

77-438. Guidance documents. (a) (1) A state agency may issue a guidance document without following the procedures set forth in this act for the adoption of rules and regulations.

(2) For the purposes of this section, "guidance document" means a record of general applicability that:

(A) Is designated by a state agency as a guidance document;

(B) lacks the force of law; and

(C) states:

(i) The agency's current approach to, or interpretation of, law; or

(ii) general statements of policy that describe how and when the agency will exercise discretionary functions.

(b) A guidance document may contain binding instructions to state agency staff members except officers who preside in adjudicatory proceedings.

(c) If a state agency proposes to act in an adjudication at variance with a position expressed in a guidance document, the state agency shall provide a reasonable explanation for the variance. If an affected person in an adjudication claims to have reasonably relied on the agency's position, the state agency's explanation for the variance shall include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests.

(d) Each state agency shall:

(1) Maintain an index of all of its currently effective guidance documents;

(2) publish the index on its website;

(3) make all guidance documents available to the public; and

(4) file the index in the manner prescribed by the secretary of state.

(e) A guidance document may be considered by a presiding officer or agency head in an agency adjudication but such guidance document shall not bind any party, the presiding officer or the agency head.

(f) Any agency that issues a guidance document shall provide a copy of such document to the joint committee on administrative rules and regulations. Such document may be submitted electronically.

History: L. 1982, ch. 386, § 9; L. 2011, ch. 14, § 4; July 1.