

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 rulemaking 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.

(d) For rules for which the Secretary determines that notice is unnecessary because no adverse public comment is anticipated, the direct final rulemaking procedure described in § 5.35 of this subpart may be followed.

[32 FR 10363, July 14, 1967, as amended at 69 FR 4458, Jan. 30, 2004]

§ 5.23 Contents of notices.

(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 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.