



Agency Guidance

Committee on Judicial Review

Proposed Recommendation | December 14, 2017

Proposed Amendments

This document displays manager’s amendments (with no marginal notes) and additional amendments from Council members and Conference members (with sources shown in the margin).

1 General statements of policy ~~as defined~~ under the Administrative Procedure Act
2 (hereinafter policy statements) are agency statements of general applicability, ~~not binding on~~
3 ~~members of the public,~~ “issued . . . to that advise the public prospectively of the manner in
4 which the agency proposes to exercise a discretionary power.”¹ Interpretive rules are defined as
5 ~~rules or~~ “statements issued by an agency to advise the public of the agency’s construction of the
6 statutes and rules which it administers.”² Both policy statements and interpretive rules are
7 exempt from the APA’s requirements for the issuance of legislative rules that legally bind the
8 public (including notice and comment),³ and are often referred to as “guidance” or “guidance
9 documents” (although usage varies). This Recommendation, ~~however, covers only policy~~
10 ~~statements, not interpretive rules; nevertheless, many of the recommendations herein regarding~~
11 ~~flexible use of policy statements may also be helpful with respect to agencies’ use of interpretive~~
12 ~~rules applies to both kinds of guidance.~~

13 Over the years, the Conference has issued several recommendations pertaining to policy
14 statements. Recommendation 76-5 states that agencies should provide for public participation in
15 the formulation of policy statements ~~(and of interpretive rules)~~ depending on the impact of the

Commented [CMA1]: Proposed amendment from Ron Levin 1

Ron Levin proposes expanding the scope of the recommendation to include interpretive rules. If the Assembly agrees, Ron has proposed two sets of changes to effectuate his proposal. The first set consists of minor substantive changes noted in this redline. The second set would require replacing the term “policy statement” with “guidance” or “guidance document” throughout the recommendation (except in a few select instances). The Committee on Style will make the second set of changes if the Assembly adopts Ron Levin’s proposal.

From Ron Levin: As a sizable minority of the Committee on Judicial Review would have preferred, the recommendation should apply to interpretive rules as well as policy statements. The committee’s proposed limitation to policy statements would put ACUS out of line with every group that has addressed the same topic in the past 25 years, including the ABA, FDA, OMB, and DOJ, and even Congress (which ratified the FDA procedures). Agency personnel themselves tend to think of and treat guidance as a single form of action, whether interpretive- or policy-based – as the committee’s proposed title for the recommendation tacitly acknowledges. Most importantly, the committee’s distinction is highly artificial. Policy and interpretation are closely intertwined, and the policies underlying the recommendation apply to interpretive rules as well as policy statements. For a full explanation of the rationale for the amendment, please see my 12.11.2017 memo posted on the project webpage: <https://www.acus.gov/member-comment/december-11-2017-comment-ron-levin-interpretive-rules-amendment>

Commented [CMA2]: Proposed amendment from Ron Levin 2

Commented [CMA3]: Proposed amendment from Ron Levin 1

Commented [CMA4]: Proposed amendment from Ron Levin 1

¹ ATTORNEY GENERAL’S MANUAL ON THE ADMINISTRATIVE PROCEDURE ACT 30 n.3 (1947).

² *Id.*

³ 5 U.S.C. § 553(b)(A).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

16 statement in question and the practicability of participation.⁴ Recommendation 92-2 recognizes
17 the value of policy statements but expresses concern about policy statements “that are intended
18 to impose binding substantive standards or obligations upon affected persons” notwithstanding
19 the legal requirement that they be nonbinding on the public, and it advises agencies to establish
20 flexible procedures that allow members of the public a fair opportunity to argue for approaches
21 different from those set forth in a policy statement.⁵ The Conference has now
22 ~~determined/decided~~, twenty-five years after Recommendation 92-2, to update its
23 recommendations on the formulation and use of policy statements in light of current
24 administrative experience.⁶ In contrast to Recommendation 92-2, this recommendation applies
25 to both policy statements and interpretive rules. This broader coverage is in line with more
26 recent pronouncements of other governmental bodies⁷ and is justified by similarities in the
27 benefits and challenges that the two types of guidance present for agencies and members of the
28 public.

Commented [CMA5]: Proposed amendment from Ron Levin 1

29 Policy statements are important instruments of administration across numerous agencies,
30 and of great value to agencies and the public alike. Compared with adjudication or enforcement,
31 policy statements can make agency decisionmaking faster and less costly, saving time and
32 resources for the agency and the regulated public. They can also make agency decisionmaking
33 more predictable and uniform and shield regulated parties from unequal treatment, unnecessary

⁴ Admin. Conf. of the U.S., Recommendation 76-5, *Interpretive Rules of General Applicability and Statements of General Policy*, 41 Fed. Reg. 56,769 (Dec. 30, 1976). Additional prior Conference Recommendations pertaining to policy statements and agency guidance more broadly, apart from others referenced specifically in this preamble, include Recommendation 2015-3, *Declaratory Orders*, 80 Fed. Reg. 78,163 (Dec. 4, 2015); and Recommendation 2014-3, *Guidance in the Rulemaking Process*, 79 Fed. Reg. 35,992 (June 25, 2014).

⁵ Admin. Conf. of the U.S., Recommendation 92-2, *Agency Policy Statements*, 57 Fed. Reg. 30,103 (July 8, 1992).

⁶ The Conference commissioned a study that resulted in interviews with 135 individuals across agencies, industry, and NGOs, which are the basis for this Recommendation. See Nicholas R. Parrillo, *Federal Agency Guidance: An Institutional Perspective* (Oct. 12, 2017) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/agency-guidance-final-report>.

⁷ See, e.g., Office of Mgmt. & Budget, Exec. Office of the President, *Final Bulletin for Agency Good Guidance Practices*, 72 Fed. Reg. 3432, 3436 (Jan. 25, 2007); 21 C.F.R. § 10.115 (2017) (FDA); see also 21 U.S.C. § 371(h)(1)(B) (2012) (ratifying FDA procedures) (“[G]uidance documents shall not be binding on the Secretary”).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

34 costs, and unnecessary risk, while promoting compliance with the law.⁸ Compared with
35 legislative rules, policy statements are generally better for dealing with conditions of uncertainty
36 and often for making agency policy accessible, especially to regulated parties who lack counsel.
37 Further, the provision of policy statements often takes less time and resources than legislative
38 rulemaking, freeing up the agency to, for instance, take other action within its statutory mission.
39 In pursuit of benefits such as these, agencies may use policy statements to bind some agency
40 employees to the approach of the policy statement,⁹ so long as such employees are not bound in a
41 manner that forecloses a fair opportunity for the public and/or employee to argue for approaches
42 different from that in the policy statement or seek modification of the policy statement.¹⁰

Commented [CA6]: Proposed amendment from Council 1

43 Despite their usefulness to both agencies and the public, policy statements are sometimes
44 criticized for coercing members of the public as if they were legislative rules, notwithstanding
45 their legally nonbinding status. Recommendation 92-2 defined this problem in terms of an
46 agency's intent to use such-policy statements to bind the public, which may imply that the
47 problem is one of official-agency bad faith. While official-agency intent to make a policy
48 statement binding, if shown, would deserve criticism and correction, a focus on intent is often
49 inadequate for understanding and addressing the phenomenon of binding policy statements.

50 There are several kinds of reasons why members of the public sometimes find they have
51 no practical escape from the terms of a policy statement. First are those that are not of the

⁸ See *id.* at 28-30; see also Admin. Conf. of the U.S., Recommendation 71-3, *Articulation of Agency Policies*, 38 Fed. Reg. 19,788 (July 23, 1973) (“Agency policies which affect the public should be articulated and made known to the public to the greatest extent feasible. To this end, each agency which takes actions affecting substantial public or private interests, whether after hearing or through informal action, should, as far as is feasible in the circumstances, state the standards that will guide its determination in various types of agency action, either through published decisions, general rules or policy statements other than rules.”).

⁹ See Recommendation 92-2, *supra* note 5; Office of Mgmt. & Budget, Exec. Office of the President, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432, 3436 (Jan. 25, 2007) (“[A]gency employees should not depart from significant agency guidance documents without appropriate justification and supervisory concurrence.”); *id.* at 3437 (“[W]hile a guidance document cannot legally bind, agencies can appropriately bind their employees to abide by agency policy as a matter of their supervisory powers over such employees without undertaking pre-adoption notice and comment rulemaking.”).

¹⁰ See Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. at 3440. ~~For example, a policy statement could bind officials at one level of the agency hierarchy to the approach in the policy statement, with the proviso that officials at a higher but still accessible level can authorize action at variance with the statement.~~



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

52 making of an agency or its ~~officials and do not depend primarily on whatever intent the officials~~
53 ~~may have~~. Specifically, modern regulatory schemes often have structural features that tend to
54 lead *regulated parties* to follow the policy statement’s approach even if in theory they might be
55 legally free to choose a different course, because the costs and risks associated with doing so are
56 simply too high. This is often the case if statutes or regulations (a) require a regulated party to
57 obtain prior approval from an agency to obtain essential permissions or benefits; (b) subject a
58 regulated party to repeated agency evaluation under a legal regime with which perfect
59 compliance is practically unachievable, incentivizing the party ~~to seek~~ to cultivate a reputation
60 with the agency as a good-faith actor by following even non-binding guidance; or (c) subject the
61 regulated party to the possibility of enforcement proceedings that entail prohibitively high costs
62 regardless of outcome, or can lead to sanctions so severe that the party will not risk forcing an
63 adjudication of the accusation. Meanwhile, a policy statement can operate on *beneficiaries* of a
64 statute or legislative rule as if it were a legislative rule by effectively depriving them of the
65 statute or legislative rule’s protection. This can occur if the policy statement promises to treat
66 regulated parties less stringently than the statute or legislative rule requires, effectively freeing
67 those parties to shift their behavior in a direction that harms beneficiaries. ~~Similarly, in its focus~~
68 ~~on beneficiaries and regulated parties, an agency policy statement may induce conduct harmful~~
69 ~~to third parties.~~

Commented [CA7]: Proposed amendment from Council 2

70 Second, there are a number of reasons why agencies themselves may naturally tend to be
71 somewhat inflexible with respect to their own policy statements. Even though these reasons are
72 more within an agency’s or its officials’ control than the earlier set, this lack of flexibility may
73 often stem from causes other than ~~bad faith agency intent~~. Officials who behave inflexibly may
74 be seeking ~~in good faith~~ to balance ~~the~~ the importance of being flexible ~~and against~~
75 ~~(b)~~ stakeholder demands to honor other, competing values that officials would be remiss to
76 ignore. For example, if one regulated firm argues for a different approach from that in a policy
77 statement and the agency approves, this may prompt other firms to criticize the agency for not
78 keeping a level playing field among competitors; may cause other firms to lose faith in the
79 agency’s consistency and predictability, which may render them less likely to trust and cooperate

Commented [CMA8]: Proposed amendment from Stephen Williams

Commented [CA9]: Proposed amendment from Council 2

Commented [CA10]: Proposed amendment from Council 2



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

80 with the agency; and may open the agency to accusations of favoritism from NGOs, the media,
81 and congressional overseers.

82 In principle, one way an agency might reconcile these understandable pressures would be
83 to prepare and disseminate written reasons when it approves an approach different from that in a
84 policy statement, thereby making the same reasoning available to all similarly-situated parties
85 going forward. This transparency helps level the playing field, makes agency behavior more
86 predictable, and diminishes concerns about favoritism. But, ~~again without any bad faith,~~
87 agencies might still find inflexibility the easier course and adopt it by default, because reason-
88 giving requires agency resources.¹¹ Besides this, there are additional organizational reasons for
89 inflexibility ~~that likewise do not depend on official bad faith:~~ some agency offices, by reason of
90 their usual day-to-day business, are socialized to be less receptive to stakeholder requests than
91 others; higher-level officials have institutional reasons to back the decisions of their
92 subordinates; and the distinction between binding and nonbinding ~~policies-rules~~ is counter-
93 intuitive for many officials, at least without substantial training.

Commented [CA11]: Proposed amendment from Council 2

Commented [CA12]: Proposed amendment from Council 2

Commented [CMA13]: Proposed amendment from Ron Levin 1

94 These various pressures tend to give at least some policy statements a quasi-binding
95 character in fact regardless of their legal status. That said, there are important steps that agency
96 officials can take to mitigate these legislative-rule-like effects of policy statements by ~~making~~
97 ~~clearstating~~ that they are not binding and by remaining flexible in their use of such statements by
98 offering members of the public a fair opportunity to argue for other approaches. What steps to
99 take and when is the focus of ~~one set of today's paragraphs 4 through 8 of this~~
100 ~~R~~ecommendation. ~~In addition, a~~ Agencies should also, in appropriate circumstances, use
101 appropriate tools to enable public participation in the formulation of policy statements before
102 these statements are adopted. This is the focus of ~~the other set of today's paragraphs 9 through 11~~
103 ~~of this R~~ecommendation.

¹¹ Another difficulty with giving reasons is ~~to act consistently~~ a potential tension with agency policies on the protection of confidential business or personal information. This Recommendation is not intended to alter existing agency policies on such protection.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

104 First, flexibility often requires managerial initiative and resources to foster and maintain.
105 This Recommendation identifies concrete organizational measures that agencies may take to
106 foster flexibility: low-cost measures that agencies should take at a minimum and additional
107 measures with higher cost that agencies should consider in light of resource limitations and
108 competing priorities.

109 In addition, public participation at the time of a policy statement’s adoption may be of
110 value to the agency, to regulated parties, and especially ~~to regulatory beneficiaries and affected~~
111 ~~third parties and organizations to regulatory beneficiaries and organizations representing them,~~
112 because ~~beneficiaries-such parties~~ often lack the opportunity and resources to participate in the
113 individual adjudicatory or enforcement proceedings ~~in-to which a policy statement will be~~
114 ~~followed may apply.~~

Commented [CMA14]: Proposed amendment from Stephen Williams

Commented [CMA15]: Proposed amendment from Carol Ann Siciliano 1

115 Choosing a level and means of public participation that is appropriate to a policy
116 statement’s likely impact and is practicable requires consideration of several factors. Given the
117 complexity of these factors and their tendency to vary with context, it is appropriate to make
118 decisions about whether ~~and-or~~ how to seek public participation on policy statements on a
119 document-by-document or agency-by-agency basis.¹² A government-wide requirement for
120 inviting written input from the public on policy statements is not recommended, unless confined
121 to the ~~very~~ most extraordinary documents.¹³ This is a function both of the complex cost-benefit
122 considerations noted above and the fact that broad mandates for written public input on policy
123 statements can result in two additional unintended consequences. First, a broad mandate applied
124 to a resource-strapped agency may cause the agency to fail to process and incorporate comments
125 and instead leave many policy statements in published “draft” form indefinitely, which may at
126 least partly defeat the purpose of participation and cause stakeholder confusion. Second, a broad

¹² Some agencies have adopted procedural rules requiring solicitation of written input from the public for large and well-defined categories of their policy statements, whereas others have undertaken such solicitations on a decentralized, ad hoc basis. Parrillo, *supra* note 6, at 167–68.

¹³ The Office of Management and Budget’s Good Guidance Practices calls for pre-adoption public comment on “economically significant” guidance documents, but this appears to cover only a very small number of documents. *See id.*, at 167–71.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

127 mandate may so legitimize policy statements in the eyes of the agency that such statements could
128 end up largely supplanting legislative rulemaking.

RECOMMENDATION

Policy Statements Should Not Bind the Public

- 129 1. An agency should not use a policy statement describing means of regulatory compliance
130 deemed acceptable to create a standard binding on the public, that is, as a standard with
131 which noncompliance may form an independent basis for action in matters that determine
132 the rights and obligations of any member of the public.
- 133 2. An agency should afford members of the public a fair opportunity to argue for lawful
134 approaches other than those put forward by the policy statement or for modification or
135 rescission of the policy statement.
- 136 3. Although a policy statement should not bind an agency as a whole, it is sometimes
137 appropriate for an agency, as an internal agency management matter, and particularly
138 when guidance is used in connection with regulatory enforcement, to direct some of its
139 employees to act in conformity with a policy statement. But the agency should ensure
140 that this does not interfere with the fair opportunity called for in Recommendation 2. For
141 example, an agency may direct officials at one level to follow the approach described in a
142 policy statement while authorizing officials at a higher level to act in ways different from
143 that described in the statement, when appropriate, despite the position taken by the lower
144 level official. For example, a policy statement could bind officials at one level of the
145 agency hierarchy, with the caveat that officials at a higher level can authorize action that
146 varies from the policy statement.

Commented [CMA16]: Proposed amendment from Peter Strauss 1

Commented [CMA17]: Proposed amendment from Peter Strauss 2

Commented [CA18]: Proposed amendment from Council 1

Minimum Measures to Avoid Binding the Public

- 147 4. A policy statement should prominently state that it is not binding on members of the
148 public and explain that a member of the public may take a lawful approach different from
149 the one set forth in the policy statement, or request that the agency take such a lawful



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

150 approach. The policy statement should also include the identity and contact information
151 of officials to whom such a request should be made. In the case of interpretive guidance,
152 the document should indicate that it is open to contestation to the extent and in the
153 manner envisioned by the foregoing recommendations, but it may also make clear, where
154 relevant, that in the agency’s view the statute or other interpreted text, as construed in the
155 guidance document, imposes mandatory requirements or prohibitions on members of the
156 public.

Commented [CM19]: Proposed amendment from Ron Levin 1

- 157 5. A policy statement should not include mandatory language unless the agency is using that
158 language to describe an existing statutory or regulatory requirement, or the language is
159 addressed to agency employees and will not interfere with the fair opportunity called for
160 in Recommendation 2.
- 161 6. The agency should instruct all employees engaged in an activity to which a policy
162 statement pertains to refrain from making any statements suggesting that a policy
163 statement is binding on the public. Insofar as any employee is directed, as an internal
164 agency management matter, to act in conformity with a policy statement, that employee
165 should be instructed as to the difference between such an internal agency management
166 requirement and law that is binding on the public.

Additional Measures to Avoid Binding the Public

- 167 7. In order to avoid using policy statements to bind the public and in order to provide a fair
168 opportunity for other lawful approaches, an agency should, subject to considerations of
169 practicability and resource limitations and the priorities described in Recommendation 8
170 below, consider additional measures, including the following:
- 171 a. promoting the flexible use of policy statements in a manner that still takes due
172 account of needs for consistency and predictability. In particular, when the
173 agency accepts a proposal for a lawful approach other than that put forward in a
174 policy statement and the approach seems likely **to be** applicable to other
175 situations, the agency ~~may should~~ disseminate its decision and the reasons
176 therefor to other persons who might make the argument, to other affected

Commented [CMA20]: Proposed amendment from Peter Strauss 3



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 177 stakeholders, to officials likely to hear the argument, and to members of the
178 public, subject to existing protections for confidential business or personal
179 information.
- 180 b. assigning the task of considering arguments for approaches other than that in a
181 policy statement to a component of the agency that is likely to engage in open and
182 productive dialogue with persons who make such arguments, such as a program
183 office that is accustomed to dealing cooperatively with regulated parties and
184 regulatory beneficiaries.
- 185 c. in cases where frontline officials are authorized to take an approach different from
186 that in a policy statement but refuse to do so, directing appeals of such a refusal to
187 a higher-level official who is not the direct superior of those frontline officials.
188 Similarly, relief should be available in cases in which frontline officials fail to
189 follow guidance in conformity with which they are properly directed to act.
- 190 d. investing in training and monitoring of frontline personnel to ensure that they (i)
191 understand the difference between binding-legislative rules and policy statements;
192 (ii) treat parties' ideas for lawful approaches different from that those in a policy
193 statement in an open and welcoming manner; and (iii) understand that approaches
194 other than that in a policy statement, if undertaken according to the proper internal
195 agency procedures for approval and justification, are appropriate and will not
196 have adverse employment consequences for them.
- 197 e. facilitating opportunities for members of the public, including through
198 intermediaries such as ombudspersons or associations, to propose or support
199 approaches different from those in a policy statement and to provide feedback to
200 the agency on whether its officials are giving reasonable consideration to such
201 proposals.

Commented [CMA21]: Proposed amendment from Peter Strauss 4

Priorities in Deciding When to Invest in Promoting Flexibility

- 202 8. Because measures to promote flexibility (including those listed in Recommendation 7)
203 may take up agency resources, it will be necessary to set priorities for which policy



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

statements are most in need of such measures. In deciding when to take such measures the agency should assign a higher priority to situations when consider the following,

bearing in mind that these considerations will not always point in the same direction:

- a. an agency should assign a higher priority to a policy statement the greater the statement's impact is likely to be on the interests of regulated parties, and regulatory beneficiaries, and third parties either because regulated parties have strong incentives to comply with the statement or because the statement practically reduces the stringency of the regulatory scheme compared to the status quo.
b. An agency should assign a lower priority to promoting flexibility in the use of a policy statement insofar as the statement's value to the agency and to stakeholders lies primarily in the fact that it is helpful to have consistency for consistency's sake, independent of the statement's substantive content.

Commented [CMA22]: Proposed amendment from Carol Ann Siciliano 2
Carol Ann Siciliano would also replace text in a. to state: "Regulated parties have strong incentives to treat the policy statement as a binding legal norm or when the statement practically reduces the stringency of the regulatory scheme compared to the status quo."
She would also delete b.

Commented [CMA23]: Proposed amendment from Stephen Williams

Commented [CMA24]: Proposed amendment from Peter Strauss 5

Public Participation in Adoption or Modification of Policy Statements

9. When an agency is contemplating adopting or modifying a policy statement, it should consider whether to solicit public participation, and, if so, what kind, before adopting the statement. Options for public participation range from include outreach to selected stakeholder representatives, to stakeholder meetings or webinars, to advisory committee proceedings, to and invitation for written input from the public with or without a response. In deciding how to proceed, the agency should consider:

- a. existing agency procedures for the adoption of policy statements, including any procedures adopted in response to the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices (2007);
b. the factors listed in Recommendation 8;
c. the likely increase in useful information available to the agency from broadening participation, keeping in mind that non-regulated parties (beneficiaries and third parties) may offer different information than regulated parties and that non-

Commented [CM25]: Proposed amendment from Stephen Williams



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 230 regulated parties will often have no opportunity to provide input regarding policy
231 statements other than at the time of adoption;
- 232 d. the likely increase in ~~acceptance of agency policies or interpretations due to~~
233 ~~broadened policy acceptance from broadening~~ participation, keeping in mind that
234 non-regulated parties will often have no opportunity to provide input regarding
235 policy statements other than at the time of adoption, and that ~~policy acceptance of~~
236 ~~those positions~~ may be less likely if the agency is not responsive to stakeholder
237 input;
- 238 e. whether the agency is likely to learn more useful information by having a specific
239 agency proposal as a focal point for discussion, or instead having a more free-
240 ranging and less formal discussion; and
- 241 f. the practicability of broader forms of participation, including invitation for written
242 input from the public, keeping in mind that broader participation may slow the
243 adoption of policy statements and may diminish resources for other agency tasks,
244 including the provision of policy statements on other matters.
- 245 10. ~~Where~~ If an agency does not provide for public participation before adopting or
246 modifying a policy statement, it should consider offering an opportunity for public
247 participation after adoption. As with Recommendation 9, options for public participation
248 ~~range from~~ include outreach to selected stakeholder representatives, ~~to~~ stakeholder
249 meetings or webinars, ~~to~~ advisory committee proceedings, ~~to and~~ invitation for written
250 input from the public with or without a response.
- 251 11. An agency may make decisions about the appropriate level of public participation
252 document-by-document or by assigning certain ~~participatory procedures for public~~
253 ~~participation~~ to general categories of documents. If an agency opts for the latter, it
254 should consider whether resource limitations may cause some documents, if subject to
255 pre-adoption ~~participatory procedures for public participation~~, to remain in draft for
256 substantial periods of time. If that is the case, agencies should either (a) make clear to
257 stakeholders which draft policy statements, if any, should be understood to reflect current

Commented [CMA26]: Proposed amendment from Ron Levin 1



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

258 agency thinking; or (b) provide in each draft policy statement that, at a certain time after
259 publication, the document will automatically either be adopted or withdrawn.

260 ~~11.~~ 12. All guidance affecting the interests of the regulated and/or beneficiary public
261 should be promptly placed in the agency's electronic reading room, where it may readily
262 be found, with indications of the nature of reliance that may be placed on it, and the
263 opportunities for reconsideration/modification of it or the taking of different approaches.

Commented [CMA27]: Proposed amendment from Peter Strauss 6