7%).

TABLE 3—FRA ENFORCEMENT BURDEN FROM ISSUING THE RULE, TOTAL COST, 2022 DOLLARS, ROUND ($100)

Type of cost	Cost			Annualized	
	Undiscounted	PV 2%	PV 3%	PV 2%	PV 3%
Review affirmations	22,000	19,700	18,700	2,200	2,200
Periodic audit	51,300	47,600	45,800	5,300	5,400
Annual report to Congress	30,200	27,100	25,600	3,000	3,000
Total cost	103,500	94,400	90,100	10,500	10,600

(2) Summary of Regulatory Impact

This section provides a summary of total costs and total benefits that is expected to come from issuing this rulemaking.

(a) Summary of Total Benefits

FRA expects the benefits that will come from implementing this rule include addressing concerns related to compromised national security and potential corporate espionage.

Based on conversations with RSA and FRA subject matter experts, all six freight car manufacturers currently comply with the 15 percent content limitation, which will be required three years after this rule's implementation date. Also, absent FRA issuing this rule, over the next 10 years, this analysis forecasts that no freight car manufacturer plans to change its materials sourcing whereby a freight car manufacturer would not be in compliance with the content limitation set forth in this rule. Also, this analysis does not anticipate any new freight car manufacturers entering the North American freight car industry over the next 10 years (during the period of analysis). Therefore, related to complying with the content limitation, issuing this rule does not result in any benefits.

Related to sensitive technology, currently no domestic manufacturer sources sensitive technology from a COC or from a SOE. Moreover, FRA estimates that absent this rule no domestic manufacturer would have plans to source sensitive technology from a COC or from a SOE. Therefore, the portion of this rule that will prohibit sourcing sensitive technology that originates from a COC or from a SOE does not result in any benefit.

(b) Summary of Total Costs

As shown in Table 4, FRA expects that the total cost from issuing the rule including the impact on industry and FRA is approximately $143,600 (undiscounted), $130,300 (PV, 2%),

[110] FRA headquarters staff salary estimated at the GS–14, step 5, rate, Washington, DC) of $71.88 with a burden rate of 1.75 for an hourly burden rate of $125.79. See *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/.*

[111] FRA burden for affirming compliance, annual = Number of freight car orders introduced (35) * [time to review affirmation (0.5 hour) * FRA headquarters employee compensation rate ($125.79)] = $2,201.

[112] FRA headquarters staff salary estimated at the GS–14, step 5, rate, Washington, DC) of $71.88 with a burden rate of 1.75 for an hourly burden rate of $125.79. FRA field staff salary estimated at the GS–12, step 5, rate (Rest of United States) of $44.98 with a burden rate of 1.75 for an hourly burden rate of $78.72. See *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/.*

[113] FRA audit burden, annual = number of audits per year (2 audits) * [FRA headquarters staff time per audit (20 hours) * FRA headquarters staff compensation rate ($125.79) + FRA headquarters staff travel expense ($500) + FRA field staff time per audit (12 hours) * FRA field staff compensation rate ($78.72) + FRA field staff travel expense ($100)] = $8,651.

[114] Prepare and submit annual report to Congress, annual = FRA staff hourly labor burden rate ($125.79) * hours to complete and submit report (24 hours) = $3,019.

$124,100 (PV, 3%), and $102,800 (PV, 7%).

TABLE 4—INDUSTRY COMPLIANCE BURDEN AND FRA'S ENFORCEMENT BURDEN, TOTAL COST, 2022 DOLLARS, ROUND ($100)

Entity	Cost			Annualized	
	Undiscounted	PV 2%	PV 3%	PV 2%	PV 3%
Industry	40,100	35,900	34,000	4,000	4,000
FRA	103,500	94,900	90,100	10,500	10,600
Total cost	143,600	130,300	124,100	14,500	14,600

B. Regulatory Flexibility Act and Executive Order 13272

FRA received no comments on the Initial Regulatory Flexibility Analysis (IRFA) published in the proposed rule, and the Small Business Administration's Chief Counsel for Advocacy did not submit any comments. As a result, FRA's analysis and conclusions regarding the potential impact of this rule on small entities, as presented in the IRFA, remain unchanged.

Certification

FRA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Basis for Certification

The IRFA concluded that the rule would not have a significant economic impact on a substantial number of small entities. No public comments were received, and the Small Business Administration's Chief Counsel for Advocacy did not submit any comments. Therefore, FRA is not required to prepare a final regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection requirements in this rule are being submitted for approval to OMB [115] under the Paperwork Reduction Act of 1995.[116] The information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent in U.S. dollars
		(A)	(B)	(C) = (A * B)	(D) = (C * wage rates) [117]
215.5(d)(6)—Dedicated Service—Notification to FRA.	784 railroads	4 notifications	1 hour	4.00 hours	$311.64
215.403(a)(1)—Certification of Compliance— Manufacturers to electronically certify to FRA that the cars comply with the requirements of this subpart (New requirement).	6 manufacturers	35 affirmations	1.25 hours	43.75	2,786.00
—(a)(1)(ii) Records and such records shall be made available to FRA upon request (New requirement).	6 manufacturers	0.33 report	6 hours	1.98 hours	126.09
Total [118]	784 railroads + 6 manufacturers.	39.33 notifications	N/A	49.73 hours	3,223.73

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. Organizations and individuals desiring to submit comments on the collection of information requirements or to request a copy of the paperwork package submitted to OMB should contact Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms.

[115] FRA will be using the OMB control number (OMB No. 2130–0502) that was issued when the previous NPRM was issued in 1979 for this information collection.

[116] 44 U.S.C. 3501 *et seq.*

[117] The dollar equivalent cost is derived from U.S. Bureau of Labor Statistics, 2021 NAICS 336500—Railroad Rolling Stock Manufacturing; 13–1000 Business Operations Specialist median wage $63.68 ($36.39 + 1.75 overhead costs. The one exception is § 215.5(d)(6), which is derived from the Surface Transportation Board's Full Year Wage 2021, group 200 Professional and Administrative.

[118] Totals may not add due to rounding.

Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required.

D. Federalism Implications

Executive Order 13132, Federalism,[119] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the E.O. to include regulations that have ''substantial direct effects on the 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.'' Under E.O. 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this rule in accordance with the principles and criteria contained in E.O. 13132. FRA has determined that this rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. In addition, this rule is required by statute. 49 U.S.C. 20171(c)(1). Therefore, the consultation and funding requirements of E.O. 13132 do not apply, and preparation of a federalism summary impact statement for the rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rule implements a statutory mandate to fulfill legitimate domestic objectives, as directed by Congress.

F. Environmental Impact

FRA has evaluated this rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500 through 1508, and FRA's NEPA implementing regulations at 23 CFR part 771 and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[120] Specifically, FRA has determined that this rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

This rulemaking will not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[121] FRA has concluded that no such unusual circumstances exist with respect to this rule and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[122] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by section 4(f).[123]

G. Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') instructs DOT agencies to address compliance with E.O. 12898 and requirements within DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.[124] FRA has evaluated this rule under Executive Orders 12898, 14096 and DOT Order 5610.2C and has determined it would not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[125] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State,

[119] 64 FR 43255 (Aug. 10, 1999).

[120] 40 CFR 1508.4.

[121] 23 CFR 771.116(b).

[122] *See* 16 U.S.C. 470.

[123] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[124] E.O. 14096 ''Revitalizing Our Nation's Commitment to Environmental Justice,'' issued on April 26, 2023, supplements E.O. 12898, but is not currently referenced in DOT Order 5610.2C.

[125] Public Law 104–4, 2 U.S.C. 1531.

local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and Tribal governments and the private sector. This final rule would not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [126] FRA evaluated this rule under E.O. 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of E.O. 13211.

J. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.*

List of Subjects in 49 CFR Part 215

Freight cars, Infrastructure Investment and Jobs Act, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 215 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

■ 1. The authority citation for part 215 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20171; 28 U.S.C. 2461; and 49 CFR 1.89.

■ 2. Revise § 215.5 to read as follows:

§ 215.5 Definitions.

As used in this part:

Break means a fracture resulting in complete separation into parts;

Component means a part or subassembly of a railroad freight car;

Control means the power, whether direct or indirect and whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity; representation on the board of directors of an entity; proxy voting on the board of directors of an entity; a special share in the entity; a contractual arrangement with the entity; a formal or informal arrangement to act in concert with an entity; or any other means, to determine, direct, make decisions, or cause decisions to be made for the entity;

Cost of sensitive technology means the aggregate cost of the sensitive technology located on a railroad freight car.

Country of concern means a country that—

(1) Was identified by the Department of Commerce as a nonmarket economy country (as defined in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of November 15, 2021;

(2) Was identified by the United States Trade Representative in the most recent report required by section 182 of the Trade Act of 1974 (19 U.S.C. 2242) as a foreign country included on the priority watch list (as defined in subsection (g)(3) of such section); and

(3) Is subject to monitoring by the Trade Representative under section 306 of the Trade Act of 1974 (19 U.S.C. 2416).

Dedicated service means the exclusive assignment of cars to the transportation of freight between specified points under the following conditions:

(1) The cars are operated—

(i) Primarily on track that is inside an industrial or other non-railroad installation; and

(ii) Only occasionally over track of a railroad;

(2) The cars are not operated—

(i) At speeds of more than 15 miles per hour; and

(ii) Over track of a railroad—

(A) For more than 30 miles in one direction; or

(B) On a round trip of more than 60 miles;

(3) The cars are not freely interchanged among railroads;

(4) The words ''Dedicated Service'' are stenciled, or otherwise displayed, in clearly legible letters on each side of the car body;

(5) The cars have been examined and found safe to operate in dedicated service; and

(6) The railroad must—

(i) Notify FRA in writing that the cars are to be operated in dedicated service;

(ii) Identify in that notice—

(A) The railroads affected;

(B) The number and type of cars involved;

(C) The commodities being carried; and

(D) The territorial and speed limits within which the cars will be operated; and

(iii) File the notice required by this paragraph (6)(iii) of the definition not less than 30 days before the cars operate in dedicated service;

In service when used in connection with a railroad freight car, means each railroad freight car subject to this part unless the car:

(1) Has a ''bad order'' or ''home shop for repairs'' tag or card containing the prescribed information attached to each side of the car and is being handled in accordance with § 215.9;

(2) Is in a repair shop or on a repair track;

(3) Is on a storage track and is empty; or

(4) Has been delivered in interchange but has not been accepted by the receiving carrier.

Net cost has the meaning given such term in chapter 4 of the USMCA or any subsequent free trade agreement between the United States, Mexico, and Canada.

Qualified facility means a facility that is not owned or under the control of a state-owned enterprise.

Qualified manufacturer means a railroad freight car manufacturer that is not owned or under the control of a state-owned enterprise.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad freight car means any car designed to carry freight or railroad personnel by rail, including—

(1) A box car;

[126] 66 FR 28355 (May 22, 2001).

(2) A refrigerator car;
(3) A ventilator car;
(4) An intermodal well car;
(5) A gondola car;
(6) A hopper car;
(7) An auto rack car;
(8) A flat car;
(9) A special car;
(10) A caboose car;
(11) A tank car; and
(12) A yard car.

Sensitive technology means any device embedded with electronics, software, sensors, or other connectivity, that enables the device to connect to, collect data from, or exchange data with another device, including—
(1) Onboard telematics;
(2) Remote monitoring software;
(3) Firmware;
(4) Analytics;
(5) Global positioning system satellite and cellular location tracking systems;
(6) Event status sensors;
(7) Predictive component condition and performance monitoring sensors; and
(8) Similar sensitive technologies embedded into freight railcar components and sub-assemblies.

State inspector means an inspector who is participating in investigative and surveillance activities under section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435).

State-owned enterprise means—
(1) An entity that is owned by, or under the control of, a national, provincial, or local government of a country of concern, or an agency of such government; or
(2) An individual acting under the direction or influence of a government or agency described in paragraph (1) of this definition.

Substantially transformed means a component of a railroad freight car that undergoes an applicable change in tariff classification as a result of the manufacturing process, as described in chapter 4 and related annexes of the USMCA or any subsequent free trade agreement between the United States, Mexico, and Canada.

USMCA. The acronym 'USMCA' has the meaning given the term in section 3 of the United States-Mexico-Canada Agreement Implementation Act (19 U.S.C. 4502).

■ 3. Add subpart E to part 215 to read as follows:

Subpart E—Manufacturing

Sec.

Subpart E—Manufacturing

§ 215.401 Requirements for railroad freight cars placed into service in the United States.

(a) *Limitation on railroad freight cars.* A railroad freight car wholly manufactured on or after December 19, 2025 may only operate on the United States general railroad system of transportation if:
(1) The railroad freight car is manufactured, assembled, and substantially transformed, as applicable, by a qualified manufacturer in a qualified facility;
(2) None of the sensitive technology located on the railroad freight car, including components necessary to the functionality of the sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise; and
(3) None of the content of the railroad freight car, excluding sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise that has been determined by a recognized court or administrative agency of competent jurisdiction and legal authority to have violated or infringed valid United States intellectual property rights of another including such a finding by a Federal district court under title 35 or the U.S. International Trade Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

(b) *Limitation on railroad freight car content*—(1) *Percentage limitation*—
(i) *Initial limitation.* Not later than December 19, 2025, a railroad freight car described in paragraph (a) of this section may operate on the United States general railroad system of transportation only if not more than 20 percent of the content of the railroad freight car, calculated by the net cost of all components of the car and excluding the cost of sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise.
(ii) *Subsequent limitation.* Effective beginning on December 19, 2028, a railroad freight car described in paragraph (a) of this section may operate on the United States general railroad system of transportation only if not more than 15 percent of the content of the railroad freight car, calculated by the net cost of all components of the car and excluding the cost of sensitive technology, originates from a country of concern or is sourced from a state-owned enterprise.
(2) *Conflict.* The percentages specified in the clauses in paragraphs (b)(1)(i) and (ii) of this section, as applicable, shall apply notwithstanding any apparent conflict with provisions of chapter 4 of the USMCA.

§ 215.403 Certification of compliance.

(a) *Certification required.* To be eligible to provide a railroad freight car for operation on the United States general railroad system of transportation, the manufacturer of such car shall certify, at least annually, to the Federal Railroad Administrator that any railroad freight cars to be so provided comply with 49 U.S.C. 20171.
(1) *Certification procedure.* Prior to providing any cars for operation on the United States general railroad system of transportation, each freight car manufacturer shall certify to FRA that the cars comply with 49 U.S.C. 20171. Such certification shall be submitted via electronic mail by an authorized representative of the manufacturer to *FRARRSMPE@dot.gov.* A manufacturer may submit this certification to FRA annually provided it covers all cars to be provided in the relevant year, or a manufacturer may submit separate certifications throughout the year.
(i) The certification shall include the statement ''I certify that all freight cars that will be provided for operation on the United States general railroad system of transportation will comply with 49 U.S.C. 20171, and the implementing regulations at 49 CFR part 215'' and contain:
(A) The manufacturer's name and address;
(B) The name, signature, and contact information for the person designated to certify compliance with this subpart; and
(C) A car identification number for each car being certified.
(ii) Manufacturers shall maintain records showing the information, including the calculations, made to support certification under this section and such records shall be made available to FRA upon request.
(2) *Valid certification required.* At the time a railroad freight car begins operation on the United States general railroad system of transportation, the manufacturer of such railroad freight car shall have valid certification described in paragraph (a) of this section for the year in which such car begins operation.

(b) [Reserved]

§ 215.405 Prohibition on registering noncompliant railroad freight cars.

(a) *Cars prohibited.* A railroad freight car manufacturer may not register, or cause to be registered, a railroad freight car that does not comply with the requirements under this subpart in the Umler system.

(b) [Reserved]

§ 215.407 Civil penalties.

(a) *In general.* A railroad freight car manufacturer that has manufactured a railroad freight car for operation on the United States freight railroad interchange system that the Secretary of Transportation determines, after written notice and an opportunity for a hearing, has violated this subpart is liable to the United States Government for a civil penalty of at least $100,000, but not more than $250,000, for each such violation for each railroad freight car.

(b) *Prohibition for violations.* The Secretary of Transportation may prohibit a railroad freight car manufacturer with respect to which the Secretary has assessed more than three violations under this section from providing additional railroad freight cars for operation on the United States freight railroad interchange system until the Secretary determines:

(1) Such manufacturer is in compliance with this subpart; and

(2) All civil penalties assessed to such manufacturer pursuant to this section have been paid in full.

§ 215.409 Demand letter.

(a) FRA, through the Office of the Chief Counsel, begins a civil penalty proceeding under § 215.407(a) by serving a demand letter on a railroad freight car manufacturer, charging the railroad freight car manufacturer with having violated one or more provisions of this subpart.

(b) A demand letter issued under this section includes:

(1) A statement of the provision(s) which the respondent is believed to have violated;

(2) A statement of the factual allegations upon which the proposed civil monetary penalty is being sought;

(3) Notice of the maximum amount of civil monetary penalty for which the respondent may be liable;

(4) Notice of the amount of the civil monetary penalty proposed;

(5) A description of the manner in which the respondent should make payment of any money to the United States;

(6) A statement of the respondent's right to present written explanations, information, or any materials in answer to the charges or in mitigation of the penalty; and

(7) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(c) FRA may amend the demand letter at any time prior to completion of a fully executed settlement agreement or the entry of an order to pay a civil monetary penalty. If the amendment contains any new material allegation of fact, the respondent is given an opportunity to respond. In an amended demand letter, FRA may change the civil monetary penalty amount initially proposed, up to the maximum penalty amount for each violation.

§ 215.411 Reply.

(a) Within sixty (60) days of the service of a demand letter issued under § 215.409, the respondent may—

(1) Pay as provided in § 209.413(a) and thereby close the case;

(2) Make an informal response as provided in § 215.415; or

(3) Request a hearing as provided in § 215.417.

(b) The Office of the Chief Counsel may extend the sixty (60) day period for good cause shown.

(c) Failure of the respondent to reply by taking one of the three actions described in paragraph (a) of this section, within the period provided, constitutes a waiver of the right to appear and contest the allegations, and authorizes the Office of the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the demand letter and to assess an appropriate civil penalty.

§ 215.413 Payment of penalty; compromise.

(a) Payment of a civil monetary penalty may be made by credit card, certified check, money order, or wire transfer. Payment by credit card must be made via the internet at *https://www.pay.gov/paygov/.* Instructions for online payment are found on the website. Payments made by certified check or money order should be made payable to the Federal Railroad Administration and sent to DOT/FRA, M.M.A.C., AMK–324, HQ–RM 181, P.O. Box 25082, Oklahoma City, OK 73125. Overnight express payments may be sent to DOT/FRA, M.M.A.C., AMK–324, HQ–RM 181, 6500 South MacArthur Blvd., Oklahoma City, OK 73169.

(b) At any time before an order requiring payment of a civil monetary penalty is referred to the Attorney General for collection, the respondent may offer to compromise for a specific amount by contacting the Office of the Chief Counsel.

§ 215.415 Informal response and assessment.

(a) If a respondent elects to make an informal response to a demand letter, respondent must submit to the Office of the Chief Counsel such written explanations, information, or other materials as respondent may desire in answer to the charges or in mitigation of the proposed penalty.

(b) The respondent may include in the informal written response a request for a conference. Upon receipt of such a request, the Office of the Chief Counsel arranges for a conference as soon as practicable.

(c) Written explanations, information, or materials submitted by the respondent, and relevant information presented during any conference held under this section, are considered by the Office of the Chief Counsel in reviewing the demand letter and determining the fact(s) of the violation and the amount of any civil penalty to be paid.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Office of the Chief Counsel may dismiss the demand letter in whole or in part. If the Office of the Chief Counsel does not dismiss the action in whole, the Office of the Chief Counsel may enter into a settlement agreement or enter an order assessing a civil monetary penalty.

§ 215.417 Request for hearing.

(a) If a respondent elects to request a hearing, the respondent must submit a written request to the Office of the Chief Counsel referring to the case number which appeared on the demand letter. The request must—

(1) State the name and email address of the respondent and of the person signing the request, if different from the respondent;

(2) State with respect to each allegation whether it is admitted or denied; and

(3) State with particularity the issues to be raised by the respondent at the hearing.

(b) After a request for hearing that complies with the requirements of paragraph (a) of this section, the Office of the Chief Counsel schedules a hearing for the earliest practicable date.

(c) The Office of the Chief Counsel, or the hearing officer designated under § 215.419, may grant extensions of the time of the commencement of the hearing for good cause shown.

§ 215.419 Hearing.

(a) When a hearing is requested and scheduled under § 215.417, a presiding officer designated by the Office of the

Chief Counsel convenes and presides over the hearing. If requested by the respondent, and if practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred, at a place convenient to the respondent, or virtually. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) The presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 209.7;

(3) Adopt procedures for the submission of evidence in written form;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, and adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and

(9) Take any other action authorized by, or consistent with, the provisions of this subpart pertaining to civil monetary penalties and permitted by law that may expedite the hearing or aid in the disposition of an issue raised, therein.

(c) The Office of the Chief Counsel has the burden of providing the facts alleged in the demand letter and may offer such relevant information as may be necessary fully to inform the presiding officer as to the matter concerned.

(d) The respondent may appear and be heard on the respondent's own behalf or through counsel of the respondent's choice. The respondent or respondent's counsel may offer relevant information, including testimony, which they believe should be considered in defense of the allegations, or that may bear on the proposed civil monetary penalty, and conduct such cross-examination as may be required for a full disclosure of the material facts.

(e) At the conclusion of the hearing, or as soon thereafter as the hearing officer shall provide, the parties may file proposed findings and conclusions, together with supporting reasons.

§ 215.421 Presiding officer's decision.

(a) After consideration of the evidence of record, the presiding officer may dismiss the demand letter in whole or in part. If the presiding officer does not dismiss the civil penalty enforcement action in whole, the presiding officer will issue and serve on the respondent an order assessing a civil penalty. The presiding officer's decision will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.

(b) If, within twenty (20) days after service of an order assessing a civil penalty fine issued by the presiding officer under paragraph (a) of this section, the respondent does not pay the civil penalty fine, the case may be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate United States District Court. In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2024–30030 Filed 12–18–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 241212–0326]

RIN 0648–XE368

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to 2025 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule makes an in-season adjustment to the 2025 Atlantic herring specifications and sub-annual catch limits for the four Atlantic herring management areas (including Area 1A, 1B, 2, and 3). This action is necessary to respond to updated scientific information from a 2024 herring management track stock assessment and achieve the goals and objectives of the Atlantic Herring Fishery Management Plan. This action reduces current 2025 catch limits to lessen the risk overfishing and help rebuild the stock.

DATES: Effective December 19, 2024, through December 31, 2025.

ADDRESSES: Copies of supporting documents, including the 2023–2025 Atlantic Herring Specifications, are available from the Sustainable Fisheries Division, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281–9315, or online at: *https://www.nefmc.org/management-plans/herring* and *https://www.fisheries.noaa.gov/species/atlantic-herring#management.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) appear at 50 CFR part 648, subpart K. NMFS implemented the 2025 specifications in the 2023–2025 specifications for the Atlantic herring fishery (88 FR 17397; March 23, 2023). The specifications set an overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), and sub-ACLs for 2023–2025 for each of the four management areas in the herring fishery, subject to future review and any necessary adjustments. FMP regulations § 648.200(e) state that NMFS may make in-season adjustments to the herring specifications and sub-ACLs to achieve conservation and management objectives, after consulting with the New England Fishery Management Council, during the fishing year in accordance with the Administrative Procedure Act and consistent with FMP objectives and provisions.

Amendment 8 to the FMP (86 FR 1810; January 11, 2021) implemented an ABC control rule for the herring fishery. The ABC control rule is a formulaic approach for setting a harvest limit and is designed to balance the goals and objectives of the FMP, including managing the fishery at long-term sustainable levels and accounting for herring's role as forage in the ecosystem. The ABC control rule states that when biomass is at or above 50 percent of the biomass associated with maximum sustainable yield (B_{MSY}) or its proxy, ABC is the catch associated with a maximum fishing mortality (F) of 80 percent of F_{MSY} or its proxy. When biomass falls below 50 percent of B_{MSY} or its proxy, the allowable F declines linearly to zero at 10 percent of B_{MSY} or its proxy.

On October 2, 2020, NMFS determined the Atlantic herring stock was overfished, but overfishing was not occurring. Framework 9 to the FMP (87 FR 42962; July 19, 2022) established a 5-year rebuilding plan for herring with an F consistent with the ABC control rule implemented in Amendment 8. The rebuilding plan was expected to rebuild the stock by 2026, however, the duration of the rebuilding period was extended from 5 years (2026) to 7 years