

***Ex Parte* Contacts in Rulemaking**

- An *ex parte* contact is an oral or written communication on the substance of an agency proceeding, not on the public record, between an agency and a person or group who is either a party to, or has an interest in, an official agency proceeding, and to which reasonable prior notice to all parties or interested persons has not been given.
- Only those contacts between an agency and an individual or group that both: 1) concern the merits or substance of a proceeding; and 2) are not made on the public record (i.e., that are made outside the normal hearing or public comment processes) are *ex parte* communications.¹
- To maintain consistency, all outside parties seeking to communicate orally to Department of Commerce personnel participating in the decision on the rule regarding its substance should be referred to one central point of contact within the Department of Commerce. Other interested agencies within the Executive branch should be directed to refer outside parties to the same central point of contact.
- Oral communication on the substance of a rulemaking should be discouraged. An outside party seeking to provide substantive oral comments to DoC respecting the merits of the rulemaking should be requested to provide a written record of their comments.
- Should DoC nonetheless receive oral communications that present substantive comments respecting the merits of the rulemaking from an outside party, a summary of the oral communication, written by DoC, should be placed promptly in a file available for public inspection. To the extent that summaries are utilized they should identify the source of the information.
- Meetings between DoC and non-Executive branch parties (outside parties) to discuss a pending rulemaking must be on the record. A summary of any meeting must be placed promptly in a file available for public inspection. This summary must include a description of arguments and information presented by the outside party to DoC.
- The purpose of any meeting held between DoC and outside parties should be to hear the views of the outside party concerning the rule. No outside party should be provided information not provided to all others or afforded an opportunity to exert undue influence over DoC's decisionmaking process.
- If meetings are held by DoC with any outside party while the rulemaking is pending, DoC must make every reasonable effort to meet with any other outside party who requests a similar opportunity.
- All written communications addressed to the merits of the rulemaking and received by DoC from an outside party should be placed promptly in a file available for public inspection.

¹An inquiry as to the status of proceeding, when a decision is expected, which office is handling the issue, or the like, would not be *ex parte* contacts, because these contacts do not involve the merits of the proceeding. Further, a substantive communication or meeting between the agency and an interested person or group would not be an *ex parte* contact provided the fact and nature of such interaction was included in the public record.