

## § 1212.655

to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

## § 1212.655 Individual.

*Individual* means a natural person.

## § 1212.660 Recipient.

*Recipient* means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

## § 1212.665 State.

*State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

## § 1212.670 Suspension.

*Suspension* means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

## PART 1213—AGENCY GUIDANCE PROCEDURES

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AUTHORITY: 44 U.S.C. 2104(a).

SOURCE: 85 FR 31979, May 28, 2020, unless otherwise noted.

## § 1213.1 Scope.

(a) This part prescribes general procedures that apply to guidance documents NARA and its components issue after April 30, 2020, and to all NARA employees and contractors involved in all phases of developing and issuing policy and guidance.

(b) This part does not apply to:

(1) Regulations; although some regulations are subject to rulemaking requirements under 5 U.S.C. 553(a), they do not constitute guidance, so are not covered by this rule. In addition, this rule does not apply to regulations exempt from rulemaking requirements under 5 U.S.C. 553(a) and regulations of agency organization, procedure, or practice;

(2) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(3) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(4) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions (*e.g.*, case or investigatory letters responding to complaints, warning letters), notices regarding particular locations or facilities (*e.g.*, guidance pertaining to using, operating, or controlling a Government facility or property), and correspondence with individual people or entities (*e.g.*, congressional correspondence), except documents ostensibly directed to a particular party but designed to guide the conduct of the broader regulated parties;

(5) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(6) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony that do not set forth for the first time a new regulatory policy or guidance;

(7) Guidance pertaining to military or foreign affairs functions;

(8) Grant solicitations and awards;

(9) Contract solicitations and awards; or

(10) Purely internal agency policies or guidance directed solely to NARA employees or contractors or to other Federal agencies that we do not intend to have substantial future effect on the behavior of regulated parties.

#### § 1213.2 Definitions.

(a) *Guidance* or *guidance document* means any statement of agency policy or interpretation concerning a statute, regulation, or technical matter within our jurisdiction that we intend to have general applicability and future effect on the behavior of regulated parties, but which we do not intend to have the force or effect of law in its own right on non-Governmental regulated parties, and for which we are not otherwise required by statute to satisfy the rulemaking procedures in 5 U.S.C. 553 or 5 U.S.C. 556. The term is not confined to formal written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, advisories, notices, handbooks and manuals, and may include video, audio, and web-based formats. *See* OMB Bulletin 07-02, Agency Good Guidance Practices, 72 FR 3432, 3434, 3439 (January 25, 2007) (“OMB Good Guidance Bulletin”).

(b) *Significant guidance document* means a guidance document that we reasonably anticipate will:

(1) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action another Federal agency takes or plans;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of those who receive them; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in E.O. 12866, as further amended.

#### § 1213.4 Requirements for review and clearance.

(a) NARA’s regulatory office must review and clear, according to this subpart, all NARA guidance documents before we issue them.

(b) The regulatory office ensures that each guidance document satisfies the following requirements:

(1) It complies with relevant statutes and regulations, and other applicable authorities;

(2) It identifies or includes:

(i) The term “guidance” or its functional equivalent;

(ii) The issuing office’s name;

(iii) A unique agency identifier, according to naming conventions we establish, and a z-RIN, if applicable;

(iv) A concise title;

(v) The issuing or effective date;

(vi) An indicator of whether the guidance revises or replaces any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(vii) Appropriate citations to applicable statutes, regulations, and other authorities; and

(3) It is consistent with NARA policies, guidance, strategic initiatives, and other authorities, is written in plain and understandable English, and meets other guidance and policy analysis factors.

(c) The guidance document must also either contain or be accompanied by an appropriate topic keyword and a short summary of the subject matter covered in the guidance document, for use on the guidance portal.

(d) The regulatory office also assesses whether the guidance document constitutes significant guidance and works with the submitting office to make a

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good faith cost estimate, as applicable, in accordance with § 1213.8(a). If we determine that a guidance document might be significant, the regulatory office coordinates with OMB's Office of Information and Regulatory Affairs (OIRA), as outlined in § 1213.8(d).

(e) We also assess whether the guidance document might be otherwise important to the agency's interests, if we reasonably anticipate that it might: Relate to a major program, policy, or activity, or a high-profile issue involving the agency or its interests; involve one of NARA's top policy priorities; garner significant press, congressional, or other attention; or raise significant questions or concerns from constituencies such as committees of Congress, states or Indian tribes, the White House or other departments of the executive branch, courts, public interest groups, or leading representatives of industry. When appropriate, we may determine that a particular guidance document that is otherwise of importance to the agency's interests be subject to the informal notice-and-comment procedures described in § 1213.8(f).

(f) The regulatory office submits guidance documents we determine may be significant to OIRA for significance determinations, before clearing the submitting office to issue them.

(f) When we issue a guidance document, we post it on our centralized guidance portal (see § 1213.6(a)).

[85 FR 31979, May 28, 2020, as amended at 87 FR 21024, Apr. 11, 2022]

EDITORIAL NOTE: At 87 FR 21024, Apr. 11, 2022, § 1213.4 was amended; however, a portion of the amendment could not be completed because the section contains two paragraphs designated (f).

## § 1213.6 Public access to guidance documents.

We post the cleared document on our centralized guidance portal at [www.archives.gov/guidance](http://www.archives.gov/guidance). The portal contains a searchable, indexed database of our various kinds of guidance along with links to each document and an agency-unique identifier, title, date issued, z-RIN, if applicable, topic keywords, brief summary, date added to the portal, and any status information

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(for example, that it supersedes a previous guidance document).

[85 FR 31979, May 28, 2020, as amended at 87 FR 21024, Apr. 11, 2022]

## § 1213.8 Significant guidance.

(a) *Good faith cost estimates.* Even though not legally binding on the public, some agency guidance may result in a substantial economic impact on the public. For example, the guidance's existence may induce private parties to alter their conduct to conform to recommended standards or practices, thereby incurring costs beyond the costs of complying with existing statutes, regulations, and other authorities. While it may be difficult to predict with precision the economic impact of voluntary guidance on the public, we, to the extent practicable, make a good faith effort to estimate the likely economic cost impact on the public, to determine whether the document might be significant.

(b) *Regulatory impact analyses.* When we, or OIRA, determine that a guidance document will have an economically significant impact on the public, we conduct and publish a regulatory impact analysis of the sort that would accompany an economically significant rulemaking, to the extent reasonably possible.

(c) *Excluded guidance.* Significant guidance documents do not include the categories of documents excluded by § 1213.1(b) or any other category of guidance documents the regulatory office exempts in writing in consultation with OIRA.

(d) *OIRA review of significant guidance.* If OIRA designates a guidance document as significant or economically significant, we submit it to OIRA for review under E.O. 12866 before we issue it, as with regulations; and we process significant guidance in compliance with the applicable requirements for regulations or rules, including significant regulatory actions.

(e) *Signature or approval.* The Archivist of the United States or a senior executive designee signs or approves significant guidance.

(f) *Informal notice-and-comment procedures.* Except as outlined in paragraph

(g) of this section, we subject all proposed guidance documents OIRA determines to be significant to the following informal notice-and-comment procedures. We publish a notice in the FEDERAL REGISTER announcing that a draft of the proposed guidance document is publicly available and where, either post the draft guidance document on our guidance portal or on *regulations.gov* in a docket with the notice (depending on the nature, size, and scope of the guidance), invite public comment on the draft document for a minimum of 30 days, and prepare and post a public response to major concerns raised in the comments, as appropriate, on our guidance portal or in the docket on *regulations.gov* (whichever location we used to post the draft guidance), either before or when we issue the guidance document.

(g) *Exceptions to notice-and-comment procedures.* The requirements of paragraph (f) of this section do not apply to any significant guidance document or categories of significant guidance documents for which we find, in consultation with OIRA, good cause that notice and public comments are impracticable, unnecessary, or contrary to the public interest (and we will incorporate the finding of good cause and a brief statement of reasons in the guidance).

[85 FR 31979, May 28, 2020, as amended at 87 FR 21024, Apr. 11, 2022]

#### § 1213.10 Petitions for guidance.

(a) Any person may petition that we issue, reconsider, modify, or rescind a particular guidance document by using the procedures described here and on our guidance portal at *www.archives.gov/guidance*.

(b) Submit your petition using the contact information and method noted on the guidance portal, which includes an email address or web portal for submitting electronic petitions, a mailing address for submitting hard copy peti-

tions, and the office responsible for coordinating the request. You must submit your petition through one of these means, and the petition must:

(1) Describe the nature of the request and set out the text or substance of the guidance you are requesting or that you wish us to reconsider, modify, or rescind;

(2) Explain your interest in the action you are requesting; and

(3) Contain any information and arguments you have to support the action you are seeking.

(c) We will review your request and make a decision whether to grant the request or deny it in whole or in part. We will provide you with a response to your request and a status update or our decision within 90 days after we receive the petition, if you provide email or mail contact information.

#### § 1213.16 Exigent circumstances.

In emergency situations or when we are required by statutory deadline, court order, or other exigent circumstances to act more quickly than normal review procedures allow, we notify OIRA as soon as possible and, to the extent practicable, comply with the requirements of this subpart at the earliest opportunity. Whenever practicable, we permit sufficient time to comply with the procedures in this subpart.

#### § 1213.18 No judicial review or enforceable rights.

We intend this part to improve our internal management. As a result, it is for the use of NARA personnel only and we do not intend it to, nor does it, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.