



Recommendation 76-5

Interpretive Rules of General Applicability and Statements of General Policy

(Adopted December 9-10, 1976)

Agencies often explain their view of the meaning of statutes or rules by issuing interpretive rules of general applicability, and agencies indicate how they will exercise discretion by announcing statements of general policy. The Administrative Procedure Act requires that these interpretive rules and policy statements be published in the Federal Register. But the Act does not require that interested persons be given advance notice and opportunity to comment upon interpretive rules and policy declarations. Courts, however, have occasionally imposed that requirement.

At times policy statements and interpretive rules are barely distinguishable from substantive rules for which notice and comment is required. For that and other reasons many agencies have often utilized the notice-and-comment procedures set forth in section 553 of the Act, without regard to whether their pronouncements fall into one category or another. This is, in general, beneficial to both the agencies and potentially affected elements of the public. Providing opportunity for comment upon interpretive rules and policy statements of general applicability, sometimes before and sometimes after their adoption, makes for greater confidence in and broader acceptance of the ultimate agency judgments. The following recommendations look toward wider voluntary adoption of such procedures by the agencies. Nothing here proposed would in any event alter the existing provisions of Administrative Procedure Act section 553(e), allowing any person to petition at any time for the amendment or repeal of a rule, including an interpretive rule or a statement of general policy. Moreover, the recommended procedures are not intended to apply to interpretations or policies set forth in opinions in formal or informal adjudications.

Recommendation

1. Before an agency issues, amends, or repeals an interpretive rule of general applicability or a statement of general policy which is likely to have substantial impact on the public, the agency normally should utilize the procedures set forth in Administrative Procedure Act subsections 553(b) and (c), by publishing the proposed interpretive rule or policy statement in the Federal Register, with a concise statement of its basis and purpose and an invitation to



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interested persons to submit written comments, with or without opportunity for oral presentation. If it is impracticable, unnecessary, or contrary to the public interest to use such procedures, the agency should so state in the interpretive rule or policy statement, with a brief statement of the reasons therefor.

2. Where there has been no pre-promulgation notice and opportunity for comment, the publication of an interpretive rule of general applicability or a statement of general policy, even one made effective immediately, should include a statement of its basis and purpose and an invitation to interested persons to submit written comments, with or without opportunity for oral presentation, within a following period of not less than 30 days. The agency should evaluate the rule or statement in the light of comments received. Not later than 60 days after the close of the comment period, the agency should indicate in the Federal Register its adherence to or alteration of its previous action, responding as may be appropriate to significant comments received. An agency may omit these post-adoption comment procedures when it incorporates in the interpretive rule or policy statement a declaration, with a brief statement of reasons, that such procedures would serve no public interest or would be so burdensome as to outweigh any foreseeable gain.

Citations:

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