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Commerce Department Issues Proposed Rule on U.S. Industrial Base Surveys

On March 3, 2015, the U.S. Commerce Department's Bureau of Industry and Security ("BIS") published a proposed rule that will codify its existing policies and procedures with regard to U.S. industrial base surveys. The Commerce Department has administered surveys to gather information on the U.S. industrial base since the mid-1980s, but has not previously promulgated regulations on its information collection policies and procedures. BIS analyzes survey responses in order to support domestic industry and formulate policy guidance for U.S. national defense priorities. The proposed rule does not create any new obligations for U.S. industry, and is intended simply to facilitate compliance with future surveys. We have summarized below the most salient aspects of the proposed rule.

BIS is empowered to conduct U.S. industrial base surveys pursuant to the Defense Production Act of 1950, as amended ("DPA"), and Executive Order 13603 of March 16, 2012. The proposed rule outlines BIS' policies and procedures relating to the following aspects of these surveys:

- scope and purpose of surveys
- confidentiality of information contained in survey responses
- extensions of time and exemptions from compliance with surveys
- consequences of failure to comply with a survey
- definitions of certain key terms

As required by the DPA, and consistent with its current practice, BIS will keep information provided in survey responses confidential. In addition (although BIS acknowledges that it may be redundant), responding parties may request that BIS keep their information confidential. BIS may only disclose information if it "determines that withholding the information is contrary to the interest of the national defense."

The proposed rule makes clear that BIS will ensure that the scope and purpose of surveys comport with its mandate under the DPA. Also, BIS will not request information that it has already received from government or other authoritative sources. The proposed rule does not modify the scope of topics on which BIS may collect information.

Survey recipients may request an extension of time to provide a response or an exemption from responding, and the proposed rule delineates the procedure that a recipient must follow to request an extension or exemption. It is important to note that any request for an extension or exemption does not

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excuse a party from submitting a response to BIS before the survey deadline. Generally, BIS will grant an extension or exemption only in "limited" circumstances. Moreover, an entity may not avoid compliance based on a nondisclosure agreement. Any failure to comply with a BIS survey may result in civil or criminal penalties.

Finally, the proposed rule contains definitions that reflect BIS' broad authority under the DPA to request information from a wide variety of private, commercial, and governmental entities if BIS determines that an entity may have information relevant to a survey topic. A supplement to the proposed rule will contain additional information for survey recipients relating to particular surveys and their administration.

Interested parties may submit comments on the proposed rule until May 4, 2015. If you have any questions regarding the proposed rule or how it may affect your business, please reach out to the contacts listed below.

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Authors & Contacts:

Washington, D.C.

Hon. Mario Mancuso	+1.202.639.7055	mario.mancuso@friedfrank.com
Michael Gershberg	+1.202.639.7085	michael.gershberg@friedfrank.com

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