PART 1911—RULES OF PROCEDURE FOR PROMULGATING, MODIFYING, OR REVOKING OCCUPATIONAL SAFETY OR HEALTH STANDARDS

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SOURCE: 36 FR 17507, Sept. 1, 1971, unless otherwise noted.

§ 1911.2 Definitions.

As used in this part, unless the context clearly requires otherwise—
(a) Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health.
(c) Standard means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated, modified, or revoked in accordance with section 6(b) (1), (2), (3), and (4) of the Act.

§ 1911.3 Petition for the promulgation, modification, or revocation of a standard.

Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

§ 1911.4 Additional or alternative procedural requirements.

Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedural requirements:
§ 1911.5 Minor changes in standards.

Section 6(b), when construed in light of the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), is read as permitting the making of minor rules or amendments in which the public is not particularly interested without the notice and public procedure which is otherwise required. Whenever such a minor rule or amendment is adopted, it shall incorporate a finding of good cause to this effect for not providing notice and public procedure.

[37 FR 8664, Apr. 29, 1972]

COMMENCEMENT OF RULEMAKING

§ 1911.10 Construction standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments in construction work, as defined in §1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary shall consult with the Advisory Committee on Construction Safety and Health, established pursuant to section 107 of the Contract Work Hours and Safety Standards Act, in the formulation of a rule to promulgate, modify, or revoke a standard. The Assistant Secretary shall provide the committee with any proposal of his own or the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days from the date of initial consultation.

(b) Within 60 days after the submission of the committee's recommendations or after the expiration of the period prescribed for such submissions, whichever date is earlier, the Assistant Secretary, if he determines that a rule should be issued, shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. The notice shall include:

1. The terms of the proposed rule;
2. A reference to section 6(b) of the Act and to section 107 of the Contract Work Hours and Safety Standards Act;
3. An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;
4. The time and place for an informal hearing to be commenced not earlier than 10 days following the end of the period for written comments;
5. A requirement for the filing of an intention to appear at the hearing, together with a statement of the position to be taken with regard to the proposed rule and of the evidence to be adduced in support of the position;
6. Designation of a presiding officer to conduct the hearing; and
7. Any other appropriate provisions pertinent to the proceeding.

(c) Any interested person who files an intention to appear in accordance with paragraph (b) of this section shall have a right to participate at the informal hearing.

In lieu of the procedure prescribed in paragraph (b) of this section, the Assistant Secretary may follow the procedure prescribed in paragraph (b) of §1911.11 providing an opportunity for informal hearing.


§ 1911.11 Other standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments other than those in construction work, as defined in §1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary may request the recommendations of an advisory committee appointed under section 7 of the Act. In such event, the Assistant Secretary shall submit to the committee any proposal of his own or of the Secretary of Health, Education,
Occupational Safety and Health Admin., Labor § 1911.12

and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days.

(b) The Assistant Secretary shall publish in the Federal Register a notice of proposed rulemaking. Where an advisory committee has been consulted and the Assistant Secretary determines that a rule should be issued, the notice shall be published within 60 days after the submission of the committee’s recommendations or the expiration of the period prescribed for such submissions, whichever date is earlier. The notice shall include:

(1) The terms of the proposed rule;
(2) A reference to section 6(b) of the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule;
(3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;
(4) Either the time and place of an informal hearing on the proposed rule to be held not earlier than 10 days from the last day of the period for written comments, or information to interested persons that they may file before the 30th day after publication of the notice written objections to the proposed rule meeting the requirements of paragraph (c) of this section and request an informal hearing on the objections; and
(5) Any other appropriate provisions with regard to the proceeding.

(c) Objections to be submitted pursuant to paragraph (b) of this section shall comply with the following conditions:

(1) The objections must include the name and address of the objector;
(2) The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;
(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;
(4) Each objection must be separately stated and numbered; and
(5) The objections must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

(d) Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph (c) of this section, the Assistant Secretary shall, and in any other case may, publish in the Federal Register a notice of informal hearing. The notice shall contain:

(1) A statement of the time, place, and nature of the hearing;
(2) A reference to the authority under which the hearing is to be held;
(3) A specification of the provisions of the proposed rule which have been objected to, and on which an informal hearing has been requested;
(4) A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;
(5) The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;
(6) The designation of a presiding officer to conduct the hearing; and
(7) Any other appropriate provisions with regard to the proceeding.

(e) Any objector requesting a hearing on the proposed rule, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

§ 1911.12 Emergency standards.

(a)(1) Whenever an emergency standard is published pursuant to section 6(c) of the Act, the Assistant Secretary must commence a proceeding under section 6(b) of the Act, and the standard as published must serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.

(2) An emergency standard promulgated pursuant to section 6(c) of the
§ 1911.15  Act shall be considered issued at the
time when the standard is officially
filed in the Office of the Federal Reg-
ister. The time of official filing in the
Office of the Federal Register is estab-
lished for the purpose of determining
the prematurity, timeliness, or late-
ess of petitions for judicial review.
(b) If the Assistant Secretary wishes
to consult an advisory committee on
any of the proposals as permitted by
section 7(b) of the Act, he shall afford
interested persons an opportunity to
inspect and copy any recommendations
of the advisory committee within a
reasonable time before the commence-
ment of any informal hearing which
may be held under this part, or before
the termination of the period for the
submission of written comments when-
ever an informal hearing is not ini-
tially noticed under § 1910.11(b)(4) of
this chapter.
(c) Section 6(c) requires that any
standard must be promulgated fol-
lowing the rulemaking proceeding
within 6 months after the publication
of the emergency standard. Because of
the shortness of this period, the con-
duct of the proceeding shall be expe-
dited to the extent practicable.

[37 FR 8664, Apr. 29, 1972, as amended at 42
FR 65166, Dec. 30, 1977]

§ 1911.15  Nature of hearing.

(a)(1) The legislative history of sec-
tion 6 indicates that Congress intended
informal rather than formal rule-
making procedures to apply. See the
Conference Report, H. Rept. No. 91–
The informality of the proceedings is
also suggested by the fact that section
6(b) permits the making of a decision
on the basis of written comments alone
(unless an objection to a rule is made
and a hearing is requested), the use of
advisory committees, and the inherent
legislative nature of the tasks in-
volved. For these reasons, the pro-
cedings pursuant to § 1911.10 or § 1911.11
shall be informal.
(2) Section 6(b)(3) provides an oppor-
tunity for a hearing on objections to
proposed rulemaking, and section 6(f)
provides in connection with the judi-
trial review of standards, that deter-
minations of the Secretary shall be
conclusive if supported by substantial
evidence in the record as a whole. Al-
though these sections are not read as
requiring a rulemaking proceeding
within the meaning of the last sen-
tence of 5 U.S.C. 553(c) requiring the
application of the formal requirements
of 5 U.S.C. 556 and 557, they do suggest
a congressional expectation that the
rulemaking would be on the basis of a
record to which a substantial evidence
test, where pertinent, may be applied
in the event an informal hearing is held.
(3) The oral hearing shall be legisla-
tive in type. However, fairness may re-
quire an opportunity for cross-exam-
ination on crucial issues. The presiding
officer is empowered to permit cross-
examination under such circumstances.
The essential intent is to provide an
opportunity for effective oral presen-
tation by interested persons which can
be carried out with expedition and in
the absence of rigid procedures which
might unduly impede or protract the
rulemaking process.
(b) Although any hearing shall be in-
formal and legislative in type, this part
is intended to provide more than the
bare essentials of informal rulemaking
under 5 U.S.C. 553. The additional re-
quirements are the following:
(1) The presiding officer shall be a
hearing examiner appointed under 5
(2) The presiding officer shall provide
an opportunity for cross-examination
on crucial issues.
(3) The hearing shall be reported ver-
batim, and a transcript shall be avail-
able to any interested person on such
terms as the presiding officer may pro-
vide.
[37 FR 8664, Apr. 29, 1972, as amended at 37
FR 12231, June 21, 1972]

§ 1911.16  Powers of presiding officer.
The officer presiding at a hearing
shall have all the powers necessary or
appropriate to conduct a fair and full
hearing, including the powers:
(a) To regulate the course of the pro-
cedings;
(b) To dispose of procedural requests,
objections, and comparable matters;
(c) To confine the presentations to
the issues specified in the notice of
Occupational Safety and Health Admin., Labor

§ 1911.17 Certification of the record of a hearing.

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

§ 1911.18 Decision.

(a)(1) Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the Assistant Secretary shall publish in the Federal Register either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule should not be issued. The action of the Assistant Secretary shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under this part.

(2) A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other determination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

(b) Any rule or standard adopted under paragraph (a) of this section shall incorporate a concise general statement of its basis and purpose. The statement is not required to include specific and detailed findings and conclusions of the kind customarily associated with formal proceedings. However, the statement will show the significant issues which have been faced, and will articulate the rationale for their solution.

(c) Where an advisory committee has been consulted in the formulation of a proposed rule, the Assistant Secretary may seek the advice of the advisory committee as to the disposition of the proceeding. In giving advice to the Assistant Secretary, an advisory committee shall consider all matter presented to the Assistant Secretary. The advice of an advisory committee shall take the form of written recommendations to be submitted to the Assistant Secretary within a period to be prescribed by him. When the recommendations are contained in the transcript of the meeting of an advisory committee, they shall be summary in form. See §§1912.33 and 1912.34 of this chapter.

(d) A rule promulgating, modifying, or revoking a standard, or a determination that a rule should not be promulgated, shall be considered issued at the time when the rule or determination is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.


PART 1912—ADVISORY COMMITTEES ON STANDARDS

Sec. 1912.1 Purpose and scope.

ORGANIZATIONAL MATTERS

1912.2 Types of standards advisory committees.