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Title 49 —Transportation

Subtitle A —Office of the Secretary of Transportation

Part 5 Administrative Procedures

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PART 5—ADMINISTRATIVE PROCEDURES

Authority: 49 U.S.C. 322(a).

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Subpart A—General

§ 5.1 Applicability.

- (a) This part prescribes general procedures that apply to rulemakings of the U.S. Department of Transportation (the Department or DOT), including each of its operating administrations (OAs) and all components of the Office of Secretary of Transportation (OST).
- (b) For purposes of this part, *Administrative Procedure Act (APA)* is the Federal statute, codified in scattered sections of chapters 5 and 7 of title 5, United States Code, that governs procedures for agency rulemaking and adjudication and provides for judicial review of final agency actions.

Subpart B—Rulemaking Procedures

§ 5.3 Petitions.

- (a) Any person may petition an OA or OST component with rulemaking authority to:
 - (1) Issue, amend, or repeal a rule, as defined in 5 U.S.C. 551; or
 - (2) Issue an exemption, either permanently or temporarily, from any requirements of a rule, consistent with applicable statutory or regulatory provisions.
- (b) When an OA or OST component receives a petition under this section, the petition should be filed with the Docket Clerk in a timely manner. If a petition is filed directly with the Docket Clerk, the Docket Clerk will submit the petition in a timely manner to the OA or component of OST with regulatory responsibility over the matter described in the petition.

- (c) The OA or component of OST should provide clear instructions on its website to members of the public regarding how to submit petitions, including, but not limited to, an email address or Web portal where petitions can be submitted, a mailing address where hard copy requests can be submitted, and an office responsible for coordinating such requests.
- (d) Unless otherwise provided by statute or in OA regulations or procedures, the following procedures apply to the processing of petitions for rulemaking or exemption:
 - (1) **Contents.** Each petition filed under this section must:
 - (i) Be submitted, either by paper submission to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, or electronically by emailing: regulationC50.law@dot.gov;
 - (ii) Describe the nature of the request and set forth the text or substance of the rule, or specify the rule that the petitioner seeks to have issued, amended, exempted, or repealed, as the case may be;
 - (iii) Explain the interest of the petitioner in the action requested, including, in the case of a petition for an exemption, the nature and extent of the relief sought and a description of the persons to be covered by the exemption;
 - (iv) Contain any information and arguments available to the petitioner to support the action sought; and
 - (v) In the case of a petition for exemption, unless good cause is shown in that petition, be submitted at least 60 days before the proposed effective date of the exemption, as appropriate.
 - (2) **Processing.** Each petition received under this section is referred to the head of the office responsible for the subject matter of that petition, and the Office of Regulation.
 - (3) **Grants.** If the OA or component of OST with regulatory responsibility over the matter described in the petition determines that the petition contains adequate justification, it may request the initiation of a rulemaking action in accordance with departmental procedures or grant the petition, as appropriate.
 - (4) **Denials.** If the OA or component of OST determines that the petition is not justified, the OA or component of OST denies the petition in coordination with the Office of Regulation.
 - (5) **Notification.** Whenever the OA or OST component determines that a petition should be granted or denied, and after consultation with the Office of Regulation in the case of denial, the office concerned prepares a notice of that grant or denial for issuance to the petitioner, and issues it to the petitioner.

§ 5.5 Public contacts in informal rulemaking.

- (a) **Agency contacts with the public during informal rulemakings conducted in accordance with 5 U.S.C. 553.**
 - (1) DOT personnel may have meetings or other contacts with interested members of the public concerning an informal rulemaking under 5 U.S.C. 553 or similar procedures at any stage of the rulemaking process, provided the substance of material information submitted by the public that DOT relies on in proposing or finalizing the rule is adequately disclosed and described in the public rulemaking docket such that all interested parties have notice of the information and an opportunity to comment on its accuracy and relevance.

- (2) During the pendency of a rulemaking proceeding, DOT personnel must avoid giving persons outside the executive branch information regarding the rulemaking that is not available generally to the public.
- (3) If DOT receives an unusually large number of requests for meetings with interested members of the public during the comment period for a proposed rule or after the close of the comment period, the issuing OA or component of OST should consider whether there is a need to extend or reopen the comment period, to allow for submission of a second round of “reply comments,” or to hold a public meeting on the proposed rule.
- (4) If the issuing OA or OST component meets with interested persons on the rulemaking after the close of the comment period, it should be open to giving other interested persons a similar opportunity to meet.
- (5) If DOT learns of significant new information, such as new studies or data, after the close of the comment period that the issuing OA or OST component wishes to rely upon in finalizing the rule, the OA or OST component should reopen the comment period to give the public an opportunity to comment on the new information. If the new information is likely to result in a change to the rule that is not within the scope of the notice of proposed rulemaking (NPRM), the OA or OST component should consider issuing a supplemental NPRM to ensure that the final rule represents a logical outgrowth of DOT’s proposal.

(b) [Reserved]

§ 5.7 Policy updates and revisions.

This subpart shall be reviewed from time to time to reflect improvements in the rulemaking process or changes in Administration policy.

§ 5.9 Disclaimer.

This subpart is intended to improve the internal management of the Department. It is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, officers or employees, or any other person. In addition, this subpart shall not be construed to create any right to judicial review involving the compliance or noncompliance with this subpart by the Department, its OAs or OST components, its officers or employees, or any other person.