I. General Information

A. What action is the Agency taking?

In accordance with E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” issued by President Biden on January 20, 2021 (86 FR 7049, January 25, 2021), the EPA is rescinding the final rule (85 FR 66230, October 19, 2020) that established the procedures and requirements regarding the issuance, revision, and withdrawal of guidance documents. The prior final rule was promulgated to implement E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents” (84 FR 55235, October 15, 2019).

B. What is the Agency’s authority for taking this action?

The revisions to the EPA’s policies and requirements concerning guidance are matters of agency organization, procedure, or practice that lack the force and effect of law. Accordingly, the EPA is not required to engage in a notice and comment process to issue or revise internal procedures under the Administrative Procedure Act (APA). See 5 U.S.C. 553(b)(3)(A), which provides that an agency may issue interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice without providing notice and an opportunity for public comment. The EPA is providing an immediate effective date for this rulemaking because it is procedural rather than substantive. The APA’s requirement, 5 U.S.C. 553(d), that substantive rules not be effective until at least 30 days after publication in the Federal Register is inapplicable because this rulemaking is procedural.

II. Background

On October 9, 2019, President Trump issued E.O. 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents.” The now revoked E.O. 13891 provided a specific definition of guidance documents and required Federal agencies to finalize regulations or amend existing regulations to establish processes and procedures for issuing guidance documents, among other actions. On October 19, 2020, the EPA published a final rule consistent with E.O. 13891. The final rule, codified at 40 CFR part 2, subpart D, established the EPA’s policy and internal procedures for issuing, modifying, withdrawing, and using guidance documents; making guidance documents available to the public; and receiving and responding to petitions about guidance documents (85 FR 66230).

On January 20, 2021, President Biden issued E.O. 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation,” which revoked E.O. 13891. E.O. 13992 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.” Section 3 of E.O. 13992 directs agencies to take steps to rescind any orders, rules, regulations, guidelines or policies, or portions thereof, implementing or enforcing the revoked Executive orders.

III. Discussion

After consideration and review, the EPA has concluded that the internal rule on guidance deprives the EPA of necessary flexibility in determining when and how best to issue public guidance based on particular facts and circumstances, and unduly restricts the EPA’s ability to provide timely guidance on which the public can confidently rely. Therefore, in accordance with E.O. 13992, the EPA is issuing this final rule to rescind the subpart D regulations.

The EPA’s stated purpose in issuing subpart D was to promote transparency and public involvement in the development and amendment of EPA guidance documents. The EPA notes, however, that the Agency has historically employed procedures for public transparency and involvement in the development of all Agency actions, including guidance, and will continue these practices. The EPA will continue to make Agency guidance available to the public on the Agency’s website at https://www.epa.gov. In addition, the EPA will comply with all statutory obligations pertaining to posting documents for public accessibility. The EPA will also continue its practice, as appropriate, of soliciting stakeholder input on guidance of significant stakeholder and public interest.

Consistent with the APA, stakeholders may still petition the EPA at any time regarding our regulatory programs, including requests to issue, amend, or repeal EPA guidance, by contacting the
The revisions consolidate five chapters and declaratory rulings among others. These proceedings include contested cases, rulemaking petitions, and declaratory rulings among others. The revisions consolidate five chapters into a single chapter by removing duplicative language and incorporating by reference model rules of agency procedures promulgated by the Attorney General for agency use in accordance with the Administrative Procedure Act.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on September 24, 2020. This final action will amend the SIP to revise the Nebraska Administrative Code “Nebraska Rules of Practice and Procedure.” These rules describe the procedures the Nebraska Department of Environment and Energy (NDEE), formerly the Nebraska Department of Environmental Quality (NDEQ), will follow for proceedings under the Administrative Procedure Act. These proceedings include contested cases, rulemaking petitions, and declaratory rulings among others. The revisions consolidate five chapters into a single chapter by removing duplicative language and incorporating by reference model rules of agency procedures promulgated by the Attorney General for agency use in accordance with the Administrative Procedure Act.