



DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Docket No. OAG 174; AG Order No. 6148-2025]

RIN 1105-AB61

Processes and Procedures for Issuance and Use of Guidance Documents

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule by which the Department of Justice (“Department”) removed amendments to its regulations that were made during 2020 pursuant to the now-revoked Executive Order 13891, which had imposed limitations on the use of Department guidance documents in criminal and civil enforcement actions brought by the Department.

DATES: This rule is effective January 17, 2025.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, telephone (202) 514–8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Overview

This rule finalizes without change the interim final rule, Processes and Procedures for Issuance and Use of Guidance Documents (OAG 174; RIN 1105-AB61), published at 86 FR 37674 (July 16, 2021) (the “July 16 interim rule”). The interim rule implemented Executive Order 13992 of January 25, 2021, 86 FR 7049 (Revocation of Certain Executive Orders Concerning Federal Regulation), by removing the Department’s regulations at 28 CFR 50.26 and 50.27 and reserving those sections. The Department’s approach to the development, issuance,

and use of guidance documents is now governed by the Attorney General Memorandum issued on July 1, 2021, “Issuance and Use of Guidance Documents by the Department of Justice,” <https://www.justice.gov/opa/page/file/1408606/download>.

B. Executive Order 13992

As discussed in greater detail in the July 16 interim rule, on January 20, 2021, President Biden issued Executive Order 13992, which, among other things, revoked Executive Order 13891 and stated that “agencies must be equipped with the flexibility to use robust regulatory action to address national priorities.” 86 FR at 7049. Executive Order 13992 directed the heads of all agencies to “promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing” the revoked Executive Order. *Id.*

C. Revocation of 28 CFR 50.26 and 50.27

Based on its evaluation of the prior regulations at 28 CFR 50.26 and 50.27, the Department concluded that those regulations were unnecessary and unduly burdensome, lacked flexibility and nuance, and limited the ability of the Department to do its work effectively. Among other things, the regulations generated collateral disputes in affirmative and enforcement litigation, and they discouraged Department components from preparing and issuing guidance that would be helpful to members of the public. In addition, because the regulations imposed requirements on a particular category of agency documents deemed to be “guidance,” the regulations inherently caused Department staff to expend significant resources determining whether each agency document, product or communication constituted “guidance” and was therefore subject to these regulations. Accordingly, the Department determined that the rules should be removed.

In removing the rules, the Department did not depart from the principle that guidance documents are interpretative and thus cannot impose legal requirements beyond those found in relevant constitutional provisions, statutes, and existing regulations. The Department also continues to believe that guidance documents should be clear, transparent, and readily accessible

to the public. But these principles, and other related Department policies and practices concerning guidance documents, have traditionally been addressed through memoranda from Department leadership rather than through regulations. The Department therefore removed 28 CFR 50.26 and 50.27 in their entirety, and solicited public comment. On July 1, 2021, the Attorney General issued a new Memorandum setting forth the Department's policies going forward from that date regarding the development, issuance, and use of guidance documents, and the Department has updated other applicable internal protocols in accordance with these policies.

D. Public Comments on the July 16, 2021, Interim Rule Pertaining to 28 CFR 50.26 and 50.27

During the public comment period, which closed on August 16, 2021, the Department received only two comments, both of which supported the interim rule. The reasons given by the commenters in support of the removal of 28 CFR 50.26 and 50.27 largely paralleled the Department's own reasons and justifications. Accordingly, the July 16 interim final rule is being finalized without change.

II. Conforming Changes to the Justice Manual

The provisions of the Justice Manual at section 1-19.000 (<https://www.justice.gov/jm/justice-manual>) have been revised, and the provisions of the Justice Manual previously published at section 1-20.000 have been removed, to conform with the principles set forth in the July 1, 2021, Attorney General Memorandum.

III. Regulatory Certifications

A. Administrative Procedure Act

This final rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, or practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), (d). The rule is effective upon being posted for public inspection at the Federal Register. The Department, in its discretion, had sought post-promulgation public comment on the

July 16 interim rule. As previously explained, the Department received only two comments, both of which supported the rule.

B. Regulatory Flexibility Act

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

C. Executive Orders 12866, 13563, and 14094 - Regulatory Review

This final rule has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation; in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation; and in accordance with Executive Order 14094, “Modernizing Regulatory Review”.

This final rule is “limited to agency organization, management, or personnel matters” and thus is not a “rule” for purposes of review by the Office of Management and Budget (OMB), a determination in which OMB has concurred. *See* Executive Order 12866, sec. 3(d)(3). Accordingly, this rule has not been reviewed by OMB. The Department claimed a similar exemption at the time of promulgating the July 16 interim rule.

D. Executive Order 12988 - Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

E. Executive Order 13132 - Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, “Federalism,” the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. 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 (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

G. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act (CRA), 5 U.S.C. 804. This action pertains to agency management or personnel, and 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 CRA, 5 U.S.C. 804(3), and the reporting requirement of 5 U.S.C. 801 does not apply.

H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 28 CFR part 50

Administrative practice and procedure.

Accordingly, the interim rule amending 28 CFR part 50, which was published at 86 FR 37674 on July 16, 2021, is adopted as final without change.

Dated: January 14, 2025.

Merrick B. Garland
Attorney General

[FR Doc. 2025-01409 Filed: 1/17/2025 8:45 am; Publication Date: 1/21/2025]