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PART 5—RULEMAKING PROCEDURES

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APPENDIX A TO PART 5

AUTHORITY: Sec. 9, 80 Stat. 944 (49 U.S.C. 1657).

SOURCE: 32 FR 10363, July 14, 1967, unless otherwise noted.

Subpart A—General

§ 5.1 Applicability.

(a) This part prescribes general rulemaking procedures that apply to the issue, amendment, and repeal of rules

of the Secretary of Transportation. It does not apply to rules issued by the National Transportation Safety Board, U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, or St. Lawrence Seaway Development Corporation.

(b) For the purposes of this part, *Secretary* means the Secretary of Transportation or the Under Secretary of Transportation, or any of the following to whom the Secretary has delegated authority to conduct rulemaking proceedings:

- (1) Any Assistant Secretary.
- (2) The General Counsel.

Any of these officers may redelegate that authority to the head of any office who reports to him.

(c) Records relating to rulemaking proceedings are available for inspection as provided in part 7 of this sub-title.

[32 FR 10363, July 14, 1967, as amended by Amdt. 5-2, 35 FR 5331, Mar. 31, 1970; Amdt. 5-3, 36 FR 430, Jan. 13, 1971]

§ 5.3 Initiation of rulemaking.

The Secretary initiates rulemaking on his own motion. However, in doing so, he may, in his discretion, consider the recommendations of other agencies of the United States and of other interested persons.

§ 5.5 Participation by interested persons.

Any person may participate in rulemaking proceedings by submitting written information or views. The Secretary may also allow any person to participate in additional rulemaking proceedings, such as informal appearances or hearings, held with respect to any rule.

§ 5.7 Regulatory docket.

(a) Records of the Office of the Secretary of Transportation concerning rulemaking actions, including notices of proposed rule making, comments received in response to those notices, petitions for rulemaking or exemption,

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petitions for rehearing or reconsideration, grants and denials of exemptions, denials of petitions for rule making, and final rules are maintained in current docket form in the Office of the General Counsel.

(b) Any person may examine any docketed material at that office and may obtain a copy of any docketed material upon payment of the prescribed fee.

Subpart B—Petitions for Rulemaking or Exemptions

§ 5.11 Filing of petitions.

(a) Any person may petition the Secretary to issue, amend, or repeal a rule, or for a permanent or temporary exemption from any rule.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Docket Clerk, Office of the General Counsel, Department of Transportation, Washington, DC 20590;

(2) Set forth the text or substance of the rule or amendment proposed, or of the rule from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of the persons to be covered by the exemption;

(4) Contain any information and arguments available to the petitioner to support the action sought; and

(5) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 60 days before the proposed effective date of the exemption.

§ 5.13 Processing of petitions.

(a) *General.* Each petition received under § 5.11 of this part is referred to the head of the office responsible for the subject matter of that petition. No public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Secretary determines that the petition contains ade-

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quate justification, he initiates rule-making action under subpart C of this part or grants the exemption, as the case may be.

(c) *Denials.* If the Secretary determines that the petition does not justify initiating rule-making action or granting the exemption, he denies the petition.

(d) *Notification.* Whenever the Secretary determines that a petition should be granted or denied, the office concerned and the Office of the General Counsel prepare a notice of that grant or denial for issuance to the petitioner, and the Secretary issues it to the petitioner.

Subpart C—Procedures

§ 5.21 General.

(a) Unless the Secretary finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rule making is issued and interested persons are invited to participate in the rule-making proceedings with respect to each substantive rule.

(b) Unless the Secretary determines that notice and public rulemaking proceedings are necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are prescribed as final without notice or other public rulemaking proceedings.

(c) In his discretion, the Secretary may invite interested persons to participate in the rulemaking proceedings described in § 5.29 of this subpart.

§ 5.23 Contents of notices.

(a) Each notice of proposed rule-making 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 rule-making proceeding;

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

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

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

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

§ 5.25 Petitions for extension of time to comment.

(a) Any person may petition the Secretary for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition must be submitted in duplicate not later than 3 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Secretary grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the FEDERAL REGISTER.

§ 5.27 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered so far as possible without incurring additional expense or delay.

§ 5.29 Additional rulemaking proceedings.

The Secretary may initiate any further rulemaking proceedings that he finds necessary or desirable. For example, he may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding.

§ 5.31 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. As a fact-finding proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties. Any rule issued in a case in which a hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Secretary designates a representative to conduct any hearing held under this part. The General Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 5.33 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the General Counsel. The rule is then submitted to the Secretary for his consideration. If the Secretary adopts the rule, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are personally served with a copy of it.

APPENDIX A TO PART 5

Pursuant to § 5.1(b), the following officials of the Office of the Secretary of Transportation are authorized to conduct rulemaking proceedings under this part, as specified in this appendix:

(1) The General Counsel is authorized to conduct all rule-making proceedings, except the issuance of final rules, under the Act of March 19, 1918, ch. 24, as amended (15 U.S.C. 261-264); the Uniform Time Act of 1966 (80 Stat. 107, 15 U.S.C. 260-267); and section 6(e)(5) of the Department of Transportation Act (80 Stat. 939, 49 U.S.C. 1655 (e)(5)).

(2) The General Counsel is authorized to determine the practicability of applying the standard time of any standard time zone to the movements of any common carrier engaged in interstate or foreign commerce, and, under section 2 of the Act of March 19, 1918, ch. 24, as amended (15 U.S.C. 262), to issue operating exceptions in any case in which he determines that it is impractical to apply the standard time.

[Amdt. 5-1, 32 FR 11473, Aug. 9, 1967]

**PART 6—IMPLEMENTATION OF
EQUAL ACCESS TO JUSTICE ACT
IN AGENCY PROCEEDINGS**

Subpart A—General Provisions

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