



DEPARTMENT OF THE INTERIOR

43 CFR Part 51

[Docket No. DOI-2020-0001]

RIN 1093-AA27

[201D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25]

Procedures for Issuing Guidance Documents

AGENCY: Office of the Secretary, Interior

ACTION: Final rule; rescission of regulations.

SUMMARY: On October 26, 2020, the Department of the Interior (Department) published an interim final rule implementing an Executive order (E.O.), entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents.” The E.O. defined guidance documents and required Federal agencies to finalize regulations or amend existing regulations to establish processes and procedures for issuing guidance documents, among other actions. In accordance with the E.O. entitled, “Revocation of Certain Executive Orders Concerning Federal Regulation” issued by President Biden on January 20, 2021, this final rule rescinds the Department’s interim final rule.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Bivan Patnaik, Deputy Director of Regulatory Affairs, Office of the Executive Secretariat and Regulatory Affairs, by phone at 202-208-3181 or via the Federal Relay Service at 800-877-8339, or via email account guidance_document@ios.doi.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

On October 26, 2020, the Department of the Interior published an interim final rule on guidance (85 FR 67666) implementing E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” signed by President Trump on October 9, 2019. As required by the E.O., the rule contained the Department’s procedural requirements governing the development, review, and clearance of guidance documents; the processes for the public to petition for withdrawal or modification of a particular guidance document, including designating the officials to whom petitions should be directed; and the procedures for review and approval of significant guidance documents.

On January 20, 2021, President Biden issued E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” which, among other actions, revoked E.O. 13891 and directed agencies to promptly take steps to rescind any rules implementing or enforcing the executive orders. The January 20, 2021, E.O. states that it is the policy of the Administration “to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use robust regulatory action to address national priorities. This E.O. revokes harmful policies and directives that threaten to frustrate the Federal Government’s ability to confront these problems and empowers agencies to use appropriate regulatory tools to achieve these goals.” After consideration and review, the Department concluded that the October 26, 2020, interim final rule on our procedural

requirements deprives the Department and subordinate Bureaus and Offices of the necessary flexibility in determining when and how best to issue public guidance based on particular facts and circumstances. The interim final rule also unduly restricts the Department's ability to provide timely guidance on which the public can confidently rely. Therefore, in accordance with President Biden's January 20, 2021, E.O., the Department is issuing this final rule, which rescinds the October 26, 2020, interim final rule.

In accordance with OMB memorandum "Guidance for Regulatory Review" (M-09-13), the Office of Management and Budget will continue to review all agency actions and documents subject to the Office of Information and Regulatory Affairs review under E.O. 12866. These reviews include policy and guidance documents that OMB determines to be significant.

In order to ensure transparency, the single, searchable, indexed website (www.doi.gov/elips/browse) that contains all of the Department's guidance documents and was made available to the public on February 28, 2020 (85 FR 12009), will remain active. However, the website will be revised to remove any references to E.O. 13891.

II. Final rule

The Department has determined that this rule is suitable for final rulemaking. The rule rescinds the October 26, 2020, revisions to the Department's existing procedures and associated implementation as it related to the development, review, and clearance of guidance documents as directed by E.O. 13891. As with the October 26, 2020, interim final rule, the Department is not required to engage in a notice and comment process to issue this rule under the Administrative Procedure Act. See 5 U.S.C § 553(b)(3)(B). Furthermore, because this rule is procedural rather than substantive; the normal

requirement of 5 U.S.C. 553(d) that a rule not be effective until at least 30 days after publication in the Federal Register is inapplicable.

List of Subjects in 43 CFR Part 51

Administrative practice and procedure, Executive orders

PART 51 [REMOVED]

For the reasons discussed in the preamble, and under the authority of 5 U.S.C. Chapter 5, Subchapter II; Chapter 7, the Department of the Interior amends 43 CFR by removing part 51.

This action is taken pursuant to delegated authority.

Rachael S. Taylor

Principal Deputy Assistant Secretary – Policy, Management and Budget

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