

Definitions

Guidance Documents

agency policy other than a rulemaking which sets forth

- a policy on a statutory issue
- a policy on a regulatory issue
- a policy on a technical issue
- an interpretation of a statutory issue
- an interpretation of a regulatory issue

Significant Guidance Documents

A guidance document disseminated to regulated entities or the general public that may *reasonably be anticipated to*:

- Lead to an annual effect of \$100 million or more
- Adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof
- Raise novel legal or policy issues arising out of legal mandates, the president's priorities, or the principles set forth in this executive order

Economically Significant Guidance Documents

A significant guidance document disseminated to regulated entities or the general public that may *reasonably be anticipated to*:

- lead to an annual effect on the economy of \$100 million or more or
- adversely affect in a material way the economy or a sector of the economy,

except that economically significant guidance documents do not include guidance documents on Federal expenditures and receipts.

Excluded

from the Bulletin only:

- legal advisory opinions for internal Executive Branch use and not for release;
- litigation and enforcement materials;
- speeches and press materials;
- congressional correspondence;
- grant solicitations;
- in re government facilities;
- internal guidance documents directed solely to other Federal agencies

from the EO only

- guidance on regs produced from formal (trial-like) rulemaking

from both

- purely internal agency policies;
- military, foreign affairs (except in re procurement or import/export of non-defense articles and services);
- any other category exempted by agency head in consultation with the OIRA Administrator.

New Burdens

Guidance Documents

- No new burdens for *all* guidance documents – only subset of “significant” guidance

Significant Guidance Documents

- Approval by OIRA (EO § 7)
- Approval by senior agency official (Bulletin § II(1)(a))
- Agency cannot depart from it without justification and supervisory approval (Bulletin § II(1)(b))
- Must comply with standard formatting requirements (Bulletin § II(2))
- Must be listed in a comprehensive Web catalogue (Bulletin § III(1))
- Agency must have a designated office for fielding complaints (Bulletin § III(2)(b))
- System for public to comment/challenge, but no formal response by agency required (Bulletin § III)

Economically Significant Guidance Documents

- All requirements above, plus
- Full-fledged notice and comment (Bulletin § IV(1))
 - Publication of draft and final in the *Federal Register*
 - Make document available to the public
 - Response-to-comments document
- Agency head in consultation with OIRA can determine these requirements are not “feasible or appropriate” (Bulletin § IV(2))

Power to Pick and Choose Which Guidance Is (or Is Not) Burdened

- OIRA can deem any particular document a “significant guidance document” subject to the executive order and guidance bulletin (EO § 7)
- OIRA can elect to waive the requirements (Bulletin § IV(2))
- In practice, OIRA has waived regulatory review requirements of cost-benefit analysis for *de*-regulatory actions, at its pleasure. Undoubtedly, it will exercise the same arbitrary authority in guidance matters.