

SUBCHAPTER A—HAZARDOUS MATERIALS AND OIL TRANSPORTATION

PART 106—RULEMAKING PROCEDURES

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AUTHORITY: 49 U.S.C. 5101-5127; 49 CFR 1.53.

SOURCE: 40 FR 31768, July 29, 1975, unless otherwise noted. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978.

Subpart A—General

§ 106.1 Scope.

This part prescribes general rulemaking procedures for the issue, amendment, and repeal of Hazardous Material Safety Program regulations of the Research and Special Programs Administration of the Department of Transportation.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.3 Delegations.

For the purposes of this part, "Administrator" means the Administrator,

Research and Special Programs Administration, or his or her delegate.

[Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.5 Regulatory dockets.

(a) Information and data considered relevant by the Administrator relating to rulemaking actions, including notices of proposed rulemaking; comments received in response to notices; petitions for rulemaking and reconsideration; denials of petitions for rulemaking and reconsideration; records of additional rulemaking proceedings under § 106.25; and final regulations are maintained by the Research and Special Programs Administration at 400 7th Street, SW., Washington, DC 20590-0001.

(b) Any person may examine any docketed material at the offices of the Research and Special Programs Administration at any time during regular business hours after the docket is established, except material which the Administrator determines should be withheld from public disclosure under applicable provisions of any statute administered by the Administrator and Section 552(b) of title 5, United States Code, and may obtain a copy of it upon payment of a fee.

[40 FR 31768, July 29, 1975. Redesignated by Amdts. 102-1 and 106-1, 43 FR 43306, Sept. 25, 1978, and amended by Amdt. 106-3, 45 FR 81571, Dec. 11, 1980; Amdt. 106-7, 55 FR 39978, Oct. 1, 1990]

§ 106.7 Records.

Records of the Research and Special Programs Administration relating to rulemaking proceedings are available for inspection as provided in section 552(b) of title 5, United States Code, and part 7 of the Regulations of the Office of the Secretary of Transportation (part 7 of this title).

§ 106.9 Where to file petitions.

Petitions for extension of time to comment submitted under § 106.19, petitions for hearings submitted under § 106.27, petitions for rulemaking submitted under § 106.31, and petitions for

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reconsideration submitted under § 106.35 must be submitted to: Administrator, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001.

[40 FR 31768, July 29, 1975. Redesignated by Amdts. 102-1 and 106-1, 43 FR 43306, Sept. 25, 1978, and amended by Amdt. 106-3, 45 FR 81571, Dec. 11, 1980; Amdt. 106-7, 55 FR 39978, Oct. 1, 1990]

Subpart B—Procedures for Adoption of Rules

§ 106.11 General.

Unless the Administrator, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking is issued and interested persons are invited to participate in the rulemaking proceedings with respect to each substantive rule.

§ 106.13 Initiation of rulemaking.

The Administrator initiates rulemaking on his or her own motion; however, in so doing, the Administrator may use discretion to consider the recommendations of other agencies of the United States or of other interested persons, including those of any technical advisory body established by statute for that purpose.

[Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.15 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the FEDERAL REGISTER or personally served, includes:

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed regulation;

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(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

§ 106.17 Participation by interested persons.

(a) Any interested person may participate in rulemaking proceedings by submitting comments in writing containing information, views or arguments in accordance with instructions for participation in the rulemaking document.

(b) The Administrator may invite any interested person to participate in the rulemaking proceedings described in § 106.25.

(c) For the purposes of this part, an interested person includes any Federal or State government agency or any political subdivision of a State (as defined in § 107.201(b) of this subchapter).

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, and amended by Amdt. 106-4, 48 FR 2651, Jan. 20, 1983; Amdt. 106-11, 61 FR 30180, June 14, 1996; Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.19 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than 10 days before expiration of the time stated in the notice. It is requested, but not required, that three copies be submitted. The filing of the petition does not automatically extend the time for petitioner's comments. A petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the FEDERAL REGISTER.

§ 106.21 Contents of written comments.

All written comments must be in English. It is requested, but not required, that five copies be submitted. Any interested person should submit as part of written comments all material considered relevant to any statement of fact. Incorporation of material by reference should be avoided; however,

where necessary, such incorporated material shall be identified by document title and page.

[Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.23 Consideration of comments received.

All timely comments and the recommendations of any technical advisory body established by statute for the purpose of reviewing the proposed rule concerned are considered before final action is taken on a rulemaking proposal. Late filed comments are considered so far as practicable.

§ 106.25 Additional rulemaking proceedings.

The Administrator may initiate any further rulemaking proceedings that the Administrator finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or the Administrator's representative and interested persons at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Administrator at which a transcript of minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.27 Hearings.

(a) If a notice of proposed rulemaking does not provide for a hearing, any interested person may petition the Administrator for an informal hearing. The petition must be received by the Administrator not later than 20 days before expiration of the time stated in the notice. The filing of the petition does not automatically result in the scheduling of a hearing. A petition is granted only if the petitioner shows good cause for a hearing. If a petition for a hearing is granted, notice of the hearing is published in the FEDERAL REGISTER.

(b) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held

under this part are informal, non-adversary, fact-finding proceedings, at which there are not formal pleadings or adverse parties. Any regulation issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(c) The Administrator designates a representative to conduct any hearing held under this part. The Chief Counsel designates a member of his or her staff to serve as legal officer at the hearing.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.29 Adoption of final rules.

Final rules are prepared by representatives of the Office of Hazardous Materials Safety concerned and the Office of the Chief Counsel. The regulation is then submitted to the Administrator for consideration. If the Administrator adopts the regulation, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.31 Petitions for rulemaking.

(a) Any interested person may petition the Associate Administrator for Hazardous Materials Safety to establish, amend, or repeal a substantive regulation, or may petition the Chief Counsel to establish, amend, or repeal a procedural regulation in parts 106 or 107.

(b) Each petition filed under this section must—

(1) Summarize the proposed action and explain its purpose;

(2) State the text of the proposed rule or amendment, or specify the rule proposed to be repealed;

(3) Explain the petitioner's interest in the proposed action and the interest of any party the petitioner represents; and

(4) Provide information and arguments that support the proposed action, including relevant technical, scientific or other data as available to the petitioner, and any specific known

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cases that illustrate the need for the proposed action.

(c) If the potential impact of the proposed action is substantial, and information and data related to that impact are available to the petitioner, the Associate Administrator for Hazardous Materials Safety or the Chief Counsel may request the petitioner to provide—

(1) The costs and benefits to society and identifiable groups within society, quantifiable and otherwise;

(2) The direct effects (including pre-emption effects) of the proposed action on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government;

(3) The regulatory burden on small businesses, small organizations and small governmental jurisdictions;

(4) The recordkeeping and reporting requirements and to whom they would apply; and

(5) Impacts on the quality of the natural and social environments.

(d) The Associate Administrator for Hazardous Materials Safety or Chief Counsel may return a petition that does not comply with the requirements of this section, accompanied by a written statement indicating the deficiencies in the petition.

[Amdt. 106-11, 61 FR 30180, June 14, 1996, as amended by Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.33 Processing of petition.

(a) *General.* Unless the Associate Administrator or the Chief Counsel otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Associate Administrator or the Chief Counsel determines that the petition contains adequate justification, he or she initiates rule-making action under this subpart.

(c) *Denials.* If the Associate Administrator or the Chief Counsel determines that the petition does not justify rule-making, the petition is denied.

(d) *Notification.* The Associate Administrator or the Chief Counsel will notify a petitioner, in writing, of the de-

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cision to grant or deny a petition for rulemaking.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-11, 61 FR 30181, June 14, 1996; Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.35 Petitions for reconsideration.

(a) Except as provided in §106.39(d), any interested person may petition the Associate Administrator for reconsideration of any regulation issued under this part, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under this part and contained in this part or in part 107 of this chapter. It is requested, but not required, that three copies be submitted. The petition must be received not later than 30 days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under §106.31. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, the petitioner must state the reason they were not presented to the Associate Administrator or the Chief Counsel within the prescribed time.

(c) The Associate Administrator or the Chief Counsel does not consider repetitious petitions.

(d) Unless the Associate Administrator or the Chief Counsel otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-11, 61 FR 30181, June 14, 1996; Amdt. 106-13, 61 FR 51337, Oct. 1, 1996]

§ 106.37 Proceedings on petitions for reconsideration.

(a) The Associate Administrator or the Chief Counsel may grant or deny, in whole or in part, any petition for reconsideration without further proceedings, except where a grant of the petition would result in issuance of a new final rule. In the event that the

Associate Administrator or the Chief Counsel determines to reconsider any regulation, a final decision on reconsideration may be issued without further proceedings, or an opportunity to submit comment or information and data as deemed appropriate may be provided. Whenever the Associate Administrator or the Chief Counsel determines that a petition should be granted or denied, the Office of the Chief Counsel prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and the Associate Administrator or the Chief Counsel issues it to the petitioner. The Associate Administrator or the Chief Counsel may consolidate petitions relating to the same rules.

(b) It is the policy of the Associate Administrator or the Chief Counsel to issue notice of the action taken on a petition for reconsideration within 90 days after the date on which the regulation in question is published in the FEDERAL REGISTER, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the petitioner and published in the FEDERAL REGISTER.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-11, 61 FR 30181, June 14, 1996; Amdt. 106-13, 61 FR 51337, Oct. 1, 1996]

§ 106.38 Appeals.

(a) Any interested person may appeal a decision of the Associate Administrator or the Chief Counsel, issued under § 106.33 or § 106.37, to the Administrator.

(b) An appeal must be received within 20 days of service of written notice to petitioner of the Associate Administrator's or the Chief Counsel's decision, or within 20 days from the date of publication of the decision in the FEDERAL REGISTER, and should set forth the contested aspects of the decision as well as any new arguments or information.

(c) It is requested, but not required, that three copies of the appeal be submitted to the Administrator.

(d) Unless the Administrator otherwise provides, the filing of an appeal under this section does not stay the effectiveness of any rule.

[Amdt. 106-11, 61 FR 30181, June 14, 1996]

§ 106.39 Direct final rulemaking.

(a) Where practicable, the Administrator will use direct final rulemaking to issue the following types of rules:

- (1) Minor, substantive changes to regulations;
- (2) Incorporation by reference of the latest edition of technical or industry standards;
- (3) Extensions of compliance dates; and
- (4) Other noncontroversial rules where the Administrator determines that use of direct final rulemaking is in the public interest, and that a regulation is unlikely to result in adverse comment.

(b) The direct final rule will state an effective date. The direct final rule will also state that unless an adverse comment or notice of intent to file an adverse comment is received within the specified comment period, generally 60 days after publication of the direct final rule in the FEDERAL REGISTER, the Administrator will issue a confirmation document, generally within 15 days after the close of the comment period, advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(c) For purposes of this section, an adverse comment is one which explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

(d) Only parties who filed comments to a direct final rule issued under this section may petition under § 106.35 for

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reconsideration of that direct final rule.

(e) If an adverse comment or notice of intent to file an adverse comment is received, a timely document will be published in the FEDERAL REGISTER advising the public and withdrawing the direct final rule in whole or in part. The Administrator may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking. A notice of proposed rulemaking will provide an opportunity for public comment, generally a minimum of 60 days, and will be processed in accordance with §§ 106.11–106.29.

[Amdt. 106–11, 61 FR 30181, June 14, 1996]

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