

## Court Services and Offender Supervision Agency

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(17) D.C. Code section 22-2105—voluntary manslaughter only;

(18) D.C. Code section 22-2106—murder of a law enforcement officer;

(19) D.C. Code section 22-2201—certain obscene activities involving minors;

(20) D.C. Code section 22-2704—abducting, enticing, or harboring a child for prostitution;

(21) D.C. Code section 22-2705—pandering; inducing or compelling an individual to engage in prostitution;

(22) D.C. Code section 22-2706—compelling an individual to live life of prostitution against his or her will;

(23) D.C. Code section 22-2708—causing spouse to live in prostitution;

(24) D.C. Code section 22-2709—detaining an individual in disorderly house for debt there contracted;

(25) D.C. Code section 22-2801—robbery;

(26) D.C. Code section 22-2802—attempted robbery;

(27) D.C. Code section 22-2803—carjacking;

(28) D.C. Code section 22-3002—first degree sexual abuse;

(29) D.C. Code section 22-3003—second degree sexual abuse;

(30) D.C. Code section 22-3004—third degree sexual abuse;

(31) D.C. Code section 22-3005—fourth degree sexual abuse;

(32) D.C. Code section 22-3006—misdemeanor sexual abuse;

(33) D.C. Code section 22-3008—first degree child sexual abuse;

(34) D.C. Code section 22-3009—second degree child sexual abuse;

(35) D.C. Code section 22-3010—enticing a child;

(36) D.C. Code section 22-3013—first degree sexual abuse of a ward;

(37) D.C. Code section 22-3014—second degree sexual abuse of a ward;

(38) D.C. Code section 22-3015—first degree sexual abuse of a patient or client;

(39) D.C. Code section 22-3016—second degree sexual abuse of a patient or client;

(40) D.C. Code section 22-3018—attempts to commit sexual offenses;

(41) D.C. Code section 22-3102—sexual performances using minors;

(42) D.C. Code section 22-3801(a) [repealed May 23, 1995]—indecent acts with children;

(43) D.C. Code section 22-3801(b) [repealed May 23, 1995]—enticing a child;

(44) D.C. Code section 22-3802(a) [repealed May 23, 1995]—sodomy where the offense was forcible or committed against a minor;

(45) D.C. Code section 22-4801 [repealed May 23, 1995]—forcible rape, carnal knowledge or statutory rape;

(46) D.C. Code section 22-1803 or section 22-1805a—attempt or conspiracy to commit any

of the offenses listed in items (1) through (45) of this table.

[67 FR 54100, Aug. 21, 2002, as amended at 68 FR 19742, Apr. 22, 2003]

### PART 813—GUIDANCE DEVELOPMENT PROCEDURES

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#### § 813.1 Overview of guidance development process.

(a) This part governs all Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) and Pretrial Services Agency (PSA) employees and contractors involved with all phases of implementing CSOSA guidance documents.

(b) The procedures set forth in this part apply to all guidance documents, issued by all components of CSOSA and PSA.

(c) For purposes of this part, “guidance document” means an agency 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 statute or regulation. Guidance documents do not have the force and effect of law and are not meant to bind the public in any way. A guidance document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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(d) CSOSA may not cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

(e) Guidance documents not posted on the Agencies' web portal are considered rescinded, and not in effect.

(f) This part does not apply to:

(1) Rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions;

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

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

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

(5) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(6) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (*e.g.*, case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (*e.g.*, guidance pertaining to the use, operation, or control of a government facility or property), and correspondence with individual persons or entities (*e.g.*, congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated public;

(7) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(8) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy;

(9) Guidance pertaining to military or foreign affairs functions;

(10) Grant solicitations and awards;

(11) Contract solicitations and awards; or

(12) Purely internal agency policies or guidance directed solely to the Agencies' employees or contractors or

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to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

### §813.2 Guidance management process for CSOSA.

All CSOSA guidance documents, as defined in §813.1, require review and clearance in accordance with this section. CSOSA's guidance documents are created through the Office of Policy Analysis (OPA), and come in two primary forms, policy statements and procedures (also known as operating instructions). This section sets forth the process for review and clearance for each.

(a) Policy statements are:

(1) Prepared by CSOSA components and issued under the Director's signature;

(2) Remain in effect and active until rescinded, amended, or superseded;

(3) Are reviewed by all CSOSA Associate Directors or their designees;

(4) Are prepared using a standard format provided by the Office of Policy Analysis (OPA);

(5) Are developed and maintained using a four-stage process that includes planning, development, review, and maintenance, each stage taking place within specified timeframes; and

(6) Are reviewed and re-certified biennially.

(b) Procedures are:

(1) Coordinated through OPA;

(2) Evaluated to prevent the issuance of duplicative or conflicting procedures;

(3) Tied to a policy statement;

(4) Developed in a collaborative process that addresses all relevant stakeholders' input;

(5) Organized so that critical information is readily accessible and staff know how and where to find any related information; and

(6) Maintained in an archive system to ensure future decision-makers have adequate information regarding the basis for previous procedure determinations.

(c) The CSOSA Director, or his/her designee, may waive or truncate the internal policy development process where good cause exists, for example

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where Congress or the executive branch mandates changes.

(d) CSOSA will notify OMB's Office of Information and Regulatory Affairs (OIRA) regularly of upcoming guidance documents. Notification will include a list of planned guidance documents, including summaries of each guidance document and the agency's recommended designation of "not significant" or "significant" as defined in §813.7.

(e) CSOSA will seek significance determinations for guidance documents from OIRA. Where CSOSA preliminarily finds the guidance document to be significant, prior to publishing, CSOSA will provide the document to OIRA for review to determine if it meets the definition of "significant" under E.O. 13891.

### §813.3 Requirements for clearance of CSOSA guidance documents.

CSOSA's review and clearance of guidance documents, including policy and procedures, occurs according to the stages set forth in paragraphs (a) and (b) of this section.

(a) *Policy management*—(1) *Stage 1—planning*. The CSOSA component coordinates with OPA to initiate the process.

(2) *Stage 2—development*. The CSOSA component provides the operational details and OPA will conduct the analysis and coordination and then prepare the initial document.

(3) *Stage 3—review*. The multi-layered review involves the Associate Directors, other CSOSA components and Employee Labor Relations (ELR), if appropriate. Upon completion, the Director reviews and signs the document for implementation.

(4) *Stage 4—maintenance*. The Office of Information Technology (OIT) posts the signed policies to CSOSA's intranet and/or public-facing web portal, and OPA maintains the central repository of all signed policies and associated working files and initiates the biennial review.

(b) *Procedure (also known as operating instruction—OI) management*—(1) *Stage 1—planning*. The CSOSA component submits a request to OPA for a new OI or an update to an existing OI;

(2) *Stage 2—development*. The CSOSA component prepares the content for the initial draft, which OPA reviews and affects any necessary coordination across CSOSA.

(3) *Stage 3—review*. The initial draft OI is submitted simultaneously to CSOSA Associate Directors, the Supervisory Policy Analyst, and Office of the Director for review. If applicable, notice is provided to union representatives; and upon clearance and approvals it is submitted to the Director for review, signature, and implementation.

(4) *Stage 4—maintenance*. The Office of Information Technology (OIT) posts the signed OI to CSOSA's intranet and/or public-facing web portal; OPA maintains the central repository of all signed OI and associated working files and initiates the biennial review.

### §813.4 Guidance development process for Pretrial Services Agency (PSA).

Pretrial Services Agency (PSA), an independent agency within CSOSA, has its own guidance or policy development process, coordinated through PSA's Office of Planning, Policy, and Analysis (OPPA). PSA's guidance development process occurs as detailed in paragraphs (a) through (d) of this section:

(a) PSA's guidance documents are:

(1) Prepared by the responsible PSA Office and issued with the PSA Director's signature;

(2) Remain in effect and active until rescinded, amended, or superseded;

(3) Reviewed by all PSA Deputy Assistant Directors and/or designees;

(4) Prepared using a standard format provided by OPPA; and

(5) Developed using a process that includes planning, development, review, and maintenance in accordance with specified timeframes.

(b) PSA process and procedure documents are:

(1) Coordinated with assistance from OPPA, as appropriate, to avoid duplicative or conflicting procedures;

(2) Tied to a policy, when appropriate;

(3) Developed in collaboration with all stakeholders including the bargaining unit;

(4) Organized in a manner that is readily accessible by those who need it; and

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(5) Maintained according to records management standards.

(c) The PSA Director, or his/her designee, may waive or truncate the internal development process where good cause exists, for example where Congress or the executive branch mandates changes within a specified period or allow changes that need to be implemented immediately.

(d) The process set forth in § 813.2(d) and (e) also applies to PSA guidance documents.

#### § 813.5 Required elements of guidance documents.

CSOSA and PSA will ensure each guidance document:

(a) Complies with all relevant statutes and regulations;

(b) Identifies or includes:

(1) The term “guidance” or its functional equivalent;

(2) The component or division issuing the document;

(3) The activities to which or the person to whom the document applies;

(4) The date of issuance;

(5) If it is a revision, the name/number of the guidance document it replaces;

(6) The title of the guidance and the document identification number;

(7) Citation(s) to the statutory provision or regulation to which it applies or interprets;

(8) A disclaimer stating: “The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.”; and

(9) A short summary of the subject matter covered in the guidance document, at the top of the document.

#### § 813.6 Public access to and notification of effective guidance documents.

CSOSA and PSA will:

(a) Ensure that all effective guidance documents are:

(1) Identified by a unique identifier which includes, at a minimum, the document’s title and date of issuance or revision;

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(2) Located on its web portal in a single, searchable, indexed database; and

(3) Available to the public.

(b) Note on the agency web portal that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract.

(c) Maintain and advertise on its web portal a means for the public to comment electronically on any guidance documents that are subject to the notice and comment procedures and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents in accordance with § 813.9.

#### § 813.7 Definition of “significant guidance document”.

For purposes of this part, “significant guidance document” means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

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

(b) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

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

(d) To raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866, as further amended.

#### § 813.8 Significant guidance documents.

(a) Though not legally binding, some agency guidance may result in a substantial economic impact. For example, the issuance of agency guidance may induce private parties to alter their conduct or conform to recommended standards of practices, thereby incurring costs beyond the

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costs of complying with existing statutes and regulations.

(b) If there is a reasonable possibility the guidance may be considered “significant” within the meaning of § 813.7 or if the Agencies are uncertain whether the guidance may qualify as such, the Agencies must receive OMB’s Office of Information and Regulatory Affairs (OIRA) approval before issuance, unless the Agencies and OIRA agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements.

(c) When an agency is assessing or explaining whether it believes a guidance document is significant, it should, at a minimum, provide the same level of analysis that would be required for a major determination under the Congressional Review Act.<sup>1</sup>

(d) The following will apply to significant guidance documents:

(1) A period of public notice and comment of at least 30 days before the issuance of a final guidance document, and a public response from the Agencies to major concerns raised in comments. If the Agencies, for good cause, find that the notice and public comment are impracticable, unnecessary, or contrary to the public interest, then

no period of public comment will be provided, with notification and consultation with OIRA;

(2) Approval by the respective Agency Director;

(3) Review by OIRA under Executive Order 12866 before issuance;

(4) Compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 13609 (Promoting International Regulatory Cooperation), E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs), and E.O. 13777 (Enforcing the Regulatory Reform Agenda).

### **§ 813.9 Petitions for withdrawal or modification of guidance.**

Any person may petition CSOSA or PSA to withdraw or modify a particular guidance document. A person may make a request by accessing the respective agency guidance web portal or by writing a letter to the respective Agencies. The Agencies’ portals allow an individual to provide his or her contact information and guidance-related requests. The Agencies will respond in a timely manner, but no later than 90 days after receipt of the request.

## **PARTS 814–899 [RESERVED]**

<sup>1</sup>See OMB Memorandum M–19–14, Guidance on Compliance with the Congressional Review Act (April 11, 2019).