

APPEALS

- 106.110 Appealing a RSPA action.
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Subpart A—RSPA Rulemaking Documents

§ 106.5 Defined terms used in this subpart.

The following defined terms (see part 105, subpart A, of this subchapter) appear in this subpart: File; Person; State.

§ 106.10 Process for issuing rules.

(a) RSPA (“we”) uses informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to add, amend, or delete regulations. To propose or adopt changes to a regulation, RSPA may issue one or more of the following documents. We publish the following rulemaking documents in the FEDERAL REGISTER unless we name and personally serve a copy of a rule on every person subject to it:

- (1) An advance notice of proposed rulemaking.
- (2) A notice of proposed rulemaking.
- (3) A final rule.
- (4) An interim final rule.
- (5) A direct final rule.

(b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:

- (1) The topic involved in the rulemaking document.
- (2) RSPA’s legal authority for issuing the rulemaking document.
- (3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).
- (4) Whom to call if you have questions about the rulemaking document.
- (5) The date, time, and place of any public meetings being held to discuss the rulemaking document.
- (6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 106.15 Advance notice of proposed rulemaking.

An advance notice of proposed rulemaking (ANPRM) tells the public that RSPA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 106.20 Notice of proposed rulemaking.

A notice of proposed rulemaking (NPRM) contains RSPA’s specific proposed regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

§ 106.25 Revising regulations without first issuing an ANPRM or NPRM.

RSPA may add, amend, or delete regulations without first issuing an ANPRM or NPRM in the following situations:

- (a) We may go directly to a final rule or interim final rule if, for good cause, we find that a notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. We must place that finding and a brief statement of the reasons for it in the final rule or interim final rule.
- (b) We may issue a direct final rule (see § 106.40).

§ 106.30 Final rule.

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency’s response.

§ 106.35 Interim final rule.

An interim final rule is issued without first issuing a notice of proposed rulemaking and accepting public comments and sets out new regulatory requirements and their effective date. RSPA may issue an interim final rule if it finds, for good cause, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. RSPA will clearly set out this finding in the interim final rule. After receiving and reviewing

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public comments, as well as any other relevant documents, RSPA may revise the interim final rule and then issue a final rule.

§ 106.40 Direct final rule.

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless RSPA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the FEDERAL REGISTER.

(a) *Actions taken by direct final rule.* We may use direct final rulemaking procedures to issue rules that do any of the following:

- (1) Make minor substantive changes to regulations.
- (2) Incorporate by reference the latest edition of technical or industry standards.
- (3) Extend compliance dates.
- (4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

(b) *Adverse comment.* An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

- (1) A comment recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states why the direct final rule would be ineffective without the change.
- (2) A frivolous or irrelevant comment.

(c) *Confirmation of effective date.* We will publish a confirmation document in the FEDERAL REGISTER, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule—either the date stated in the direct final rule or at least 30 days after the publication

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date of the confirmation document, whichever is later.

(d) *Withdrawing a direct final rule.* (1) If we receive an adverse comment or notice of intent to file an adverse comment, we will publish a document in the FEDERAL REGISTER before the effective date of the direct final rule advising the public and withdrawing the direct final rule in whole or in part.

(2) If we withdraw a direct final rule because of an adverse comment, we may incorporate the adverse comment into a later direct final rule or may publish a notice of proposed rulemaking.

(e) *Appeal.* You may appeal RSPA's issuance of a direct final rule (see §106.115) only if you have previously filed written comments (see §106.60) to the direct final rule.

§ 106.45 Tracking rulemaking actions.

The following identifying numbers allow you to track RSPA's rulemaking activities:

(a) *Docket number.* We assign an identifying number, called a docket number, to each rulemaking proceeding. Each rulemaking document that RSPA issues in a particular rulemaking proceeding will display the same docket number. This number allows you to do the following:

(1) Associate related documents that appear in the FEDERAL REGISTER.

(2) Search the DOT Docket Management System ("DMS") for information on particular rulemaking proceedings—including notices of proposed rulemaking, public comments, petitions for rulemaking, appeals, records of additional rulemaking proceedings and final rules. There are two ways you can search the DMS:

(i) Visit the public docket room and review and copy any docketed materials during regular business hours. The DOT Docket Management System is located at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW., Washington, DC 20590-0001.

(ii) View and download docketed materials through the Internet at <http://dms.dot.gov>.

(b) *Regulation identifier number.* The Department of Transportation publishes a semiannual agenda of all current and projected Department of