amount charged allocable to the section 5000D tax so charged, and no section 5000D tax is due on the amount of section 5000D tax so charged.

(ii) *Separately charged tax not part of price.* If the section 5000D tax is separately charged on the invoice or similar document pertaining to an applicable sale, the section 5000D tax so charged is not included in the price. Thus, if a manufacturer, producer, or importer calculates the section 5000D tax and charges it as a separate item on the invoice or similar document pertaining to an applicable sale, the amount of section 5000D tax so charged is not included in the price for purposes of calculating the section 5000D tax under paragraph (b)(1) of this section, and no section 5000D tax is due on the amount of section 5000D tax so charged.

(3) *Example*—(i) *Facts.* Manufacturer X is the manufacturer, producer, or importer of 409,000 units of Designated Drug H (that is, it makes the first sale of those units). During a day described in section 5000D(b), and no more than 90 days since the first such day, Manufacturer X sells 100,000 units of Designated Drug H to Wholesaler A at $1.00 per unit, 300,000 units of Designated Drug H to Wholesaler B at $0.90 per unit, and 9,000 units of Designated Drug H to Wholesaler C at $1.12 per unit. Manufacturer X has reasonably determined that the applicable sale consists of 35 percent of the units of Designated Drug H in each such sale. Manufacturer X has not separately invoiced any section 5000D tax to Wholesalers A, B, or C.

(ii) *Analysis*—(A) *In general.* To calculate its section 5000D tax liability with respect to its sales of Designated Drug H to Wholesalers A, B, and C, Manufacturer X must aggregate its section 5000D tax liability for the applicable sales by applying the presumption described in paragraph (b)(2)(i) of this section.

(B) *Step 1.* Manufacturer X begins by determining the applicable sales within each of the sales described in paragraph (b)(3)(i) of this section. The applicable sale within the sale to Wholesaler A is 35,000 units (100,000 units × 0.35). The applicable sale within the sale to Wholesaler B is 105,000 units (300,000 units × 0.35). And the applicable sale within the sale to Wholesaler C is 3,150 units (9,000 units × 0.35).

(C) *Step 2.* Next, Manufacturer X determines the amount charged for the applicable sales. The amount charged for the applicable sale to Wholesaler A is $35,000.00 (35,000 units × $1.00 per unit). The amount charged for the applicable sale to Wholesaler B is $94,500.00 (105,000 units × $0.90 per unit). And the amount charged for the applicable sale to Wholesaler C is $3,528.00 (3,150 units × $1.12 per unit).

(D) *Step 3.* Manufacturer X then determines the correct tax and price with respect to each amount charged for the applicable sales under the presumption provided in paragraph (b)(3)(i) of this section. Of the $35,000.00 Manufacturer X charged for the applicable sale to Wholesaler A (35,000 of 100,000 units), Manufacturer X allocates $22,750.00 to the section 5000D tax and $12,250.00 to the price ($22,750.00/($22,750.00 + $12,250.00) = 0.65). Of the $94,500.00 Manufacturer X charged for the applicable sale to Wholesaler B (105,000 of 300,000 units), Manufacturer X allocates $61,425.00 to the section 5000D tax and $33,075.00 to the price ($61,425.00/($61,425.00 + $33,075.00) = 0.65). And of the $3,528.00 Manufacturer X charged for the applicable sale to Wholesaler C (3,150 of 9,000 units), Manufacturer X allocates $2,293.20 to the section 5000D tax and $1,234.80 to the price ($2,293.20/($2,293.20 + $1,234.80) = 0.65).

(E) *Step 4.* Manufacturer X's section 5000D tax liability for the applicable sales is $86,468.20 ($22,750.00 + $61,425.00 + $2,293.20 = $86,468.20). This amount, when divided by the sum of the tax and the price of the applicable sales, equals 65 percent ($86,468.20/($86,468.20 + $46,559.80) = 0.65).

(c) *Anti-abuse rule.* If a manufacturer, producer, or importer engages in any transaction (or series of transactions) with a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price at which a sale is made, including transactions made other than at arm's length, such transaction (or series of transactions) may be adjusted, recharacterized, or otherwise recast by the Secretary for purposes of determining the correct section 5000D tax liability. Whether a transaction (or series of transactions) has a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price of an applicable sale is determined based on all of the facts and circumstances, including, but not limited to, a comparison of the purported business purpose for, and the section 5000D tax consequences of, the transaction (or series of transactions).

(d) *Severability.* The provisions of this section are separate and severable from one another and any other section of this part. If any provision of this section is stayed or determined to be invalid, it is the intention of the Department of the Treasury and Internal Revenue Service that the remaining provisions and sections of this part shall continue in effect.

(e) *Applicability date.* This section applies to sales of designated drugs on or after [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2024–31462 Filed 12–31–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 5

[Docket No. NSD 102; AG Order No. 6121–2024]

RIN 1124–AA00

Amending and Clarifying Foreign Agents Registration Act Regulations

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Justice (''DOJ,'' ''the Department'') is proposing amendments and other clarifications to the scope of certain exemptions, to update and add various definitions, and to make other modernizing changes to the Attorney General's Foreign Agents Registration Act (''FARA'') implementing regulations.

DATES: Electronic comments must be submitted and paper comments must be postmarked or otherwise indicate a shipping date on or before March 3, 2025. Paper comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System at *https://www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1124–AA00 or Docket No. NSD 102, by one of the two methods below:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Commercial Courier:* Jennifer Kennedy Gellie, Chief, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, FARA Unit, 175 N Street NE, Constitution Square, Building 3—Room 1.100, Washington, DC 20002.

Instructions: All submissions received must include the agency name and docket number or Regulatory

Information Number (''RIN'') for this rulemaking. Paper comments that duplicate an electronic submission are unnecessary. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Kennedy Gellie, Chief, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, FARA Unit, 175 N Street NE, Constitution Square, Building 3—Room 1.100, Washington, DC 20002; telephone: (202) 233–0776 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking (''NPRM'') through one of the two methods identified above and by the deadline stated above.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifiable information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Department may withhold from public viewing information provided in comments that is offensive, that may adversely impact the privacy of a third party, or for other legitimate reasons. For additional information, please read the Privacy & Security Notice that is available through the link in the footer of *https://www.regulations.gov.* The Freedom of Information Act, 5 U.S.C. 552, applies to all comments received. To inspect the agency's public docket file in person, you must make an appointment with the FARA Unit. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for FARA Unit contact information.

II. Background

The Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.* (''FARA'' or ''the Act''), was enacted to ensure that the United States Government and the American people are aware of persons who are acting within this country as agents of ''foreign principals,'' as defined by the Act, and are informed about the activities undertaken by such agents to influence public opinion or governmental action on political or policy matters. The Act requires that persons acting as agents of foreign principals label the informational materials they distribute and make periodic public disclosures of their agency relationship and activities as well as their receipts and disbursements in support of these activities. Disclosure of the required information allows the American public and government officials to evaluate the agents' statements and activities with knowledge of the foreign interests they serve. The FARA Unit of the Counterintelligence and Export Control Section (''CES'') in the National Security Division (''NSD'') of DOJ is responsible for the administration and enforcement of FARA.

The Act gives the Attorney General the authority to issue ''rules, regulations, and forms as he may deem necessary to carry out the provisions'' of the Act. *See* 22 U.S.C. 620; *see also id.* 612(f), 614(c). Under that authority, the Attorney General has issued regulations covering a range of administrative and enforcement functions. *See* 28 CFR 5.1–5.1101. The regulations were last amended in 2007.[1]

III. Public Comments and Discussion of Proposed Changes

The Department published an Advance Notice of Proposed Rulemaking (''ANPRM'') on December 13, 2021, soliciting public comment on 19 questions regarding the revision and amendment of the regulations implementing FARA and on the regulations as a whole.[2] The Department received comments from 29 commenters in response to the ANPRM, all of which provided responses to one of the 19 specific questions on which the Department solicited input.[3] One commenter conceded it was not addressing the substance of the ANPRM, but rather expressing its disagreement with the position taken in a prior communication from the FARA Unit. Nine commenters were lawyers or law firms that represent registrants or potential registrants. Ten commenters were nonprofit organizations that either are themselves, or represent members who are, registrants or potential registrants. Another six commenters were nonprofit organizations with an issue-based interest in FARA. Three commenters submitted comments anonymously.

The comments are summarized below as they relate to each of the 19 questions posed in the ANPRM, along with responses to the comments and an explanation of the changes, if any, to existing regulations that the Department proposes in light of the public comments.

A. Agency

Question 1: Should the Department incorporate into its regulations some or all of its guidance addressing the scope of ''agency,'' which is currently published as part of the FARA Unit's FAQs on its website? See U.S. Dep't of Just., *FARA Frequently Asked Questions* (Apr. 10, 2023), *https://www.justice.gov/nsd-fara/frequently-asked-questions. If so, which aspects of that guidance should be incorporated? Should any additional guidance currently included in the FAQs, or any other guidance, be incorporated into the regulations?*

Each commenter who took a position on this question favored clarifying the Department's definition of ''agency'' by regulation. However, opinions about how best to clarify the definition of ''agency'' were varied.

Six commenters favored incorporating into the proposed rule at least some portion of the Department's guidance document entitled, ''The Scope of Agency Under FARA'' (''Scope of Agency'').[4] The Department wishes to clarify that it has issued sources of guidance on the scope of agency, like this document and certain advisory opinions, that may not be contained within the FAQs referenced in Question 1. One commenter suggested incorporating facts in the *Scope of Agency* guidance document into the regulatory definitions of ''order,'' ''request,'' ''direction,'' and ''control.'' Other commenters proposed using the guidance as a starting point but making clearer in the proposed rule that a foreign principal must exert ''*some level of power over the agent* and must have *some sense of obligation to achieve the principal's requests.*'' One commenter recommended that ''the Department look to other settings in which agencies have defined similar relationships in order to provide detailed, practical guidance on this important threshold question.'' The commenter noted that

> the Department of [the] Treasury has issued detailed regulations to determine whether a foreign person ''controls'' an entity for Committee on Foreign Investment in the

[1] *See* 72 FR 10068 (Mar. 7, 2007).

[2] 86 FR 70787.

[3] One of these comments was submitted twice.

[4] U.S. Dep't of Just., *The Scope of Agency Under FARA* (May 2020), *https://www.justice.gov/media/1070276/dl?inline.*

United States (''CFIUS'') purposes, 31 CFR 800.208. Likewise, the Office of the Director of National Intelligence (''ODNI'') has provided a comprehensive list of factors it considers when assessing ''foreign ownership, control, or influence'' (''FOCI''), 32 CFR 2004.34.

Another commenter stated that the Department ''should draw upon preexisting legal schemas and limit the agency to contractual, common law agency, and quid pro quo arrangements'' to allow ''the Department and the regulated community to draw on extensive case law and guidance defining the scope of quid pro quo deals under other Federal statutes, while meeting the intent of FARA to require registration of persons acting on behalf of foreign principals.''

Three commenters specifically recommended adopting the definition of ''agency'' included in the Restatement (Third) of Agency. For example, one commenter recommended that the Department prioritize simplicity in its regulations by adopting the Restatement test for agency, which the commenter interpreted to require action at the control of the principal and the consent of both parties.

Another commenter suggested including illustrative examples in the regulations and identified particular areas for clarification. The commenter recommended that the Department explain under what circumstances an intermediary relationship will qualify as a principal/agent relationship under FARA, specifically agreeing with the ABA Task Force recommendation that a principal/agent relationship should only exist in intermediary relationships where ''a foreign principal exerts some degree of supervision, direction, control, or provides a majority of the financing *for the activities in question* rather than with respect to other aspects of the intermediary's operations.''

Several nonprofit organizations, or those representing their interests, suggested ways to exclude nonprofit entities from any definition of agency under FARA. For example, one commenter urged the Department to adopt a presumption that tax-exempt nonprofits are not generally acting ''for or in the interest of a foreign principal when conducting activities consistent with their missions'' and past practice—even if those activities are funded in part by a foreign principal.

Contrary to those recommendations, one commenter was opposed to incorporating the factors identified in the Department's guidance document, citing a concern that relying only on the listed factors could excuse ''true agents'' from FARA's registration requirement.

Having considered the public comments, the Department is not proposing to adopt the common-law definition of agency or to codify the Scope of Agency guidance document in the FARA regulations at this time.

First, the recommendations for the Department to adopt the test for common-law agency [5] as the test for agency under FARA are inconsistent with the statutory text and judicial interpretations of the statute. As discussed below, courts have held that the scope of agency under FARA is broader than the scope of agency under the common law. The scope of agency under FARA involves a two-part inquiry that considers both the relationship between the agent and the foreign principal and the activities the agent performs in the principal's interests. With regard to the relationship part of the inquiry, rather than being focused on ''whether the agent can impose liability on his principal,'' as with the common law definition, FARA is concerned with ''whether the relationship warrants registration by the agent to carry out the informative purposes of the Act.'' *Att'y Gen. of U.S.* v. *Irish N. Aid Comm.,* 668 F.2d 159, 161 (2d Cir. 1982) (''*INAC*'') (''Control is an appropriate criterion for a determination of common law agency because the agent contemplated by the Restatement has the power to bind his principal.''). Therefore, for example, whereas the common-law test for agency requires the agent to be subject to the principal's control, agency under FARA may encompass persons who act at the direction or request of a foreign principal.[6] This means that a person may not be an ''agent'' under the Restatement (Third) of Agency but could nonetheless be an ''agent of a foreign principal'' under FARA. *See INAC,* 668 F.2d at 161 (''We agree that the agency relationship sufficient to require registration need not . . . meet the standard of the Restatement (Second) of Agency[.]''); *see also RM Broad., LLC* v. *U.S. Dep't of Just.,* 379 F. Supp. 3d 1256, 1262 (S.D. Fla. 2019) (''[A] common-law agency relationship is unnecessary to satisfy FARA's definition of 'agent of a foreign principal.' ''). Indeed, if a person engages in certain activities even only at the ''request'' of a foreign principal, this may satisfy the two-part test to establish an agency relationship under FARA. *See Att'y Gen. of U.S.* v. *Irish N. Aid Comm.,* 530 F. Supp. 241, 257 (S.D.N.Y. 1981), *aff'd,* 668 F.2d at 161 (noting that the disjunctive use of ''or'' in the statute allows various means of direction or control to satisfy ''agency'' under FARA).

Second, after significant consideration of the issue, the Department believes that the non-exhaustive factors identified in the guidance are not well suited to adaptation as a test in a regulation intended to capture the full scope of the statute's broad concept of agency. In contrast to the CFIUS and FOCI contexts, it would not be feasible to codify the broad range of factors that may inform whether a person qualifies as an agent of a foreign principal under FARA. Instead, analyzing whether a registrant has an agency relationship with a foreign principal is a fact-intensive exercise better suited to the advisory-opinion process, where persons who are unclear as to the applicability of the Act can seek and receive definitive guidance as to whether they have a registration obligation. *See* 28 CFR 5.2 (setting forth the advisory opinion process); U.S. Dep't of Just., *FARA: Advisory Opinions*, *https://www.justice.gov/nsd-fara/advisory-opinions* (collecting FARA Unit advisory opinions by topic).

Question 2: Should the Department issue new regulations to clarify the meaning of the term ''political consultant,'' including, for example, by providing that this term is generally limited to those who conduct ''political activities,'' as defined in 22 U.S.C. 611(o)?

Under the statute, political consultants who act within the United States for or in the interests of the foreign principal must register.[7] The Act defines a political consultant broadly as ''any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.'' [8]

Of the eight commenters responding to this question, all were in favor of limiting the definition of ''political consultant'' by regulation. For instance, one commenter stated that

because the current definition of ''political consultant'' is so wide-reaching, it is virtually certain that hundreds, if not thousands, of individuals are currently in

[5] *See* Restatement (Third) Of Agency § 1.01 cmt. c (2006) (''As defined by the common law, the concept of agency posits a consensual relationship in which one person, to one degree or another or respect or another, acts as a representative of or otherwise acts on behalf of another person with power to affect the legal rights and duties of the other person. The person represented has a right to control the actions of the agent.'').

[6] *See* 22 U.S.C. 611(c)(1).

[7] 22 U.S.C. 611(c)(1)(ii).

[8] 22 U.S.C. 611(p).

violation without ever realizing their registration obligations. This puts those few individuals that *do* register at a disadvantage, given the burden of registration and quarterly reporting.[9] Clarifying that the definition of ''political consultant'' includes only those who conduct political activities will level the playing field and provide much-needed clarity as to the law's applicability.

Multiple commenters referenced legislative history that suggests the term ''political consultant'' should be read narrowly. One such commenter quoted the 1965 legislative history, S. Rep. No. 89–143, at 9 (1965) (emphasis added by commenter):

> The definition of the term ''political consultant'' would apply to persons engaged in advising their foreign principals with respect to political matters. *However, a ''political consultant'' would not be required to register as an agent unless he is engaged in political activities, as defined, for his foreign principal.* A lawyer who advised his foreign client concerning the construction or application of an existing statute or regulation would be a ''political consultant'' under the definition, but unless the purpose of the advice was to effect a change in U.S. policy he would not be engaged in ''political activities'' and would be exempt from registering with the Department of Justice.

After reviewing the comments and upon further consideration, the Department believes that this issue also is not well suited to the issuance of a regulation. The narrow definition proposed by the commenter would render the definition of ''political consultant'' redundant of the definition of ''political activities,'' and the Department did not identify another potential definition consistent with the statutory language. If a putative agent is unsure about whether the agent's activities are registrable, the agent should request an advisory opinion.

B. Exemptions

The Department posed questions about three specific statutory exemptions and a general question soliciting comments on whether changes to the FARA regulations should be made to address other exemptions. The public comments on each are set forth below, along with a discussion of the proposed changes to the regulations under consideration.

1. Commercial Exemptions

Question 3: Should the Department issue a regulation addressing how 22 U.S.C. 613(d)(2) applies to political activities on behalf of foreign principals other than state-owned enterprises? If so, how should the Department amend the regulation to address when such activities do not serve ''predominantly a foreign interest''?

(a) Commenters Generally Favored Clarification

Most commenters who answered this question favored new regulations to clarify the application of 22 U.S.C. 613(d)(2), which provides an exemption for ''other activities not serving predominantly a foreign interest.'' [10] The relevant current regulation provides that a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.[11]

One commenter, in suggesting that the Department clarify the regulation, characterized the opinion of multiple interested parties—business, nonprofits, and law firms. The commenter is concerned that by reading 28 CFR 5.304(c) standing alone, the regulated community is under the misimpression that the only way to qualify for the exemption in section 613(d)(2) is if the entity meets the ''high standard'' set forth in the current regulation. The commenter believes this ''chills activities that are plainly outside of FARA's intended goal of disclosure for 'agents of foreign governments and political parties,' '' potentially requiring a ''privately held and controlled business'' to analyze, for example, whether its efforts to advance its own commercial interests could directly promote a foreign government's public or political interests if they ''simply coincide in even a limited fashion'' with the foreign government's stated views.

The Department agrees that the regulation interpreting the exemption at 22 U.S.C. 613(d)(2) needs revision. The Department has grappled for years with how to apply the current regulation to a broad range of complex scenarios, including the increasing use of state-owned enterprises by other countries for geopolitical and strategic purposes; foreign government funding of, and other influence on, think tanks and non-governmental organizations; the consulting work by former, high-ranking U.S. Government officials on behalf of foreign state allies and adversaries; and U.S. activities of sovereign wealth funds. The Department determined that it needs a more comprehensive regulation that better addresses the variegated relationships and conduct the Department sees in its investigations, and that better guides practitioners on how the Department analyzes this exemption.

The Department considered various approaches to revising the regulation, including one proposed by commenters.

(b) Intentionality Standard Proposal

Multiple commenters suggested that the Department adopt a version of an intentionality standard. Specifically, one commenter suggested the Department ''include an 'intent' or 'purpose' test'' to apply the provisions of section 613(d)(2). The commenter recommended that to the extent ''activities are not conducted with an intent to directly promote any public or political interests of any foreign government,'' the section 613(d)(2) exemption should remain available. In applying this approach, the commenter recommended a regulation that clearly provides that ''mere incidental or unintentional benefit to a foreign state'' does not require registration. Further, the commenter suggested that the Department make clear in a regulation that registration is not required ''where an agent acting on behalf of a principal has no contact with any foreign state (or political party) actors,'' and there is no conveying of any direction or request from any foreign state.

The Department declines to adopt this approach for two reasons. First, such a test is not consistent with the statutory text of the exemption, which makes no express reference to intent. Instead, the exemption requires that the activities not serve (whether intentionally or not) ''predominantly a foreign interest.'' [12] The intent or the purpose of the activities is relevant only to the extent that it could shed light on whether the activities serve predominantly a foreign interest. As set forth below, the approach the Department proposes is more consistent with the statutory language and is better suited to the task of ascertaining whether the activities serve predominantly a foreign interest.

[9] FARA imposes a semiannual, not quarterly, registration requirement. *See* 22 U.S.C. 612(b).

[10] Multiple commenters questioned the way the Department posed the question in the ANPRM, noting that the regulation is not limited to state-owned enterprises. The Department agrees. The question was intended to elicit suggestions for regulations addressing contexts outside those involving state-owned enterprises.

[11] 28 CFR 5.304(c).

[12] 22 U.S.C. 613(d)(2).

Second, adopting exclusively a subjective test to determine who may fall within the exemption would also frustrate the Department's ability to enforce FARA in accordance with its purpose. The Department would have to rebut a person's subjective claim that the ''purpose'' or the ''intent'' of the political activities had not been to benefit the public or political interests of the foreign government or foreign political party. Even if the Department were to adopt a test focused on the outward manifestations of a person's intent, rebutting such evidence would pose similar practical challenges for the Department's enforcement capacity. The Department declines to adopt a test that would so constrain its enforcement of the Act.

(c) Three Principal Proposed Changes to the 22 U.S.C. 613(d)(2) Exemption

Other than the purpose or intent test, commenters did not offer any comprehensive test that would apply in all circumstances. Nor does the Department think one is feasible given the fact-dependent nature of the ''predominant interest'' inquiry.[13] Likewise, commenters proposed a series of tests, each of which would apply in different circumstances such as where state-owned enterprises are or are not at issue, where commercial and non-commercial interests are present, and the like. The Department concluded that this approach would become too unwieldy, given the myriad scenarios to which the exemption may apply.

Rather, based on all the comments received, as well as the Department's decades of experience administering and enforcing the 613(d)(2) exemption, the Department proposes three principal changes to the relevant regulation.

(1) The first change would make clear that this exemption applies to commercial and non-commercial entities alike, so long as the predominant interest being served is not foreign. This change is consistent with the statutory language, which draws no distinction between commercial and noncommercial entities, and addresses the concerns from commenters referenced above (and below in response to Question 5) about the scope of the exemption.

(2) The second change would create a set of four exclusions to the exemption. The exclusions focus only on the relationship (if any) between the activities and a foreign government or foreign political party. If there is no such relationship, then the exclusions will not apply and the exemption will remain available. In each instance, the facts would establish whether the predominant interest served by the activities is foreign. Under the proposal, an agent would be categorically precluded from obtaining the exemption if (1) the intent or purpose of the activities is to benefit the political or public interests of the foreign government or political party; (2) a foreign government or political party influences the activities; (3) the principal beneficiary is a foreign government or political party; or (4) the activities are undertaken on behalf of an entity that is directed or supervised by a foreign government or political party (such as a state-owned enterprise) and promote the political or public interests of that foreign government or political party.

The sources for these proposed exclusions to the 613(d)(2) exemption are the statute, the regulations, relevant legislative history, and the Department's experience over the decades analyzing and applying the exemption.[14]

(A) The first proposed exclusion would cover cases in which there is evidence that the activities are intended to promote or benefit the political or public interests of a foreign government or foreign political party. In such cases, FARA registration should be required. There may be multiple motivations in any given case, but where there is evidence that an agent is motivated specifically to advance the political or public interests of the foreign government or foreign political party, there should exist at least a rebuttable presumption that the foreign interest predominates. In addition, because it may be difficult if not impossible to prove definitively which motivation is primary, the existence of an intent or purpose to advance the foreign interest should be determinative.

(B) The second proposed exclusion would cover cases where a foreign government or foreign political party itself is influencing the activities (as opposed to collateral activities outside the scope of FARA). The Department proposes that it should infer that influence is being exercised deliberately to benefit the foreign government or foreign political party. As with the first exclusion, the balance of the benefit accruing to domestic and foreign interests may be difficult to identify with certainty, but the existence of influence by a foreign government or foreign political party justifies withholding the exemption. Such influence may be exerted directly or through an intermediary; as a result, not every person relevant to the registrable conduct may appreciate that the influence originated with the foreign government or foreign political party. Although directing, controlling, owning, financing, and subsidizing are all ways a foreign government or political party may exert influence over the domestic person or the person's activities, and such influence may be exerted ''directly or indirectly'' (*i.e.,* through an intermediary),[15] such examples do not encompass the full spectrum of ways a foreign government or foreign political party may exert its influence. This proposed exclusion would allow the Department flexibility to determine if such influence is present in any form; if so, the exemption would not be available.

(C) The third proposed exclusion would cover cases where the principal beneficiary of the activities is a foreign government or foreign political party. The Department looked to the legislative history relating to the section 613(d)(2) exemption as well as, by analogy, a current regulation relating to the LDA exemption. In his remarks about this exemption, Senator Fulbright—who had introduced identical legislation in the previous Congress—stated that the bill ''is not designed or intended to impair the normal contacts of company officials with government agencies and the Congress, even if the contacts would constitute 'political activities' as defined in the bill, unless the principal beneficiary of the activities is the foreign subsidiary or parent.'' 111 Cong. Rec. 6985 (1965) (statement of Sen. Fulbright). Further support for adopting this exclusion comes from the current regulatory test for exempting persons from the LDA, under which circumstantial evidence that the foreign government or foreign political party is in fact directing or controlling the

[13] *Cf.* H.R. Rep. No. 89–1470, at 10 (1966) (''Applicability of the exemption will have to be judged on the facts of each case . . . . It is expected that the Department of Justice will, by regulation, establish criteria to provide guidance to agents involved in commercial activities which are of direct or indirect interest to a foreign government.''); S. Rep. No. 89–143, at 12 (''[I]t may prove difficult to decide whether the [section 3(d)(2) exemption] appl[ies] in a given situation. Clearly this is not an area where the law can establish strict criteria.'').

[14] The Department's FARA website contains, in redacted form, over 40 advisory opinions construing the section 613(d)(2) exemption. In addition, the Frequently Asked Questions page of the FARA website contains guidance on ''Exemptions,'' including but not limited to the section 613(d)(2) exemption. U.S. Dep't of Just., *FARA Frequently Asked Questions* (Apr. 10, 2023), *https://www.justice.gov/nsd-fara/frequently-asked-questions.*

[15] *See* 22 U.S.C. 611(c)(1).

activities prevents persons from using the exemption.[16]

(D) The fourth and final proposed exclusion covers cases where a person's activities are directly or indirectly supervised, directed, controlled, or financed in whole or in substantial part by a government of a foreign country or a foreign political party (such as when a state-owned enterprise is involved) and promote that foreign country's or political party's public or political interests. To describe the second element of the exclusion, the Department proposes retaining language from the current regulation that excludes from the exemption activities that promote the public or political interests of a foreign government or foreign political party,[17] though the Department proposes removing the word ''directly'' before ''promote'' from the formulation, for the reasons discussed below in response to Question 4.

(3) The third proposed change would apply when these exclusions do not preclude the exemption. In such cases, the Department has identified a non-exhaustive list of factors to determine whether, given the totality of the circumstances, the predominant interest being served is domestic rather than foreign, such that the exemption should apply. These non-exhaustive factors include, but are not limited to: (1) whether the public and relevant government officials already know about the relationship between the agent and the foreign principal; (2) whether the commercial activities further the commercial interests of a foreign commercial entity more than those of a domestic commercial entity; (3) the degree of influence (including through financing) that foreign sources have over domestic non-commercial entities, such as nonprofits; (4) whether the activities concern U.S. laws and policies applicable to domestic or foreign interests; and (5) the extent to which any foreign principal influences the activities. While in many instances several factors may prove significant, in other instances a single factor may be dispositive; further, depending on the circumstances, the factors may overlap to various degrees (and sometimes completely). The Department expects that advisory opinions and enforcement actions will clarify how these factors apply to a range of activities.

As the discussion below explains, the sources for these factors are the current statute, the current regulations, relevant legislative history, and the Department's experience over the decades analyzing and applying the section 613(d)(2) exemption.

(1) The first proposed factor is whether the public and relevant government officials already know about the relationship between the agent and the foreign principal. The Department derived this factor from former section 611(q) of the Act,[18] which required for the section 613(d)(2) exemption to apply that the ''identity of [the] foreign person is disclosed to the agency or official of the United States with whom such activities are conducted.'' Foreign Agents Registration Act of 1938, Amendments, Public Law 89–486, sec. 1(5), 80 Stat. 244, 245 (1966). The Department proposes carrying that transparency concept forward by considering it as a non-exclusive factor in determining whether registration is required.

(2) The second proposed factor is whether the activities further the commercial interests of a foreign commercial entity more than those of a domestic commercial entity. The Department drew this factor from the current regulation as an initial matter, which considers whose commercial interests are furthered. *See* 28 CFR 5.304(c). Both former section 611(q) and other legislative history reflect the principle that a regulated party ought not lose the exemption simply because its activities further the interests of both the domestic enterprise as well as a related foreign enterprise, so long as the domestic enterprise's interests predominate. *See* Public Law 89–486, sec. 1(5), 80 Stat. at 245; H.R. Rep. No. 89–1470, at 11 (1966). Further, in the Department's experience, whose commercial interests are furthered most by the activities is a useful metric to consider when determining the predominant interest.

(3) The third proposed factor is the amount of influence, including through financing, that foreign sources (whether governmental or private) have over the activities of domestic non-commercial entities. Financing is only one way a foreign principal may exert influence over a domestic entity and its activities, however.[19] Further, in the Department's experience, assessing the extent of a foreign source's influence over domestic non-commercial entities' activities, whatever form it may take, is a useful metric to consider when determining the predominant interest being served.

(4) The fourth proposed factor is whether the activities concern U.S. laws and policies that are more relevant to domestic interests or to foreign interests. The Department identified this factor by looking to legislative history. As the Senate Report noted, ''where the foreign subsidiary of a U.S. parent is concerned with U.S. legislation facilitating investment or expansion of production abroad[,] the locus of the interest will, also, as a general rule, be predominantly (even if not ultimately) foreign.'' S. Rep. No. 88–875, at 12 (1964). In this way, the Department proposes considering whether the activities relate to U.S. laws or policies that are principally of interest or would principally benefit the domestic entity or the foreign entity to determine where the locus or the predominant interest lies.

(5) The fifth proposed factor is the extent to which any foreign principal (as defined in the Act, and not limited to a foreign government or a foreign political party in this context) influences the activities. Here, put simply, the greater the foreign influence involved, the greater the likelihood that this factor will favor a finding that the predominant interests served by the activities are foreign.

The Department proposes the foregoing as a non-exhaustive set of factors because the ''[a]pplicability of the exemption will have to be judged on the facts of each case.'' H.R. Rep. No. 89–1470, at 10. This means there may be other factors that come to light while administering and enforcing this exemption, and the applicability of the exemption must be evaluated in light of the totality of the circumstances, taking all relevant factors into account.

Question 4: Is the language in 28 CFR 5.304(b), (c), which provides that the exemptions in sections 613(d)(1) and (d)(2) do not apply to activities that ''directly promote'' the public or political interests of a foreign government or political party, sufficiently clear? And does that language appropriately describe the full range of activities that are outside the scope of the exemptions because they promote such interests, including indirectly? Should the language be clarified, and, if so, how?

This question elicited responses from eight commenters, all of whom were in favor of clarifying the language referred to in the question. Commenters noted that guidance surrounding the ''directly promote'' standard was not clear and that revised regulations should make more explicit how the Department interprets that phrase. For example, one commenter indicated that the current regulatory language is unduly vague and

[16] *See* 28 CFR 5.307.

[17] *See* 28 CFR 5.304(b), (c).

[18] 22 U.S.C. 611(q) was repealed by the Lobbying Disclosure Act of 1995, which created a public registry of lobbyists for domestic interests.

[19] *See* 22 U.S.C. 611(c)(1).

subjective on its face and that the Department's interpretation of the term ''directly promote'' in various advisory opinions fails to provide the regulated community with a clear and consistent standard to facilitate public understanding and compliance.

The Department agrees that the use of the word ''directly'' in conjunction with ''promotes'' has led to many questions about the distinction between the direct and indirect promotion of a foreign government's or foreign political party's interests. The Department proposes to address this issue by deleting the word ''directly'' from the regulations relating to the exemptions at 22 U.S.C. 613(d)(1) and (d)(2).

The exemption at 22 U.S.C. 613(d)(1) creates a test for determining whether commercial activities are ''private'' when state-owned enterprises are at issue. Besides eliminating the ambiguity these commenters referenced, deleting the word ''directly'' is consistent with the legislative history. For example, the House Report on FARA recognized that a foreign government's otherwise private or commercial activities would not be exempt if ''the foreign agent promotes the political and public interests of a foreign governmental principal.'' H.R. Rep. No. 89–1470, at 10 (emphasis added); *see also* S. Rep. No. 89–143, at 11 (same). The report nowhere distinguishes between direct and indirect promotion.

Accordingly, the Department proposes to revise the regulation's language to exclude from the exemption activities that promote—rather than directly promote—the public or political interests of the foreign government or political party.

The Department also proposes to delete the modifier ''directly'' from the regulation applicable to the exemption at 22 U.S.C. 613(d)(2), which covers activities not predominantly serving a foreign interest. Some commenters expressed concern that the ''directly promote'' test—which forms a key part of the section 613(d)(2) regulation—may require, as one commenter noted, a ''privately held and controlled business'' to analyze ''whether its efforts to advance its own commercial interests could 'directly promote . . . public or political interests' '' of a foreign government or foreign political party. By deleting the word ''directly'' from the proposed rule, the Department has eliminated this concern with respect to such privately held commercial enterprises unless the intent or purpose of their activities is to promote foreign government or foreign political party interests, or a foreign government or foreign political party is the principal beneficiary of the activities. Rather, under the Department's proposed rule, only activities on behalf of an entity that is directed or supervised by a foreign government or political party, such as a state-owned enterprise, that promote the political or public interests of a foreign government or political party would render the agent subject to the exclusion. As with the section 613(d)(1) exemption, removal of the modifier ''directly'' will remove the ambiguity present in the current regulation.

Question 5: What other changes, if any, should the Department make to the current regulations at 28 CFR 5.304(b) and (c) relating to the exemptions in 22 U.S.C. 613(d)(1) and (2)?

Commenters from the nonprofit community suggested revising the regulations implementing section 613(d)(1) and (2) to explicitly include nonprofit activity. For example, one commenter suggested that the Department make clear that the section 613(d)(2) exemption applies equally to charities and commercial organizations. Another commented that the current regulation fails to make clear how a nonprofit organization without trade or commercial operations, as those terms are commonly understood, could benefit from the section 613(d)(2) exemption.

In another instance one commenter stated that the regulation should clarify that the section 613(d)(2) exemption applies in the context of a tax-exempt organization conducting activities in furtherance of its bona fide purpose.

The Department agrees that the proposed rule should make clear that the section 613(d)(2) exemption applies to nonprofit and commercial entities alike, so long as the activities do not serve predominantly foreign interests. The proposed regulatory text at 28 CFR 5.304(c) reflects this change.

2. Exemption for Religious, Scholastic, or Scientific Pursuits

Question 6: Should the Department issue additional or clarified regulations regarding this [bona fide religious, scholastic, academic and scientific pursuits or of the fine arts] exemption to clarify the circumstances in which this exemption applies? If so, how should those additional regulations clarify the scope of the exemption?

The seven commenters who offered a view on the section 613(e) exemption primarily wrote to express the view that the exemption should cover a broader scope of activity. One commenter urged the Department to narrow the definition of ''political activities'' to ensure that term does not capture legitimate and reasonable scholastic, academic, and scientific pursuits.

One commenter suggested that the regulation exempt all architecture, sculpture, painting, music, performing arts, literature, and fictional films. Furthermore, the commenter suggested broadening the applicability of the exemption to include those who engage in political speech, stating that doing so would provide more breathing room to civil society, and would not harm the government's core interest because of parallel protections found in 18 U.S.C. 951.

One commenter suggested that new regulations were not necessary, but that the Department should issue more detailed non-binding interpretive guidance that focuses this exemption on the direction or influence of a foreign government or political party.

The Department does not believe new regulations are necessary to address this exemption. The scope of the exemption has not been a frequently raised question during the advisory-opinion process, as demonstrated by the fact that there have been only five opinions issued on this topic in the last seven years. Given the often context-dependent nature of the inquiry, the Department agrees that it must exercise care and provide reasonable guidance, including through the advisory opinions process, concerning religious, scholastic, academic, and scientific pursuits, and the fine arts. FARA seeks to provide transparency for the U.S. public as to the activities of foreign agents in the United States so that the public can better assess messaging in light of the speaker's status as a foreign agent. The Department encourages the invocation of this exemption for bona fide religious, scholastic, academic and scientific pursuits, or fine arts activity, and encourages parties who are unclear about application of the exemption to their specific circumstances to use the advisory-opinion process pursuant to 28 CFR 5.2.

3. Exemption for Persons Qualified To Practice Law

Question 7: Should the Department amend 28 CFR 5.306(a) to clarify when activities that relate to criminal, civil, or agency proceedings are ''in the course of'' such proceedings because they are within the bounds of normal legal representation of a client in the matter for purposes of the exemption in 22 U.S.C. 613(g)? If so, how should the Department amend the regulation to address that issue?

Multiple law firms or commenters representing the interests of attorneys submitted comments suggesting that the Department clarify the scope of 28 CFR 5.306(a), which interprets the

exemption found at 22 U.S.C. 613(g) for persons qualified to practice law. One respondent commented that the current regulations would appear to require registration for statements to the media that could be made in substantially equivalent form in court without triggering a registration requirement.

Another commenter suggested that the Department identify the types of activities it considers as occurring ''in the course'' of legal proceedings, proposing that public relations, jury selection, media and social media efforts, and other out-of-court proceedings ancillary to in-court representation would not make a lawyer ineligible for the exemption.

One commenter suggested that it was unclear whether, under the current regulations, requesting an advisory opinion from the Department would qualify for the section 613(g) exemption. Under 22 U.S.C. 611(c)(1), however, an attorney seeking an advisory opinion from the FARA Unit about the applicability of the Act to the attorney's client is not in and of itself an act that requires registration under FARA.

One commenter suggested that the changes referenced in the question were unnecessary, however, and that such a change could be counterproductive in the long term because perspectives could shift over time regarding what kinds of activities by lawyers are within the bounds of normal legal representation.

The Department agrees with the majority of commenters who felt that it should clarify § 5.306(a). As revised, the proposed rule would clarify how the exemption applies in light of the realities of modern legal practice. First, proposed § 5.306(a) rephrases for clarity the language of the statutory exemption for persons qualified to practice law who are engaged in legal representation. Second, and in line with one commenter's suggestion, proposed § 5.306(b) would define the statutory term ''legal representation,'' clarifying that it includes activities commonly considered part of client representation in the underlying proceeding so long as they do not constitute political activities; for example, making statements outside of the courtroom or agency hearing room could qualify. The proposed rule is therefore consistent with current guidance in the Frequently Asked Questions section of the Department's FARA website. This guidance notes that the legal representation exemption ''once triggered, may include an attorney's activities outside [judicial or administrative] proceedings so long as those activities do not go beyond the bounds of normal legal representation of a client within the scope of that matter.'' U.S. Dep't of Just., *FARA: Frequently Asked Questions* (April 10, 2023), *https://www.justice.gov/nsd-fara/frequently-asked-questions.* Finally, proposed § 5.306(c) would retain the requirement from the existing regulation that the attorney must disclose that the attorney's representation is on behalf of a specific foreign principal to the court or agency decision maker regardless of whether any court or agency procedures require it.

Question 8: What other changes, if any, should the Department make to 28 CFR 5.306 to clarify the scope of the exemption in 22 U.S.C. 613(g)?

Two commenters commented on the applicability of FARA to non-attorneys. One suggested that non-attorney legal professionals should be eligible for the section 613(g) exemption. That commenter explained that it excludes paralegals and other non-attorney professionals from working on some matters based on a view that otherwise the non-attorney would need to register under FARA. Another commenter opined that registration appears to, but should not be, required for non-attorney researchers who had neither contact with the foreign client nor any role in public outreach on behalf of the foreign client.

The Department does not believe a rule is necessary to address whether non-attorney professionals and other legal support staff engaged in activities supervised by an attorney for or in the interests of a foreign principal are required to register under FARA. To date, no request for an advisory opinion has sought guidance on this issue, and staff supporting exempt legal representation do not commonly register under FARA. The Department also notes that questions regarding activities that are registrable under the Act turn to a significant degree on the nature of the activities themselves rather than the job title(s) of the person(s) engaging in them. While the Department believes that non-attorney legal professionals may fall within an attorney's section 613(g) exemption when providing support services for the exempt work, specific questions about the applicability of the statute to particular facts in such scenarios may be addressed through a request for an advisory opinion rather than formal rulemaking.

4. Additional Clarifications of Statutory Exemptions

Question 9: Are there other aspects of the statutory exemptions that the Department should clarify, whether to make clear additional circumstances in which registration is, or is not, required?

Many commenters who responded to Question 9 requested that the Department clarify the 22 U.S.C. 613(h) exemption from registration under FARA for agents properly registered under the LDA. For example, one commenter stated that the Department had inappropriately narrowed the section 613(h) exemption through its guidance and advisory opinions.

Another commenter wrote to urge the Department to clarify the scope of the section 613(h) exemption. That was especially urgent, the commenter claimed, because of a recent Advisory Opinion noting that the section 613(h) exemption might not apply where a foreign government or political party is one of multiple principal beneficiaries of lobbying activities, which the commenter claimed had engendered significant confusion. The Department acknowledges the confusion to which the commenters refer, and the footnote in the Advisory Opinion to which the commenter referred does not reflect the present enforcement intentions of the Department.[20] The governing standard remains as it is written in the current regulation: ''In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.'' [21]

One commenter suggested that the Department sharpen its interpretation of the LDA exemption by eliminating the ''principal beneficiary'' standard from its regulations and replacing it with a purpose-based test. The Department declines to propose this approach for the section 613(h) exemption for the same reasons the Department declined to propose it for the section 613(d)(2) exemption. A purpose-based test would shift the burden to a great extent to the Department to ascertain the purpose of certain activity, as viewed from the outside, when it would be the agent who would possess critical probative evidence: the subjective knowledge as to the purpose of its activities. Such a test would frustrate FARA enforcement and undercut transparency under the Act. Rather, the Department will continue to deny the exemption in 613(h) in any situation where a foreign government or foreign political party is the principal beneficiary of the lobbying activity. This language is a good indicator of direction or control by a foreign government or foreign political party. In other words, in instances where a foreign government

[20] *See* 28 CFR 5.2(h) (providing that advisory opinions reflect the ''present enforcement intention'' of the Department).

[21] 28 CFR 5.307.

or political party is the principal beneficiary of the activities, that principal benefit provides circumstantial evidence supporting the fact that the foreign government or foreign political party is likely, in fact, requesting, ordering, directing, or otherwise controlling the activities.

Additionally, commenters suggested changes to one other exemption and an exclusion under the Act. First, one commenter representing the interests of nonprofit organizations suggested that the humanitarian exemption in 22 U.S.C. 613(d)(3) should be read broadly to include not just soliciting or collecting funds for medical aid, food, or clothing, but a broader array of charitable activities. The statutory language, however, is clear that the exemption applies to ''the soliciting or collecting of funds and contributions within the United States to be used *only* for medical aid and assistance, or for food and clothing to relieve human suffering[.]'' [22] The Department cannot expand the scope of a statutory exemption through regulation. *See, e.g., Nat. Res. Def. Council, Inc.* v. *EPA,* 25 F.3d 1063, 1070 (D.C. Cir. 1994).

A second commenter suggested that the Department clarify the exception at 22 U.S.C. 611(d). Under that provision, certain news organizations are excluded from the definition of ''agent of a foreign principal'' when they are engaged in news or journalistic activities including certain activities related to advertising and subscriptions, as long as they are at least 80 percent beneficially owned by U.S. citizens, their directors and officers are U.S. citizens, and they are not influenced in certain ways by a foreign principal or by an agent of a foreign principal. The commenter suggested clarifying that this provision applies to online media platforms that provide news or press services.

The Department agrees with the commenter that there is no sound statutory or policy reason to distinguish between online and traditional print media with respect to this exclusion, and the statutory language does not in fact compel any such distinction. While it is true that an online-only media entity cannot qualify as a publication having mail privileges with the U.S. Postal Service and so cannot rely on that particular criterion in the exclusion, such a media entity could still qualify for the exclusion so long as it otherwise complies with the remaining criteria set forth in section 611(d).[23] Given the plain language of the statute and the generally straightforward interpretation, the Department does not believe that there is any need to clarify section 611(d) by regulation.

C. Inquiries Concerning Application of the Act

The Department asked three questions about the Rule 2 advisory opinion process.

Question 10: Should the Department revise 28 CFR 5.2(i) to allow the National Security Division longer than 30 days to respond to a Rule 2 request, with the time to begin on the date it receives all of the information it needs to evaluate the request? If so, what is a reasonable amount of time?

Those commenters who answered Question 10 were generally opposed to lengthening the 30-day time frame provided in the current iteration of 28 CFR 5.2(i). That said, one commenter offered that a 45- or 60-day response deadline, while problematic for time-sensitive business decisions, would be more realistic if the FARA Unit consistently could issue advisory opinions within those time frames. After considering these comments, the Department is not proposing changes to the current 30-day time frame to respond to advisory opinion requests. The Department notes, however, that 28 CFR 5.2(i) makes clear that the 30-day time frame is tolled for any period when the Department awaits any materials necessary to provide its current enforcement intention.

Question 11: Should the Department include with its published Rule 2 advisory opinions the corresponding request, with appropriate redactions to protect confidential commercial or financial information, so that the public may better understand the factual context of the opinion?

Commenters were generally in favor of the Department publishing the corresponding request with Rule 2 advisory opinions, with six commenters responding that publishing the request would be beneficial. Specifically, one commenter agreed that publishing the corresponding request would provide context helpful for the regulated community. Another responded that releasing the redacted versions of opinion requests would greatly assist the regulated community, but noted the importance of sufficient redactions to protect any trade secrets or similar confidences. On the other hand, one commenter found the current process—in which the Department summarizes the request in the text of the Advisory Opinion—to provide sufficient context without publication of the corresponding request.

After considering comments and reevaluating our current process, the Department is not proposing the publication of incoming requests for advisory opinions. The Department believes doing so would not provide enough benefit to account for the possible drawbacks of the proposed change. Anonymizing and publishing incoming requests would take significant staff hours and would delay the publication online of the redacted advisory opinions as FARA Unit staff consulted with the requester about the proposed redactions. Also, after redaction, this proposed practice is unlikely to provide the regulated community with significantly more material information than the Department's current practice of summarizing all the relevant portions of the incoming request in the published advisory opinion. Finally, the Department is concerned that the possibility of a request being published, with the attendant risk of inadvertent release of confidential business information, could chill interested parties from seeking opinions and thus frustrate the Department's goal of obtaining voluntary compliance with FARA.

Question 12: What other changes, if any, should the Department make to the current process for using advisory opinions pursuant to 28 CFR 5.2?

One commenter suggested that the Department set a specific timeline for posting an advisory opinion after it is issued to a requestor, and that the Department post more conspicuous notices on its website to alert interested parties when new opinions are published online.

The Department already announces publication of new advisory opinions through an announcement on FARA.gov as well as via social media alert, so a new regulation to that effect is unnecessary. And, while the Department believes that a regulation setting a schedule for publishing Rule 2 opinions is also unwarranted because they are already posted in a sequence that appropriately balances expedition with flexibility to accommodate administrative and other particular concerns, the Department is considering setting such a schedule as a matter of internal policy.

Multiple commenters also suggested that the Department should make it easier to search the published advisory opinions for specific text or topics or to access data uploaded to the FARA

[22] 22 U.S.C. 613(d)(3) (emphasis added).

[23] *See, e.g.,* Mar. 14, 2023 Advisory Opinion at 3–4, *https://www.justice.gov/nsd-fara/media/1355041/dl?inline* (finding an online platform to be a news or press service or association within the section 611(d) exclusion).

Unit's website. Again, while the Department does not believe a regulation is necessary to effect this change, it will consider this proposal as part of its efforts to modernize the way such data are made available to the public.

Apart from the commenters' proposals, the Department is also proposing amending its regulations regarding the issuance of advisory opinions to update the method for requesting an advisory opinion, clarify language related to requests for advisory opinions, and expand the information required to be provided with each request for an advisory opinion. The proposed rule would update and streamline the process by requiring that a portal on the FARA website be used for requesting an advisory opinion. In light of some requesters' confusion on this point, the proposed rule would also clarify the current language to emphasize that the Department will not respond to any request for its present enforcement intention that is not in compliance with the regulations. To provide the Department with the context necessary to assess the request, the proposed rule would also expand the information to be provided with each request to include, where applicable, a list of partners, officers, or directors or persons performing the functions of an officer or director, and relevant and material information regarding current or past affiliation(s) with a foreign government or foreign political party. Further, to clarify the required elements of a request for an advisory opinion, the Department is proposing dividing the subparagraphs in the regulation by transferring to its own subparagraph the requirement that all submissions be certified to be true, correct, and complete.

D. Labeling Informational Materials

In the ANPRM, the Department posed a series of questions about defining the term ''informational materials'' as that term appears in 22 U.S.C. 614, labeling informational materials in various contexts, and changing the content of the conspicuous statement on those materials.

Question 13: Should the Department define by regulation what constitutes ''informational materials''? If so, how should it define the term?

Recognizing the broad scope of ''informational materials'' in 22 U.S.C. 614, most commenters responded with only minor suggestions for regulations. For example, one commenter opined that there is no significant confusion about the meaning of ''informational materials'' at present and encouraged the Department to propose a broad definition if it chooses to propose one at all. Two commenters specifically referenced the need for the Department to address electronic forms of information, including websites, instant messaging, and social media content, especially given the statute's use of the term ''prints,'' which would seem to exclude electronic materials. Another commenter suggested that the Department should generally provide more guidance as to the types of materials requiring labelling and filing with the Department, and specifically suggested including details as to the content and formats falling within the definition, as well as illustrative examples. Finally, one commenter suggested adopting a definition that, consistent with FARA's original goal of targeting propaganda, focuses on whether the communication is reasonably adapted or intended to influence the recipient or the public with respect to U.S. policy or the interests or foreign relations of a foreign government or political party.

The Department appreciates commenters' suggestions on how best to define ''informational materials,'' and proposes a new regulation at § 5.100(g) that would tie the definition to the statutory definition of political activities. ''Political activities'' consists of certain efforts to influence the U.S. public or Government regarding U.S. policies or the interests of foreign governments or political parties.[24] The proposed definition of ''informational materials'' would also make clear that materials can qualify as informational materials regardless of how they are transmitted. Other proposed regulations about how to label informational materials distributed through a wide array of media also make that point clear. The Department does not propose a regulation that would exhaustively list the myriad ways informational materials may be transmitted in the modern age, however, because such a list would become outdated through technological innovation. Further, in agreement with some commenters, § 5.401(h) of the proposed rule would confirm that the term ''political propaganda,'' where still found in the Act, is defined to mean the same thing as ''informational materials.''

Finally, the proposed rule would also clarify the term ''request'' in 22 U.S.C. 614(e). Section 614(e) generally requires that information furnished to an agency or official of the Government in the interest of a foreign principal contain a statement that the person is registered under the statute as an agent of that foreign principal. The proposed rule specifies that all communications related to an agent's request regarding information or advice, such as communications to schedule a meeting to discuss the request, are covered by section 614(e). In this way, these ''scheduling'' communications would also require a conspicuous statement about the agent's relationship to the foreign principal.

Question 14: What changes, if any, should the Department make to the current regulation, 28 CFR 5.402, relating to labeling informational materials to account for the numerous ways informational materials may appear online? For example, how should the Department require conspicuous statements on social media accounts or in other communications, particularly where text space is limited?

Many commenters suggested that the Department issue a regulation requiring conspicuous statements on social and electronic media, but respondents were split on the specific instances where such statements were necessary and on ideas for implementation. For instance, one respondent recommended adopting a flexible, standards-based approach applicable across all media platforms, and providing illustrative examples to assist regulated parties. However, that respondent and several others recommended against requiring a conspicuous statement on every digital communication because doing so would preclude the use of certain digital media platforms with limited space for each communication.

More than one commenter recommended looking to practices of other agencies with similar labeling requirements, including the disclaimer requirements for the digital context adopted by the Federal Election Commission and the Federal Trade Commission.

One commenter specifically suggested adopting a two-pronged approach, in which firms distributing digital communications on behalf of a foreign principal would be required to include a conspicuous statement on the account or profile distributing the propaganda, like the one suggested in a recent legislative initiative by Sens. Shaheen and Young, and would also be required to place a marker like a checkmark on each individual communication indicating that it is being distributed on behalf of a foreign principal. Another commenter suggested that the Department should adopt different requirements for different media. For streaming media like audio and video, the conspicuous statement would need to be included at the beginning and end

[24] 22 U.S.C. 611(o).

of every communication. For social media accounts, the conspicuous statement would need to appear on the user's profile and on all posts. For longer form digital media, the conspicuous statements should be included in any biographical information about the writer and at the beginning and end of each post.

In response to the commenters' suggestions, the Department considered the practices of other agencies with respect to social media labeling requirements. While it has incorporated best practices from those agencies' various guidance documents into its proposed rule, the Department did not find any regulations that were appropriate to import wholesale into the FARA context. Instead, in light of the comments received and based on the Department's own analysis of labeling concerns, § 5.401 of the proposed rule would provide a standard labeling requirement for all informational materials that is subject to other requirements in specifically enumerated contexts. Under § 5.401(b) of the proposed rule providing the generally applicable default requirements, the standard label must satisfy the requirements of the conspicuous statement, including a new requirement that it contain the country (or state, territory, or principality) in which the foreign principal is located, and be set forth at the beginning of the materials in the same language as the rest of the materials and in a font and color that are easy to read.

The proposed rule then sets out other contexts that require a different labelling approach. First, as one commenter discussed, for materials that contain the author's byline or biographical information, or the identifying information of a digital author or account, there is a need for transparency through a conspicuous statement in that location. Second, with television and broadcasts (including internet-based audio/visual transmission or television), the Department proposes that different rules need to apply, as set forth in response to Question 15 below. Third, the Department also proposes that still or motion picture films also require different rules to enable the public to see and understand the conspicuous statement in those formats. Fourth, the Department is proposing different requirements to apply when the informational materials are posted on internet websites or platforms. The proposed rule varies depending on whether the registrant has administrative rights (and thus an ability to post conspicuous statements in different parts of the website or platform). In either case, however, the proposed rule would account for situations where the internet platform or website does not provide sufficient space for the full conspicuous statement by requiring that the internet post include an embedded image of the conspicuous statement instead.

Question 15: Should the Department amend the current regulation, 28 CFR 5.402(d), relating to ''labeling informational materials'' that are ''televised or broadcast'' by requiring that the conspicuous statement appear at the end of the broadcast (as well as at the beginning), if the broadcast is of sufficient duration, and at least once per hour for each broadcast with a duration of more than one hour, or are there other ways such information should be labeled?

Two commenters were in favor of amending the regulations as described in Question 15. One commenter opined that additional regulations are unnecessary because existing regulations adequately inform recipients about how to find information about the foreign principal.

The Department considered these views and its own experience administering and enforcing the labeling provisions in this context when drafting the proposed rule. Proposed 28 CFR 5.401(d) would add a requirement that informational materials that are broadcast must be both introduced with and concluded by a statement that reasonably conveys that the person responsible for the materials is an agent; in contrast, the current regulation only requires that such a statement introduce such material. This proposed change would account for the fact that viewers or listeners of real-time broadcasts may tune into the programming when it is already underway, thus missing the initial conspicuous statement. Bookending the statements at the beginning and end of programming would increase the likelihood the conspicuous statements will be viewed or heard by consumers of the content. Similarly, the Department proposes adding a requirement that programming which lasts longer than one hour include a conspicuous statement every hour that the programming runs to increase the likelihood that a viewer or listener will see or hear the statement.

Question 16: Should any changes to regulations relating to the labeling of ''televised or broadcast'' informational materials also address audio and/or visual informational materials carried by an online provider? And, if so, should the regulations addressing labeling of such audio and/or visual information materials be the same as for televised broadcasts or should they be tailored to online materials; and, if so, how?

The few respondents who submitted a comment on this question generally thought that the regulations should be updated so that the requirements for modern information platforms were harmonized with legacy media types. One respondent recommended that the Department strive for parity between digital and analog content so that the resulting filing requirements would be as neutral as possible with respect to technology and platform. Another suggested that the Department update its regulations to account for the growing use of social media influencers in foreign principals' attempts to influence the U.S. public. Finally, another commenter argued that the regulations should require at least the same level of notification for streaming media as they do for traditional televised or broadcast media.

Having considered the foregoing comments, the Department has proposed regulations that would clarify that labeling requirements for ''broadcasts'' include audio-video transmittals made through internet-based websites and other electronic platforms that are reasonably calculated to reach an audience in the United States.

Question 17: Should the Department amend 28 CFR 5.402 to ensure that the reference to the ''foreign principal'' in the conspicuous statement includes the country in which the foreign principal is located and the foreign principal's relation, if any, to a foreign government or foreign political party; and, if so, how should the regulations be clarified in this regard?

Neither of the two commenters who responded specifically to Question 17 believed that the benefit that such a change would have on increased transparency outweighed the burden on registrants. Both noted that the information referenced was already on file and publicly available with DOJ.

Despite these comments, the Department assesses that disclosure of the country (or state, territory, or principality) wherein the foreign principal is located is justified in service of FARA's transparency goals. Corporate foreign principals may have business names that provide no context as to the work of the corporation or its geographic location. Adding the name of the country where the principal is located does not make the disclosures significantly more onerous and does provide important information at the point of viewing for those in the

audience that do not follow up by viewing the information on the public record. Accordingly, the Department proposes a regulation that would require such location information as part of the conspicuous statement.

E. FARA eFile

Question 18: What changes, if any, should the Department make to its regulations to account for the eFile system that was adopted after the regulations were last updated in 2007?

One commenter responded that the Department should undertake a ''comprehensive review'' of its regulations and update them to account for eFile. Several other respondents gave suggestions for improvements to eFile itself and how the information should be submitted to the Department (*e.g.,* in structured data fields to make searches easier).

The Department greatly appreciates these practical recommendations for improvement of its FARA eFile system. The Department has continued to improve upon the eFile system, moving to a web-form fillable format for new registrants in September 2019; that system streamlines the inputting of information, provides for the collection of data in structured data fields, and increases search functionality. The Department finished migration of all active legacy registrants (*i.e.,* those registered prior to September 23, 2019), who had been uploading fillable PDFs to comply with their registration obligations, to the new structured data format for all future filings (*e.g.,* amendments, supplemental statements, exhibits, short forms, informational materials) as of May 28, 2022. The Department agrees that some regulatory changes are necessary to account for technological advancements. Accordingly, proposed §§ 5.3, 5.5, and 5.206 would change how registration statements and other documents are filed as well as how registration fees are paid.

Additionally, the proposed rule would clarify that visits to the FARA Public Office are by appointment only. The FARA Public Office is open to the public for review of certain public records, including whether someone is registered. The vast bulk of those records, however—including the FARA Unit's holdings pertaining to active registrations from 1991 to the present, except for certain short form registration statements containing personally identifiable information—are readily available, at no cost to the public, through the Department's FARA website.

Question 19: Should the Department amend 28 CFR 5.1 to require—separate from the registration statements, supplements, and related documentation—that agents provide their business telephone numbers and business email addresses to facilitate better communications with the FARA Unit?

Commenters were generally in favor of this proposal, and two commenters specifically noted, to the extent business contact information was required, the underlying ostensible need for residential contact information would disappear. The Department believes that it needs both business contact information and residential addresses for effective administration and enforcement of the Act, however. In the Department's experience, having such information is necessary to ensure that the Department can effectively seek overdue filings and the curing of deficient ones. Under the proposed rule, the business contact information would be provided to the Department separately from the registration statement and supplements.

IV. Summary of Proposed Changes to the Regulations

The Department has undertaken a review of the current regulations to identify areas in need of clarification and modernization. Based on the comments received in response to the ANPRM and as discussed in greater detail above, the Department proposes to issue new regulations to provide additional guidance in key areas and to revise, clarify, and modernize existing provisions. The proposed changes to the regulations are summarized below in topic-oriented fashion; for additional detail, see the material accompanying the various questions from the ANPRM set forth above.

The Department proposes new regulations regarding (i) exemptions to FARA's registration requirement; (ii) the filing and labeling of informational materials; and (iii) miscellaneous issues largely to ensure the regulations keep pace with technological changes.

A. Exemptions

FARA contains eight exemptions that allow a person engaging in otherwise covered activities for or in the interests of a foreign principal to be exempt from registration if certain criteria are met. The Department proposes two changes to § 5.304, addressing exemptions for bona fide trade and commerce, or activity that does not serve predominantly a foreign interest, 22 U.S.C. 613(d), and changes to § 5.306 addressing the exemption for activity by attorneys in connection with certain proceedings, investigations, and inquiries, 22 U.S.C. 613(g).

1. 22 U.S.C. 613(d) Exemptions

FARA provides exemptions for persons who engage or agree to engage only in either ''(1) private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest.'' [25] With regard to the first exemption, the Department proposes two changes to the regulation. The first, to § 5.304(b), would delete the word ''directly'' in the phrase ''directly promote'' to clarify that the exemption does not apply when the agent engages in political activities or where the activities promote—rather than ''directly promote,'' as the current language reads—the political or public interests of a foreign government or foreign political party. Doing so would remove the ambiguity flagged by commenters and would be consistent with legislative history, as explained in Section III.B.1 of this preamble.

The second proposed change affecting § 5.304(b) of the regulation implementing section 613(d)(1) would allow a person or employee of such person who engages or agrees to engage only in promoting bona fide recreational or business travel to a foreign country to come within this exemption where the agent's relationship to a foreign principal is apparent to the public. In the past, the Department has taken the position that such activities are political because recreational tourism ''creates an influx of capital and a host of jobs'' for the local population and has therefore required registration for such activities.[26] The Department has reconsidered that position in the course of analyzing revisions to the FARA regulations. The Department now believes that the promotion of recreational or business tourism is too attenuated from the definition of political activities to warrant imposing FARA registration obligations on agents who promote only recreational or business tourism in foreign countries. Moreover, given that ''[f]oreign governments engage in private activities of a commercial nature'' that—as is the case with promoting recreational tourism—''may not[ ] involve political or policy matters,'' [27] the Department concludes that persons engaged only in

[25] 22 U.S.C. 613(d)(1), (2).

[26] *See, e.g.,* Jan. 20, 1984 Advisory Opinion, *https://www.justice.gov/nsd-fara/page/file/1046156/dl?inline=*.

[27] S. Rep. No. 89–143, at 11.

promoting bona fide recreational or business tourism to foreign countries are engaged in private activities ''in furtherance of the bona fide trade or commerce'' of a foreign principal. 28 CFR 5.304(b). Those activities do not, for purposes of section 613(d)(1), promote the public or political interests of the foreign government or foreign political party. Even without FARA registration for these persons, however, the Department expects the foreign interests to be apparent to the American public because the activities will necessarily identify the specific country to which recreational or business tourism is being promoted and because entities engaged in such work typically incorporate the name of that country into their own brand names.

Regarding the exemption in section 613(d)(2), the Department proposes substantial revisions to the current regulation, 28 CFR 5.304(c), based on both the public comments and our own experience applying the current regulation over the past two decades. There are three proposed changes. The first change would make explicit that, consistent with the plain meaning of the statutory language, the exemption applies to noncommercial interests as well as commercial interests. The public comments were consistent in their request for such clarity. *See* Section III.B.1 of this preamble.

The second change would create a set of four exclusions to the exemption. The exclusions focus only on the relationship (if any) between the activities and a foreign government or foreign political party, which is the key relationship animating the need for FARA registration. The Department has selected specific exclusionary circumstances that are appropriate proxies for the statute's predominant-interest test. Under the proposed rule, an agent would be considered to serve a predominantly foreign interest and categorically precluded from qualifying for the exemption if (1) the intent or purpose of the activities is to benefit the political or public interests of the foreign government or political party; (2) a foreign government or political party influences the activities; (3) the principal beneficiary is a foreign government or political party; or (4) activities on behalf of a state-owned enterprise (or an entity that is directed or supervised by a foreign government or political party) promote the political or public interests of that foreign government or political party.

The third change would apply when none of these exclusions are triggered. In those circumstances, the Department is proposing to replace its current test, which applies only when state-owned enterprises are involved. The Department is instead proposing to adopt a totality-of-the-circumstances test to determine whether the activities in question predominantly serve a foreign or domestic interest. To guide that test, the Department is proposing a set of non-exhaustive common factors that it may consider in future cases. The Department declines to propose a bright-line rule; the subjective test offered by commenters is problematic for the reasons explained in Section III.A.B.1(b) of this preamble, and a test that accounts for all scenarios could not otherwise be identified. The Department also declines to propose a series of tests that would apply separately in particular contexts (*e.g.,* separate tests for the commercial and non-commercial contexts or for cases where a state-owned enterprise was or was not involved) because the Department concluded that these tests quickly became too numerous and unwieldy.

To guide its totality-of-the-circumstances inquiry, the Department proposes factors drawn from components of the legislative history of section 613(d)(2) as well as the Department's decades of experience evaluating this issue. The Department proposes the following non-exhaustive factors: (i) whether the public and relevant government officials already know about the relationship between the agent and the foreign principal; (ii) whether the commercial activities further the interests of the domestic commercial entity more or less than the foreign commercial entity; (iii) the degree of influence (including through financing) that foreign sources have over domestic non-commercial entities such as nonprofits; (iv) whether the activities concern laws and policies applicable to domestic or foreign interests; and (v) the extent to which any foreign principal influences the activities.

2. 22 U.S.C. 613(g) Exemption

FARA provides for an exemption to registration for persons qualified to practice law who engage or agree to engage in legal representation of a disclosed foreign principal before a court or any agency proceedings, investigations, or inquiries.[28] Practitioners have expressed frustration with the regulation's lack of clarity about when activities outside of the courtroom, agency hearing room, or investigation or inquiry may still be covered by the exemption. The proposed rule in § 5.306 would clarify that the attorney of record in any of the covered proceedings, investigations, or inquiries can also provide certain information about the activities to others, such as the press, without losing the exemption. Those hearing or reading the information the attorney provides will recognize that the attorney is acting as the agent of the client and can consider that fact in evaluating the information without the need for the attorney to register.

The proposed rule in § 5.306(b) also would clarify that, to stay within the parameters of the exemption, the attorney's activities outside of the proceeding, investigation, or inquiry must not constitute ''political activities'' within the meaning of FARA. This means, for example, that the attorney could not qualify for the exemption while seeking to persuade persons who are not involved in the proceeding, investigation, or inquiry—such as the public or Congress—to adopt or change foreign or domestic U.S. policy. Doing so goes beyond the bounds of normal legal representation of a specific client in a specific matter and goes to the heart of the transparency goals of FARA and thus requires registration.

B. Informational Materials

The Department is proposing a comprehensive overhaul of FARA regulations regarding ''informational materials,'' largely to keep pace with technological advances.[29] FARA states that any agent who distributes ''informational materials'' [30] to two or more persons must file two copies of those materials with the Department within 48 hours and that, regardless of the number of persons who receive the materials, those materials must contain a conspicuous statement that discloses that they are being distributed on behalf of the foreign principal.[31] Based on the comments received to the ANPRM, as well as the Department's own analysis of the need for regulatory changes, the Department proposes four key changes.

First, in § 5.100(g), the Department proposes defining ''informational materials'' by regulation (for the first time) as any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any

[28] *See* 22 U.S.C. 613(g).

[29] The current regulations for filing and labeling informational materials are 28 CFR 5.400 and 5.402, respectively.

[30] In 1995, Congress amended FARA and deleted the statute's antiquated definition of ''political propaganda'' and replaced that term with ''informational materials,'' without providing a definition. *See* 22 U.S.C. 611(j); Lobbying Disclosure Act of 1995, Public Law 104–65, § 9(1)(A), 109 Stat. 699. There is no definition in the current regulations either.

[31] 22 U.S.C. 614(a), (b).

agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. Informational materials that satisfy the proposed definition would require a conspicuous statement that they are being distributed on behalf of the foreign principal.[32] The definition also makes clear that the way the materials are distributed—in print, online, or by any other method—has no bearing on the statutory requirement to file and label them.

Second, in §§ 5.3–5.5 and 5.206, the Department proposes changes to reflect that the Department has adopted a FARA eFile system that makes it easier for new registrants to keep their registrations current and for the public to search for and download information about FARA registrants. One key change, in § 5.400, is that, absent special circumstances, agents will be required to file their informational materials through the eFile system.

Third, in response to frequent calls to update FARA regulations due to technological advances in how informational materials are disseminated (such as over social media), the Department proposes in § 5.401 significant changes relating to how informational materials must be labeled.[33] To enhance transparency, the Department proposes that the conspicuous statement itself include the name of the country or territory where the foreign principal is located because that information may not be evident from the registration materials. The proposed labeling regulations then set forth a standard labeling requirement that will vary slightly depending on the medium through which the materials are disseminated, such as through television, radio, or social media platforms. Each labeling requirement is intended to maximize transparency while considering the nature and limitations of the medium by which the informational materials are disseminated.

Fourth and finally, the Department proposes in § 5.401(h)(2) to clarify that, when an agent requests information or advice from any agency or official of the government (including Congress), those communications—even when they pertain only to scheduling meetings to discuss the request—must contain a statement about the agent's relationship with a foreign principal.[34] This proposed rule would fill a current gap that allows agents to schedule meetings to discuss a request with government officials without ever having to identify the foreign principal for which the request is going to be made until the agent raises the foreign principal's request at the meeting.

C. Other Proposed Changes to the Regulations

The Department proposes two other categories of regulatory changes and various miscellaneous changes to the existing regulations. The first, in § 5.2, relates to the Department's issuance of advisory opinions.[35] The current regulations provide that a person may submit an inquiry to the Department and obtain, for a small fee, a determination of whether FARA applies to current or contemplated activities. Among other changes, the proposed rule would require the inquiries be submitted through the FARA website, expand the information required to be submitted, and clarify who should sign the inquiry.

The second category, in §§ 5.212, 5.600, and 5.800, is a series of proposed provisions necessitated by recent technological changes. These include how registration statements are filed, how registration fees are paid, the limited need for in-person public examination of registration statements when they are available online, and the Department's need for an agent's business email address to expedite communications with the agent.

In addition, the Department proposes a number of conforming changes to the regulations in light of the other changes proposed in this NPRM.

To the extent not already discussed above, these additional proposed changes are as follows, in the order in which they appear in the proposed rule:

(1) For uniformity, all references to the ''FARA Registration Unit'' in part 5 would be replaced by the ''FARA Unit.''

(2) Section 5.1(c) would be amended to add that copies of the Act, and of the rules, regulations, and non-fillable exemplars of forms, may be obtained from the Department's FARA website in addition to, as is currently the case, in hard-copy form upon request without charge from the FARA Unit.

(3) Section 5.2(c) would be amended to require that payment of the filing fee for a Rule 2 advisory opinion must be made electronically via the Department's FARA website.

(4) Section 5.2(d) would be amended to require that a request for a Rule 2 advisory opinion be submitted in writing to the FARA Unit via the Department's FARA website rather than sent to the Assistant Attorney General for National Security.

(5) Section 5.2(e)(4) would be amended for clarity to require the party to include the statutory or regulatory basis for the exemption claimed only in instances in which the party is claiming such an exemption.

(6) New § 5.2(e)(5) would be added to require that, when a request for a Rule 2 advisory opinion is not regarding an individual, the request must include a list of partners, officers or directors or persons performing the functions of an officer or director of the entity and all relevant and material information regarding their current or past affiliation with a foreign government or foreign political party.

(7) Section 5.2(f), previously titled ''Certifications,'' would be retitled ''Required Signatures.'' The substance of the final sentence of current § 5.2(f), which deals with the certification that a request for a Rule 2 advisory opinion is true, complete, and correct, would be incorporated into new § 5.2(h).

(8) The final sentence of § 5.2(g) would be amended to clarify that all subsequent submissions by a party in connection with a request for a Rule 2 advisory opinion should be signed by the same person or persons who signed the original request ''except for good cause,'' to ensure consistency of attestation as to the contents of the submissions.

(9) New § 5.2(h), ''Certifications,'' would be added to incorporate the substance of the sentence that is currently at the end of § 5.2(f), as noted above, and to clarify that the required certification must be made in connection with the initial request for a Rule 2 advisory opinion pursuant to § 5.2(f) and any subsequent submissions of additional information pursuant to § 5.2(g).

(10) New § 5.2(o) would be added to make clear that the Department will not respond to a request for a Rule 2 advisory opinion that is not in compliance with all of the requirements of § 5.2.

(11) Section 5.3 would be revised to remove the requirement that all filings be made in hard copy. Instead, all

[32] 22 U.S.C. 614(b).

[33] The ''Attorney General may by rule define what constitutes a conspicuous statement.'' 22 U.S.C. 614(b).

[34] *See* 22 U.S.C. 614(e) (requiring information furnished by, or a request for information by, an agent of a foreign principal to an agency or official of the Government, including Congress, to contain a statement that the person is an agent of a foreign principal).

[35] *See* 28 CFR 5.2.

filings would be required to be made electronically through the FARA eFile system, which is available through the Department's FARA website. Documents would be deemed filed upon their submission electronically and the payment of registration fees, all through the FARA eFile system.

(12) Section 5.5 would be revised to require that all registration fees shall be paid electronically through the FARA eFile system, doing away with the requirement of payment by cash, check, or money order.

(13) Section 5.100(a) would be amended to add new subsection (13), establishing ''FARA Unit'' as a defined term.

(14) Section 5.202(e) would be amended to eliminate the reference to ''Form OBD–66'' and to state instead that a short form registration statement shall be filed on a form provided by the Department; to require that a short form registrant must file a separate Short Form Registration Statement for each foreign principal represented by such registrant; and that any changes affecting information previously furnished shall be filed as an amendment to the short form registration statement rather than via a new short form registration statement.

(15) Section 5.206(b) would be amended to eliminate typewritten or handwritten filings of registration statements and related documents and to require that all such filings be made through the Department's FARA eFile system.

(16) New § 5.206(e) would be added to specify the circumstances under which a registrant may disclose required information via the uploading of a spreadsheet to the Department's FARA eFile system.

(17) New § 5.212 would be added to require that each registrant provide a business email address and business telephone number, in order to facilitate easier communications with the FARA Unit.

(18) Section 5.302 would be amended to replace the outdated reference to ''Notification of Status with a Foreign Government (Form D.S. 394)'' with ''Notification of Appointment of Foreign Government Employee via the Department of State's electronic system (eGov) or equivalent successor system.''

(19) Section 5.600 would be amended to eliminate the reference to ''political propaganda,'' to state that registration statements and related material required to be filed by a registrant will be available to the public via the Department's FARA website, and to state that to the extent any registration statements or any other publicly available materials filed pursuant to FARA are not available on the FARA website, they may be viewed at the FARA Unit by appointment, during the posted public hours of operation on an official business day.

(20) To eliminate a discontinuity in the numbering of the regulations, current § 5.402 would be re-numbered as § 5.401.

(21) Section 5.800 would be amended to replace the requirement of deposit in the U.S. mails with submission through the Department's FARA eFile system.

(22) Section 5.1101 would be amended to state that copies of the Report of the Attorney General to the Congress on the Administration of the Foreign Agents Registration Act of 1938, as amended, shall be made available to the public on the Department's FARA website free of charge, rather than being sold to the public.

D. The Department's Inability To Redact, via Regulation, Residential Address Information From Online Registration Materials

Although this topic did not come up in the public comments to the ANPRM, the Department examined whether it would be possible to propose a regulation that would allow FARA Unit personnel to redact the residential addresses of FARA registrants from the registration statements and supplements prior to making them publicly available online. Continuing to make this information available online may create privacy and safety concerns for registrants lawfully complying with the requirements of the Act and may discourage registration.

While these privacy and safety issues are of great concern to the Department, the language of the Act does not permit the redaction of residential address information prior to the posting of registration information online. 22 U.S.C. 612(a) sets forth certain information that must be included in a registration statement. Among other things, that provision requires registration statements to include registrants' residential addresses.[36] 22 U.S.C. 616(d)(1) states that the ''Attorney General shall maintain, and make available to the public over the internet . . . an electronic database that includes *the information* contained in registration statements and updates filed under this subchapter; and is searchable and sortable, at a minimum, by *each* of the categories of information described in Section 612(a) of this title'' (emphases added). Section 616(d)(1)(B) requires the database to be searchable and sortable by ''each'' category of information described in section 612(a),[37] which includes the registrant's residential address.[38]

V. Regulatory Certifications

A. Regulatory Flexibility Act

The Attorney General, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that it would not have a significant economic impact upon a substantial number of small entities. FARA registrants typically tend to fall into several different categories of businesses: law firms, tourist offices operated by foreign governments, advertising agencies, public relations firms, consulting firms, nonprofit organizations, trade associations, foreign political parties, individuals (*e.g.,* consultants, activists) not associated with any formal organization, non-governmental organizations, media outlets, and government relations lobbying firms. As of the publication of this NPRM, there are only about 517 active FARA registrants. Dividing these FARA registrants into the various categories of businesses, and then into the number of such registrants that also qualify as small entities within each category, reveals that the FARA registrants would represent a minuscule percentage of entities in each category that qualify as small entities.

FARA is an important transparency tool used to address foreign influence in the United States. As noted more fully in Section II of this preamble, FARA ensures that the Government and the American people are aware of persons who are acting within this country as agents of foreign principals and are informed about the activities undertaken by such agents to influence public opinion or governmental action on political or policy matters. Congress enacted FARA as a comprehensive legislative framework to be applied uniformly to all persons and activities that fall within its jurisdiction, *i.e.,* to all persons engaging in registrable activities. All FARA registrants bear the same statutory burden because they have chosen to engage in activities that are subject to the jurisdiction of the Act.

The Department took the economic impact of its proposed rule into account during the drafting of this NPRM, with the intent that any incremental economic burden on agents would be outweighed by the clarity and certainty the rule would give to agents and the

[36] 22 U.S.C. 612(a)(1), (2).

[37] 22 U.S.C. 616(d)(1).

[38] *See* 22 U.S.C. 612(a)(1).

transparency they would give to the American public and to American policymakers. For example, the proposed rule would streamline the process of filing registration materials, paying fees, and filing informational materials with the FARA Unit by requiring that all such filings be made via FARA eFile. Additionally, one of the proposed revisions would redound to the benefit of small entities because it would clarify that those who engage only in transparently promoting bona fide recreational or business travel to a foreign country—typically small entities—do not need to register under FARA. And, finally, the proposed rule about labeling informational materials, particularly online, was carefully crafted to require no more labelling than the Department has determined is necessary to ensure adequate transparency, such that it would not unduly burden any FARA registrant, of any size, that is endeavoring to comply with the requirements of the Act.

For these reasons, the Attorney General certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Department of Justice solicits comments regarding this determination.

B. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Congressional Review Act

This proposed rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

D. Executive Orders 12866, 13563, and 14094 (Regulatory Review)

The Office of Management and Budget (''OMB'') has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this proposed rule has been submitted to OMB for review. This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation; in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation; and in accordance with Executive Order 14094, ''Modernizing Regulatory Review.''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Department estimates that the proposed revisions and modernization of the implementing regulation will provide greater clarity for all registrants and potential registrants. As discussed in reference to the Regulatory Flexibility Act above, the Department assesses that any incremental economic burden on some agents would be outweighed by the clarity and certainty the regulation would give to all agents and potential agents, and by the transparency the regulation would give to the American public and to American policymakers. For example, the proposed rule will reduce the regulatory burden on those who engage only in transparently promoting bona fide recreational or business travel to a foreign country and will no longer have to register. Likewise, a more detailed system for labeling and filing informational materials will benefit both registrants who disseminate these materials and members of the public who view them.

E. Executive Order 13132 (Federalism)

This proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to specify provisions in clear language.

G. Paperwork Reduction Act of 1995

This proposed rule would call for collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). 5 CFR 1320.3(c) defines the ''collection of information'' to include reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The requirements introduced by this proposed rule would be related to the existing collections covered by OMB Numbers 1124–0001, 1124–0002, 1124–0003, 1124–0004, 1124–0005 and 1124–0006. Additionally, this proposed rule would result in a one-time decrease in paperwork burdens of FARA applications due to persons who engage only in transparently promoting bona fide recreational or business travel to a foreign country no longer having to register under FARA. There are currently approximately 56 such registrants, and the total number of FARA registrants will therefore decrease on a one-time basis by 56 as a result, although each such respondent would need to file a statement terminating their registration. As the required frequency of the filing of the six forms listed below varies by form and not all 56 such registrants necessarily file all such forms in a typical year, except as expressly provided otherwise with respect to form OMB Number 1124–0002, it is not possible to accurately estimate the differential impact of this one-time reduction in the number of FARA registrants on the aggregate time burden associated with each of these forms.

OMB Number 1124–0001, Registration Statement of Foreign Agents, is filed once, when the respondent initially registers under FARA. Based on historical data from July 2022 to July 2023, if an estimated 119 respondents register annually, with an estimated time burden of 0.75 hours (45 minutes) per respondent, the total estimated annual time burden on these respondents would be approximately 89 hours.

OMB Number 1124–0002, Supplemental Statement to Registration Statement of Foreign Agents, is filed twice annually as assigned by the FARA Unit. The current number of registrants

is approximately 517. If, on a one-time basis, an estimated 56 current registrants who engage only in transparently promoting bona fide recreational or business travel to a foreign country terminate their registrations as a result of this proposed rulemaking, then an estimated 461 respondents would file this form twice annually in the year immediately following the effective date of the final rulemaking. Given an estimated time burden of 1.17 hours (70 minutes) per filing, the total estimated time burden on these respondents would be approximately 1,079 hours in the year immediately following the effective date of the final rulemaking.

OMB Number 1124–0003, Amendment to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents combined file this form a total of 630 times, with an estimated time burden of 0.75 hours (45 minutes) per filing, the total estimated time burden on these respondents would be approximately 473 hours.

OMB Number 1124–0004, Exhibit B to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents file this form a total number of 451 times combined, with an estimated time burden of 0.33 hours (20 minutes) per filing, the total estimated time burden on these respondents would be approximately 149 hours.

OMB Number 1124–0005, Short Form to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents file this form a total of 1,149 times combined, with an estimated time burden of 0.23 hours (14 minutes) per filing, the total estimated time burden on these respondents would be approximately 264 hours.

OMB Number 1124–0006, Exhibit A to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents file this form a total of 451 times combined, with an estimated time burden of 0.22 hours (13 minutes) per filing, the total estimated time burden on these respondents would be approximately 99 hours.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

Accordingly, for the reasons set forth above, the Attorney General proposes to amend part 5 of chapter I of title 28 of the Code of Federal Regulations as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF THE FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

■ 1. The authority citation for 28 CFR part 5 continues to read as follows:

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

■ 2. Amend § 5.1 by revising paragraph (c), to read as follows:

§ 5.1 Administration and enforcement of the Act.

* * * * *

(c) Copies of the Act, the rules, regulations, non-fillable exemplars of forms prescribed pursuant to the Act, and information concerning the foregoing may be obtained on the Department's FARA website and upon request without charge from the National Security Division, FARA Unit, Department of Justice, Washington, DC 20530.

* * * * *

■ 3. Amend § 5.2 by:
■ a. Changing the designations of paragraphs (h) through (m) to paragraphs (i) through (n);
■ b. Revising paragraphs (c), (d), (e)(4), (f), and (g); and by
■ c. Adding new paragraphs (e)(5), (h), and (o).

The revisions and additions read as follows:

§ 5.2 Inquiries concerning application of the Act.

* * * * *

(c) *Fee.* All requests for statements of the Department's present enforcement intentions must be accompanied by a non-refundable filing fee submitted in accordance with § 5.5. Payment of the filing fee shall be made electronically via the Department's FARA website.

(d) *Submission.* A review request must be submitted in writing to the FARA Unit through the Department's FARA website.

(e) * * *

(4) In cases where a party is seeking an exemption or exclusion, the applicable statutory or regulatory basis for the exemption or exclusion claimed.

(5) In cases where a request is not for or regarding an individual, a list of partners, officers or directors or persons performing the functions of an officer or director of the entity and all relevant and material information regarding their current or past affiliation with a foreign government or foreign political party.

(f) *Required Signatures.* If the requesting party is an individual, the review request must be signed by the prospective or current agent, or, if the requesting party is not an individual, the review request must be signed on behalf of each requesting party by an officer, a director, a person performing the functions of an officer or a director of, or an attorney for, the requesting party.

(g) *Additional information.* Each party shall provide any additional information or documents the National Security Division may thereafter request in order to review a matter. Any information furnished orally shall be confirmed promptly in writing. All submissions shall be signed by the same person or persons who signed the initial review request, except for good cause.

(h) *Certifications.* Each such person signing a review request pursuant to § 5.2(f) or a submission of information pursuant to § 5.2(g) must certify that the document(s) contain a true, correct, and complete disclosure with respect to the proposed conduct or additional information described.

* * * * *

(o) The Department will not respond to any request for its present enforcement intentions that is not in compliance with the provisions of this section.

* * * * *

■ 4. Revise § 5.3 to read as follows:

§ 5.3 Filing of a registration statement.

All registration statements and supplements, amendments, exhibits thereto, and other documents and papers filed pursuant to the Act are required to be filed using the Department's FARA eFile system, which can be accessed through the Department's FARA website. Documents shall be deemed to be filed upon submission and payment of registration fees through FARA eFile.

* * * * *

■ 5. Amend § 5.5 by:
■ a. Revising paragraph (a);
■ b. In paragraph (b) removing ''FARA Registration Unit'' where it appears and adding in its place ''FARA Unit.''
■ c. In paragraphs (b), (c), (e), (f), and (g), removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

The revision reads as follows:

§ 5.5 Registration fees.

(a) A registrant shall pay a registration fee with each initial registration statement (including an Exhibit A for one foreign principal) filed under § 5.200 and each supplemental registration statement filed under § 5.203 at the time such registration statement is filed. The registration fee shall be paid through the Department's FARA website using the FARA eFile system.

* * * * *

■ 6. Amend § 5.100 by:

■ a. In paragraph (a)(6) removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit''; and

■ b. Adding paragraphs (a)(13) and paragraph (g).

The additions read as follows:

§ 5.100 Definition of terms.

* * * * *

(13) The term *FARA Unit* means the Foreign Agents Registration Act Unit, National Security Division, U.S. Department of Justice.

* * * * *

(g) The term *informational materials,* as used in section 4 of the Act, shall be deemed to include any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. The manner or form of dissemination, whether in print, electronic, or otherwise, does not change whether material falls under this definition.

§§ 5.200 and 5.201 [Amended]

■ 7. Amend §§ 5.200(b), 5.201(a)(1), 5.201(a)(2), and 5.201(b) by removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

■ 8. Amend § 5.202 by revising paragraph (e), to read as follows:

§ 5.202 Short form registration statement.

* * * * *

(e) The short form registration statement shall be filed on a form provided by the Department. When required to file a short form registration statement, the person rendering services shall file a separate short form registration statement for each foreign principal represented by the person. Any change affecting the information furnished with respect to the nature of the services rendered by the person filing the statement, or the compensation the person receives, shall require the filing of an amendment to the short form registration statement within 10 days after the occurrence of such change. There is no requirement to file exhibits or supplemental statements to a short form registration statement.

§§ 5.204 and 5.205 [Amended]

■ 9. Amend §§ 5.204(a) and 5.205(a) by removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

■ 10. Amend § 5.206 by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 5.206 Language and wording of registration statement.

* * * * *

(b) A statement, amendment, exhibit, or notice required to be filed under the Act shall be filed through the Department's FARA eFile system.

* * * * *

(e) Any response to an item on each pertinent form that allows a registrant to disclose information by uploading a comma-separated-value (''csv'') spreadsheet to the Department's FARA eFile system shall be made using a csv spreadsheet template provided on the Department's FARA website. Registrants may populate the spreadsheet template in advance and upload the information into the Department's FARA eFile system. Only spreadsheets provided on the Department's website may be uploaded to the Department's FARA eFile system.

■ 11. Add § 5.212, to read as follows:

§ 5.212 Provision of business contact information.

Each registrant shall provide, separate from the registration statement, a business email address and business telephone number, to facilitate easier communications with the FARA Unit.

■ 12. Revise § 5.302 to read as follows:

§ 5.302 Exemptions under sections 3(b) and (c) of the Act.

The exemptions provided by sections 3(b) and (c) of the Act shall not be available to any person described therein unless such person has filed with the Secretary of State an accepted Notification of Appointment of Foreign Government Employee via the Department of State's electronic system (eGov) or equivalent successor system.

■ 13. Amend § 5.304 by:

■ a. Revising paragraphs (b) and (c);

■ b. Redesignating paragraph (d) as paragraph (e); and

■ c. Adding a new paragraph (d).

The addition and revisions read as follows:

§ 5.304 Exemptions under section 3(d) of the Act.

* * * * *

(b) For the purpose of section 3(d)(1) of the Act:

(1) Activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered ''private,'' even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not promote the public or political interests of the foreign government.

(2) Any person or employee of such person who engages or agrees to engage only in transparently promoting bona fide recreational or business travel to a foreign country shall be deemed to be engaging or agreeing to engage in private and nonpolitical activities in furtherance of the bona fide trade or commerce of a foreign principal.

(c) For purposes of section 3(d)(2) of the Act, this exemption is available to an agent of a foreign principal engaged in activities for or in the interests of commercial and non-commercial entities alike, so long as the activities do not serve predominantly a foreign interest.

(d) For purposes of section 3(d)(2) of the Act:

(1) The activities of an agent of a foreign principal serve predominantly a foreign interest, and the exemption is unavailable, where any of the following is true:

(i) The intent or purpose of the activities is to promote the political or public interests of a foreign government or foreign political party;

(ii) A foreign government or foreign political party influences the activities;

(iii) The principal beneficiary of the activities is a foreign government or foreign political party; or

(iv) In the case of a person whose activities are directly or indirectly supervised, directed, controlled, or financed in whole or in substantial part by a government of a foreign country or a foreign political party, the activities promote the public or political interests of a foreign government or of a foreign political party; and

(2) In cases in which the exclusions in paragraph (d)(1) of this section do not preclude the exemption, additional factors will inform an analysis as to whether the activities nonetheless serve predominantly a foreign interest. Such factors include:

(i) Whether the relationship to and identity of any foreign principal is open and obvious to the public and explicitly disclosed to any agency or official of the United States with whom such activities are conducted;

(ii) Whether, in the case of a domestic commercial entity, the activities further the bona fide commercial, industrial, or financial interests of that domestic entity as much or more than the commercial, industrial, or financial interests of a related foreign commercial entity;

(iii) In the case of an agent of a non-commercial or nonprofit organization located in the United States, the extent to which the activities of the organization are influenced by a foreign entity or concern a foreign jurisdiction, including the extent to which domestic sources rather than foreign ones fund the activities of the organization;

(iv) Whether the activities concern laws or policies applicable to the U.S. operations or interests of the domestic person; and

(v) The extent to which a foreign principal influences the activities of the domestic person.

* * * * *

■ 14. Revise § 5.306 to read as follows:

§ 5.306 Exemption under section 3(g) of the Act.

(a) Any person qualified to practice law who engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States may be entitled to the section 3(g) exemption provided such representation does not extend beyond the bounds of normal legal representation as described in paragraph (b) of this section.

(b) ''Legal representation'' includes:

(1) Activities by retained and disclosed counsel intended to influence or persuade agency personnel or officials in the course of judicial proceedings; criminal law or civil enforcement inquiries, investigations, or proceedings; or agency proceedings conducted on the record, concerning the disclosed foreign principal; and

(2) Activities other than political activities, by the same counsel, that fall within the bounds of normal legal representation and involve providing information about the aforementioned proceeding, inquiry, or investigation, during the pendency of that proceeding, inquiry, or investigation to persons other than the agency or official decision-makers.

(c) Regardless of whether court or agency procedures require it, the attorney engaged in legal representation on behalf of a foreign principal before a court of law or an agency of the Government of the United States must disclose the attorney's foreign principal to the court or agency personnel or officials before whom the attorney appears.

■ 15. Amend § 5.400 by

■ a. In paragraphs (a), (b), and (c), removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit''; and

■ b. Adding paragraphs (d) and (e).

The additions read as follows:

§ 5.400 Filing of informational materials.

* * * * *

(d) Unless the format of the informational materials is incompatible with the Department's FARA eFile system and the Department has granted permission to file the materials by an alternative and approved method, informational materials shall be filed with the Attorney General through the Department's FARA eFile system.

(e) Unless otherwise directed by the Assistant Attorney General, screen captures, or contemporaneous reproductions of all informational materials referenced in § 5.401(f)–(g), shall be filed as a PDF or other standard electronic file format compatible with the Department's FARA eFile system.

■ 16. Add § 5.401 to read as follows:

§ 5.401 Labeling of informational materials; other requirements.

(a) *Definition of a ''conspicuous statement.''* Except as set forth specifically in paragraphs (b) through (g) of this section, a conspicuous statement placed on informational materials must contain the language set forth in section 4(b) of the Act as well as the name of the foreign principal, the country (or state, territory, or principality) in which the foreign principal is located, the FARA registration number, and note that further information is available via the FARA website of the Department of Justice.

(b) *Default labeling requirement.* Subject to the additional or different requirements set forth in paragraphs (c) through (g) of this section when applicable, informational materials shall be deemed to contain a conspicuous statement if they contain a label satisfying the requirements of section 4(b) of the Act and paragraph (a) of this section at the beginning of the materials in the language or languages used therein and in a font size and color that are easy to read.

(c) *Author.* When informational materials contain an author's byline, signature block, or biographical information, the conspicuous statement must be placed in the byline, signature block, or biographical information in addition to the beginning of the materials, as set forth in paragraph (b) of this section.

(d) *Televised or broadcast.* (1) When informational materials are televised or broadcast, they must contain a conspicuous statement at the beginning and the end of the informational materials. If the running time for the informational materials exceeds one hour, then the conspicuous statement must be repeated once per hour in addition to occurring at the beginning and at the end of the informational materials. If the informational materials are presented in audio only, then the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend. If the informational materials are presented in an audio-visual format, then the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend and must appear on the screen long enough to be noticed, read, and understood by the viewer.

(2) As used in this part, the term ''broadcast'' includes, but is not limited to, transmittal reasonably calculated to reach an audience in the United States through an internet-based website, mobile application, television network or radio frequency, cable or satellite service, or telephonic message.

(e) *Still or motion picture film.* An agent of a foreign principal who transmits or causes to be transmitted in the U.S. mails or by any means or instrumentality of interstate or foreign commerce a still or motion picture film which contains informational materials shall insert at the beginning, or, if it is a motion picture film, at the beginning and at the end, a statement that satisfies the requirements of section 4(b) of the Act and paragraph (a) of this section. For a still, the conspicuous statement shall be in a font size and color that are easy to read. For a motion picture, the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend, must appear in a font size and color that are easy to read and that stand out against the background, and must appear on the screen long enough to be noticed, read, and understood by the viewer.

(f) *Internet website or platform for which registrant has administrative rights.* Informational materials posted by a registrant on an internet platform or website, which is hosted or controlled by the registrant, or for which the registrant otherwise has administrative rights, shall contain a conspicuous statement that satisfies the requirements

of section 4(b) of the Act and paragraph (a) of this section, in a font size and color that are easy to read and that stands out against the background, on the website ''home'' page and on the website ''about'' page. The conspicuous statement on these pages shall also include a hyperlink to the registrant's filings on the Department's FARA website. Each individual post to the website for or in the interests of the registrant's foreign principal shall bear the conspicuous statement, with a hyperlink to the registrant's filings on the Department's FARA website. If the internet platform or website does not provide sufficient space for the full conspicuous statement, as set forth in section 4(b) of the Act and paragraph (a) of this section, the registrant or anyone acting on the registrant's behalf must include in each comment or post on the internet platform or website an embedded image of the conspicuous statement on the face of the comment or post; that image shall contain the term ''FARA,'' the registrant's registration number, and an electronic link to the registrant's filings on the Department's FARA website. The conspicuous statement in the embedded image must be in a font size and color that are easy to read and that stand out against the background.

(g) *Internet website or platform for which registrant does not have administrative rights.* Informational materials posted by a registrant on an internet platform or website, which is not hosted or controlled by the registrant, or for which the registrant does not otherwise have administrative rights, shall include the conspicuous statement as set forth in section 4(b) of the Act and paragraphs (a) and (b) of this section. Each individual post to the website for or in the interests of the registrant's foreign principal shall bear the conspicuous statement, with a hyperlink to the registrant's filings on the Department's FARA website. If the internet platform or website does not provide sufficient space for the full conspicuous statement, as set forth in section 4(b) of the Act and paragraph (a) of this section, the registrant or anyone acting on the registrant's behalf must include in each comment or post on the internet platform or website an embedded image of the conspicuous statement on the face of the comment or post along with the term ''FARA'' with the registrant's registration number containing an electronic link to the registrant's filings on the Department's FARA website. The conspicuous statement in the embedded image must be in a font size and color that are easy to read and that stand out against the background.

(h) *Defined terms.* For the purpose of section 4(e) of the Act:

(1) The term ''political propaganda'' has the same meaning as ''informational materials,'' the labeling of which is governed by paragraphs (a) through (g) of this section;

(2) Any ''request'' made to any agency or official of the Government for or in the interests of a foreign principal includes all communications related to that request even if the communication itself does not contain a specific request for information or advice within the meaning of section 4(e); for example, all communications, oral or written, involved in scheduling a meeting to discuss the requested information or advice must be prefaced with or accompanied by a true and accurate statement to the effect that such a person is registered as an agent of a foreign principal, as required by section 4(e);

§ 5.402 [Removed]

■ 17. Remove § 5.402.

■ 18. Revise § 5.600 to read as follows:

§ 5.600 Public examination of records.

Registration statements and supplements, amendments, exhibits thereto, informational materials, and Dissemination Reports are available to the public on the Department's FARA website. To review any such statements or any publicly available materials filed pursuant to FARA not available on the Department's FARA website, members of the public shall schedule an appointment through the FARA Unit to examine such records on an official business day, during the posted public office hours of operation.

§ 5.601 [Amended]

■ 19. In § 5.601 amend paragraphs (a), (b), and (c) by removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

■ 20. Revise § 5.800 to read as follows:

§ 5.800 Ten-day filing requirement.

The 10-day filing requirement provided by section 8(g) of the Act shall be deemed satisfied if the amendment to the registration statement is submitted through the Department's FARA eFile system no later than the 10th day of the period.

■ 21. Revise § 5.1101 to read as follows:

§ 5.1101 Copies of the report to Congress.

Copies of the report to Congress mandated by 22 U.S.C. 621 shall be made available to the public on the Department's FARA website free of charge.

Dated: December 19, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–30871 Filed 12–31–24; 8:45 am]

BILLING CODE 4410–PF–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 14 and 64

[CG Docket Nos. 23–161, 10–213, 03–123; FCC 24–95; FR ID 268783]

Access to Video Conferencing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) seeks comment on whether to amend the accessibility rules for interoperable video conferencing services (IVCS) to include additional performance objectives addressing text-to-speech and speech-to-speech functionality; automatic sign-language interpretation; additional user interface control functions; access to video conferencing for people who are blind or have low vision; and access to video conference for people with cognitive or mobility disabilities. The Commission also seeks further comment on whether and how the telecommunications relay services (TRS) Fund should support team interpreting in video conferences and whether additional rules are needed to facilitate the integration and appropriate use of TRS with video conferencing.

DATES: Comments are due February 3, 2025. Reply comments are due March 3, 2025.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 23–161, 10–213, and 03–123 by the following method:

• *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/filings.* Follow the instructions for submitting comments.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2716, or *William.Wallace@fcc.gov;* or Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–1028, or *Ike.Ofobike@fcc.gov.*