

and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days.

(b) The Assistant Secretary shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. Where an advisory committee has been consulted and the Assistant Secretary determines that a rule should be issued, the notice shall be published within 60 days after the submission of the committee's recommendations or the expiration of the period prescribed for such submissions, whichever date is earlier. The notice shall include:

- (1) The terms of the proposed rule;
- (2) A reference to section 6(b) of the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule;
- (3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;
- (4) Either the time and place of an informal hearing on the proposed rule to be held not earlier than 10 days from the last day of the period for written comments, or information to interested persons that they may file on or before the 30th day after publication of the notice written objections to the proposed rule meeting the requirements of paragraph (c) of this section and request an informal hearing on the objections; and
- (5) Any other appropriate provisions with regard to the proceeding.

(c) Objections to be submitted pursuant to paragraph (b) of this section shall comply with the following conditions:

- (1) The objections must include the name and address of the objector;
- (2) The objections must be post-marked on or before the 30th day after the date of publication of the notice of proposed rulemaking;

(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered; and

(5) The objections must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

(d) Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph (c) of this section, the Assistant Secretary shall, and in any other case may, publish in the FEDERAL REGISTER a notice of informal hearing. The notice shall contain:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A reference to the authority under which the hearing is to be held;
- (3) A specification of the provisions of the proposed rule which have been objected to, and on which an informal hearing has been requested;
- (4) A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;
- (5) The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;
- (6) The designation of a presiding officer to conduct the hearing; and
- (7) Any other appropriate provisions with regard to the proceeding.

(e) Any objector requesting a hearing on proposed rule, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

§ 1911.12 Emergency standards.

(a)(1) Whenever an emergency standard is published pursuant to section 6(c) of the Act, the Assistant Secretary must commence a proceeding under section 6(b) of the Act, and the standard as published must serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.

(2) An emergency standard promulgated pursuant to section 6(c) of the

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Act shall be considered issued at the time when the standard is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

(b) If the Assistant Secretary wishes to consult an advisory committee on any of the proposals as permitted by section 7(b) of the Act, he shall afford interested persons an opportunity to inspect and copy any recommendations of the advisory committee within a reasonable time before the commencement of any informal hearing which may be held under this part, or before the termination of the period for the submission of written comments whenever an informal hearing is not initially noticed under § 1910.11(b)(4) of this chapter.

(c) Section 6(c) requires that any standard must be promulgated following the rulemaking proceeding within 6 months after the publication of the emergency standard. Because of the shortness of this period, the conduct of the proceeding shall be expedited to the extent practicable.

[37 FR 8664, Apr. 29, 1972, as amended at 42 FR 65166, Dec. 30, 1977]

HEARINGS

§ 1911.15 Nature of hearing.

(a)(1) The legislative history of section 6 indicates that Congress intended informal rather than formal rulemaking procedures to apply. See the Conference Report, H. Rept. No. 91-1765, 91st Cong., second sess., 34 (1970). The informality of the proceedings is also suggested by the fact that section 6(b) permits the making of a decision on the basis of written comments alone (unless an objection to a rule is made and a hearing is requested), the use of advisory committees, and the inherent legislative nature of the tasks involved. For these reasons, the proceedings pursuant to § 1911.10 or § 1911.11 shall be informal.

(2) Section 6(b)(3) provides an opportunity for a hearing on objections to proposed rulemaking, and section 6(f) provides in connection with the judicial review of standards, that deter-

minations of the Secretary shall be conclusive if supported by substantial evidence in the record as a whole. Although these sections are not read as requiring a rulemaking proceeding within the meaning of the last sentence of 5 U.S.C. 553(c) requiring the application of the formal requirements of 5 U.S.C. 556 and 557, they do suggest a congressional expectation that the rulemaking would be on the basis of a record to which a substantial evidence test, where pertinent, may be applied in the event an informal hearing is held.

(3) The oral hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

(b) Although any hearing shall be informal and legislative in type, this part is intended to provide more than the bare essentials of informal rulemaking under 5 U.S.C. 553. The additional requirements are the following:

(1) The presiding officer shall be a hearing examiner appointed under 5 U.S.C. 3105.

(2) The presiding officer shall provide an opportunity for cross-examination on crucial issues.

(3) The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

[37 FR 8664, Apr. 29, 1972, as amended at 37 FR 12231, June 21, 1972]

§ 1911.16 Powers of presiding officer.

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

(a) To regulate the course of the proceedings;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to the issues specified in the notice of