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Title 38 —Pensions, Bonuses, and Veterans' Relief

Chapter I —Department of Veterans Affairs

Part 5 Administrative Procedures:Guidance Documents

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PART 5—ADMINISTRATIVE PROCEDURES:GUIDANCE DOCUMENTS

Authority: 38 U.S.C. 501; E.O. 12866, 58 FR 51735, 3 CFR, 1993 Comp., p. 638.

Source: 85 FR 72570, Nov. 13, 2020, unless otherwise noted.

§ 5.0 Purpose.

This part provides the Department of Veterans Affairs' (VA's) processes and procedures for issuing and managing guidance documents.

[86 FR 30184, June 7, 2021]

§ 5.10 Definitions relating to guidance documents.

The following definitions apply to §§ 5.0 through 5.25.

Guidance document means an agency statement of general applicability (*i.e.*, it applies to more than just one person, event, or transaction), that is intended to have a future effect on the behavior or actions of regulated parties (to include non-VA actors), and that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. A guidance document does not include the following:

- (1) Rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or similar statutory provisions;
- (2) Rules exempt from rulemaking requirements under section 553(a) of title 5, United States Code;
- (3) Rules of agency organization, procedure, or practice;
- (4) Decisions of agency adjudications under section 554 of title 5, United States Code, or similar statutory provisions;

- (5) Internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; or
- (6) Internal executive branch legal advice or legal opinions addressed to executive branch officials.

Significant guidance document means a guidance document that the Administrator of the Office of Information and Regulatory Affairs determines is reasonably anticipated to:

- (1) Lead to an annual effect on the economy of \$100 million or more or 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;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

VA means the Department of Veterans Affairs.

§ 5.15 Procedures for issuing guidance documents.

(a) **General.**

- (1) Each guidance document should clearly and prominently state that it does not bind the public, except as authorized by law or as incorporated into a contract. * * * Guidance documents may include the following or similar disclaimer language: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.
- (2) Each guidance document should include the following information in the published guidance document:
 - (i) The term guidance;
 - (ii) The agency or office issuing the document;
 - (iii) To what and to whom the document applies;
 - (iv) The date of issuance;
 - (v) The title and unique identification number of the document;
 - (vi) Citation to statutory or regulatory authority that the guidance document interprets or applies;
 - (vii) A short summary of the subject matter covered at the beginning of the guidance document; and
 - (viii) As applicable, the guidance document being revised or replaced.

- (b) **Significant guidance documents.** VA will refer to the Administrator of the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget, or the Administrator's designee, the question of whether a guidance document is significant. Significant guidance documents should

contain the disclaimer and information described in paragraph (a) of this section. Additionally, unless the Administrator of OIRA, pursuant to review under E.O. 12866, and VA agree that exigency, safety, health, or other compelling cause warrants an exemption, the following additional procedures apply:

- (1) The Secretary or a VA component head appointed by the President (with or without confirmation by the Senate), or by an official who is serving in an acting capacity as either of the foregoing, must approve any significant guidance document prior to issuance. This approval authority is not delegable.
- (2) Significant guidance documents must be submitted to OIRA for review under Executive Order 12866 prior to issuance.
- (3) Significant guidance documents must comply with the applicable requirements set forth in Executive Orders 12866, 13563, and 13609.

[85 FR 72570, Nov. 13, 2021, as amended at 86 FR 30184, June 7, 2021]

§ 5.20 Procedures for petition for the withdrawal or modification of a guidance document.

Petitions for withdrawal or modification of a guidance document. The following procedures apply for the public to petition for withdrawal or modification of a guidance document.

- (a) A member of the public wishing to petition for withdrawal or modification of a guidance document may submit such petition via email to: OEIDMO@va.gov. Petitions may also be mailed to the following address: Office of Policy and Interagency Collaboration, Office of Enterprise Integration, 810 Vermont Avenue NW, Washington, DC 20420.
- (b) A petition for withdrawal or modification of a guidance document must contain the following information:
 - (1) The petitioner's name and address;
 - (2) Information identifying the guidance document to which the petition pertains;
 - (3) A statement of the reasons the petitioner believes the document should be withdrawn or modified.
- (c) VA will seek to provide a response to a petition within 90 days of receipt of the request.

[85 FR 72570, Nov. 13, 2021, as amended at 86 FR 30184, June 7, 2021]

§ 5.25 Guidance website.

VA has a guidance website that contains, or links to, guidance documents that are currently in effect. The website can be found at the following address: www.va.gov/orpm/va_guidance_documents.asp.

[86 FR 30184, June 7, 2021]