

§ 389.17

§ 389.17 Participation by interested persons.

(a) Any interested person may participate in rule making proceedings by submitting comments in writing containing information, views, or arguments.

(b) In his/her discretion, the Administrator may invite any interested person to participate in the rule making procedures described in § 389.25.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.19 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received in duplicate not later than three (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. Such 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.

§ 389.21 Contents of written comments.

All written comments must be in English and submitted in five (5) legible copies, unless the number of copies is specified in the notice. Any interested person must submit as part of his/her written comments all material that he/she considers relevant to any statement of fact made by him/her. Incorporation of material by reference is to be avoided. However, if such incorporation is necessary, the incorporated material shall be identified with respect to document and page.

§ 389.23 Consideration of comments received.

All timely comments are considered before final action is taken on a rule making proposal. Late filed comments may be considered as far as practicable.

§ 389.25 Additional rule making proceedings.

The Administrator may initiate any further rule making proceedings that

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he/she finds necessary or desirable. or example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or his/her representative 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 or minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.27 Hearings.

(a) 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 procedures at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Administrator designates a representative to conduct any hearing held under this part. The Chief Counsel of the Federal Motor Carrier Safety Administration designates a member of his/her staff to serve as legal officer at the hearing.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.29 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the Chief Counsel. The rule is then submitted to the Administrator for his/her consideration. If the Administrator 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.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.31 Petitions for rule making.

(a) Any interested person may petition the Administrator to establish, amend, or repeal a rule.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the Administrator, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the rule or amendment proposed, 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;

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

[35 FR 9209, June 12, 1970, as amended at 45 FR 46424, July 10, 1980; 53 FR 2036, Jan. 26, 1988]

§ 389.33 Processing of petition.

(a) Unless the Administrator 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 Administrator determines that the petition contains adequate justification, he/she initiates rule making action under this Subpart B.

(c) *Denials.* If the Administrator determines that the petition does not justify rule making, he/she denies the petition.

(d) *Notification.* Whenever the Administrator determines that a petition should be granted or denied, the Office of the Chief Counsel prepares a notice of that grant or denial for issuance to the petitioner, and the Administrator issues it to the petitioner.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition must be in English and submitted in five (5) legible copies to the Administrator, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, and received not later than thirty (30) days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under § 389.31. 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, he/she must state the reason they were not presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

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

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

§ 389.37 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he/she determines to reconsider any rule, he/she may issue a final decision on reconsideration without further proceedings, or he/she may provide such opportunity to submit comment or information and data as he/she deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he/she prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

[35 FR 9209, June 12, 1970, as amended at 53 FR 2036, Jan. 26, 1988]

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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