

that goes into effect during a plan year beginning after December 31, 2014, so that a plan may meet the requirements of a funding improvement plan under section 305(c) of ERISA and section 432(c) of the Code or a rehabilitation plan under section 305(e) of ERISA and section 432(e) of the Code, except to the extent that one of the following exceptions applies pursuant to section 305(g)(3) of ERISA and section 432(g)(3) of the Code:

(i) The increases in contribution requirements are due to increased levels of work, employment, or periods for which compensation is provided.

(ii) The additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or (f)(1)(B) of ERISA and section 432(d)(1)(B) or (f)(1)(B) of the Code.

(b) *Simplified method for a plan that is no longer in endangered or critical status.* A plan sponsor may amend a plan without PBGC approval to use the simplified method in this paragraph (b) for purposes of determining the highest contribution rate for a plan that is no longer in endangered or critical status. The highest contribution rate is the greater of—

(1) The employer's contribution rate as of the date that is the later of the last day of the first plan year that ends on or after December 31, 2014 and the last day of the plan year the employer first contributes to the plan (the "employer freeze date") plus any contribution increases after the employer freeze date, and before the employer's withdrawal date that are determined in accordance with the rules under § 4219.3(a)(2)(ii); or

(2) The highest contribution rate for any plan year after the plan year that includes the expiration date of the first collective bargaining agreement of the withdrawing employer requiring plan contributions that expires after the plan is no longer in endangered or critical status, or, if earlier, the date as of which the withdrawing employer renegotiated a contribution rate effective after the plan year the plan is no longer in endangered or critical status.

(c) *Example:* The simplified method in paragraph (b) of this section is illustrated by the following example.

(1) *Facts.* A contributing employer withdraws in plan year 2028, after the 2027 expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in critical status in plan year 2026. The plan sponsor determines that under the expiring collective bargaining agreement the employer's \$4.50 hourly

contribution rate in plan year 2014 was required to increase each year to \$7.00 per hour in plan year 2025, to enable the plan to meet its rehabilitation plan. The plan sponsor determines that, over this period, a cumulative increase of \$0.85 per hour was used to fund benefit increases, as provided by plan amendment. Under a new collective bargaining agreement effective in 2027, the employer's hourly contribution rate is reduced to \$5.00.

(2) *Highest contribution rate.* The plan sponsor determines that the employer's highest contribution rate for purposes of section 4219(c) of ERISA is \$5.35, because it is the greater of the highest rate in effect after the plan is no longer in critical status (\$5.00) and the employer's contribution rate in plan year 2014 (\$4.50) plus any increases between 2015 and 2025 (\$0.85) that were required to be taken into account under section 305(g)(3) of ERISA.

(d) *Effective and applicability dates.*

(1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 220

[COE-2020-0009]

RIN 0710-AA85

Design Criteria for Dam and Lake Projects

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the U.S. Army Corps of Engineers' part titled Design Criteria for Dam and Lake Projects. This part is out-of-date and otherwise covers internal agency operations that have no public compliance component or adverse public impact. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on January 8, 2021.

ADDRESSES: Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW-EC (Mr. Robert Bank), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bank at (202) 761-5532 or by email at Robert.Bank@usace.army.mil.

SUPPLEMENTARY INFORMATION:

This final rule removes from the 33 CFR part 220, Design Criteria for Dam and Lake Projects providing policy, design, and report requirements for low level discharge facilities for drawdown of lakes to be impounded by Corps Civil Works projects. The rule was initially published in the **Federal Register** on May 8, 1975 (40 FR 20081), and amended on August 22, 1975 (40 FR 36774). While the rule applies only to Corps design criteria on Corps dam and lake projects, it was published, at that time, in the **Federal Register** to aid public accessibility.

The solicitation of public comment for this removal is unnecessary because the rule is out-of-date, duplicative of existing internal agency guidance, and otherwise covers internal agency operations that have no public compliance component or adverse public impact. For current public accessibility purposes, updated internal agency policy on this topic may be found in Engineer Manual 1110-2-1602, "Hydraulic Design of Reservoir Outlet Works" (available at https://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-1602.pdf). The agency policy is only applicable to field operating activities having responsibility for the design of Corps Civil Works projects and provides guidance specific to the Corps' hydraulic design analysis of reservoir outlet works facilities.

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs the Corps' design criteria for Corps dam and lake projects. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs.

This rule is not significant under Executive Order (E.O.) 12866, "Regulatory Planning and Review." Therefore, the requirements of E.O. 13771, "Reducing Regulation and Controlling Regulatory Costs," do not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 33 CFR Part 220

Dams, Flood control.

PART 220—[REMOVED]

■ Accordingly, for the reasons stated in the preamble and under the authority of 5 U.S.C. 301, the Corps removes 33 CFR part 220.

R.D. James,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2020–27908 Filed 1–7–21; 8:45 am]

BILLING CODE 3720–58–P

COUNCIL ON ENVIRONMENTAL QUALITY**40 CFR Part 1519**

RIN 0331–AA04

Guidance Document Procedures

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: Pursuant to Executive Order (E.O.) 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents,” this final rule establishes the process that the Council on Environmental Quality (CEQ) will follow for issuing guidance documents. E.O. 13891 requires Federal agencies to finalize regulations or amend existing regulations to establish processes and procedures for issuing guidance documents.

DATES: This rule is effective January 8, 2021.

FOR FURTHER INFORMATION CONTACT:

Amy B. Coyle, Deputy General Counsel, Council on Environmental Quality, 730 Jackson Place NW, Washington, DC 20503, (202) 395–5750, amy.b.coyle@ceq.eop.gov.

SUPPLEMENTARY INFORMATION:

On October 9, 2019, President Trump issued E.O. 13891,¹ which addresses the development, use, and public availability of agency guidance documents. It requires agencies to promulgate or update existing regulations setting forth their procedures for issuing guidance documents. In accordance with section 6 of E.O. 13891, on October 31, 2019, the Office of Management and Budget (OMB) issued memorandum M–20–02, “Guidance Implementing Executive Order 13891, Titled ‘Promoting the Rule of Law Through Improved Agency Guidance Documents’” (OMB M–20–02)² to provide guidance and implement the Executive order. OMB

M–20–02 provides agencies with additional instruction on how to implement E.O. 13891, including the required rulemaking.

I. Summary of Final Rule

In this final rule, CEQ adds a new part 1519 to the Code of Federal Regulations to set out its procedures for the development and issuance of guidance documents consistent with the direction and reflecting the policies described in E.O. 13891 and OMB M–20–02.

A. Section 1519.1, “Purpose”

Section 1519.1, “Purpose,” states that the purpose of part 1519 is to implement E.O. 13891, and explains CEQ’s process for developing and issuing guidance.

B. Section 1519.2, “Guidance Document Procedures”

Section 1519.2, “Guidance document procedures,” defines “guidance documents” in paragraph (a) and describes documents that do not meet that definition in paragraph (b), consistent with section 2(b)³ of the E.O. and Q2 of OMB M–20–02.

Paragraph (c) of § 1519.2 lists the minimum requirements for any document meeting the definition of a guidance document consistent with Q22 of OMB M–20–02, including a title, unique identification number, date, indication of whether it revises or replaces prior guidance, summaries, and legal citations. Additionally, consistent with section 4(i) of E.O. 13891, paragraph (c)(6) includes a requirement that each guidance document clearly state that it does not bind the public, except as authorized by law or as incorporated into a contract.

Paragraph (c)(11) of § 1519.2 specifies that any guidance document must be posted on CEQ’s website. E.O. 13891 also directed Federal agencies to make guidance documents publicly available in an indexed, searchable database online. As described in the **Federal Register** notice published today, CEQ has complied with this requirement through its website [whitehouse.gov/ceq/resources](https://www.whitehouse.gov/ceq/resources).⁴ As noted on this website, CEQ may not cite, use, or rely on any guidance that is not posted on its web pages except to establish historical facts. CEQ also makes clear that CEQ’s guidance documents lack the force and effect of law, unless expressly

authorized by statute or incorporated into a contract.

Finally, paragraph (d) of § 1519.2 requires the CEQ Office of the General Counsel to review and clear all guidance documents before CEQ issues them.

C. Section 1519.3, “Procedures for the Public To Request Withdrawal or Modification of a Guidance Document”

Consistent with section 4(ii) of E.O. 13891, § 1519.3, “Procedures for the public to request withdrawal or modification of a guidance document,” addresses the process for members of the public to petition CEQ to withdraw or modify a particular guidance document, including designation of the Office of the General Counsel as the office within CEQ to which the public should direct such petitions. CEQ intends to provide additional instructions on its guidance website, including appropriate contact information and format of the petitions.

D. Section 1519.4, “Significant Guidance Documents”

Finally, § 1519.4, “Significant guidance documents,” addresses specific requirements for a subset of “guidance documents” that are “significant guidance documents” as defined by section 2(c) of E.O. 13891. Paragraph (a) sets forth that definition. OMB’s Office of Information and Regulatory Affairs (OIRA) makes the final determination of whether a guidance document is significant. If OIRA makes such a determination for a particular guidance document, this section will also apply. Consistent with section 4(iii) of E.O. 13891, paragraph (b) sets forth procedural requirements, including public notice and comment for at least 30 days, unless an exception applies; public response to major concerns raised in comments; approval on a non-delegable basis by the Chairman, or an official acting as Chairman; review by OIRA under Executive Order 12866; and compliance with the applicable requirements for regulations or rules.

II. Rulemaking Analyses and Notices**A. Regulatory Procedures**

Under the Administrative Procedure Act, an agency may waive notice and comment procedures if an action is an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). This rule describes the internal process that CEQ will follow to comply with the requirements specified in E.O. 13891 when issuing guidance documents as defined by the

¹ 84 FR 55235 (Oct. 15, 2019).

² OMB M–20–02 is available at <https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf>.

³ E.O. 13891 section 2(b) lists the following as exclusions to the definition of guidance document. 84 FR at 55235–36.

⁴ CEQ’s website, [whitehouse.gov/ceq/resources](https://www.whitehouse.gov/ceq/resources), includes links to CEQ guidance documents and resources, some of which are provided on [nepa.gov](https://www.nepa.gov) and [sustainability.gov](https://www.sustainability.gov).