

Federal Emergency Management Agency, DHS

§ 1.12

Budget, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(c) To permit each major rule to be analyzed in light of the requirements stated in section 2 of Executive Order 12291, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (c)(4) of this section, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in section 2 of Executive Order 12291.

Subpart B—Procedures for Rulemaking

§ 1.10 Initiation of rulemaking.

Rulemaking may be initiated on the Administrator's motion or upon motion of an official to whom rulemaking authority has been delegated. Rulemaking may also be initiated on the petition of any interested person in accordance with the provisions of § 1.18. Interested person includes a Federal, State, or local government or government agency.

§ 1.11 Advance notice of proposed rulemaking.

An Advance Notice of Proposed Rulemaking will be published in the FEDERAL REGISTER and contains:

(a) A description of the proposed new program or program changes, and why they are needed;

(b) A presentation of the major policy issues involved;

(c) A request for comments, both specific and general, on the need for the proposed rule and the provisions that the rule might include;

(d) If appropriate, a list of questions about the proposal which seeks to bring out detailed comments;

(e) If known, an estimate of the reporting or recordkeeping requirements, if any, that the rule would impose; and

(f) The time within which comments may be submitted to the Rules Docket Clerk, Federal Emergency Management Agency, Washington, DC 20472.

[46 FR 32584, June 24, 1981, as amended at 48 FR 44542, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984]

§ 1.12 Notice of proposed rulemaking.

Each notice of proposed rulemaking required by statute, executive order, or by § 1.4 will be published in the FEDERAL REGISTER and will include:

(a) The substance or terms of the proposed rule or a description of the subject matter and issues involved.

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

(c) Where participation is limited to written comments, a statement of the time within which such comments must be submitted.

(d) A reference to the legal authority under which the proposal is issued.

(e) In a proceeding which has provided Advance Notice of Proposed Rulemaking, an analysis of the principal issues and recommendations raised by the comments, and the manner in which they have been addressed in the proposed rulemaking.

(f)(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination;

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis; and

(3) The initial regulatory flexibility analysis or a summary thereof as required by the Regulatory Flexibility

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Act (5 U.S.C. 601, *et seq.*), or a certification that the rule, if promulgated, will not have a significant economic impact on a significant number of small entities pursuant to 5 U.S.C. 605. Such certification may be made by any FEMA official with rulemaking authority.

(g) It is desirable, but not required, that the notices contain a target deadline for issuance of the regulation, and that to the extent feasible, this deadline be met.

(h) If the rule is one which contains a requirement for collection of information, a copy of the rule will be furnished OMB in accordance with 44 U.S.C. 3504(h).

[46 FR 32584, June 24, 1981, as amended at 49 FR 38119, Sept. 27, 1984]

§ 1.13 Participation by interested persons.

(a) Unless the notice otherwise provides, any interested person may participate in rulemaking proceedings by submitting written data, views or arguments within the comment time stated in the notice. In addition, the Administrator may permit the filing of comments in response to original comments.

(b) In appropriate cases, the Administrator may provide for oral presentation of views in additional proceedings described in § 1.14.

(c) Copies of regulatory flexibility analyses shall be furnished the Chief Counsel for Advocacy of the Small Business Administration.

§ 1.14 Additional rulemaking proceedings.

The Administrator may invite interested persons to present oral arguments, appear at informal hearings, or participate in any other procedure affording opportunity for oral presentation of views. The transcript or minutes of such meetings, as appropriate, will be kept and filed in the Rules Docket.

§ 1.15 Hearings.

(a) The provisions of 5 U.S.C. 556 and 557, which govern formal hearings in adjudicatory proceedings, do not apply to informal rulemaking proceedings described in this part. When opportunity

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is afforded for oral presentation, the informal “hearing” is a nonadversary, fact-finding proceeding. Any rule issued in a proceeding under this part in which a hearing is held need not be based exclusively on the record of such hearing.

(b) When a hearing is provided, the Administrator will designate a representative to conduct the hearing.

§ 1.16 Adoption of a final rule.

(a) All timely comments will be considered in taking final action on a proposed rule. Each preamble to a final rule will contain a short analysis and evaluation of the relevant significant issues set forth in the comments submitted, and a clear concise statement of the basis and purpose of the rule.

(b) When determined necessary by the Administrator in accordance with the provisions of 1 CFR 18.12, the preamble shall contain the following information:

(1) A discussion of the background and major issues involved;

(2) In the case of a final rule, any significant differences between it and the proposed rule;

(3) A response to substantive public comments received; and

(4) Any other information the Administrator considers appropriate.

(c) At the time of publication of the final rule, a statement shall be published describing how the public may obtain copies of the final regulatory flexibility analysis which must be prepared in accordance with 5 U.S.C. 604 unless the procedure for waiver or delay of completion under 5 U.S.C. 608 is followed.

(d) Before approving any final major rule FEMA will:

(1) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent and include in the FEDERAL REGISTER at the time of promulgation a memorandum of law supporting that determination; and

(2) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public