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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–SC–21–0077; SC21–984–4]

Walnuts Grown in California; Notification of Moratorium

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Notification.

SUMMARY: The U.S. Department of Agriculture (USDA) is announcing a six-month moratorium on the enforcement of mandatory inspection requirements under the Federal marketing order for California walnuts.

DATES: This enforcement moratorium began September 1, 2021.

ADDRESSES: Copies of the marketing order may be obtained from the office 1220 SW 3rd Avenue, Suite 305, Portland, OR 97204; Telephone: (503) 326–2724; or the Office of the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or on the internet *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde or Gary D. Olson, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1220 SW 3rd Avenue, Suite 305, Portland, OR 97204; Telephone: (503) 326–2724, or Email: *Joshua.R.Wilde@usda.gov* or *GaryD.Olson@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 984, as amended (7 CFR part 984), hereinafter referred to as the ''Order,'' and applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby announced that a six-month moratorium on the enforcement of mandatory inspection requirements under the Federal marketing order for California walnuts is effectuated beginning September 1, 2021. This moratorium also includes inspection requirements on walnuts imported into the United States under section 608e of the Agricultural Marketing Agreement Act of 1937, as amended.

The six-month moratorium will also affect the California Walnut Board's (CWB) collection of assessments from domestic handlers under the marketing order. While the moratorium is in effect, the CWB will be unable to collect assessments to finance its operational activities. Instead, the CWB will be able to employ financial practices authorized by the marketing order, which may include utilizing borrowing authority, using its financial reserves, and accepting voluntary contributions.

The moratorium is based on discussions with industry about market disruptions associated with the COVID–19 pandemic, such as labor and transportation interruptions and ongoing tariff issues. The combination of these issues is adversely affecting market conditions across the California walnut industry.

Through this notification, USDA is informing stakeholders, including the Dried Fruit Association; the California Department of Food and Agriculture; U.S. Customs and Border Protection; and walnut producers, handlers, and importers that USDA is exercising its discretion to issue the six-month moratorium on the enforcement of mandatory inspection requirements.

The moratorium will remain in place for six months beginning September 1, 2021. If, during the moratorium, the CWB will submit a proposal for formal rulemaking to address inspection requirements in the marketing order. USDA may extend the moratorium until resolution of the rulemaking process.

USDA's role of overseeing the CWB and the Order's operations will continue uninterrupted during the moratorium.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–21105 Filed 9–28–21; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 9

[Docket ID ED–2020–OGC–0150]

RIN 1801–AA22

Rulemaking and Guidance Procedures

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

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) rescinds the Department's Rulemaking and Guidance Procedures interim final rule (IFR).

DATES: This rule is effective September 29, 2021.

FOR FURTHER INFORMATION CONTACT: Lynn Mahaffie, U.S. Department of Education, 400 Maryland Avenue SW, Room 6E231, Washington, DC 20202. Telephone: (202) 453–7862. Email: *lynn.mahaffie@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: This regulatory action rescinds the Rulemaking and Guidance Procedures IFR and removes 34 CFR part 9.

The Department published the IFR on October 5, 2020 (85 FR 62597), to codify procedures relating to the issuance of rulemaking and guidance documents. The IFR followed Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents,'' issued on October 9, 2019. 84 FR 55235. That Executive Order called for Federal agencies, including the Department, to finalize or amend regulations to set forth processes and procedures for issuing guidance documents, consistent with the order. The IFR became effective on November 4, 2020. 85 FR 62597.

In the IFR, the Department established an internal process for the Department's development of regulations, under which the Secretary establishes a Regulatory Reform Task Force (RRTF), designates the members of the RRTF, and identifies the Department's Regulatory Reform Officer (RRO), in accordance with Executive Order 13777. 34 CFR 9.5. Section 9.7 of the IFR describes steps that the Department

must engage in before developing a significant regulation, including that the principal operating component (POC) proposing the regulation prepare a Rulemaking Initiation Request that describes, for example, the need for the regulation, the legal authority for the rulemaking, whether the rulemaking is expected to be regulatory or deregulatory, and whether it is expected to be significant, as defined by Executive Order 12866. Both the Working Group and the Leadership Council of the RRTF must review and approve the Rulemaking Initiation Request for the action to move forward. Section 9.9(d) requires that the Department review all significant regulations on a 10-year cycle to determine whether they have, among other things, a continued policy justification and a continued cost justification. Additionally, the IFR contains special procedures for economically significant rules and high-impact rules in § 9.10. That section establishes a definition of the term ''high-impact'' rule and provides, for example, that the comment period for high-impact rule will be at least 90 days and that, following the publication of an NPRM for an economically significant or high-impact rule, any interested party may request that the Department hold a formal hearing on the proposed rule.

The IFR also established rules related to the publication of guidance documents, expressing that the Department's policy is to disfavor guidance except in special circumstances. 34 CFR 9.12. Section 9.14(c) requires that a POC proposing to issue a significant guidance document prepare a Significant Guidance Document Initiation Request to be reviewed by the Working Group and Leadership Council of the RRTF. Additionally, unless the Department and Administrator of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) agree that exigency, safety, health, or other compelling cause warrants an exemption from some or all requirements, upon approval of the Leadership Council of the RRTF, the Department will issue a significant guidance document only after completing a 30-day period of public notice and comment and approval by the Secretary or the component head or by an official serving in an acting capacity as either of the foregoing before issuance. Section 9.16 further requires that the Department will provide a 30-day notice and comment period before rescinding a significant guidance document and publish a notice in the **Federal Register** announcing the rescission.

On January 20, 2021, the President issued Executive Order 13992 which revoked several other Executive orders, including Executive Orders 13891 and 13777. 86 FR 7049. Executive Order 13992 directed heads of agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the revoked Executive Orders, as appropriate and consistent with applicable law, including the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* 86 FR 7049. The express purpose of Executive Order 13992 is to equip Executive departments and agencies with the flexibility to use robust regulatory action to effectively address national priorities and tackle challenges, such as the coronavirus disease 2019 (COVID–19) pandemic, economic recovery, racial justice, and climate change.

Consistent with Executive Order 13992, the Department is exercising its discretion to rescind the IFR. Since the issuance of the IFR, the Department has developed and published many regulatory and guidance documents under challenging circumstances. This experience has led us to recognize that many of the procedures required by the IFR create obstacles to the timely issuance of regulatory and guidance documents, and we believe they do not benefit either the Department or the public.

While the goals of the IFR were to increase transparency, fairness, and public participation, and strengthen the overall quality and fairness of the Department's processes, we believe, based on our recent experience and the public comments we received, that the IFR's requirements regarding the regulatory and guidance processes will not help the Department achieve those goals. Sections 9.6, 9.7 and 9.9 relate to the Department's internal procedures to initiate a rulemaking. Those sections require the Department to establish an RRTF, and set forth in detail the roles of the Working Group and Leadership Counsel, as well as the roles of a number of individuals and offices within the Department. In addition, they prescribe a formal process for initiating a rulemaking and the Department's internal review process of proposed rules. Those procedures are entirely internal to the Department and will not increase transparency, fairness, or public participation, nor do we believe that they will they strengthen the overall quality and fairness of the Department's processes.

Additionally, we do not believe that the special procedures for economically significant rules and high-impact rules will achieve the goals of the IFR. Rather, they will likely benefit sophisticated stakeholders, rather than students, children, and families. For example, the procedures for formal hearings in § 9.10(c) allow an interested party to file a petition for a formal hearing on a proposed economically significant or high-impact rule. As noted in public comments in response to the IFR, well-financed and sophisticated stakeholders will likely have an advantage over small organizations or individuals when engaging in a formal hearing on complex regulatory issues before a Department hearing official.

Although the provisions governing the Department's internal processes for the approval and issuance of regulations and guidance documents contain some flexibility when the Department is faced with extraordinary circumstances (see, *e.g.,* § 9.14(h)(1)), we believe that the provisions create unreasonable burdens on Department staff and will slow the process of issuing regulatory and guidance documents without improving the quality of the documents. Allowing the Department to issue guidance documents that clarify its understanding of relevant law and how it intends to use its discretionary authority without these additional procedural hurdles imposed by the IFR will better allow it to serve students, schools, and other stakeholders.

Some of the IFR's procedures involved the Department's Regulatory Reform Task Force (RRTF) and regulatory reform officer (RRO), which were established pursuant to Executive Order 13777. 82 FR 12285. That Executive Order also was revoked by Executive Order 13992, which specifically directed agencies to abolish RRTFs and RRO positions established by Executive Order 13777. 86 FR 7049.

This rescission is responsive to public comments received on the IFR. While most parties that submitted public comments in response to the IFR requested that the Department rescind the IFR in its entirety, we also address the specific reasons cited by commenters as justifying rescission.

Public Comment: The IFR is an internal rule of agency procedure. See 5 U.S.C. 553(a)(2), 553(b)(A).

Nonetheless, the Department invited public comments on the IFR to allow members of the public to provide their input about the content of the rule. In response to our invitation in the IFR, nine parties submitted comments on the IFR. In this preamble, we respond to those comments, which we have

grouped by subject. Generally, we do not address technical or other minor changes.

Analysis of Public Comments: An analysis of the public comments received follows.

General

Comment: The majority of commenters urged the Department to withdraw the IFR in its entirety. In general, commenters noted that the IFR creates burdensome requirements that will only delay critical agency action and make government less responsive to the needs of constituents. Commenters also argued that the IFR creates unreasonably burdensome processes for issuing regulations and guidance, rather than promoting fair process. One commenter noted that the Department already has many steps in place that ensure that rulemaking is undertaken with public input and in the public interest and that the IFR requires many procedures that may create delays in implementation of student protections and programmatic oversight.

Discussion: The Department agrees with the commenters that seek rescission of the IFR. Consistent with Executive Order 13992, it is crucial that the Department be able to issue and modify regulations and guidance quickly, especially considering challenges such as those caused by the COVID–19 pandemic. The procedures required in the IFR for the initiation, modification, and withdrawal of rulemaking and guidance documents hinder the Department from responding nimbly to the needs of stakeholders. The APA and other laws applicable to the issuance of rulemaking and guidance documents, including the Higher Education Act of 1965, as amended (20 U.S.C. 1001, *et seq.*) (HEA); the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6301, *et seq.*) (ESEA); the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612); the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)); Executive Order 12866; and OMB's Final Bulletin for Agency Good Guidance Practices (Guidance Bulletin) published on January 25, 2007 (72 FR 3432), sufficiently ensure transparency and public participation in the rulemaking and guidance processes.

Changes: The Department rescinds 34 CFR part 9.

Comments: Commenters expressed concern about the IFR's effect on the Department's ability to effectively meet its mission as it relates to students with disabilities. They stated that introducing obstacles in the IFR for issuing regulations and guidance could not come at a worse time, noting that students with disabilities and their families have been particularly adversely affected by physical school closures during the COVID–19 pandemic and remain in need of timely and responsive guidance from the Department.

Commenters also noted that the Department has issued several important guidance documents since the pandemic began to help schools understand their ongoing obligations to students with disabilities, such as question and answer documents related to COVID–19 that help clarify the law during a time when States, districts, and families need immediate information from the Department. The commenters stated that the Department must continue to be able to do so in a timely and efficient manner.

Discussion: The Department appreciates and agrees with the commenters' observations about the effect the COVID–19 pandemic has had on all students, especially students with disabilities. The Department has learned how challenging it has been over the past year to successfully respond to the needs of students and families that were caused by the pandemic with the requirements of the IFR in place. To ensure the needs of these students are met in the future, the Department will continue to need to act timely and efficiently, and the Department believes that the burdensome requirements of the IFR may hinder its ability to do so.

Changes: The Department rescinds 34 CFR part 9.

Comments: One commenter supported the IFR, stating that the Department's adoption of the procedures in the IFR signals that it is invested in meaningful regulatory reform that will curb abuses of administrative power.

Discussion: While the Department appreciates the comment, it does not agree that there is abuse of administrative power in the Department. Instead, the purpose behind the issuance of the IFR was to provide a clear process by which the Department could engage in rulemaking in a transparent manner with meaningful public input. After further consideration, the Department agrees with most of the commenters that the processes that it imposed were unduly burdensome and unnecessary given the requirements of the APA, HEA, and ESEA, which the Department follows, as applicable, and which require public input when rulemaking.

Changes: The Department rescinds 34 CFR part 9.

Comments: Some commenters stated that the Department failed to provide a meaningful opportunity for public input by issuing an IFR instead of a notice of proposed rulemaking. One commenter stated that there was no urgency that requires proceeding through an IFR and that the COVID–19 pandemic warrants allowing more time for submission of public comments and meaningful review. Another commenter questioned whether the IFR qualifies as the kind of procedural rule that falls within the APA's narrow exemption to notice-and-comment rulemaking, and stated that, according to the criteria of the Administrative Conference of the United States, the Department should allow for public comment on all aspects of the rulemaking.

Discussion: The Department does not agree that it failed to provide a meaningful opportunity for public input on the IFR. Although the Department issued the IFR without first publishing proposed regulations for public comment, it did invite public comment on the IFR and noted that it would consider all comments in determining whether to revise the regulations. Furthermore, as the IFR was a ''rule[ ] of agency . . . procedure, or practice,'' the APA notice-and-comment rulemaking requirements do not apply. 5 U.S.C. 553(b)(B). The exception for procedural rules ''covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994), quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980). The IFR contains requirements that govern the Department's internal procedures and practices related to the issuance or regulatory and guidance documents, as well as the procedures that the public must follow to present their views to the Department, such as the processes by which individuals may petition the Department to issue, amend, or repeal a rule (§ 9.9(c)) or request the withdrawal or modification of a guidance document or significant guidance document (§ 9.15).

The Department's rescission of the IFR's requirement to develop significant guidance documents using notice-and-comment procedures (§ 9.14(h)(1)) is also procedural because the APA contemplates that such procedures are within the discretion of an agency to grant or lift given that the APA excepts guidance documents from notice-and-comment rulemaking requirements (see 5 U.S.C. 553(b)(A)).

Finally, notice-and-comment rulemaking requirements also do not apply to regulations that involve a

''matter relating to agency management and personnel,'' 5 U.S.C. 553(a)(2). In addition to relating to agency procedure and practices, many of the requirements in the IFR relate to agency management and personnel, including the provisions governing the structure and composition of the RRTF, Leadership Council and Working Group, those outlining the responsibilities of individuals in various Department positions, and the requirements describing the roles and obligations of specific Department offices in the creation of regulatory and guidance documents.

After considering all comments and Executive Order 13992, the Department has decided to rescind the IFR altogether, consistent with Executive Order 13992.

Changes: The Department rescinds 34 CFR part 9.

Policies (§ 9.4)

Comments: One commenter noted that the IFR contains problematically vague language, such as § 9.4(a)(2)(ii), which provides that rulemaking interpretations must raise no ''major question.'' The commenter expressed concern that the IFR does not define this term and that invoking such undefined and controversial language is problematic.

Discussion: The Department appreciates the comment and also believes that the term ''major question'' taken together with the remaining portion of the sentence is unclear and problematic. The Department is rescinding § 9.4 as part of its rescission of the IFR, and will rely on the APA, existing Executive Orders, and established case law in determining when rulemaking is appropriate.

Changes: The Department rescinds 34 CFR part 9.

General rulemaking procedures (§ 9.9)

Comments: Some commenters recommended that the Department eliminate § 9.9(c), which provides that any interested person may petition the Department to issue, amend, or repeal a rule or for an exemption from a rule that authorizes a permanent or temporary exemption, or to perform a retrospective review of an existing rule. Commenters argued that this provision could lead to unnecessary delays, while empowering industry in a process that is already heavily influenced by industry without providing adequate weight to the interests of students and consumers. Commenters stated that it was unclear how petitions will be analyzed and ruled upon, and that, given the existing opportunities for public input during regulatory processes, including through public comment, hearings before negotiated rulemakings, and in negotiated rulemaking sessions, it is not clear how this additional action will advance rulemaking. Instead, commenters expressed concern that the IFR will further skew the balance on behalf of industry and away from students and consumers and increase the likelihood that bad-actor institutions will be granted exemptions from having to follow the rules.

Discussion: While the Department appreciates the commenters' request to rescind § 9.9(c) and believes it is necessary to rescind the IFR in its entirety, the language in § 9.9(c), in large part, is mirrored in sections 553(e) and 555(e) of the APA and, therefore, exists outside of this IFR.

We acknowledge the concerns about unequal access in the petition process. In complying with the petition requirements established in the APA, the Department intends to use a process that treats everyone equitably and will continue to work to ensure we receive input from all stakeholders, including students and consumers.

Changes: The Department rescinds 34 CFR part 9.

Comments: One commenter stated that § 9.9(c) is inconsistent with best practices as articulated in recommendations from the Administrative Conference of the United States. The commenter noted that the docket for petitions on *regulations.gov* is difficult for unsophisticated petitioners to find and cited some potential technical issues.

Discussion: We appreciate the commenter's concerns that the docket for petitions on *regulations.gov* can be difficult for petitioners unfamiliar with the site to find. The Department would like flexibility to make changes to the petition process as new technologies and procedures become available.

Changes: The Department rescinds 34 CFR part 9.

Comments: One commenter objected to the inclusion of § 9.9(d) providing that all significant Department regulations will be reviewed on a 10-year cycle. The commenter stated that the requirement will burden Department staff in unending process by requiring them to defend existing regulations from repeal every 10 years. The commenter contrasted the requirements of Executive Order 13563 (76 FR 3821), issued on January 21, 2011, with the rule. Executive Order 13563 requires that Federal agencies, subject to resource constraints, conduct a periodic review of significant regulations to determine whether they should be changed, including whether they should be broadened. The commenter contended that, in expanding upon the requirement in the Executive order, the IFR established a backward-looking process that will unnecessarily burden Department staff and prevent them from pursuing work central to the Department's mission.

Discussion: The Department agrees with the commenters that recommended rescission of the IFR, including this commenter's request to rescind § 9.9(d). A requirement for the Department to review all significant Department regulations on a 10-year cycle does burden the Department with a backward-looking process that takes time away from the Department's ability to pursue work central to the Department's mission. We note that, after this rescission, nothing prohibits the Department from reviewing regulations on a case-by-case basis, to assess whether they are achieving their intended goals. However, we believe that doing so on a mandatory, fixed cycle for all regulations is contrary to the goal of flexibility expressed in Executive Order 13992 and is not the best use of Department resources.

Changes: The Department rescinds 34 CFR part 9.

Comments: One commenter stated that the IFR is arbitrarily biased in favor of deregulation and against full consideration of regulatory benefits. As an example, the commenter noted that § 9.9(e) provides that deregulatory rulemakings will be assessed for cost savings but fails to clarify that foregone benefits must also be assessed. Additionally, § 9.9(d)(2)(ii) requires that retrospective review include a review of the cost justification to test whether the rule is no longer net beneficial, but the IFR fails to provide for a review of whether the net benefits of existing rules could be increased by modifying the scope or structure of the regulation. Finally, in several provisions, the IFR requires that the regulatory benefits must ''exceed'' or ''outweigh'' costs, when the appropriate language, as articulated by Executive Order 12866, is that benefits should ''justify'' costs, which better allows analysts and decisionmakers to give due weight to unquantified benefits.

Discussion: We agree with this commenter. We note that Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' which emphasized cost considerations over benefits in rulemaking and formed part of the basis for the IFR, as noted in § 9.1(c), was revoked by Executive Order 13992. Accordingly, consistent with Executive Order 12866, in determining whether rulemaking is appropriate, the Department will consider whether the benefits, including unquantifiable

benefits, justify the costs of the proposed regulatory action, consistent with OMB Circular A–4.[1]

Changes: The Department rescinds 34 CFR part 9.

Special procedures for economically significant rules and high-impact rules (§ 9.10)

Comments: Some commenters urged the Department to eliminate § 9.10(c), which contains procedures for an interested party to file a petition for a formal hearing on a proposed rule following publication of a notice of proposed rulemaking for an economically significant rule or a high-impact rule that has not gone through negotiated rulemaking. Commenters argued that the procedures empower industry in a process that is already heavily influenced by industry without providing adequate weight to students and consumers. Additionally, commenters indicated that this process will delay the finalization of rules. One commenter stated that formal rulemaking, including holding hearings, is a defunct process that will inevitably delay rulemaking, has been shown to be ineffective in empirical analyses by administrative law scholars, and would disadvantage interested parties that do not have the resources to hire attorneys. The commenter asserted that hearings are doubly inappropriate after the Department has completed negotiated rulemaking, as permitted under § 9.10(c)(2)(ii), because Congress structured the negotiated rulemaking process to ensure that all impacted parties, including students, borrowers, and other stakeholders, have a voice in the rulemaking process and have an opportunity to respond to proposals and arguments. The commenter stated that the additional hearings under the IFR would give resourced industry lobby groups an unfair advantage in conveying their views to the Department.

Another commenter stated that the special procedures for economically significant and high-impact rulemakings create glaring and problematic hurdles and that, in erecting these new obstacles, the IFR fails to satisfy its own standard for clearly stating a demonstrated need for the proposed regulation. The commenter also noted that the IFR does not explain why the additional procedural hurdles are necessary or beneficial and fails to consider the costs of these hurdles in terms of delayed regulatory benefits.

Discussion: The Department appreciates and agrees with the commenters' concerns regarding the special procedures for economically significant and high-impact rulemakings. The Department appreciates the concerns that these formal proceedings may present obstacles for some stakeholders, including consumers and students. We also agree that the special procedures could lead to unnecessary rulemaking delays and inhibit regulatory flexibility. The Department believes that its rulemaking procedures under the APA and its negotiated rulemaking procedures under the HEA and ESEA provide ample and equitable opportunity for stakeholders to provide the Department their views on proposed regulations and that there is not a significant benefit to requiring additional hearings. The Department agrees that the IFR should be rescinded, including § 9.10.

Changes: The Department rescinds 34 CFR part 9.

Guidance documents (§ 9.13)

Comments: Commenters argued that the guidance process established in the IFR is overly burdensome, as agencies address more substantial legal issues through rulemaking, which includes notice-and-comment procedures. They noted that agencies may need to quickly issue guidance so that beneficiaries of Federal services and grantees obtain information that they need to perform services in accordance with the law. The commenters noted that the Department has recognized the value of regular subregulatory guidance, such as the Office for Civil Rights' blog related to clarifications and explanations of the new Title IX regulations. They contended that the IFR, which disfavors guidance except in special circumstances and requires Department staff to demonstrate a compelling operational need to issue new guidance, wrongly presumes that guidance is almost always unnecessary. Additionally, a commenter believed the inclusion of electronic announcements and documents that set forth policies on technical issues in the definition of ''guidance document'' in § 9.13(a) will inhibit administrative flexibility and slow the issuance of important guidance and technical assistance documents. Further, they noted that the requirement in § 9.13(c) that all guidance be cleared by the General Counsel will delay the Department's timely issuance of guidance.

Discussion: We agree with commenters that it is important in some circumstances for the Department to have the flexibility to issue guidance quickly so that grantees and other stakeholders have the information they need in a timely manner and that the requirements in § 9.13 related to the issuance of guidance are burdensome and could cause excessive delays. For example, in recent months, the Department has issued guidance documents to help schools and institutions of higher education react to the pandemic and to make the best use of COVID–19 relief funds. To be useful, this guidance needed to be issued and modified quickly as circumstances changed. We recognize the value of timely guidance and agree that the IFR's policy to disfavor guidance except in special circumstances and the requirement that Department staff demonstrate a compelling operational need to issue new guidance creates an unreasonable presumption that guidance is almost always unnecessary.

By rescinding the IFR, the Department will have the ability to issue guidance, which may include technical assistance documents and electronic announcements, more quickly when needed. Additionally, with the rescission of the IFR, the Department will use an internal clearance process that is appropriate for the nature and scope of the guidance documents being issued.

Changes: The Department rescinds 34 CFR part 9.

Comments: A commenter asserted that requiring the disclaimer in § 9.13(b) stating that guidance documents are not legally binding will likely foster confusion among constituencies. For example, although they are not technically legally binding, guidance about the Department's interpretation of court decisions or prioritizing certain types of cases can significantly impact how stakeholders should comply with existing law.

Discussion: We appreciate the commenter's concerns about the disclaimer language in § 9.13(b). By rescinding § 9.13, as well as all of part 9, the Department will have the flexibility to provide information about guidance documents that is appropriate for the intended audience and subject matter of the guidance.

Changes: The Department rescinds 34 CFR part 9.

Comments: One commenter asserted that § 9.13(a)(9) will unnecessarily create confusion for stakeholders by not considering agency statements, such as responses from the Department to a stakeholder's specific question, to be guidance documents unless they offer an interpretation of the law. The commenter stated that not including this type of communication in the

[1] Office of Mgmt. & Budget, Exec. Office of the President, *Circular A–4, Regulatory Impact Analysis: A Primer* 13 (Aug. 15, 2011), *available at www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf* (discussing ''[b]enefits and costs that are difficult to quantify'').

definition of ''guidance document'' is nonsensical, as a stakeholder's question about a law's application to a specific circumstance necessarily requires the Department to respond with its interpretation of the relevant law. They said that the IFR's definition of the term ''guidance document'' introduces new confusion as to when parties can turn to such guidance to ensure their actions comply with applicable laws. The commenter expressed concern that the Department may be inclined to provide indirect and unhelpful responses to questions from stakeholders to avoid triggering the burdensome requirements for developing guidance.

Discussion: The definition of ''guidance document'' in the IFR is based on the definition of the same term in OMB's Guidance Bulletin, which remains in effect. Under this definition, only agency statements of general applicability that otherwise meet the definition constitute guidance documents for purposes of the laws and procedures related to guidance documents. If an agency statement in response to a specific stakeholder question interprets a law, it may be generally applicable if it is intended to apply to other stakeholders in the same or similar circumstances. The Department continues to welcome questions from stakeholders about their specific circumstances and strives to provide responses that are as timely, direct, and helpful as possible in the given circumstances. In responding to stakeholder questions, the Department will determine whether its response is limited to that stakeholder or whether it is of general applicability and better provided to all stakeholders through its guidance procedures.

Changes: The Department rescinds 34 CFR part 9.

Comments: Commenters objected to the process for rescinding guidance documents in § 9.13(e), which states that all active guidance documents will be available through the Department's guidance portal and that documents that are not available in the portal are not considered to be in effect. Commenters expressed concern that the IFR does not address how the Department will select which guidance documents will be in the portal, what issues the Department may consider in withdrawing guidance, or how it must notify stakeholders about public requests for withdrawal of guidance.

One commenter noted that advocates for students with disabilities have opposed recent actions by the Department to rescind guidance, most notably the rescission of the 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline. The commenter recognized the guidance was not legally binding, but argued that the guidance clarified regulatory requirements, and its rescission made the obligations of States and school districts less clear.

One commenter suggested that the Department engage with stakeholders to develop a process in which guidance documents are comprehensively scrutinized so that a clear and compelling reason for their removal is ascertained, and that such a process must be done in a way that does not harm the interests of underserved communities or advance the special interests of groups with political power.

Discussion: The Department evaluates guidance on an ongoing basis to make sure that it is not outdated and that it accurately reflects current Department policy. Where necessary, changes are made or guidance is rescinded, in compliance with applicable law. The Department is committed to ensuring that the public always has access to the most current Department guidance. The guidance portal continues to be available at: *https://www2.ed.gov/policy/gen/guid/types-of-guidance-documents.html.*

The public may contact the relevant office or contact person specified in a guidance document to inquire about its status or raise concerns. Generally, for guidance documents that are being rescinded for policy reasons, where we are exercising our discretion, we use the same method for rescinding the guidance document that we use for issuing it. For example, if the guidance document was issued by posting it to the program web page, we would notify the public of the rescission through a posting to the same web page.

The Department believes that collaboration with stakeholders is valuable; however, we are concerned that the process described by the commenter would create unreasonable obstacles and impede the Department's ability to quickly withdraw or modify guidance in response to challenging circumstances or a change in law. We decline to adopt this suggestion but recognize the importance of considering the interests of different stakeholders when deciding to withdraw or modify guidance and will seek stakeholder input as needed and when practicable.

Changes: The Department rescinds 34 CFR part 9.

Significant guidance documents (§ 9.14)

Comments: Commenters objected to the procedures for the issuance of significant guidance documents in § 9.14(h), most significantly the requirement for a period of public notice and comment. One commenter stated that requiring a process that traditionally has been reserved for only legally binding agency rules will needlessly burden a process meant to be distinct from, and more responsive and flexible than, rulemaking. According to the commenter, this requirement could cause unnecessary delays, including for important question-and-answer guidance documents that help clarify the law during such events as the COVID–19 pandemic when States, districts, and families need immediate information from the Department. Similarly, the commenter contended that the IFR would prohibit the Department from quickly clarifying new laws, such as the Coronavirus Aid, Relief, and Economic Security (''CARES'') Act, as well as existing law, and hamper the Office for Civil Rights and other offices in the Department from issuing clarifying policy that could be considered significant because it raises novel legal or policy issues arising out of legal mandates.

Discussion: Consistent with Executive Order 13992, we are rescinding § 9.14. Although we believe that a 30-day comment period for guidance documents may be valuable in many instances, we believe that requiring it in all circumstances would hinder the Department's ability to provide stakeholders with timely information relating to new and existing laws and requirements. Guidance, especially quick and timely guidance, can serve an important purpose, because it can be clearer and issued faster than case-by-case adjudication and is more flexible than full notice-and-comment rulemaking, and also permits more accessible, audience-tailored explanations. ''[I]nformal communications between agencies and their regulated communities . . . are vital to the smooth operation of both government and business.'' *Indep. Equip. Dealers Ass'n* v. *EPA,* 372 F.3d 420, 428 (D.C. Cir. 2004), and requiring an agency ''to undertake notice and comment whenever it refines an interpretation of its rules or statutory authorities would discourage the agency from synthesizing and documenting helpful and reliable advice.'' *POET Biorefining, LLC* v. *Envtl. Prot. Agency,* 970 F.3d 392, 408 (D.C. Cir. 2020).

Changes: The Department rescinds 34 CFR part 9.

Request for withdrawal or modification of guidance documents and significant guidance documents (§ 9.15)

Comments: One commenter objected to § 9.15, which provides a process by

which members of the public may request the withdrawal or modification of an existing guidance document or significant guidance document. According to the commenter, this process would fail to deliver meaningful transparency and public participation because it subjects crucial guidance to Department review based on the whims of any interest group, without any requirement that the Department notify and work in collaboration with regulated entities and other stakeholders in considering whether to grant a petition.

Discussion: Consistent with Executive Order 13992, we are rescinding § 9.15. We do not believe that it is necessary to have a formal process for requests that the Department withdraw or modify guidance or to require the Department to respond by a specific deadline. Such a process could overburden the Department's resources and hamper its ability to perform other needed activities in a timely manner. The Department will continue to follow the procedures in the Guidance Bulletin, under which an agency must establish and clearly advertise on its website a means for the public to submit a request electronically for issuance, reconsideration, modification, or rescission of significant guidance documents.

Changes: The Department rescinds 34 CFR part 9.

Comments: One commenter approved of the Department's inclusion of a process for challenging agency guidance documents in § 9.15(a) but stated that the IFR should also expressly provide for availability of judicial review after the final disposition of a petition for withdrawal or modification of guidance documents.

Discussion: The Department appreciates the commenter's suggestion but declines to adopt it because we are rescinding § 9.15(a) and all of part 9, consistent with Executive Order 13992. Nonetheless, consistent with the Guidance Bulletin, the Department provides on its website a means for the public to comment on, and submit requests for issuance, reconsideration, modification, or rescission of, significant guidance documents. Specifically, each significant guidance document provides an email link that allows members of the public to submit questions or comments, including requests that the Department revise the significant guidance document. Moreover, the public may submit comments on, and make such requests with respect to, all other guidance through the contact listed in the guidance document, and stakeholders will continue to have all available legal remedies.

Changes: The Department rescinds 34 CFR part 9.

Rescinded significant guidance documents (§ 9.16)

Comments: Two commenters stated that § 9.16(a), which provides for a 30-day notice-and-comment period before the Department rescinds a significant guidance document, as well as publication of a **Federal Register** notice announcing any rescission, is unnecessary. According to these commenters, a procedure for rescinding a guidance document should not be any more difficult than the procedure in effect when the guidance document was issued. They noted that case law adopts this symmetrical approach in the analogous question of when notice and comment is necessary to change an interpretation. Therefore, these commenters contended, the IFR should only apply to significant guidance documents that are issued after the date the IFR is effective, and publication of a **Federal Register** notice announcing the rescission of significant guidance should not be required when the issuance of significant guidance does not require the same.

Discussion: Consistent with Executive Order 13992, we are rescinding all of part 9, including § 9.16. We agree with the commenters that the IFR procedures are unnecessary and unduly burdensome and that the procedures for rescission will be based on the method by which the guidance was adopted, consistent with *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 101 (2015), as well as other relevant circumstances.

Changes: The Department rescinds 34 CFR part 9.

Executive Orders 12866 and 13563 Regulatory Impact Analysis

Under Executive Order 12866, OMB must determine whether this regulatory action is ''significant'' and, if so, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 (76 FR 3821), issued on January 18, 2011, also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are rescinding the IFR only on a reasoned determination that the benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that

follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Costs and Benefits

In accordance with Executive Order 13563, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The Department does not anticipate any potential costs associated with the rescission of the IFR, while the potential benefits are significant. The rescission of the IFR will benefit the public by allowing the Department to respond quickly to the needs of students, school districts, and other stakeholders by issuing regulations and guidance to clarify legal requirements. In addition, there will be cost savings associated with the rescission based on the removal of the additional procedural requirements on the Department that were required by the IFR, such as that it engage in additional public hearings and perform more frequent retrospective reviews of agency regulations. The Department believes that the benefits that were identified in the IFR, including providing transparency and performing a comprehensive analysis of each regulatory action, ensuring that the public is subject only to rules imposed through statutes and regulations, and providing the public with fair notice of their obligations will be achieved through existing agency processes pursuant to existing law, such as the APA, HEA, ESEA, Regulatory Flexibility Act, Paperwork Reduction Act, and Guidance Bulletin.

As explained under *Paperwork Reduction Act of 1995,* there are no information collection requirements associated with this regulatory action.

Regulatory Flexibility Act Certification

Because the IFR is an internal rule of agency procedure, see 5 U.S.C. 553(a)(2), 553(b)(A), notice-and-comment rulemaking is not necessary to rescind the IFR. As a result, the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

Because we are rescinding 34 CFR part 9, there are no associated information collection requirements.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 9

Administrative practice and procedure.

Miguel A. Cardona,

Secretary of Education.

PART 9—[REMOVED]

■ Accordingly, for the reasons discussed in the preamble and under the authority of 20 U.S.C. 1221e–3, the Secretary removes 34 CFR part 9.

[FR Doc. 2021–20992 Filed 9–28–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0474; FRL–8755–02–R7]

Air Plan Approval; Missouri; Control of Emissions From Batch Process Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to incorporate revisions to Missouri's rule related to control of emissions from batch process operations. These revisions update references to the appropriate State rule for New Source Performance Regulations. These revisions are administrative in nature and do not reduce the stringency of the SIP or have an adverse impact to air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 29, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0474. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Robert F. Webber, Environmental Protection Agency, Region 7 Office, Air Permitting and Standards Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7251; email address: *webber.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.