

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

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Reporting Entity: _____ Page _____ of _____

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**PART 29—PROCEDURES FOR
GUIDANCE DOCUMENTS**

- Sec.
- 29.1 Definitions.
- 29.2 Procedures for issuing guidance documents.
- 29.3 Public petition for withdrawal or modification.
- 29.4 General provisions.

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§ 29.1 Definitions.

As used in this part:

Administrator means the Administrator of the Office of Management and

§ 29.2

Budget's Office of Information and Regulatory Affairs (OIRA).

Department means the Department of Commerce including any of its component bureaus and agencies.

Guidance document means a Department statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include the following:

(1) Rules promulgated pursuant to notice and comment under 5 U.S.C. 553, or similar statutory provisions;

(2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(3) Rules of Department organization, procedure, or practice;

(4) Decisions of Department adjudications under 5 U.S.C. 554, or similar statutory provisions;

(5) Internal guidance directed to the Department that is not intended to have substantial future effect on the behavior of regulated parties; or

(6) Internal executive legal advice or legal opinions addressed to executive branch officials.

Pre-enforcement ruling means a formal written communication by the Department in response to an inquiry from a person concerning compliance with legal requirements that interprets the law or applies the law to a specific set of facts supplied by the person. The term includes informal guidance under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (Title II), as amended, letter rulings, advisory opinions, and no-action letters.

Secretary means the Secretary of Commerce.

Significant guidance document means a guidance document deemed to be significant by OIRA because it may reasonably be anticipated to:

(1) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

15 CFR Subtitle A (1-1-23 Edition)

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

§ 29.2 Procedures for issuing guidance documents.

(a) The Department will indicate prominently that each guidance document does not bind the public, except as authorized by law or as incorporated into a contract.

(b) The Department will comply with Executive Orders 12866, 13563, 13609, 13771 and 13777 in issuing guidance documents.

(c)(1) For a significant guidance document, as determined by the Administrator unless the Department and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exception from some or all requirements, the Department will:

(i) Provide a period of public notice and comment of at least 30 days before issuance of a final guidance document, and a public response from the Department to major concerns raised in comments, except when the Department for good cause finds (and incorporates such finding and a brief statement of reasons therefor into the guidance document) that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest;

(ii) Seek approval on a non-delegable basis by the Secretary or by a Department component head appointed by the President, before issuance; and

(iii) Submit the significant guidance document for review by OIRA under Executive Order 12866 before issuance.

(2) This section does not apply to pre-enforcement rulings.

(3) This section does not apply to any document that falls within a class which the Administrator or the Administrator's designee has determined is exempt from consideration as significant guidance documents.

§ 29.3 Public petition for withdrawal or modification.

(a) The public may petition for withdrawal or modification of a particular guidance document by submitting such petition through the designated website: Department of Commerce: *www.commerce.gov/guidance*; Bureau of Economic Analysis (BEA): *www.bea.gov/guidance*; Bureau of Industry and Security (BIS): *www.bis.doc.gov/guidance*; U.S. Census Bureau: *www.census.gov/guidance*; Economic Development Administration: *www.eda.gov/guidance*; International Trade Administration (ITA): *www.trade.gov/guidance*; Minority Business Development Agency (MBDA): *www.mbda.gov/guidance*; National Institute of Standards and Technology (NIST): *www.nist.gov/guidance*; National Oceanic and Atmospheric Administration (NOAA): *www.noaa.gov/guidance*; National Technical Information Service (NTIS): *www.ntis.gov/guidance*; National Telecommunications and Information Administration (NTIA): *www.ntia.doc.gov/guidance*; and U.S. Patent and Trademark Office (USPTO): *www.uspto.gov/guidance*.

(b) The Department or the relevant individual bureau will provide a response to such petition within 90 days of receipt of the petition.

§ 29.4 General provisions.

Notwithstanding any other provision in this part, nothing in this part shall apply:

(a) To any action that pertains to foreign or military affairs, or to a national security or homeland security function of the United States (other than guidance documents involving procurement or the import or export of articles and services subject to the Department's jurisdiction);

(b) To any action related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related to a criminal investigation or prosecution, including undercover operations, or any civil enforcement action or related investigation by the Department of Justice, including any action related to a civil investigative demand under 18 U.S.C. 1968;

(c) To any investigation of misconduct by a Department employee or any disciplinary, corrective, or employment action taken against a Department employee;

(d) To any document or information that is exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552(b); or

(e) In any other circumstance or proceeding to which application of this section, or any part of this part, would, in the judgment of the Secretary, undermine the national security.