

§ 2509.12

involved in issuing CNCS guidance documents on or after April 28, 2020.

(b) For the purposes of this subpart, “guidance document” means any statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statute, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include:

(1) Legislative rules promulgated under 5 U.S.C. 553 (or similar statutory provisions), or exempt from rule-making requirements under 5 U.S.C. 553(a);

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

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

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

(5) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions, notices regarding particular locations or facilities, and correspondence with individual persons or entities, except documents directed to a particular party and designed to guide the conduct of the broader regulated public;

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

(7) Agency statements that do not set forth for the first time a new regulatory 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;

(8) Grant solicitations and awards;

(9) Contract solicitations and awards; or

(10) Purely internal agency policies or guidance directed solely to CNCS employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

45 CFR Ch. XXV (10–1–24 Edition)

§ 2509.12 What should I do if a guidance document is covered by this subpart?

(a) All CNCS guidance documents require review and clearance in accordance with this subpart.

(b) Guidance proposed by CNCS must be reviewed by the Office of General Counsel (OGC) and cleared by the General Counsel or his/her designee.

(c) Additional reviews by other CNCS officials are also conducted as described in CNCS Policy 100—Preparing Policies and Procedures and Policy 103—Clearing Controlled Correspondence and Other Documents with the Board, Chief Executive Officer, and Chief of Staff, or subsequent updates or revisions to those policies.

§ 2509.14 What is the purpose of the review and clearance procedure?

CNCS’s guidance issuance process shall ensure that each proposed guidance document satisfies the following requirements:

(a) The guidance document complies with all relevant statutes and regulations (including any statutory deadlines for Agency action);

(b) The guidance document identifies or includes:

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

(2) The issuing CNCS responsible office name;

(3) A unique identifier, including, at a minimum, the date of issuance and title of the document and its regulatory identification number (RIN), if applicable;

(4) The activity or entities to which the guidance applies;

(5) Citations to applicable statutes and regulations;

(6) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(7) A short summary of the subject matter covered in the guidance document at the top of the document;

(c) The guidance document avoids using mandatory language, such as “shall,” “must,” “required,” or “requirement,” unless the language is describing an established statutory or

regulatory requirement or is addressed to CNCS employees and will not foreclose CNCS's consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) All guidance documents should include the following disclaimer prominently in each guidance document: "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." When CNCS's guidance document is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, CNCS will modify the disclaimer above to reflect either of those facts.

§ 2509.16 How will CNCS make guidance documents available to the public?

CNCS shall:

(a) Ensure all effective guidance documents, identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision and its RIN, if applicable, are on its website in a single, searchable, indexed database, and available to the public in accordance with § 2905.16;

(b) Note on its website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract; and

(c) Publish on its website where the public can comment electronically on any guidance documents that are subject to the notice-and-comment procedures described in § 2509.22 and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents.

(d) Guidance documents that do not appear on the Agency's single, searchable, indexed database are rescinded.

§ 2509.18 What procedures apply to guidance documents identified as "significant"?

(a) OGC review of proposed guidance documents will include a preliminary

determination as to whether the proposed guidance document is significant within the meaning of § 2509.20. Unless exempt, each proposed guidance document determined to be significant must be approved by the Chief Executive Officer before issuance. In such instances, CNCS will:

(1) Obtain a RIN to report what CNCS is planning to issue;

(2) Coordinate the guidance document with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) for the interagency review, final significance determination, and clearance; and

(3) Coordinate internal review and clearance of the guidance document before submitting it to the Chief Executive Officer for approval, consistent with CNCS Policy 103.

(b) If the guidance document is determined to be significant under § 2509.20, CNCS may proceed with publication in the FEDERAL REGISTER. For each significant guidance document, the originating CNCS office should include a statement in the clearance memorandum indicating that the guidance document has been reviewed and cleared in accordance with this section.

§ 2509.20 What is a "significant" guidance document?

(a) The term "significant guidance document" means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(1) 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;

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

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

(4) To raise novel legal or policy issues arising out of legal mandates,