



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 120

RIN 3206-AO63

Guidance Procedures

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This final rule removes existing regulations concerning procedures applicable to the issuance of OPM’s guidance documents. OPM is taking this action because President Biden revoked the authority for the regulations in an Executive order (E.O.) on January 20, 2021.

Furthermore, OPM finds that the current procedures are impracticable and lack the flexibility needed for issuing guidance internally.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kirsten J. Moncada, Executive Director, Office of the Executive Secretariat, Privacy, and Information Management at 202-936-0251.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” OPM published a final rule (85 FR 65651, October 16, 2020) that established the procedures and requirements regarding the issuance, revision, and withdrawal of guidance documents codified at 5 CFR part 120. On January 20, 2021, President Biden issued E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation” (86 FR 7049, January 25, 2021), which revoked several E.O.s, including E.O. 13891, and directed agencies to take the necessary steps to rescind regulations implemented pursuant to E.O. 13891.

This rule fulfills that requirement. In accordance with E.O. 13992, OPM is removing 5 CFR part 120 from the Code of Federal Regulations.

In addition to the procedural requirements established at 5 CFR part 120, OPM created a “Guidance” webpage at <https://www.opm.gov/guidance> pursuant to E.O. 13891. OPM has found that it is impracticable to maintain a single, comprehensive, and up-to-date collection of guidance documents. In fact, most of OPM’s website at <https://www.opm.gov> consists of guidance for prospective, current, and former employees; retirees and annuitants; and agencies. Very little of that guidance was issued as stand-alone documents susceptible to the processes set forth in 5 CFR part 120. Therefore, after consideration and review, OPM has concluded that the existing regulations create unnecessary burden for the agency and deprive the agency of necessary flexibility to determine how best to issue public guidance.

Accordingly, OPM rescinds 5 CFR part 120 in its entirety and will remove the Guidance webpage. As has been OPM’s practice predating the rule, OPM will continue to make guidance available to the public on its website at <https://www.opm.gov>.

II. Waiver of Notice of Proposed Rulemaking

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of “agency organization, procedure, or practice.” *See* 5 U.S.C. 553(b)(A). The Civil Service Reform Act’s additional provisions for rulemaking by OPM incorporate this exception. *See* 5 U.S.C. 1105. Since, like the rule it is rescinding, this rule is not a substantive rule but a rule of agency procedure, notice and comment are not necessary.

III. Expected Impact of this Rule

This rule removes regulations pertaining to OPM’s internal procedures on issuing guidance documents. As such, they were for the use of OPM personnel only and did not 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. 5 CFR 120.12. Accordingly, we expect the economic impact of removing those regulations, if any, to be minimal.

IV. Procedural Issues and Regulatory Review

A. Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). OMB has determined this rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required for this final rule because OPM is not required to publish a general notice of proposed rulemaking for this matter. *See* 5 U.S.C. 601(2), 604(a).

C. Federalism

OPM has examined this rule in accordance with Executive Order 13132, “Federalism,” and has determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or Tribal governments. Therefore, in accordance with Executive Order 13132, “Federalism,” OPM has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Civil Justice Reform

This regulation meets the applicable standards set forth in Executive Order 12988.

E. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Paperwork Reduction Act of 1995

This rule will not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

G. Congressional Review Act

This action pertains to agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a “rule” as that term is used in the Congressional Review Act, 5 U.S.C. 804(3)(C), and the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 120

Administrative practice and procedure.

PART 120 [REMOVED AND RESERVED]

For the reasons stated in the preamble, and under the authority of 5 U.S.C. 301 and E.O. 13992, OPM removes and reserves 5 CFR part 120.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024-09192 Filed: 4/29/2024 8:45 am; Publication Date: 4/30/2024]