



DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 89

RIN 1290-AA41

Rescission of Department of Labor Rule on Guidance

AGENCY: Office of the Secretary, U.S. Department of Labor.

ACTION: Final rule; rescission of regulations.

SUMMARY: On August 28, 2020, the Department of Labor published a final rule on guidance implementing an Executive order entitled “Promoting the Rule of Law Through Improved Agency Guidance Documents,” and providing policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice and comment process for significant guidance; and taking and responding to petitions about guidance. In accordance with the “Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation,” issued by President Biden on January 20, 2021, this final rule rescinds the Department’s rule on guidance.

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

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, Senior Policy Advisor, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5076 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Discussion

On August 28, 2020, the Department of Labor published an internal final rule on guidance implementing EO 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” signed by President Trump on October 9, 2019. As required by the EO,

the rule contained policy and requirements for issuing, modifying, withdrawing, and using guidance; making guidance available to the public; a notice and comment process for significant guidance; and taking and responding to petitions about guidance (85 FR 53163).

On January 20, 2021, President Biden issued the “Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation” which, among other things, revoked EO 13891 and directed agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive orders. The January 20, 2021, EO states that it is the policy of the Administration “to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID-19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies (agencies) must be equipped with the flexibility to use robust regulatory action to address national priorities. This order revokes harmful policies and directives that threaten to frustrate the Federal Government’s ability to confront these problems, and empowers agencies to use appropriate regulatory tools to achieve these goals.”

After consideration and review, the Department has concluded that the internal rule on guidance deprives the Department and subordinate agencies of necessary flexibility in determining when and how best to issue public guidance based on particular facts and circumstances, and unduly restricts the Department’s ability to provide timely guidance on which the public can confidently rely. Therefore, in accordance with President Biden’s January 20, 2021, EO, the Department is issuing this final rule, which rescinds the internal rule on guidance published at 85 FR 53163.

II. Final Rule

The Department has determined that this rule is suitable for final rulemaking. The revisions to the Department’s policies and requirements surrounding guidance are purely internal matters of agency management, as well as the agency’s organization, procedure, and practice.

Accordingly, as with the August 2020 final rule, the Department is not required to engage in a notice and comment process to issue them under either the Administrative Procedure Act. *See* 5 U.S.C. 553(a)(2), 553(b)(A). Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule not be effective until at least 30 days after publication in the Federal Register is inapplicable. The Department also finds good cause to provide an immediate effective date for this rule, because it imposes no obligations on parties outside the federal government and therefore no advance notice is required to enable employers or other private parties to come into compliance.

List of Subjects in 29 CFR Part 89

Administrative practice and procedure, Labor.

PART 89 [REMOVED]

For the reasons discussed in the preamble, and under the authority of 5 U.S.C. 301, the Department of Labor amends 29 CFR subtitle A by removing part 89.

Signed at Washington, D.C.

Stephanie Swirsky,

Deputy Assistant Secretary of Labor for Policy.

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