

additional report 96-2
see also 92-2

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Publication in the Federal Register of Interpretations of
General Applicability and Statements of General Policy

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Courts, agencies and commentators continue to wrestle with the distinction between substantive rules and regulations on the one hand and interpretative rules and general statements of policy on the other hand. The Administrative Procedure Act defines "rule" to mean "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy...." 5 U.S.C. 551 (4). Read literally, that definition is broad enough to encompass any agency statement on matters of law or policy. However, other provisions in the Administrative Procedure Act treat substantive rules separately from interpretative rules and general statements of policy. For example, section 553(b) (A) expressly exempts "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice" from the notice and comment requirements otherwise applicable to rule making. The provisions in what are now sections 553(b)-(d) that require an agency to afford notice of a proposed rule and the opportunity for public comment only apply "to substantive rules issued pursuant to statutory authority." Attorney General's Manual on the Administrative Procedure Act 30 (1947). Efforts by private parties to invalidate agency pronouncements on the ground that they ^{are} in reality substantive rules not properly promulgated under sections 553(b)-(d) have forced courts to struggle to define the exempted categories of interpretative and procedural rules and general statements of policy. See, e.g., Gardiner

v. Tarr, 341 F. Supp. (D.C.D.C. 1972), where the court held that the Selective Service Director's letter to all state directors and temporary instruction were substantive rules under the Administrative Procedure Act notwithstanding the contrary labels attached to them by the agency. While the Conference has not taken a formal position on these exemptions, a memorandum prepared for the Committee on Rule-Making and Public Information tentatively concluded that the current exemptions for interpretative rules and general statements of policy are probably justified. Bonfield, Some Tentative Thoughts on Public Participation in the Making of Interpretative Rules and General Statements of Policy under the A.P.A., 23 Ad. Law Rev. 101 (1971).

This distinction between substantive rules and interpretative rules or general statements of policy which is so important under the rule-making section of the Administrative Procedure Act (section 553) has little or no applicability under the public information section (section 552). Section 552(a)(1)(D) requires each agency to separately state and currently publish in the Federal Register for the guidance of the public not only its "substantive rules of general applicability adopted as authorized by law" but also "statements of general policy or interpretations of general applicability formulated and adopted by the agency." Likewise, sections 552(a)(2)(A)-(C) require each agency to make available for public inspection and copying and to index its final opinions in the adjudication of cases and its administrative staff manuals and instructions to its staff that affect a member of the public as well as "those statements of policy and interpretation which have been adopted by the agency and are not published in the Federal Register." This last provision logically applies to statements or interpretations of particular applicability that are not required to be published in the Federal

Register under section 552(a)(1)(D).

The number of general statements of policy or interpretations of general applicability that appear in the Federal Register is minuscule when compared with the quantity of substantive rules and regulations. The exact number is difficult to determine because general statements of policy and interpretative rules are not separately indexed, but it probably does not exceed ten or twenty per month. The SEC has a regular program of interpretative releases under the various acts which it administers. The releases are printed in the Federal Register and then listed but not reprinted in the Code of Federal Regulations. The FTC formerly published a significant number of interpretative industry guides and trade practice rules because its authority to issue substantive rules was unclear. Court decisions and new legislation have now recognized the Commission's power to promulgate substantive trade regulation rules and the Commission's rule making now takes that form. See proposed trade regulation rule on food advertising, 39 FR 39841 (Nov. 11, 1974). Both the CAB and the FPC have distinct parts in the Code of Federal Regulations reserved for policy statements and issue several new statements each year through publication in the Federal Register. The INS recently published its first policy statement that I have discovered in the Federal Register, 39 FR 40311 (November 19, 1974). That statement terminated a prior unpublished policy that seemingly conflicted with a published regulation.

The dearth of general statements of policy and interpretations of general applicability in the Federal Register is not necessarily harmful. The Conference has favored the articulation of agency policy through informal rule-making where there is public notice and an opportunity for public participation.

(1) National Petroleum Refiners Ass'n. v. FTC, 482 F2d 672 (D.C. Cir. 1973)

(2) Federal Trade Commission Improvement Act, Pub. Law 93-637

See ACUS Recommendation 16 on the elimination of the exemptions for public property loans, grants, benefits or contracts from the APA rule-making requirements. Interpretative releases and general statements of policy should only be resorted to when more formal rule-making is not feasible. ACUS Recommendation 19 on SEC No-Action Letters reached that conclusion in the context of SEC policy-making on the question when sales of unregistered stock might violate the Securities Act of 1933. To the extent that agencies articulate their policies through rule making, the comparative dearth of general statements of policy and interpretations of general applicability appearing in the Federal Register is of no consequence.

The lack of general statements of policy and interpretative rules of general applicability appearing in the Federal Register may be due to other causes. For instance, agencies have, with one major exception, taken advantage of the Attorney General's interpretation of Sec. 552 that "an agency is not required under subsection (a) to publish in the Federal Register the rules, policies, and interpretations formulated and adopted in its published decisions. Instead, this 'case law' is to be made available under subsection (b)!"⁽¹⁾

Attorney General's Memorandum on the Public Information Section of The Administrative Procedure Act 10(1967) (quoting House Report at 7). The major exception is the FTC which publishes its cease and desist orders (both contested and adjudicated) in the Rules and Regulations Section of the Federal Register and then digests but does not reprint the orders in the Code of Federal Regulations. The FTC also publishes in the Federal Register and in the Code of Federal Regulations Administrative Opinions and Rulings of an advisory nature,

(1) The numbering of the subsections has changed since 1967. "Subsection (a)" is now designated (a)(1), while "subsection b" is now designated (a)(2).

but the number of these advisory opinions appearing in recent years has greatly declined. Other agencies like the NLRB which articulate their policies primarily through adjudication publish practically nothing in the Federal Register or the Code of Federal Regulations.

Professor Davis forcefully attacks the Attorney General's interpretation of Section 552(a)(1) and argues that at least some adjudicatory decisions (e.g. the NLRB's adoption of a 3 year contract bar rule in the General Cable case) contain general statements of policy and interpretations of general applicability that must be published in the Federal Register under that section. Davis, Administrative Law Treatise 126-127 (1970 Supp). While Professor Davis's logic may be compelling, a matter of potentially far greater concern is an agency's failure to articulate policy at all or failure to make public a policy or interpretation it has adopted. Agency policies articulated in adjudicatory proceedings normally do not constitute secret law because agency decisions must be made available for public inspection and copying and indexed in accordance with the provisions of section 552(a)(2)(A). Under the 1974 amendments to the Public Information section of the Administrative Procedure Act, agencies must publish and distribute current indexes at least quarterly except where such frequent publications would be unnecessary and impracticable. Case law therefore does provide some guidance to interested persons, which does not occur if agency policies or interpretations are unarticulated or unpublished.

The overall absence of general statements of policy and interpretations of general applicability in the Federal Register therefore prompts at least three questions: First, what are general statements of policy and interpretations of general applicability? Second, why do agencies publish so few of them?

Third, should agencies be encouraged to publish more of them? The Committee on Rule Making initially studied this problem in 1971 and favored agency articulation of broadly applicable standards through the use of public procedures in which interested persons are given adequate opportunity to participate (i.e. through informal rule making). Committee on Rule-Making, Recommendation C: Articulation of Agency Policies and Procedures for Participation by Interested Persons, April 19, 1971. The full Conference, however, went no further than to recommend the articulation of agency policy "through published decisions, general rules or policy statements other than rules." ACUS Recommendation 71-3. This recommendation recognized the need for articulated policy to inform and guide the public but did not directly concern itself with how those policies were to be articulated.

Interpretations of General Applicability The most frequently quoted definition of an interpretative rule appears in Gibson Wine Co. v. Snyder:

"Generally speaking, it seems to be established that 'regulations', 'substantive rules' and 'legislative rules' are those which create law, usually implementary to an existing law; whereas interpretative rules are statements as to what the administrative officer thinks the statute or regulation means." 194 F2d 329,331 (D.C.Cir. 1952).

Perhaps the most distinctive feature of interpretative rules is their lack of binding effect in subsequent administrative and judicial proceedings. Both the validity and the correctness of interpretative rules are subject to future challenge, although a reviewing court may often give considerable weight to an agency's interpretation of its operative statute or of its own regulations. Skidmore v. Swift & Co., 323 U.S. 134 (1944). In National

Ass'n. of Insurance Agents v. Board of Governors of the Federal Reserve System, 489 F2d 1268 (D.C. Cir 1974), for example, the court categorized the Board's statement on the range of insurance activities permissible for one-bank holding companies as an unreviewable interpretative rule but made clear that the insurance agents could direct "particularized challenges" to the merits of the Board's interpretation in pending application proceedings initiated by bank holding companies. Accord, American Bancorporation, Inc. v. Board of Governors of Federal Reserve System 509 F2d 29 (8th Cir. 1974). In Insurance Agents, the Board's statement interpreted the Board's previously promulgated regulation on permissible insurance activities; and the statement itself was published in the Federal Register, 37 FR 18520 (September 12, 1972), and codified in 12 CFR 225.128. The interpretative rule in American Bancorporation took the form of an amendment to an existing regulation on the acquisition by bank holdings of companies engaged in advising state and local governments in financial matters; and the amendment itself was published in the Federal Register and codified as part of 12 CFR 225.4(a)(5). In both instances, therefore, the new or amended "rule" was published in the Federal Register in accordance with 5 U.S.C. 552 (a)(1)(D) but the agency did not afford public notice or opportunity to comment as provided by sections 553(b)-(d) prior to promulgating the rule.

The Board's approach appears justifiable in both cases. In the Insurance Agents case, the Board had already engaged in notice and comment rule-making on permissible insurance activities for bank holding companies and the Board's statement, couched in language such as "the Board will generally regard," simply gave the Board's views on interpretative difficulties in applying the regulation to particular fact patterns. While the amendment in the American Bancorporation case is more substantive in appearance, the court

characterized the agency's narrowed view of the language of the original regulation as making "explicit what was implicit under that regulation." 509 F2d at 34.

A more questionable use of an interpretative regulation occurred in Eastern Kentucky Welfare Rights Organization v. Simon, 506 F2d 1278 (D.C.Cir. 1974).⁽¹⁾ The court there upheld on the merits Revenue Ruling 69-545 which allowed private non-profit hospitals to qualify as tax exempt charitable organizations under section 501(c)(3) of the Federal Revenue Code without requiring them to provide free or below cost treatment (except in emergency rooms) for individuals unable to pay for such services. The Commissioner promulgated Revenue Ruling 69-545 without affording any public notice or opportunity for comment. The ruling, like other Revenue Rulings, was not published in the Federal Register. The court upheld the Commissioner's interpretation of the term "charitable" in Section 501(c)(3) and excused his non-compliance with 5 U.S.C. 553(b)-(d) because the Revenue Ruling was an interpretative ruling with no independent binding effect on the courts unless "they chose to accept it as a proper interpretation of the meaning of the word 'charitable!'" 506 F2d at 1290. Notice and comment rule-making proceedings nevertheless seem strongly desirable for the promulgation of the policy articulated in Revenue Ruling 69-545 because that Ruling has a substantive impact on the availability of hospital services for the poor and because the Internal Revenue Service is not an expert in health care delivery needs but must be educated in that area. 506 F2d at 1291-92 (Wright J. dissenting).

With respect to Federal Register publication, Revenue Ruling 69-545 certainly appears to be an interpretation of general applicability that should

(1) Certiorari granted May 19, 1975.

be published in the Federal Register in accordance with Section 552(a)(1)(D). See Davis, Administrative Law Treatise 127 (1970 Supplement). Nevertheless, publication of Revenue Rulings in the Internal Revenue Service's Cumulative Bulletin affords adequate public notice, even though it may not technically be adequate under the Administrative Procedure Act. No court is likely to require the wasteful and duplicative publication of Revenue Rulings in the Federal Register. In Boesche v. Udall, 303 F.2d 204 (D.C. Cir. 1962), for example the court forgave the Secretary of the Interior's failure to publish in the Federal Register an interpretation of a regulation that had general applicability and legal effect for no apparent reason other than the imposition of any such rigid publication requirement "would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise." Id. at 206. This loose approach to the publication requirement is defensible only if it is limited to agencies that otherwise adequately make available and publicized their interpretations and policy statements.

General Statements of Policy. The Attorney General's Manual defined general statements of policy to mean "statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power." Attorney General's Manual on the Administrative

Procedure Act 30 n. 3 (1947). Once again the distinctive feature of a general statement of policy is its lack of binding effect. The Court of Appeals for the District of Columbia recently described a general statement of policy as follows:

"A general statement of policy is the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but it is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications. . . . It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy only announces what the agency seeks to establish as policy. A policy statement announces the agency's tentative intentions for the future. When the agency applies the policy in a particular situation, it must be prepared to support the policy just as if the policy statement had never been issued. An agency cannot escape its responsibility to present evidence and reasoning supporting its substantive rule by announcing binding precedent in the form of a general statement of policy." Pacific Gas & Electric Co. v. FPC, 506 F 2d 33, 38-39 (D.C. Cir. 1974) (footnotes omitted).

In Pacific Gas & Electric, the FPC had promulgated, without prior notice or opportunity for comment, a "Statement of Policy" expressing its views on curtailment priorities in pipeline sales of natural gas necessitated by the natural gas shortage. The Statement of Policy was published in the Federal Register, 38 FR 2171 (January 22, 1973), and duly codified in 18 CFR 2.78 with the Commission's previously issued Statements of Policy. The effect of the statement was to inform the public of the types of curtailment plans submitted by pipeline companies that would receive "initial and tentative FPC approval," but there was "no assurance" that any such plan would be finally approved. *Id.* at 40. No doubt the Statement of Policy facilitated private planning by pipeline companies and affected natural gas users by indicating what types of curtailment plans the Commission was

likely to approve. At the same time it did not restrict or bind the Commission in advance as would the more rigid format of a rule. The FPC's use of the general statement of policy technique seems justifiable.

A legislative or substantive rule, as opposed to a general statement of policy, "changes existing rights and obligations." Lewis-Mota v. Secretary of Labor, 469 F 2d 478, 482 (2d Cir. 1972). Thus, the Secretary of Labor's directive suspending the precertification list that exempted aliens in listed occupations destined for listed geographic areas from the requirement of showing a specific job offer was a legislative rule because it required aliens in the affected classes to submit proof of specific job offers as well as statements of their qualifications in order to obtain permanent resident visas. The directive was therefore an improperly promulgated legislative rule because no other exemption from the rulemaking provisions in sections 553(b)(d) was applicable and because the Secretary had not afforded public notice and opportunity for comment as required by those sections. See also Texaco Inc. v. FPC, 412 F.2d 740 (3rd Cir. 1969), where the court held that an FPC order establishing compound interest rates on refunds was a legislative rule affecting legal obligations and not a general statement of policy.

The Secretary of Labor's directive in Lewis-Mota also was not published in the Federal Register. The Court of Appeals did not resolve the publication issue, but the District Court, which had found the directive to be a general statement of policy exempt from the rulemaking requirements of sections

553(b)-(d) held that the directive was required to be published in the Federal Register under section 551 (a) (1) (A). Lewis-Mota v. Secretary of Labor, 337 F. Supp. 1289 (S.D.N.Y.), rev'd on other grounds, 469 F 2d 478 (2d Cir. 1972). Surprisingly, the District Court did not refer to the publication requirement in paragraph D of section 551(a) (1) applicable to statements of general policy but only to the publication requirement in paragraph A which relates to descriptions of agency organization and methods and which appears inapplicable to the case at hand. The District Court also held that Lewis-Mota and other alien applicants for permanent resident visas in the relevant class received "actual and timely notice of the terms" of the directive when the INS notified the applicants in writing of the suspension of the precertification list. The "sanction" in the concluding paragraph of section 552(a) (1) that no person "be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published" was therefore inapplicable. The District Court's holding on the timeliness of the actual notice is very questionable because the actual notice came long after the promulgation of the directive and delayed efforts by the affected aliens to solicit job offers.

Another more serious problem on the applicability of any sanction for the non-publication of statements of general policy derives from the non-binding effect of such statements. In Airport Commission of Forsyth County v. CAB, 300 F 2d 185 (4th Cir. 1962), the CAB and FAA issued but did not publish in the Federal Register a joint press release favoring single

airports for adjacent communities. The CAB later ordered consolidated service at a single airport for a tri-city area in North Carolina. The aggrieved loser, challenged the order as based on an unpublished statement of general policy. The court assumed that the press release was a statement of general policy required to be published in the Federal Register but held that the petitioners suffered no injury since they were not "required to resort to" or "adversely affected by" the unpublished press release. The so-called policy or pronouncement did not operate in and of itself to deny any rights to the petitioners because the Board did not attempt to apply the policy statement as a rule of law but based its decision on "substantial and extensive record evidence." 300 F 2d at 188. While the Court's approach is consistent with the reasoning of the court in Pacific Gas & Electric that the agency in adjudicatory and rulemaking proceedings must be prepared to defend any policy in a prior policy statement just as if the statement had never been issued, it pays too little attention to the impact of policy statements. An airport official unaware of the Board's policy pronouncement is adversely affected in overall airport planning and in preparation for any adjudicatory proceedings. The problem of the sanction is nevertheless a real one, and it is unlikely that the courts will impose any sanctions for the non-publication of a statement of general policy so long as the agency does not treat the statement as a rule or precedent.

Another approach to general statements of policy is to treat them as "rules directed primarily at the staff of an agency describing how it will conduct agency discretionary functions, while other [substantive] rules are directed primarily at the public in an effort to impose obligations on them." Bonfield, *Some Tentative Thoughts on Public Participation in the Making of Interpretative Rules and General Statements of Policy under the A.P.A.*, 23 Ad.L. Rev. 101,115 (1971). Under this characterization administrative staff manuals are likely to contain many general statements of policy. This approach seems most apt in agencies where lower and middle level personnel enjoy large amounts of discretionary and informal adjudicatory powers and need to be "educated" by the policy-makers at the top of the agency. For example, in Noel v. Chapman, 508 F 2d 1023 (2d Cir. 1975), the INS "instructed" its District Directors that Western Hemisphere aliens should not be routinely granted extended departure times but rather should be offered that privilege only in those cases where compelling circumstances warranted that relief. No public notice or opportunity for comment preceded the issuance of the instruction, and the instruction itself was not published in the Federal Register. The court viewed the instruction as a statement by the agency of its general policy to serve as a guideline for District Directors who still retained their discretionary powers under 8 CFR 244.2 to extend the time of deportation. The instruction was therefore exempt from the rulemaking provisions of sections 553 (b)-(d) but not necessarily from the publication requirement

of section 552(a)(1)(D). The court acknowledged the contention of the plaintiff aliens that the statement of general policy had not been published in the Federal Register and that they did not have actual notice of it and then cited United States v. Aarons, 310 F 2d 341 (2d Cir. 1962), where the court had recognized that unpublished substantive rules could not be enforced against persons who did not have actual knowledge of them. The court nevertheless refused, without any explanation, to afford the plaintiffs any remedy for the non-publication of the general statement of policy. The facts of the case are complex and not fully developed in the court's opinion, and it is very possible that the plaintiffs were not adversely affected or prejudiced by the unpublished instruction.

Appropriateness of Interpretations of General Applicability and General Statements of Policy. The above survey indicates that in at least some circumstances it is appropriate for an agency to articulate its policy through interpretations of general applicability and general statements of policy. Agencies that lack substantive rule-making powers have no choice but to issue interpretative rules. Even if an agency has rule-making powers, it is appropriate for the agency to issue interpretative releases on matters of detail or clarification once the agency has resolved major policy issues through rule-making procedures where there is an opportunity for public participation. General statements of policy, on the other hand, may involve many major policy issues, but the agency's position on those issues is of a tentative or interim nature. The agency is disclosing its present thinking on the matter but awaits further "education" in subsequent rulemaking or adjudicatory proceedings before it makes up its mind. Under this approach, the operative life of a general statement of policy should be

reasonably short. However, some agencies also use general statements of policy for more long range purposes to articulate policies which they wish to operate as guidelines but not to bind the agency in subsequent proceedings. For example, the CAB's longstanding "use or lose it" policy which "expects" cities awarded subsidized local carrier service to generate a minimum volume of passenger traffic appears only as a policy statement in 14 CFR 399.11. In many such instances the use of notice and comment rule making may be a more appropriate approach in order to afford some opportunity for public input in policy formation. There is no necessity for the rule which is the outcome of the proceeding to be stated in mandatory terms.

Within the above parameters, agencies should articulate their policies through interpretations of general applicability and statements of general policy. To do this agencies should either articulate policies in this fashion where they have not articulated policy before or, as is more likely to be the case, should treat amendments to staff manuals and internal directives that articulate general interpretations and policies as interpretations of general applicability or statements of general policy. In both instances the general interpretations or statements should be published in the Federal Register in accordance with section 552(a)(1)(D). Perhaps the Federal Register should designate a special section for these items. In this way important materials that at present may be hidden away in staff manuals and internal directives will see the light of day through Federal Register publication. Agencies should not be significantly prejudiced by

complying with this recommendation because they are not bound by interpretations of general applicability and statements of general policy and because direct judicial review of the interpretations or statements is normally not available.¹

Critics of hidden law contend that much material in staff manuals and internal directives should really be in regulation form. The public should not only be aware of the policies contained therein but should have an opportunity to participate in their formulation and the resulting rule should be treated as binding by the agency. This conclusion certainly seems correct for the material on mining claims in the Bureau of Land Management's Manual so intensively surveyed by Professor Straus in *Rules, Adjudications and Other Sources of Law in an Executive Department: the Interior Department's Administration of the Mining Law*, 74 *Col. L. Rev.* 1231, 1236-44 (1974). It also seems true with respect to the "on the reservation" eligibility requirement for welfare benefits in the Bureau of Indian Affairs Manual which the Supreme Court invalidated in *Morton v. Ruiz*, 415 U.S. 197 (1974). Justice Blackmun's confusing and little noticed opinion in *Ruiz* categorized the eligibility requirement as a legislative-type rule which should have been published in the Federal Register in accordance with

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Direct judicial review of an interpretative ruling was granted in *Eastern Kentucky Welfare Rights Organization v. Simon*, 506 F.2d 1278 (D.C. Cir. 1974), but in that case no subsequent challenge to the application of the interpretation was possible since taxpayers would naturally take advantage of the liberalized definition of "charitable" hospital in claiming tax deductions.

section 551(a)(1)(D), even though it was exempt from the rule-making provisions in sections 553(b)-(d). Encouraging agencies to publish in the Federal Register interpretations of general applicability and general statements of policy nevertheless seems desirable because once the material surfaces in the Federal Register it will at least focus attention on the related issue whether it should appear in regulation form.

Section 552(a)(1)(D) only requires that an agency publish in the Federal Register interpretations of general applicability and statements of general policy. Under section 552(a)(2)(B), an agency must make available and index "those statements of policy and interpretation which have been adopted by the agency and are not published in the Federal Register." The legislative history is not enlightening on the distinction between those policy statements and interpretations that must be published and those that must be made available and indexed, but the logical dividing line seems to be between statements and interpretations of general applicability that must be published and those of particular applicability that need only be made available and indexed. Tax Analysts and Advocates v. IRS, 362 F.Supp 1298, 1303-4 (D.C.D.C. 1973), affd. 505 F 2d 350 (D.C. Cir. 1974). Thus, advisory opinions and interpretative rulings in particular cases need not be published in the Federal Register even if the agency recognizes them as precedents. Professor Davis argues to the contrary and contends that the natural distinction between what must be published and what must be made available as

"use or non-use" as precedent. Davis, Administrative Law Treatise 130 (1970 Supp.). This approach is not clearly compelled by the statute and its implementation would swamp the Federal Register. Professor Davis's approach to the publication of statements of general policy and interpretations of general applicability that appear in adjudicatory decisions is more sensible and should be followed here also. There Professor Davis argues that some policy statements and interpretations should be published and some should not be. Statements or interpretations such as the NLRB's enlargement of the contract bar rule from two or three years are "general" and should be published because of "the legislative quality of such statements and interpretations." Davis, Administrative Law Treatise 125 (1970 Supp.). A similar test should preclude the publication in the Federal Register of particular interpretative rulings or advisory statements that have precedential significance but lack any general or "legislative" quality.