

United States Court of Appeals for the District of Columbia Circuit by December 28, 2020.

III. Description of Action

On February 4, 2020, the EPA promulgated a final rule addressing a petition for reconsideration that was filed in response to a rule issued in December 2015,¹ which amended the Petroleum Refinery Sector NESHAP based on the RTR conducted for the Petroleum Refinery source category. 85 FR 6064. Following promulgation of the final rule, on April 6, 2020, the Administrator received a petition for reconsideration of certain provisions of the final rule pursuant to CAA section 307(d)(7)(B). The petition for reconsideration was filed by Earthjustice on behalf of Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition for a Safe Environment, Community In-Power and Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment. The petition for reconsideration requests that the EPA reconsider five issues in the February 4, 2020, final rule: (1) The EPA's rationale that the pressure relief device (PRD) standards and emergency flaring standards are continuous; (2) the EPA's rationale for the PRD standards under CAA sections 112(d)(2) and (3); (3) the EPA's rationale for separate work practice standards for flares operating above the smokeless capacity; (4) the EPA's rationale for risk acceptability and risk determination; and (5) the EPA's analysis and rationale in its assessment of acute risk.

CAA section 307(d)(7)(B) requires the EPA to convene a proceeding for reconsideration of a rule if a party raising an objection to the rule "can demonstrate to the Administrator that it was impracticable to raise such objection within [the public comment period] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." The requirement to convene a proceeding to reconsider a rule is, thus, based on the petitioner demonstrating to the EPA both: (1) That it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period, but within

the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the **Federal Register**, see CAA section 307(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule.

The EPA carefully reviewed the petition for reconsideration and evaluated all five issues raised to determine if they meet the CAA section 307(d)(7)(B) criteria for reconsideration. In a separate letter to the petitioner, the EPA Administrator denied the petition for reconsideration. The letter articulates in detail the rationale for the EPA's final responses and is available in the docket for this action.

Andrew Wheeler,

Administrator.

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DEPARTMENT OF THE INTERIOR

43 CFR Part 51

[Docket No. DOI-2020-0001; 201D0102DM, DS6CS00000, DLSN00000.000000, DX6CS25]

RIN 1093-AA27

Procedures for Issuing Guidance Documents

AGENCY: Office of the Secretary, Interior.

ACTION: Interim final rule; request for comments.

SUMMARY: We, the Department of the Interior (Department), through this interim final rule (IFR), revise our rulemaking procedures to implement an Executive order (E.O.) entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents." The E.O. requires Federal Agencies to finalize regulations or amend existing regulations to establish processes and procedures for issuing guidance documents and to establish exceptions for categories of guidance documents.

DATES: This rule is effective October 26, 2020. Comments will be accepted until December 28, 2020.

ADDRESSES: You may submit comments by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. DOI-2020-0001. Please note that if you are using the Federal eRulemaking Portal, the deadline for submitting electronic comments is 11:59 Eastern Standard Time on the comment due date.

• *Mail:* Address comment to Public Comments Processing, Attn: Docket No. DOI-2020-0001; Department of the Interior; MS: 7328; 1849 C Street NW, Washington, DC 20240.

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:

Background Information

E.O. 13891, entitled "Promoting the Rule of Law Through Improved Agency Guidance Documents," which published in the **Federal Register** on October 15, 2019 (84 FR 55235), is intended to improve the guidance document development process while maintaining an open and fair regulatory process for the public. On October 31, 2019, the Office of Management and Budget (OMB) issued a "Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions" (M-20-02).¹ One of E.O. 13891's requirements is that Federal Agencies promulgate final regulations or amend existing regulations that set forth processes and procedures for issuing guidance documents.² The purpose of this IFR is to codify these processes and procedures for issuing guidance documents as well as to allow the public to comment on the rule. The Department is amending its regulations under an IFR and will forgo issuing a proposed rule. The IFR will take effect on the date specified above in **DATES**, with public comment to conclude as set forth in **DATES**. Based on public comments received, the interim rule may be revised. The final rule will contain responses to comments received on the IFR, state the final decision, and provide the justification for that decision.

Discussion of the Interim Final Rule

This IFR creates a new part 51 in title 43 of the Code of Federal Regulations (CFR), which concerns Public Lands and the Department of the Interior. This rule promulgates the Department's procedural requirements governing the development, review, and clearance of guidance documents; the processes for

¹ See Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions.

² See section 4(a) of Executive Order 13891.

¹ The December 1, 2015, rule can be found in the **Federal Register** at 80 FR 75178.

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.

The procedures contained in this IFR apply to all guidance documents, which E.O. 13891 defines as any statement of agency that is of general applicability and intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issues or an interpretation of a statute or regulation, with certain exceptions. OMB's M-20-02 further clarifies and provides information for Agencies to consider in determining when a document is indeed a guidance document, including a functional test for rules of agency organization, procedure, or practice. This IFR codifies the Department's existing procedures and implements new procedures regarding the development, review, and clearance of guidance documents. These procedures ensure that all guidance documents receive legal review and, when appropriate, Office of the Secretary review. Before guidance documents are issued, they must be reviewed to ensure they are written in plain language and do not impose any substantive legal requirements above and beyond those imposed by statute, regulation, or contract. If a guidance document purports to describe, approve, or recommend specific conduct that extends beyond what is required by existing law, regulation, or contract, then it must include clear and prominent language effectively stating that the contents of the guidance document do not have the force and effect of law and are not meant to bind the public in any way, and the guidance document is intended only to provide clarity to the public regarding existing requirements under the law, regulation, contract or agency policies.

In recognition of the fact that although guidance documents are not legally binding, they could nevertheless have a substantial economic impact on regulated entities that alter their conduct to conform to the guidance, this IFR directs Bureaus and Offices within the Department to undertake a benefits and cost assessment of the impact of the guidance document when appropriate. Further information that describes identifying and measuring benefits and costs are found in OMB's Circular A-4 (add footnote). Further Bureaus/Offices of the Department are to be in compliance with E.O. 13891, Section 4(a)(iii)(C) and (D). The procedures for

the development, review, and clearance of guidance documents can be found at 43 CFR part 51.

Required Determinations

Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.)

Under section 553(b)(3)(B) of the APA, a proposed rule is not required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." There is good cause to forgo notice and public comment on a proposed rule in this instance and instead take immediate action because this IFR codifies the Department's existing procedures and implements new procedures regarding the development, review, and clearance of guidance documents as directed by E.O. 13891. Additionally, it does not reach any right or benefit, substantive, or procedural, as an enforceable action against the United States or the Department. The Department finds good cause in accordance with 5 U.S.C. 553(d)(3) to make the IFR effective less than 30 days after the date of publication to allow for swift implementation of this program. Although this IFR is effective immediately, comments are solicited from the public on all aspects of the interim final rule. The Department will consider all public comments received in the development of a subsequent final rule.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

E.O. 12866 provides that the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory objectives. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives. This IFR is in compliance with E.O. 13563 and is intended to promote predictability, to reduce uncertainty, and to use the best, most

innovative, and least burdensome tools for achieving regulatory objectives.

Regulatory Flexibility Act

This IFR will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as it will not directly impact small entities or impose any regulatory burdens on them.

Small Business Regulatory Enforcement Fairness Act

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will assist small entities in understanding this rule so that they can better evaluate its effects. If the IFR rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule. Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business.

Unfunded Mandates Reform Act

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

This rule:

(a) Will not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year.

(b) Will not have a significant or unique effect on State, local, or tribal governments, or the private sector.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule is not a Government action capable of interfering with constitutionally protected property rights. It does not impose any obligations on the public

that would result in a taking. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this IFR will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because it will not substantially and directly affect the relationship between the Federal and State governments. Accordingly, a federalism summary impact statement is not required.

Civil Justice Reform (E.O.12988)

This IFR complies with the requirements of E.O. 12988.

Specifically, this rule:

(a) Meets the criteria of section 3(a) of this E.O. which requires that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) of this E.O. which requires that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with federally recognized Indian tribes through a commitment to consultation and recognition of their right to self-governance and tribal sovereignty. Under the criteria in E.O. 13175 and Departmental Manual Part 512 Chapters 4 and 5, this IFR will have no substantial direct effects on federally recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and consultation under the Department's consultation policies is not required.

Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

This IFR does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This IFR will not impose recordkeeping or reporting requirements on State, local, or Tribal governments, individuals, businesses, or organizations.

National Environmental Policy Act

This IFR does not constitute a major Federal action significantly affecting the quality of the human environment. Pursuant to Departmental Manual 516 DM 2.3A (2), section 1.10 of 516 DM 2, Appendix 1 categorically excludes from the requirement to document an environmental assessment or impact statement policies, directives, regulations and guidelines of an

administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject to the NEPA process, either collectively or case-by-case. *See also* 43 CFR 46.210(i). The Department has reviewed this rule and determined that this categorical exclusion applies, and that none of the extraordinary circumstances that would preclude use of the categorical exclusion are applicable. *See* 43 CFR 46.215. Therefore, a detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required.

Effects on the Energy Supply (E.O. 13211)

This IFR is not a significant energy action under the definition in E.O. 13211; therefore, a Statement of Energy Effects is not required.

Plain Language

The Department is required by section 1(b)(12) of E.O. 12866 and Section 3(b)(1)(B) of E.O. 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that this rule must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Authority

The Department publishes this IFR in accordance with the APA as codified in the text of chapters 5 and 7 of Title 5, United States Code, that govern procedures for agency rulemaking and adjudication and provides for judicial review of final agency actions and E.O. 13891.

List of Subjects in 43 CFR Part 51

Administrative practice and procedure, Executive orders.

For the reasons discussed in the preamble, 43 CFR part 51 is added to read as follows:

PART 51—GUIDANCE DOCUMENTS PROCEDURES

Sec.

51.1 General.

51.3 Review and clearance by the Office of the Solicitor.

51.5 Requirements for clearance.

51.7 Public access to effective guidance documents.

51.9 Cost and benefit estimates.

51.11 Approval procedures for guidance documents identified as “significant.”

51.13 Definition of “significant guidance document.”

51.15 Designation procedures.

51.17 Notice-and-comment procedures.

51.19 Petitions for guidance.

51.21 Rescinded guidance.

51.23 Exigent circumstances.

51.25 Reports to Congress and the Comptroller General.

51.27 No judicial review or enforceable rights.

Authority: 5 U.S.C. Chapter 5, Subchapter II; Chapter 7, E.O. 13891, 84 FR 55235, 3 CFR, 2019 Comp., p. 371.

§ 51.1 General.

(a) This part governs the issuance of Departmental guidance documents.

(b) Subject to the qualifications and exemptions contained in this part, the procedures in this part apply to all guidance documents issued by all Bureaus/Offices of the Department of the Interior (the Department) after October 26, 2020.

(c) For purposes of this part, the term “guidance document” is any statement of agency policy or interpretation of a statute, regulation, or technical matter within the jurisdiction of the agency that is of general applicability and intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issues or an interpretation of a statute or regulation, with certain exceptions. The term is not confined to formal written documents; guidance may come in a variety of forms, including (but not limited to) letters, memoranda, circulars, bulletins, advisories, and may include video, audio, and Web-based formats. *See* Office of Management and Budget (OMB) Bulletin 07–02, “Agency Good Guidance Practices,” (January 25, 2007) (“OMB Good Guidance Bulletin”).

(d) This part does not apply to the following documents, which are not included in the definition of “guidance document” for purposes of this part:

- (1) Rules promulgated pursuant to notice and comment under 5 U.S.C. 553, or similar statutory provisions;
- (2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);
- (3) Rules of agency organization, procedure, or practice;
- (4) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;
- (5) Internal guidance directed to the issuing agency or other agencies that is

not intended to have substantial future effect on the behavior of regulated parties; or

(6) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials that are not intended to have substantial future effect on the behavior of regulated parties.

§ 51.3 Review and clearance by the Office of the Solicitor.

All Departmental guidance documents, as defined in § 51.1(c), require review and clearance in accordance with this part.

(a) Guidance proposed to be issued by a Bureau/Office of the Department must be reviewed and cleared by the relevant Division of the Office of the Solicitor. In addition, as provided in paragraph (b) of this section, some Bureau/Office guidance documents will require review and clearance by the Immediate Office of the Solicitor.

(b) Guidance proposed to be issued by the Office of the Secretary must be reviewed and cleared by the Immediate Office of the Solicitor.

§ 51.5 Requirements for clearance.

The Department's review and clearance of guidance documents must ensure that each guidance document proposed to be issued by a Bureau/Office of the Department satisfies the following requirements:

(a) The guidance document complies with and cites all relevant statutes and regulations (including any statutory deadlines for agency action);

(b) The guidance document identifies or includes:

(1) The term "guidance" or its functional equivalent;

(2) The issuing Bureau/Office and the date of issuance;

(3) A unique identifier, including, at a minimum, the date of issuance and title of the guidance document and its Z-Regulatory Identification Number (Z-RIN), if applicable;

(4) The activity or entities to which the guidance applies;

(5) Citations to applicable statutes and regulations;

(6) A statement noting whether the guidance document intends to revise or replace any previously issued guidance document and, if so, sufficient information to identify the previously issued guidance document; and

(7) A short summary of the subject matter covered in the guidance document at the top of the document;

(c) The guidance document should not use mandatory language, such as "shall," "must," "required," or "requirement," unless the language is

describing an established statutory, regulatory, or contractual requirement or is addressed to Department staff and will not foreclose the Department's consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) The guidance document must include a clear and prominent statement declaring that the contents of the document do not have the force and effect of law, except as authorized by law or as incorporated into a contract, and are not meant to bind the public in any way, except as authorized by law or as incorporated into a contract, and that the document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

§ 51.7 Public access to effective guidance documents.

Each Bureau/Office that is responsible for issuing guidance documents must:

(a) Ensure all effective guidance documents, identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision and its Z-RIN, if applicable, are on the Department's website in a single, searchable, indexed database, and available to the public in accordance with the notice titled "Implementation of Executive Order 13891: Guidance Documents";

(b) Note on its website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract;

(c) Maintain and advertise on its website a means for the public to comment electronically on any guidance documents that are subject to the notice-and-comment procedures described in § 51.17 and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents in accordance with § 51.21; and

(d) Designate an office or official(s) to receive petitions for withdrawal or modification of guidance documents and address complaints from the public that the Bureau/Office is not following the requirements of OMB's Good Guidance Bulletin or is improperly treating a guidance document as a binding requirement.

§ 51.9 Cost and benefit estimates.

(a) The Bureau/Office must evaluate whether, although not legally binding, an agency guidance document may result in a substantial economic impact (e.g., by inducing private parties to alter their conduct to conform to

recommended standards or practices) where "significant" as defined by E.O. 12866. E.O. 12866 requires agencies to estimate the net benefits of regulations. Net benefits are defined as total benefits minus total costs. When it is determined that a guidance document will be economically significant, the Bureau/Office must prepare a Regulatory Impact Analysis and make it publicly available in the same manner it what would accompany an economically significant rulemaking.

(b) While it may be difficult to predict with precision the economic impact of voluntary guidance, the issuing Bureau/Office must, to the extent practicable, make a estimate the likely economic cost impact of the guidance document in order to determine whether the guidance document is economically significant. When a Bureau/Office is explaining to OMB's Office of Information and Regulatory Affairs (OIRA) whether it believes a guidance document is economically significant, it should, at a minimum, provide the same level of analysis that would be required for a major determination under the Congressional Review Act.¹

§ 51.11 Approval procedures for guidance documents identified as "significant."

(a) Guidance documents proposed to be issued by a Bureau/Office must be submitted (or a summary of it) to the Office of the Executive Secretariat and Regulatory Affairs (OES). OES will submit these documents or summaries of them to OIRA for significance determinations. If OIRA determines that a proposed guidance document is significant, then the Bureau/Office must obtain a Z-RIN and clearance through the Data Tracking System (DTS) or successor data management system. Each proposed guidance document determined to be significant must be approved by the Secretary before issuance.

(b) As with regulations or rules, including significant regulatory actions, OES will submit significant guidance documents to OIRA consistent with the requirements set forth in § 51.13(c). In addition, OES may determine that it is appropriate to coordinate with the Office of the Secretary and OIRA in the review of guidance documents.

(c) Significant guidance documents must be reviewed by OIRA under E.O. 12866 before issuance and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions.

¹ See OMB Memorandum M-19-14, Guidance on Compliance with the Congressional Review Act (April 11, 2019).

(d) If the guidance document is determined not to be significant as defined by § 51.13, OES will advise the proposing Bureau/Office to proceed with issuance of the guidance through its standard clearance process.

§ 51.13 Definition of “significant guidance document.”

(a) The term “significant guidance document” means a guidance document that may reasonably be anticipated to:

- (1) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;
- (3) Alter materially the budgetary impact of entitlements, 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 set forth in E.O. 12866, as further amended.

(b) The term “significant guidance document” does not include the categories of documents excluded by § 51.1(d) or any other category of guidance documents exempted in writing by OIRA in consultation with OES.

(c) Significant guidance documents must:

- (1) Be reviewed by OIRA under E.O. 12866 before issuance;
- (2) Be approved on a non-delegable basis by the Bureau/Office head or by an agency component head appointed by the President, before issuance; and
- (3) Demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in Executive Orders 12866, 13563, 13609, 13771, 13777, and 13893.

§ 51.15 Designation procedures.

(a) The OES may request a Bureau/Office to prepare a designation request for certain guidance documents. Designation requests must include the following information:

- (1) A summary description of the guidance document; and
 - (2) The Bureau/Office recommended designation of “not significant,” “significant,” or “economically significant,” as well as a justification for that designation.
- (b) OES must seek significance determinations from OIRA for guidance

documents in the same manner as for regulatory actions. Prior to publishing such guidance documents, and with sufficient time to allow OIRA to review the document in the event that a significance determination is made, OES will provide OIRA with an opportunity to review the designation request or the guidance document, if requested, to determine if it meets the definition of “significant” under Executive Order 13891.

§ 51.17 Notice-and-comment procedures.

(a) Except as provided in paragraph (b) of this section, all proposed Department guidance documents determined to be a “significant guidance document” within the meaning of § 51.13 will be subject to the following informal notice-and-comment procedures prior to issuance. The issuing Bureau/Office must:

- (1) Publish a notice in the **Federal Register** announcing that a draft of the proposed guidance document is publicly available;
- (2) Post the draft guidance document on its website;
- (3) Invite public comment on the draft document for a minimum of 30 days through a **Federal Register** notice;
- (4) All public comments received must be posted and made publicly available; and
- (5) Prepare and post public responses to major concerns raised in the comments, as appropriate, on its website, and through a **Federal Register** notice either before or when the guidance document is finalized and issued.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document or categories of significant guidance documents for which OES finds, in consultation with OIRA, the proposing Bureau/Office, Solicitor, Assistant Secretary, and the Secretary, that good cause exists such that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons therefor in the guidance issued). Unless OES advises otherwise in writing, the categories of guidance will be exempt from the requirements of paragraph (a) of this section.

(c) Where appropriate, OES or the proposing Bureau/Office may recommend to the Secretary that a particular guidance document that is not a significant guidance document should be subject to the informal notice-and-comment procedures described in paragraph (a) of this section.

§ 51.19 Petitions for guidance.

Any person may petition the Secretary, through an electronic submission, to issue new, or withdraw or modify, a particular guidance document by using the procedures found in 43 CFR part 14 (§§ 14.1 through 14.4). The Secretary will delegate the petition to the appropriate Bureau/Office, which should respond to all requests in a timely manner but must respond no later than 90 days after receipt of the request.

§ 51.21 Rescinded guidance.

A Bureau/Office may not cite, use, or rely on guidance documents that are rescinded, except to establish historical facts.

§ 51.23 Exigent circumstances.

In emergency situations or when the issuing Bureau/Office is required by statutory deadline or court order to act more quickly than normal review procedures allow, the issuing Bureau/Office must coordinate with OES to notify OIRA as soon as possible and, to the extent practicable, must comply with the requirements of this part at the earliest opportunity. Wherever practicable, the issuing Bureau/Office should schedule its proceedings to permit sufficient time to comply with the procedures set forth in this part.

§ 51.25 Reports to Congress and the Comptroller General.

Unless otherwise determined in writing by OES, it is the policy of the Department that upon issuing a guidance document determined to be “significant” within the meaning of § 51.13, the issuing Bureau/Office will submit a report to Congress and the Comptroller General in accordance with the procedures described in 5 U.S.C. 801 (the “Congressional Review Act”).

§ 51.27 No judicial review or enforceable rights.

This part is intended to improve the internal management of the Department. As such, it is for the use of Department personnel only and is not intended to, and does 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.

Dated: September 28, 2020.

Katharine Sinclair MacGregor,
Deputy Secretary, U.S. Department of the Interior.

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