



June 13, 2023

Kerry Kolodziej
Assistant General Counsel

Pete Buttigieg
Secretary of Transportation

U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590
Submitted Electronically

Re: Docket No. NHTSA-2023-0014.

Motor Vehicle Safety Whistleblower Act Rulemaking

Dear Secretary Buttigieg:

National Whistleblower Center (NWC) is 501(c)(3) non-profit organization that has advocated for whistleblower protection since 1988. NWC has advocated for whistleblowers by participating in various rulemaking efforts, including a 2016 comment to the Department of Transportation regarding Motor Vehicle Safety whistleblowers.

This call for comments under the National Highway Traffic Safety Administration (“NHTSA”) and Whistleblower Rules cites to our 2016 comment. NWC reaffirms our recommendations in the 2016 comment and proposes that the DOL establish rules modeled on the SEC’s and IRS’s whistleblower reward laws. The attached 2016 comment letter also includes recommended language proposed by NWC in 2016. Thank you for your consideration.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Siri Nelson", written over a horizontal line.

/s/ Siri Nelson
Executive Director
info@whistleblowers.org
National Whistleblower Center

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NATIONAL WHISTLEBLOWER CENTER

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June 26, 2016

The Hon. Anthony Foxx
Secretary of Transportation

Mr. Carlos Monje Jr.
Acting Under Secretary for Policy

U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Motor Vehicle Safety Whistleblower Act Rulemaking

Dear Secretary and Acting Under Secretary:

Attached please find the formal proposal and rulemaking comments submitted Pursuant to subsection (i) the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. § 30172, the Department of Transportation must complete the rulemaking process and publish final rules on the whistleblower law within 18 months of the enactment of the law.¹ The National Whistleblower Center hereby files with this letter its initial rulemaking proposal.

The NWC's proposal like the Motor Vehicle Safety Whistleblower Act ("Act") itself, is modeled on the whistleblower reward laws covering the IRS and the SEC. As explained by Senator John Thune, the principle sponsor of the Act, in the press release issued by his office when the Act was originally introduced, "The legislation is modeled after existing statutory whistleblower protections that encourage individuals to share information with the Internal Revenue Service and the Securities and Exchange Commission."²

In 2010-11 the SEC conducted a historic rulemaking proceeding on its whistleblower reward program. It carefully reviewed hundreds of detailed proposals, and after extensive proceedings the Commission published its final rules on May 25, 2011.³ These rules properly address almost all of the issues for which the Department of Transportation should address in its auto safety whistleblower rulemaking. They set forth fair and logical rules for filing claims, clear definitions of original information and appropriate procedures for an internal appeal of claim denials. We

¹ 49 U.S.C. § 30172(i) ("Not later than 18 months after the date of enactment of this section, the Secretary shall promulgate regulations . . .").

² Office of John Thune Press Release, "Thune, Nelson Introduce Legislation to Help Prevent Auto Injuries, Deaths From Faulty Parts by Incentivizing Whistleblowers," (November 20, 2014), <http://www.thune.senate.gov/public/index.cfm/2014/11/thune-nelson-introduce-legislation-to-help-prevent-auto-injuries-deaths-from-faulty-parts-by-incentivizing-whistleblowers>.

³ See <http://www.sec.gov/about/offices/owb/reg-21f.pdf>.

have based the NWC's proposal on these SEC rules, and have modified them to take into consideration the specific requirements of the Act, the fact that these rules concern auto safety, and various lessons learned since the implementation of the SEC rules.

Although at the time the SEC rules were published there was some controversy over their efficacy, after almost six years of experience, the SEC program has proven to be a success. The Chair of the Commission has publicly praised the operation of the program and the contributions made by whistleblowers. *See* Chair Mary Jo White, "The SEC as the Whistleblower's Advocate," Ray Garrett, Jr. Corporate and Securities Law Institute-Northwestern University School of Law Chicago, Illinois (April 30, 2015).⁴

As part of the SEC's program, the Commission established a Whistleblower Office within its Office of Enforcement. That Office is respected and professionally managed. It provides whistleblowers with critical information necessary to file proper claims and understand their rights. It also operates a claims filing process that ensures the confidentiality of whistleblowers. We strongly recommend that the Department of Transportation study the operation of that office, and establish a similar office to ensure the proper implementation of the Act.⁵

By building on the success of the SEC program, and using its positive attributes as a foundation for the Department's final rules on the whistleblower program, we believe that the Department can finalize its whistleblower rules prior to the mandatory 18 month cut-off date. It is in the public interest, and consistent with the legislative intent behind the law, for the Department to have a fully functioning whistleblower program as quickly as possible. The public needs to be assured that the automobiles sold in the United States are safe. Congress has recognized that an effective whistleblower incentive program will play a key role in ensuring public safety. We therefore request that the Department publish proposed rules (based on the SEC model), and approve final rules as quickly as permissible under the Administrative Procedure Act.

We request an opportunity to meet with the Secretary of Transportation and the relevant staff members involved in the rulemaking process to fully explain our position on this critical safety issue.

Respectfully submitted,
/s/
Stephen M. Kohn
Executive Director

Enclosure: Proposed Auto Safety Whistleblower Rules

CC: Shomaila.sharif.ctr@dot.gov
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⁴ *See* <http://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html>.

⁵ *See* <http://www.sec.gov/whistleblower>.

MOTOR VEHICLE SAFETY WHISTLEBLOWER ACT IMPLEMENTING REGULATIONS, 49 § 30172

SOURCE: 49 U.S.C. § 30172.

Supplemental Information—Purpose and Scope

These regulations implement the whistleblower provisions of the following Motor Vehicle Safety Whistleblower Act, 49 U.S.C. § 30172 (“Whistleblower Act”). The purpose of the Whistleblower Act “is to incentivize a motor vehicle manufacturer, part supplier, or dealership employee or contractor to voluntarily provide the Secretary of Transportation (Secretary) information relating to any motor vehicle defect, noncompliance, or any violation of any notification or reporting requirement that is likely to cause unreasonable risk of death or serious physical injury,” S. Rep. 114-13, p. 1. These regulations draw from the United States Security and Exchange Commission’s (“SEC”) whistleblower program rules and the federal anti-retaliation law protecting employees who raise vehicle safety issues. See, Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 49 U.S.C. § 30171 (“MAP-21”).

The SEC rules provide an appropriate starting point for these regulations based on the success of the SEC program and the legislative history behind the Whistleblower Act. The Honorable Mary Jo White, Chair of the SEC, has publicly acknowledged the success of the SRC rules. See Chair Mary Jo White, “The SEC as the Whistleblower’s Advocate,” Ray Garrett, Jr. Corporate and Securities Law Institute-Northwestern University School of Law Chicago, Illinois (April 30, 2015).¹ The principle sponsor of the Whistleblower Act also stated that the Act was “modeled ”on the “existing statutory whistleblower protections that encourage individuals to share information with the Internal Revenue Service and the Securities and Exchange Commission.”²

Part 1—General.

The Motor Vehicle Safety Whistleblower Act, 49 U.S.C. § 30172 (“Whistleblower Act”) authorizes the Secretary of Transportation (“Secretary”) to pay awards, subject to certain limitations and conditions, to whistleblowers who provide the

¹ See <http://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html>.

² Office of John Thune Press Release, “Thune, Nelson Introduce Legislation to Help Prevent Auto Injuries, Deaths From Faulty Parts by Incentivizing Whistleblowers,”(November 20, 2014), <http://www.thune.senate.gov/public/index.cfm/2014/11/thune-nelson-introduce-legislation-to-help-prevent-auto-injuries-deaths-from-faulty-parts-by-incentivizing-whistleblowers>.

Secretary with original information about automotive safety violations.

These rules describe the whistleblower program that the Secretary has established to implement the Whistleblower Act, and explain the procedures you will need to follow in order to be eligible for an award. You should read these procedures carefully because the failure to take certain required steps within the time frames described in these rules may disqualify you from receiving an award for which you otherwise may be eligible. Unless expressly provided for in these rules, no person is authorized to make any offer or promise, or otherwise to bind the Secretary with respect to the payment of any award or the amount thereof.

Part 2 – Whistleblower definitions, status and retaliation protection.

(a)(1) The term ‘whistleblower’ means any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Secretary original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter, which is likely to cause unreasonable risk of death or serious physical injury.

(2) “Secretary” shall mean the Secretary of Transportation.

(3) The “Office of the Whistleblower” is the office delegated by the Secretary to

(4) The term ‘covered action’ means any administrative or judicial action, including any related administrative or judicial action, brought by the Secretary or the Attorney General under Title 49 of the United States Code that in the aggregate results in monetary sanctions exceeding \$1,000,000.

(5) The term ‘monetary sanctions’ means monies, including penalties and interest, ordered or agreed to be paid. The monies paid can come from administrative, civil or criminal fines penalties, disgorgement, restitution, community service fees, or other monetary payments made to the United States

(6) The term ‘original information’ means information that—

(A) is derived from the independent knowledge or analysis of an individual;

(B) is not known to the Secretary from any other source, unless the individual is the original source of the information; and

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

(7) The term ‘part supplier’ means a manufacturer of motor vehicle equipment.

(8) The term ‘successful resolution’, with respect to a covered action, includes any settlement or adjudication of the covered action. Successful resolution also includes, but is not limited to, an enforcement action, settlement, criminal prosecution or any other administrative, civil or criminal action by the Secretary (or any other agency of the United States or a State government for which the Secretary has referred any matter) relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of any law related to the safety of a motor vehicle, which is likely to cause unreasonable risk of death or serious physical injury, provided the total amount of sanctions, fines, civil or criminal penalties, disgorgement, restitution, community service fees, or other monetary payments made to the United States totals at least \$1,000,000.00 (one million U.S. dollars).

(b) Subject to the requirement set forth in subsection (c) below, to be eligible for an award, you must voluntarily submit original information to the Secretary or the Office of the Whistleblower in accordance with the procedures and conditions described in these regulations.

(c) If an employer has a “mechanism” as defined in these regulations, an employee must first inform his supervisor or another employee within his chain of command, or an internal compliance program, or the “mechanism” of his or her safety concern, in order to be eligible for a reward. However, the requirement to submit the safety information if a company has a “mechanism” shall not apply any of the following circumstances:

(1) if the applicable motor vehicle manufacturer, parts supplier, or dealership does not have an internal reporting mechanism in place to protect employees from retaliation that conforms to the definition of “mechanism” set forth in these regulations.

(2) the whistleblower reasonably believed that such an internal report would have resulted in retaliation, notwithstanding the existence of a mechanism. The test that the Secretary shall apply to determine the reasonable belief of the whistleblower shall be a

subjective test, based on the testimony of the whistleblower and any evidence that the whistleblower submits to justify his or her subjective determination that reporting internally may result in retaliation.

(3) If the employer at issue has been found to have engaged in any employment retaliation or obstruction of justice within the five years prior to the employee's disclosure to the Secretary, there will be an irrefutable presumption that the employee's belief that he or she may suffer from retaliation is reasonable.

(4) the whistleblower reasonably believed that the information—

- (i) was already internally reported; or
- (ii) was already subject to or part of an internal inquiry or investigation; or
- (iii) was otherwise already known to the motor vehicle manufacturer, part supplier, or dealership; or
- (iv) constitutes an immediate threat to the public health or safety; or
- (v) the safety violation was willfully committed.

(5) The requirement is waived for good cause in the discretion of the Secretary or the Office of the Whistleblower.

(6) The Secretary shall waive the requirement if the disclosure of the whistleblower is covered under the obstruction of justice laws, including 18 U.S.C. § 1513(e) or if the whistleblower first provides the information to the any law enforcement officer as a result of voluntary testimony in a grand jury or federal court proceeding concerning a potential criminal violation of an auto safety law.

(7) If an employee initially files a claim with the Secretary, but was otherwise required to file his or her claim with the mechanism in order to qualify for a reward, the Secretary shall inform the employee of this requirement, in writing, and provide the employee with an opportunity to make the disclosure to the mechanism. The failure of the Secretary to inform the employee of his or her obligation to file a safety allegation with the mechanism shall, as a matter of law, constitute good cause for the Secretary to waive any requirement to notify a mechanism of the safety concern.

Part 3—Payment of awards.

(a) Subject to the eligibility requirements described Parts 2, 8, and 16 of these regulations, the Secretary will pay an award or awards to one or more whistleblowers

who provides the Secretary with original information that leads to the successful resolution of a covered action.

(b) The \$1 million threshold can be satisfied if the total amount of monies paid or awarded against multiple defendants or parties totals at least \$1 million.

(c) The \$1 million threshold can be satisfied if the total amount of monies paid or awarded from all defendants or parties in all civil or criminal actions or related actions which relied upon the whistleblower's original information totaled at least \$1 million.

(d) Related actions: The Secretary will also pay an award based on amounts collected in certain related actions.

(1) A related action is a judicial or administrative action and any other civil or criminal proceeding, related to the safety of a motor vehicle, which is likely to cause unreasonable risk of death or serious physical injury brought by:

(i) The Attorney General of the United States;

(ii) A federal regulatory authority;

(iii) Any governmental agency to which the Secretary referred information provided by the whistleblower;

(iv) A state attorney general or transportation regulatory agency in a criminal or civil case, and is based on the same original information that the whistleblower voluntarily provided to the Secretary, and that led the Secretary to take any enforcement action.

(2) In order for the Secretary to make an award in connection with a related action, the Secretary must determine that the original information that the whistleblower gave to the Secretary also led to the successful enforcement of the related action under the same criteria described in these rules for awards made in connection with Secretary actions. The Secretary may seek assistance and confirmation from the authority bringing the related action in making this determination. The Secretary will deny an award in connection with the related action if:

(i) The Secretary determines that the criteria for an award are not satisfied; or

(ii) The Secretary is unable to make a determination because the Office of the Whistleblower could not obtain sufficient and reliable information that could be used as the basis for an award determination. However, if the whistleblower provides

information as to his or her communications with the regulatory or law enforcement agencies identified in the Related Action provisions, and the regulatory or law enforcement agencies fail to provide information, the Secretary shall make a decision based on the information provided by the whistleblower and any other information the Secretary is able to obtain based on its good faith efforts to confirm the information provided by the whistleblower.

(e) Timeframe of awards: The Secretary shall make a final decision regarding the eligibility for an award within 180 days following the formal receipt of an award application. If the Secretary fails to notify the whistleblower of their decision within 180 days, the whistleblower has the right to a de novo review of the claim in the appropriate federal district court, unless the deadline has been extended with the expressed written consent of the whistleblower. Any action filed in federal court shall be adjudicated in an expedited basis. The parties to the federal action shall be the whistleblower and the United States. The employer or other person or party who paid the collected proceeds in the underlying enforcement action may not be permitted to participate in the proceeding without the consent of the whistleblower.

(f) A whistleblower may be represented by counsel. With the consent of the whistleblower, any reward paid may be paid into the Client Trust Account of the whistleblower's attorney, provided that the trust account conforms to the state bar rules for which the attorney is licensed.

(g) No contract with the Secretary is necessary for any whistleblower to receive an award.

Part 4—Other definitions.

(a) Voluntary submission of information.

(1) Your submission of information is made voluntarily within the meaning these regulations if you provide your submission before a request, inquiry, or demand that relates to the subject matter of your submission is directed to you or anyone representing you (such as an attorney):

(i) By the Secretary;

(ii) In connection with an investigation, inspection, or examination by the Secretary

or

(iii) In connection with an investigation by Congress, any other authority of the Federal government, or a state Attorney General.

(2) If the Secretary or any of these other authorities direct a request, inquiry, or demand as described in paragraph (a)(1) of this section to you or your representative first, your submission will not be considered voluntary, and you will not be eligible for an award, if your response is compelled by subpoena or other applicable law. However, your submission of information to the Secretary will be considered voluntary if you voluntarily provided the same information to one of the other authorities identified above, or provided the same information to a “mechanism” or your employer’s internal compliance program, or to the news media, prior to receiving a request, inquiry, or demand from the Secretary. If information is provided in response to a “friendly” subpoena requested by the whistleblower, the information will be considered voluntary.

(3) In addition, your submission will not be considered voluntary if you are required to report your original information to the Secretary as a result of a pre-existing legal duty, a contractual duty that is owed to the Secretary, or a duty that arises out of a judicial or administrative order.

(b) Original information.

(1) In order for your whistleblower submission to be considered original information, it must be:

(i) Derived from your independent knowledge or independent analysis;

(ii) Not already known to the Secretary from any other source, unless you are the original source of the information;

(iii) Not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless you are a source of the information; and

(2) Independent knowledge means factual information in your possession that is not solely derived from publicly available sources. You may gain independent knowledge from your experiences, communications and observations in your business or social interactions or from your independent analysis of otherwise public information.

(3) Independent analysis means your own analysis, whether done alone or in combination with others. Analysis means your examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.

(4) The Secretary will not consider information to be derived from your independent knowledge or independent analysis in any of the following circumstances:

(i) If you obtained the information through a communication concerning legal advice made by an attorney that was subject to the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney pursuant to the applicable state attorney conduct rules, or rules approved by the Secretary, which are subject to a formal rule making proceeding, or otherwise;

(ii) If you obtained the information in connection with the legal representation of a client on whose behalf you or your employer or firm are providing services, and you seek to use the information to make a whistleblower submission for your own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to the applicable state attorney conduct rules, or rules approved by the Secretary; or

(iii) If you obtained the information because you were:

(A) An officer, director, trustee, or partner of an entity and another person informed you of allegations of misconduct, or you learned the information in connection with the entity's processes for identifying, reporting, and addressing possible violations of law;

(B) An employee whose principal duties involve compliance or internal audit responsibilities, or you were employed by or otherwise associated with a firm retained to perform compliance or internal audit functions for an entity;

(C) Employed by or otherwise associated with a firm retained to conduct an inquiry or investigation into possible violations of law.

(5) If you obtained the information by a means or in a manner that is determined by a United States court to violate applicable Federal or state criminal law; or

(6) Exceptions. Paragraph (b)(4)(iii) of this section shall not apply if:

(i) You have a reasonable basis to believe that disclosure of the information to

the Secretary is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the public health and safety;

(ii) You have a reasonable basis to believe that the relevant entity is engaging in conduct that will impede an investigation of the suspected safety violations; or

(iii) At least 120 days have elapsed since you provided the information to the relevant entity's audit committee, "mechanism," chief legal officer, chief compliance officer (or their equivalents), or your supervisor, or since you received the information, if you received it under circumstances indicating that the entity's audit committee, chief legal officer, "mechanism," chief compliance officer (or their equivalents), or your supervisor was already aware of the information.

(7) The Secretary will consider you to be an original source of the same information that we obtain from another source (including your employer and/or from a company's "mechanism" or other compliance program) if the information satisfies the definition of original information and the other source obtained the information from you or your representative. In order to be considered an original source of information that the Secretary receives from Congress, any other authority of the Federal government, a state Attorney General or a regulatory authority under any Federal Department with responsibility investigate motor vehicle safety, you must have voluntarily given such authorities the information within the meaning of these rules. You must establish your status as the original source of information to the Secretary's satisfaction. In determining whether you are the original source of information, the Secretary may seek assistance and confirmation from one of the other authorities described above, or from another entity (including your employer), in the event that you claim to be the original source of information that an authority or another entity provided to the Secretary.

(8) If the Secretary already knows some information about a matter from other sources at the time you make your submission, and you are not an original source of that information, the Secretary will consider you an original source of any information you provide that is derived from your independent knowledge or analysis and that materially adds to the information that the Secretary already possesses.

(9) If you provide information to the Congress, any other authority of the Federal

government, a state Attorney General or a regulatory authority under any Federal Department with responsibility to handle motor vehicle safety issues or to an entity's internal whistleblower, legal, or compliance program or "mechanism," and you, within 120 days, submit the same information to the Secretary pursuant to these regulations, then, for purposes of evaluating your claim to an award under Part 10 and Part 11 of these regulations, the Secretary will consider that you provided information as of the date of your original disclosure, report or submission to one of these other authorities or persons. You must establish the effective date of any prior disclosure, report, or submission, to the Secretary's satisfaction. The Secretary may seek assistance and confirmation from the other authority or person in making this determination.

(10) The Secretary will consider you to be an original source of the same information that we obtain from another source if the information satisfies the definition of original information and the other source obtained the information from any international body.

(c) Information that leads to successful enforcement. The Secretary will consider that you provided original information that led to the successful enforcement of a judicial or administrative action in any of the following circumstances:

(1) You gave the Secretary original information that was sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation, reopen an investigation that the Secretary had closed, or to inquire concerning different conduct as part of a current examination or investigation, and the Secretary brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of your original information; or

(2) You gave the Secretary original information about conduct that was already under examination or investigation by the Secretary, the Congress, any other authority of the Federal government, a state Attorney General or a regulatory authority under any Federal Department (except in cases where you were an original source of this information as defined in paragraph (b)(5) of this section), and your submission significantly contributed to the success of the action.

(3) You reported original information through an entity's internal whistleblower,

legal, or compliance procedures for reporting allegations of possible violations of law before or at the same time you reported them to the Secretary (or to an entity's "mechanism" before you provided information to the Secretary); the entity later provided your information to the Secretary, or provided results of an audit or investigation initiated in whole or in part in response to information you reported to the entity; and the information the entity provided to the Secretary satisfies the other requirements set forth under these regulations. However, you must also submit the same information to the Secretary within or after 120 days of providing it to the entity.

(d) An action generally means a single captioned judicial or administrative proceeding brought by the Secretary. Notwithstanding the foregoing:

(1) For purposes of making an award under these regulations, the Secretary will treat as a Secretary action two or more administrative or judicial proceedings brought by the Secretary or another federal regulatory or law enforcement authority if these proceedings arise out of the same nucleus of operative facts; or

(2) For purposes of determining the payment on an award under these regulations, the Secretary will deem as part of the Secretary action upon which the award was based any subsequent Secretary or other federal law enforcement or regulatory proceeding that, individually or collectively, results in a monetary sanction that arises out of the same nucleus of operative facts.

(e) An "internal reporting mechanism in place to protect employees from retaliation" (i.e. "mechanism") shall mean an internal mechanism, widely publicized to all employees, that operates independent of any legal department of the employer and can provide an investigatory procedures, burdens of proof, and relief consistent with the Moving Ahead for Progress in the 21st Century Act, P.L. 112-141, 49 U.S.C. § 30171 ("MAP-21").

(f) Procedures and standards applicable to a "mechanism:"

(1) Procedures applicable to the mechanism: The information or investigative files created by the mechanism as a result of information provided to the mechanism by the employee cannot be disclosed to any third party (except the Secretary) without the written consent of the whistleblower. The findings of the mechanism, or any of the documents produced during the proceedings conducted by the mechanism, may be

introduced at hearing or trial conducted pursuant to the MAP-21 only with the written consent of the employee.

(2) Standards applicable to the relief awardable by the mechanism: The mechanism shall have the responsibility to award all damages and relief available to employees under MAP-21 and shall apply the same standards of review as set forth in that law. Should the mechanism find any adverse action, it shall award damages as permitted or required under MAP-21. An employer must agree, in writing, that the filing of a complaint or claim with the mechanism shall toll the statute of limitations for filing a complaint under MAP-21. If the mechanism awards any relief or damages to the employee, such relief and/or damages shall be considered a privilege of employment as defined under the MAP-21, 49 U.S.C. § 30171(a). An employee shall have to enforce the relief or damages awarded by the mechanism as a privilege of employment in a proceeding filed under MAP-21, in a breach of contract claim, or as a retaliation or public policy claim that may be permitted under state law. An employee may file a complaint with the U.S. Secretary of labor under MAP-21 regardless of whether or not he or she has sought relief under the mechanism. Any such complaint shall be heard by the Secretary of Labor *de novo* and any findings made by the mechanism may only be introduced into evidence in any such proceeding with the consent of the whistleblower.

(3) Confidential filings: The mechanism must be able to accept safety or retaliation related complaints from employees on an anonymous basis. Any investigation conducted by the mechanism shall remain strictly confidential, except if corrective action is awarded (and the employee consents to the release of the findings), and may not be shared with any attorney or corporate representative who may represent, or assist in the representation, of the company in any retaliation claim or any investigation pursuant to a whistleblower's safety disclosure, without the consent of the whistleblower. However, the employee shall have access to the investigatory files of the mechanism.

(4) Notification of the mechanism: Any employer who establishes a mechanism must file a copy of the written procedures and rules governing the mechanism with the Secretary. This filing must be open to the public and subject to public comment for a period of no less than 180 days. Employees must be given reasonable notice of the filing with the Secretary. The notification required in this section does not constitute an

endorsement by the Secretary of the procedures or rules governing the mechanism, and does not limit the right of any employee to challenge the rules and procedures governing the mechanism in any proceeding. The failure of a company to operate the mechanism in conformance with its written rules and procedures shall constitute a serious safety violation. The failure to file this notification with the Secretary shall waive any requirement that an employee first notify the mechanism of his or her concerns prior to filing a claim for a reward with the Secretary.

(5) The investigatory files and findings of the mechanism shall not be privileged under state or federal law, and shall not be considered a trade secret. These documents shall be open to review by the Secretary within 30 days of any request to conduct such a review. All documents related to the mechanism's investigation and findings shall be open to review, including communications with attorneys representing the employer or a motor vehicle manufacturer, parts supplier, or dealership.

(6) Any requirement that a whistleblower report to an "internal reporting mechanism in place to protect employees from retaliation" or any other internal compliance program shall not be applicable to an employee who is employed outside the United States.

Part 5—Amount of award.

(a) The determination of the amount of an award is in the discretion of the Secretary.

(b) If all of the conditions are met for a whistleblower award, the Secretary shall award the qualified whistleblower(s) not less than 10 percent, in total, of collected monetary sanctions; and not more than 30 percent, in total, of collected monetary sanctions. The percentage awarded in connection with a Secretary action may differ from the percentage awarded in connection with a related action.

(c) Any amount shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.

(d) If the Secretary makes awards to more than one whistleblower in connection with the same action or related action, the Secretary will determine an individual percentage award for each whistleblower, but in no event will the total amount awarded to all whistleblowers in the aggregate be less than 10 percent or greater than 30 percent of the amount the Secretary or the other authorities collect.

Part 6—Criteria for determining amount of award or denying an award in its entirety.

(a) In exercising its discretion to determine the appropriate award percentage, the Secretary shall consider the following factors in relation to the unique facts and circumstances of each case, and may increase or decrease the award percentage based on its analysis of these factors. In the event that awards are determined for multiple whistleblowers in connection an action, these factors will be used to determine the relative allocation of awards among the whistleblowers.

(b) Factors that may increase the amount of a whistleblower's award. In determining whether to increase the amount of an award, the Secretary will consider the following factors, which are not listed in order of importance:

(1) Significance of the information provided by the whistleblower. The Secretary will assess the significance of the information provided by a whistleblower to the success of the Secretary action or related action. In considering this factor, Secretary may take into account, among other things:

(i) The nature of the information provided by the whistleblower and how it related to the successful enforcement action, including whether the reliability and completeness of the information provided to the Secretary by the whistleblower resulted in the conservation of Secretary resources;

(ii) The degree to which the information provided by the whistleblower supported one or more successful claims brought in the Secretary or in a related action.

(2) Assistance provided by the whistleblower. The Secretary will assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the Secretary action or related action. In considering this factor, the Secretary may take into account, among other things:

(i) Whether the whistleblower provided ongoing, extensive, and timely cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry;

- (ii) The timeliness of the whistleblower's initial report to the Secretary or to an internal compliance or reporting system or a “mechanism,” where appropriate;
- (iii) The resources conserved as a result of the whistleblower's assistance;
- (iv) Whether the whistleblower appropriately encouraged or authorized others to assist the staff of the Secretary who might otherwise not have participated in the investigation or related action;
- (v) The efforts undertaken by the whistleblower to remediate the harm caused by the violations, including assisting the authorities in the recovery of the fruits and instrumentalities of the violations; and
- (vi) Any unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action.

(3) Law enforcement interest. The Secretary will assess its programmatic interest in deterring violations of the motor vehicle safety laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws. In considering this factor, the Secretary may take into account, among other things:

- (i) The degree to which an award enhances the Secretary's ability to enforce safety laws; and
- (ii) The degree to which an award encourages the submission of high quality information from whistleblowers by appropriately rewarding whistleblowers' submission of significant information and assistance, even in cases where the monetary sanctions available for collection are limited or potential monetary sanctions were reduced or eliminated by the Secretary because an entity self-reported a violation following the whistleblower's related internal disclosure, report, or submission.
- (iii) Whether the subject matter of the action is a Secretary priority, whether the reported violation involves regulated entities or fiduciaries, whether the whistleblower exposed an industry-wide practice, the type and severity of the violation, the age and duration of misconduct, the number of violations, and the isolated, repetitive, or ongoing nature of the violations; and
- (iv) The dangers to the public presented by the underlying violations involved in the enforcement action, including the amount of harm or potential harm caused by the

underlying violations, and the type of harm resulting from or threatened by the underlying violations.

(4) Participation in internal compliance systems. The Secretary will assess whether, and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance systems. In considering this factor, the Secretary may take into account, among other things:

(i) Whether, and the extent to which, a whistleblower reported the possible violation through internal whistleblower, legal or compliance procedures before, or at the same time as, reporting them to the Secretary; and

(ii) Whether, and the extent to which, a whistleblower assisted any internal investigation or inquiry concerning the reported violation.

(5) Whether the whistleblower resided outside of the territory of the United States of America, and, as a consequence of their residence, was subject to retaliation practices that were beyond the reach of U.S. law enforcement.

(6) The extent to which an award would encourage non-US citizens to provide original information regarding violations of U.S. auto safety laws which may originate outside of the jurisdictional limits of the United States.

(7) Whether the whistleblower promptly contacted federal or state law enforcement officials if he or she believed that the underlying violation also constituted a violation of federal or state criminal law, if the Secretary was not already aware of the potential violation.

(c) Factors that may decrease the amount of a whistleblower's award. In determining whether to decrease the amount of an award, the Secretary will consider the following factors, which are not listed in order of importance.

(1) Culpability. The Secretary will assess the culpability or involvement of the whistleblower in matters associated with the Secretary's action or related actions. In considering this factor, the Secretary may take into account, among other things:

(i) The whistleblower's role in the violation;

(ii) The whistleblower's education, training, experience, and position of responsibility at the time the violations occurred;

(iii) Whether the whistleblower acted with scienter, both generally and in relation

to others who participated in the violations;

(iv) Whether the whistleblower financially benefitted from the violations;

(v) Whether the whistleblower is a recidivist;

(vi) The egregiousness of the underlying fraud committed by the whistleblower; and

(vii) Whether the whistleblower knowingly interfered with the Secretary's investigation of the violations or related enforcement actions.

(2) Unreasonable reporting delay. The Secretary will assess whether the whistleblower unreasonably delayed reporting the violation. In considering this factor, the Secretary may take into account, among other things:

(i) Whether the whistleblower was aware of the relevant facts but failed to take reasonable steps to report (either to the Secretary or internally) or prevent the violations from occurring or continuing;

(ii) Whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation, or enforcement action; and

(iii) Whether there was a legitimate reason for the whistleblower to delay reporting the violations.

(3) Interference with internal compliance and reporting systems. The Secretary will assess, in cases where the whistleblower interacted with his or her entity's internal compliance or reporting system, whether the whistleblower undermined the integrity of such system. In considering this factor, the Secretary will take into account whether there is evidence provided to the Secretary that the whistleblower knowingly:

(i) Interfered with an entity's established legal, compliance, or audit procedures to prevent or delay detection of the reported violation;

(ii) Made any material false, fictitious, or fraudulent statements or representations that hindered an entity's efforts to detect, investigate, or remediate the reported violation; and

(iii) Provided any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate, or remediate the reported violation.

(d) Factors that will result in the denial of a reward in its entirety. The Secretary

shall deny a reward:

(1) to any whistleblower who is convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award under this section;

(2) to any whistleblower who, acting without direction from an applicable motor vehicle manufacturer, part supplier, or dealership, or agent thereof, deliberately causes or substantially contributes to the alleged violation of a requirement of this chapter;

(3) to any whistleblower who submits information to the Secretary that is based on the facts underlying the covered action submitted previously by another whistleblower who is eligible for a reward;

(4) to any whistleblower who fails to provide the original information to the Secretary in such form as the Secretary may require by regulation; and

(5) to any whistleblower who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. If a whistleblower makes or uses any such information he or she will be subject to prosecution under section 1001 of title 18.

~~§240.21F-7~~ Part 7—Confidentiality of submissions.

(a) Notwithstanding section 30167 of United States Code Title 49, and except as provided below, the Secretary, and any officer or employee of the Department of Transportation, shall not disclose any information, including information provided by a whistleblower to the Secretary, which could reasonably be expected to reveal the identity of a whistleblower, unless—

(1) required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Secretary or any entity described in paragraph (5);

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

or

(3) the Secretary, or other officer or employee of the Department of Transportation, receives the information through another source, such as during an inspection or investigation under section 30166, and has authority under other law to release the information.

(4) Redaction of Information. The Secretary, and any officer or employee of the Department of Transportation, shall take reasonable measures to not reveal the identity of the whistleblower when disclosing any information under paragraph (1).

“(3) SECTION 552(B)(3)(B).

(5) For purposes of section 552 of title 5, paragraph (1) of this subsection shall be considered a statute described in subsection (b)(3)(B) of that section. The identity of the whistleblower, and the information provided to the Secretary by the whistleblower, shall be considered exempt from disclosure under the provisions of section 552 of title 5 to the fullest extent permitted under law. Should a request for disclosure of whistleblower-related information be submitted to the Secretary by any person, other than the whistleblower pursuant to the Privacy Act, 5 U.S.C. 552a, the information requested shall also be treated as confidential business information, and the Secretary shall notify the whistleblower of the request for information, and permit the whistleblower to file objections to the release of information. Should the agency consent to the release under section 552 of title 5 to any information that could result in the disclosure of the identity of the whistleblower, the whistleblower shall have the right to file a reverse Freedom of Information Act complaint in U.S. district court to prevent such disclosure, and the Secretary will not object to that proceeding being filed as a “John Doe” matter or otherwise being filed under seal.

“(b) Nothing in this subsection is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation, provided that the Attorney General treat the whistleblower as a confidential informant, and provides advance notice to the whistleblower of any intent to reveal his or her identity and/or reveal information that may reveal his or her identity in a manner that would provide the whistleblower an opportunity to seek a protective order regarding information related to his or her identity.

(c) Availability to other government agencies.

(1) Without the loss of its status as confidential in the hands of the Secretary, all information provided to the Secretary by the whistleblower may, in the discretion of the Secretary, when determined by the Secretary to be necessary or appropriate to accomplish the purposes of this chapter and in accordance with subparagraph (B), be made available to the following:

(i) The Department of Justice.

(ii) An appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction.

(2) Each entity described in subparagraph (1) shall maintain information described in that subparagraph as confidential, in accordance with the requirements in paragraphs (a) and (b) above.

(d) Consistent with the requirements of this section, the Secretary will determine what assurances of confidentiality it deems appropriate in providing such information to the government agencies referenced in this section.

(e) Nothing in this section limits the right of the whistleblower to obtain information from the Secretary or any other federal agency pursuant to the Privacy Act, 5 U.S.C. § 552a. Any information provided to the Secretary shall be considered information within a system of records related to the whistleblower, and covered under the disclosure and record keeping requirements of the Privacy Act.

(f) The Whistleblower shall be given notice and opportunity to object to any disclosure set forth in this section.

(g) You may submit information to the Secretary anonymously. If you do so, however, you must also do the following:

(1) You must have an attorney represent you in connection with both your submission of information and your claim for an award, and your attorney's name and contact information must be provided to the Secretary at the time you submit your information;

(2) You and your attorney must follow the procedures set forth in Part 9 of these regulations for submitting original information anonymously; and

(3) Before the Secretary will pay any award to you, you may be required to

disclose your identity to the Secretary and your identity must be verified by the Secretary as set forth in Part 9 of these regulations.

(4) Providing your identity to the Secretary does not waive your right to complete confidentiality of your identity as to the release to any person outside of the office of the Secretary.

Part 8—Eligibility.

(a) To be eligible for a whistleblower award, you must give the Secretary information in the form and manner that the Secretary requires. The procedures for submitting information and making a claim for an award are described in Part 9 through Part 11 of these regulations. You should read these procedures carefully because you need to follow them in order to be eligible for an award, except that the Secretary may, in its sole discretion, waive any of these procedures based upon a showing of good cause.

(b) In addition to any forms required by these rules, the Secretary may also require that you provide certain additional information. You may be required to:

(1) Provide explanations and other assistance in order that the staff may evaluate and use the information that you submitted;

(2) Provide all additional information in your possession that is related to the subject matter of your submission in a complete and truthful manner, through follow-up meetings, or in other forms that our staff may agree to;

(3) Provide testimony or other evidence acceptable to the staff relating to whether you are eligible, or otherwise satisfy any of the conditions, for an award; and

(4) Enter into a confidentiality agreement in a form acceptable to the Office of the Whistleblower, covering any non-public information that the Secretary provides to you, and including a provision that a violation of the agreement may lead to your ineligibility to receive an award.

Part 9—Procedures for submitting original information.

(a) To be considered a whistleblower you must submit your information about a possible auto safety violation by either of these methods:

(1) Online, through the Secretary’s Web site located at [web address]. This Web

site shall contain information regarding the rights and obligations of potential whistleblowers and shall be published and publicized as necessary to promote the purposes of this Whistleblower Act; or

(2) By mailing or faxing a Whistleblower Disclosure Form to the Secretary or the Office of the Whistleblower at the following address: -----.

(b) Further, to be eligible for an award, you must declare under penalty of perjury at the time you submit your information pursuant to paragraph (a)(1) or (2) of this section that your information is true and correct to the best of your knowledge and belief.

(c) Notwithstanding paragraphs (a) and (b) of this section, if you are providing your original information to the Secretary anonymously, then your attorney must submit your information on your behalf pursuant to the procedures specified in paragraph (a) of this section. Prior to your attorney's submission, you must provide your attorney with a completed Whistleblower Disclosure Form that you have signed under penalty of perjury. When your attorney makes her submission on your behalf, your attorney will be required to certify that he or she:

(1) Has verified your identity;

(2) Has reviewed your completed and signed the Whistleblower Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of the attorney's knowledge, information and belief;

(3) Has obtained your non-waivable consent to provide the Secretary with your original completed and signed Whistleblower Disclosure Form in the event that the Secretary requests it due to concerns that you may have knowingly and willfully made false, fictitious, or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false fictitious or fraudulent statement or entry; and

(4) Consents to be legally obligated to provide the signed Whistleblower Disclosure Form within ten (10) working days of receiving such request from the Secretary.

(d) If you submitted original information in writing to the Secretary before the

effective date of these rules, your submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of this section. If you were an anonymous whistleblower, however, you must provide your attorney with a completed and signed copy of Whistleblower Disclosure Form within 120 days of the effective date of these rules, your attorney must retain the signed form in his or her records, and you must provide of copy of the signed form to the Secretary staff upon request by Secretary staff prior to any payment of an award to you in connection with your submission. Notwithstanding the foregoing, you must follow the procedures and conditions for making a claim for a whistleblower award described in Part 10 and Part 11 of these regulations.

Part 10 -- Procedures for making a claim for a whistleblower award

(a) Whenever a Secretary action results in monetary sanctions totaling more than \$1,000,000, the Office of the Whistleblower will cause to be published on the Secretary's Web site a "Notice of Covered Action." Such Notice will be published subsequent to the entry of a final judgment or order that alone, or collectively with other judgments or orders previously entered in the Secretary's action, exceeds \$1,000,000. Unless an agreement is reached pursuant to subsection (2) below, a claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.

(1) The Secretary shall publish this required Notice of Covered Action within 10 days of its approval of the sanction. Additionally, this publishing shall not be delayed because monetary sanction has not been paid.

(2) The Secretary shall use its best efforts to notify any whistleblower for which the Secretary believes may be eligible for a reward before the publication of the Notice of Covered Action. The Secretary shall work directly with the whistleblower prior to the publication of any Notice of Covered Action, in order to reach an agreement as to the basis for granting an award, and the amount of a reward. When such an agreement is reached prior to the publication of the Notice of Covered Action, the fact that an agreement has been reached shall be referenced in the Notice, and only another

whistleblower who filed original information prior to the commencement of the enforcement action shall have standing to file an additional request for a reward. If no such additional request for a reward is filed, the agreement reached between the Secretary and the whistleblower shall become final, and the award shall be paid within 30-days of the collection of the sanction. The failure of the Secretary to make an advanced notification of a Notice of Covered Action or to negotiate a settlement with the whistleblower shall not toll the 90-day filing deadline.

(b) If no agreement is reached as referenced above, or if you were not pre-notified by the Secretary prior to the publication of the Notice of Covered Action, or if for any other reason you did not file a request for a reward with the Secretary after the publication of the Notice of Covered Action, you must file Whistleblower Reward Application Form. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax. All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award.

(c) If you provided your original information to the Secretary anonymously, you may be required to disclose your identity on the Whistleblower Reward Application Form, and your identity may be subject to verification in a form and manner that is acceptable to the Office of the Whistleblower prior to the payment of any award. The Secretary shall maintain the confidentiality of your identity if you disclose your identity as part of this application process.

(d) Once the time for filing the Whistleblower Reward Application Form has expired Secretary's Office of the Whistleblower "Claims Review Staff" will evaluate all timely whistleblower award claims submitted on the Form. If an agreement was reached between the Secretary and the whistleblower(s), and no additional applications for a reward are pending, the Secretary shall approve the reward and make payment within 30-days of the receipt of the collected proceeds for which the reward is based. If the Secretary has not obtained the full amount of the collected proceeds, partial rewards shall be paid.

(e) In connection with any proceeding or review by the Claims Review Staff of an application for a reward, the Office of the Whistleblower may require that you provide

additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in Part 8(b) of these regulations. Following that evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount. The review shall be completed within 180-days of the publication of the Notice of Covered Action.

(f) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response.

(1) Before determining whether to contest a Preliminary Determination, you may:

(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Office of the Whistleblower make available for your review the materials from among those set forth in Part 12(a) of these regulations that formed the basis of the Claims Review Staff's Preliminary Determination.

(ii) Within thirty (30) calendar days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; however, such meetings are not required and the office may in its sole discretion decline the request.

(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to these regulations, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review.

(g) If you fail to submit a timely response pursuant to paragraph (f) of this section, then the Preliminary Determination will become the Final Order of the Secretary (except where the Preliminary Determination recommended an award, in which case the Preliminary Determination will be deemed a Proposed Final Determination for purposes of paragraph (h) of this section). Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust

administrative remedies, and you will be prohibited from pursuing an appeal pursuant to Part 13 of these regulations.

(h) If you submit a timely response pursuant to paragraph (f) of this section, then the Claims Review Staff will consider the issues and grounds advanced in your response, along with any supporting documentation you provided, and will make its Proposed Final Determination within 60-days for your submission.

(i) The Office of the Whistleblower will then notify the Secretary of each Proposed Final Determination. Within five calendar days thereafter, the Secretary may request that the Proposed Final Determination be reviewed by the Secretary. Any such request shall be served on the whistleblower and shall be in writing. If the Secretary does not request a review, in writing, within the 5 calendar day period, then the Proposed Final Determination will become the Final Order of the Secretary. In the event the Secretary requests a review, the Secretary will review the record that the staff relied upon in making its determinations, including your previous submissions to the Office of the Whistleblower, and issue its Final Order within 30 calendar days of issuing its request. If a Final Order is not issued within the 30-day time period, the Proposed Final Determination shall become the Final Order.

(j) The Office of the Whistleblower will provide you with the Final Order of the Secretary.

Part 11—Procedures for determining awards based upon a related action.

(a) If you are eligible to receive an award, you also may be eligible to receive an award based on the monetary sanctions that are collected from a related action (as defined in Part 3 of these regulations). You must also use the Whistleblower Reward Application Form referenced in Part 10(b) of these regulations) to submit a claim for an award in a related action. You must sign this form as the claimant and submit it to the Office of the Whistleblower by mail or fax.

(b) (1) If a final order imposing monetary sanctions has been entered in a related action at the time you submit your claim for an award in connection with a Secretary action, you must submit your claim for an award in that related action on the same

Whistleblower Reward Application Form referenced in Part 10(b) of these regulations that you use for the Secretary action.

(2) If a final order imposing monetary sanctions in a related action has not been entered at the time you submit your claim for an award in connection with a Secretary action, you must submit your claim on the Whistleblower Reward Application Form referenced in § Part 10(b) of these regulations) within ninety (90) days of the issuance of a final order imposing sanctions in the related action.

(c) The Office of the Whistleblower may request additional information from you in connection with your claim for an award in a related action to demonstrate that you directly (or through the Secretary) voluntarily provided the governmental agency, regulatory authority or the same original information that led to the Secretary's successful covered action, and that this information led to the successful enforcement of the related action. The Office of the Whistleblower may, in its discretion, seek assistance and confirmation from the other agency in making this determination.

(d) Once the time for filing any appeals of the final judgment or order in a related action has expired, or if an appeal has been filed, after all appeals in the action have been concluded, the Claims Review Staff will evaluate all timely whistleblower award claims submitted on the Whistleblower Reward Application Form Part 10(b) of these regulations in connection with the related action. The evaluation will be undertaken pursuant to the criteria set forth in these rules. In connection with this process, the Office of the Whistleblower may require that you provide additional information relating to your eligibility for an award or satisfaction of any of the conditions for an award, as set forth in Part 8(b) of these regulations. Following this evaluation, the Office of the Whistleblower will send you a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be allowed or denied and, if allowed, setting forth the proposed award percentage amount.

(e) You may contest the Preliminary Determination made by the Claims Review Staff by submitting a written response to the Office of the Whistleblower setting forth the grounds for your objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Office of the

Whistleblower shall require. You may also include documentation or other evidentiary support for the grounds advanced in your response.

(1) Before determining whether to contest a Preliminary Determination, you may:

(i) Within thirty (30) days of the date of the Preliminary Determination, request that the Office of the Whistleblower make available for your review the materials from among those set forth in Part 12(a) of these regulations that formed the basis of the Claims Review Staff's Preliminary Determination.

(ii) Within thirty (30) days of the date of the Preliminary Determination, request a meeting with the Office of the Whistleblower; however, such meetings are not required and the office may in its sole discretion decline the request.

(2) If you decide to contest the Preliminary Determination, you must submit your written response and supporting materials within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1)(i) of this section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review.

(f) If you fail to submit a timely response pursuant to paragraph (e) of this section, then the Preliminary Determination will become the Final Order of the Secretary (except where the Preliminary Determination recommended an award, in which case the Preliminary Determination will be deemed a Proposed Final Determination for purposes of paragraph (h) of this section). Your failure to submit a timely response contesting a Preliminary Determination will constitute a failure to exhaust administrative remedies, and you will be prohibited from pursuing an appeal pursuant to Part 13 of these regulations.

(g) If you submit a timely response pursuant to paragraph (e) of this section, then the Claims Review Staff will consider the issues and grounds that you advanced in your response, along with any supporting documentation you provided, and will make its Proposed Final Determination.

(h) The Office of the Whistleblower will notify the Secretary of each Proposed Final Determination. Within thirty 30 days thereafter, the Secretary may request that the Proposed Final Determination be reviewed by the Secretary. This request shall be in writing and shall also be served on the whistleblower. If the Secretary does not requests such

a review within the 30-day period, then the Proposed Final Determination will become the Final Order of the Secretary. In the event a Secretary requests a review, the Secretary will review the record that the staff relied upon in making its determinations, including your previous submissions to the Office of the Whistleblower, and issue its Final Order. This Final Order must be issued within 90 days of the filing of the request for review.

(i) The Office of the Whistleblower will provide you with the Final Order of the Secretary.

Part 12—Materials that may form the basis of an award determination and that may comprise the record on appeal.

(a) The following items constitute the materials that the Secretary and the Claims Review Staff may rely upon to make an award determination pursuant to these regulations:

- (1) Any publicly available materials from the covered action or related action, including: (i) The complaint, notice of hearing, answers and any amendments thereto;
 - (ii) The final judgment, consent order, or final administrative order;
 - (iii) Any transcripts of the proceedings, including any exhibits; (iv) Any items that appear on the docket; and
 - (v) Any appellate decisions or orders.
- (2) The whistleblower's Disclosure Form (referenced in Part 9(a)(2)), including attachments, supplemental or amended filings, and other related materials provided by the whistleblower to assist the Secretary with the investigation or examination;
- (3) The whistleblower's Application Form referenced in Part 10(b) of these regulations, including attachments, and any other filings or submissions from the whistleblower in support of the award application;
- (4) Sworn declarations (including attachments) from the Secretary staff regarding any matters relevant to the award determination;
- (5) With respect to an award claim involving a related action, any statements or other information that the entity provides or identifies in connection with an award

determination, provided the entity has authorized the Secretary to share the information with the claimant. (Neither the Secretary nor the Claims Review Staff may rely upon information that the entity has not authorized the Secretary to share with the claimant); and

(6) Any other documents or materials including sworn declarations from third parties that are received or obtained by the Office of the Whistleblower to assist the Secretary resolve the claimant's award application, including information related to the claimant's eligibility. (Neither the Secretary nor the Claims Review Staff may rely upon information that the entity has not authorized the Secretary to share with the claimant).

(b) These rules do not entitle claimants to obtain from the Secretary any materials (including any pre- decisional or internal deliberative process materials that are prepared exclusively to assist the Secretary in deciding the claim) other than those listed in paragraph (a) of this section, however, the Secretary may provide these materials to the whistleblower, in its discretion. Moreover, the Office of the Whistleblower may make redactions as necessary to comply with any statutory restrictions, to protect the Secretary's law enforcement and regulatory functions, and to comply with requests for confidential treatment from other law enforcement and regulatory authorities. The Office of the Whistleblower may also require you to sign a confidentiality agreement, as set forth in Part 8(b)(4) of these regulations, before providing these materials.

(c) If a whistleblower conducts a deposition or interviews of a witness, said deposition transcript or the notes from the interview may be placed on the record and relied upon in an appeal.

Part 13—Appeals.

(a) The Whistleblower Act commits determinations of whether, to whom, and in what amount to make awards to the Secretary's discretion. A determination of whether or to whom to make an award may be appealed within 30 days after the Secretary issues its final decision to the United States Court of Appeals for the District of Columbia Circuit, or to the circuit where the aggrieved person resides or has his principal place of

business. Where the Secretary makes an award based on the factors set forth in Part 6 of these regulations of not less than 10 percent and not more than 30 percent of the monetary sanctions collected by the Secretary or in a related action, the Secretary's determination regarding the amount of an award (including the allocation of an award as between multiple whistleblowers, and any factual findings, legal conclusions, policy judgments, or discretionary assessments involving the Secretary's consideration of the factors in Part 6 of these regulations of not less than 10% of the monetary sanctions collected in the Secretary or related action is not appealable.

(b) The record on appeal shall consist of the Preliminary Determination, the Final Order of the Secretary, and any other items from those set forth in Part 12(a) of these regulations that either the claimant or the Secretary identifies for inclusion in the record. The record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared exclusively to assist Secretary in deciding the claim (including the staff's Draft Final Determination in the event that the Secretary reviewed the claim and issued the Final Order).

(c) Any determination made by the Secretary under this section may be appealed by a whistleblower to the appropriate court of appeals of the United States not later than 30 days after the Secretary issues the determination. The standard of review of a final Secretary order is governed by 5 U.S.C. § 706.

Part 14—Procedures applicable to the payment of awards.

(a) Any award made pursuant to these rules will be paid from the collected proceeds obtained in any civil or criminal enforcement action based, in whole or in part, from the original information provided by the whistleblower to the Secretary and/or any other competent organ of the United States government in a manner approved by the Secretary. Unless the amount of an award is contested by the whistleblower, the payment of the award shall be made within 90 days of the collection of the collected proceeds from any defendant or other entity covered under the Act.

(b) A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction awarded in the Secretary action or in a

related action upon which the award is based is \$1 million dollars or more.

(c) If a whistleblower files an appeal as to his or her denial of a reward, or the amount of a reward, the Secretary shall withhold from payment to any whistleblower the amount of money contested in the appeal, until such time as the appeal is resolved. Thereafter, the payment shall be made within 30 days of the resolution of the appeal. A partial appeal of a reward determination shall not result in a delay of payment of those portions of the collected proceeds that are not contested.

Part 15—No automatic amnesty.

The Whistleblower Act does not provide amnesty to individuals who provide information to the Secretary. The fact that you may become a whistleblower and assist in Secretary investigations and enforcement actions does not preclude the Secretary from bringing an action against you based upon your own conduct in connection with violations of the motor vehicle safety laws. If such an action is determined to be appropriate, however, the Secretary will take your cooperation into consideration in any decision regarding the filing of any enforcement action and/or any penalty that may be assessed against you. A whistleblower may negotiate amnesty or other reductions in potential criminal penalties with the Department of Justice or any other appropriate U.S. law enforcement Agency. Any such agreement reached between the whistleblower and a member of the U.S. Government shall not impact the whistleblower's eligibility for an award. A whistleblower who obtains immunity from prosecution for Congress or any law enforcement agency shall be eligible for an award.

Part 16—Awards to whistleblowers who engage in culpable conduct.

In determining whether the required \$1,000,000 threshold has been satisfied (this threshold is further explained in Part 10 of these regulations) for purposes of making any award, Secretary will not take into account any monetary sanctions that the whistleblower is ordered to pay, or that are ordered against any entity whose liability is

based substantially on conduct that the whistleblower directed, planned, and initiated. Similarly, if the Secretary determines that a whistleblower is eligible for an award, any amounts that the whistleblower or such an entity pay in sanctions as a result of the action or related actions identified above will not be included within the calculation of the amounts collected for purposes of making payments.

Part 17—Staff communications with individuals reporting possible violations of motor vehicle safety laws

(a) No person may take any action to impede an individual from communicating directly with the Secretary or the Secretary’s staff about a possible violation of a motor vehicle safety law or an individual’s filing a claim under these regulations, including enforcing, or threatening to enforce, a confidentiality agreement.

(b) If you are a director, officer, member, agent, or employee of an entity that has counsel, and you have initiated communication with the Secretary relating to a possible motor vehicle safety violation, the staff is authorized to communicate directly with you regarding the possible violations without seeking the consent of the entity's counsel.

Part 18—Coordination with other agencies

(a) The Secretary shall coordinate with the U.S. Department of Labor, the U.S. Securities and Exchange Commission, the Internal Revenue Service, the U.S. Commodity Futures Trading Commission, the U.S. Environmental Protection Agency, the Federal Trade Commission, and/or the U.S. Department of Justice on any matters related to the Whistleblower Act that may also implicate the violation of laws enforced by these agencies. The Secretary shall also coordinate with other applicable agencies, as may be appropriate to ensure the full enforcement of U.S. laws that also implicate motor vehicle safety.

(b) The Secretary shall honor any confidentiality agreement or statutory requirements to maintain the anonymity or confidentiality of any whistleblower provides the other agency with original information that also constitutes a violation of

the laws and regulations for which a reward may be predicated under these regulations.

(c) The Secretary shall use his or her best efforts to inform individuals who report violations of motor vehicle safety laws of their right to file a reward claim under these regulations or the anti-retaliation provisions implemented by the U.S. Department of Labor pursuant to the MAP Act.