

PART 106—RULEMAKING PROCEDURES

Subpart A—PHMSA Rulemaking Documents

Subpart A—PHMSA Rulemaking Documents

§ 106.5 Defined terms used in this subpart.

Sec.

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

- 106.5 Defined terms used in this subpart.
- 106.10 Process for issuing rules.
- 106.15 Advance notice of proposed rulemaking.
- 106.20 Notice of proposed rulemaking.
- 106.25 Revising regulations without first issuing an ANPRM or NPRM.
- 106.30 Final rule.
- 106.35 Interim final rule.
- 106.40 Direct final rule.
- 106.45 Tracking rulemaking actions.

§ 106.10 Process for issuing rules.

Subpart B—Participating in the Rulemaking Process

(a) PHMSA (“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, PHMSA 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:

- 106.50 Defined terms used in this subpart.
- 106.55 Public participation in the rulemaking process.

(1) An advance notice of proposed rulemaking.

WRITTEN COMMENTS

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

- 106.60 Filing comments.
- 106.65 Required information for written comments.
- 106.70 Where and when to file comments.
- 106.75 Extension of time to file comments.

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

PUBLIC MEETINGS AND OTHER PROCEEDINGS

(1) The topic involved in the rulemaking document.

- 106.80 Public meeting procedures.
- 106.85 Requesting a public meeting.
- 106.90 Other rulemaking proceedings.

(2) PHMSA’s legal authority for issuing the rulemaking document.

PETITIONS FOR RULEMAKING

(3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations).

- 106.95 Requesting a change to the regulations.
- 106.100 Required information for a petition for rulemaking.
- 106.105 PHMSA response to a petition for rulemaking.

(4) Whom to call if you have questions about the rulemaking document.

APPEALS

(5) The date, time, and place of any public meetings being held to discuss the rulemaking document.

- 106.110 Appealing a PHMSA action.
- 106.115 Required information for an appeal.
- 106.120 Appeal deadline.
- 106.125 Filing an appeal.
- 106.130 PHMSA response to an appeal.

(6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

AUTHORITY: 49 U.S.C. 5101–5127; 49 CFR 1.53.

[67 FR 42954, June 25, 2002, as amended at 70 FR 56088, Sept. 23, 2005]

SOURCE: 67 FR 42954, June 25, 2002, unless otherwise noted.

§ 106.15 Advance notice of proposed rulemaking.

EDITORIAL NOTE: Nomenclature changes to part 106 appear at 70 FR 56088, Sept. 23, 2005.

An advance notice of proposed rulemaking (ANPRM) tells the public that PHMSA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An

§ 106.20

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 PHMSA'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.

PHMSA 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. PHMSA 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. PHMSA will clearly set out this finding in the interim final rule. After receiving and reviewing public comments, as well as any other relevant documents, PHMSA 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

49 CFR Ch. I (10-1-07 Edition)

changes will take effect on a specified date unless PHMSA 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 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