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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 May 30, 2024.

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" web page 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 web page. 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 4–29–24; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 1021

[DOE–HQ–2023–0063]

RIN 1990–AA48

National Environmental Policy Act Implementing Procedures

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is revising its National Environmental Policy Act (NEPA) implementing procedures (regulations) to add a categorical exclusion for certain energy storage systems and revise categorical exclusions for upgrading and rebuilding powerlines and for solar photovoltaic systems, as well as to make conforming changes to related sections of DOE’s NEPA regulations. These changes will help ensure that DOE conducts an appropriate and efficient environmental review of proposed projects that normally do not result in significant environmental impacts.

DATES: This rule is effective May 30, 2024.

ADDRESSES: Documents relevant to this rulemaking are posted at www.regulations.gov (Docket: DOE–HQ–

2023–0063). These documents include: the notice of proposed rulemaking, public comments, this final rule, and DOE’s Technical Support Document, which provides additional information regarding the changes and a redline/strikeout version of affected sections of the DOE NEPA regulations indicating the changes made by this rule.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE’s NEPA regulations, contact Ms. Carrie Abravanel, Deputy Director, Office of NEPA Policy and Compliance, at carrie.abravanel@hq.doe.gov or 202–586–4798.

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I. Introduction and Background

The National Environmental Policy Act, as amended, (42 U.S.C. 4321 *et seq.*) requires Federal agencies to provide a detailed statement regarding the environmental impacts of proposals for major Federal actions significantly affecting the quality of the human

environment. The Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508) require agencies to develop their own NEPA implementing procedures to apply the CEQ regulations to their specific programs and decision-making processes (40 CFR 1507.3). DOE promulgated its regulations entitled “National Environmental Policy Act Implementing Procedures” (10 CFR part 1021) on April 24, 1992 (57 FR 15122), revised these regulations on five subsequent occasions,¹ and now revises these regulations again with this rule.

NEPA establishes three types of environmental review for Federal proposed actions—environmental impact statement, environmental assessment, and categorical exclusion—each involving different levels of information and analysis. An environmental impact statement is a detailed analysis of reasonably foreseeable environmental effects prepared for a major Federal action significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C) and 40 CFR part 1502 and section 1508.1(j)). An environmental assessment is a concise public document prepared by a Federal agency to set forth the basis for its finding of no significant impact or its determination that an environmental impact statement is necessary (42 U.S.C. 4336(b)(2) and 40 CFR 1501.5, 1501.6, and 1508.1(h)). A categorical exclusion is a category of actions that the agency has determined, as established in its agency NEPA procedures, normally does not have a significant effect on the human environment and therefore does not require preparation of an environmental assessment or environmental impact statement (40 CFR 1501.4, 1507.3(e)(2)(ii), and 1508.1(d)). DOE’s procedures for applying categorical exclusions require the Department to consider several conditions (described in section II of this document), including whether extraordinary circumstances exist such that a normally excluded action may have a significant environmental effect.

II. Establishment and Use of Categorical Exclusions

CEQ issued guidance in 2010 on establishing, applying, and revising categorical exclusions under NEPA (75 FR 75628; December 6, 2010). CEQ explained, “Categorical exclusions are

¹ July 9, 1996 (61 FR 36222), December 6, 1996 (61 FR 64603), August 27, 2003 (68 FR 51429), October 13, 2011 (76 FR 63764), and December 4, 2020 (85 FR 78197).