Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

List of Subjects in 40 CFR Part 186

Environmental protection, Animals feeds, Pesticides and pests.

Dated: May 29, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In 180.441, by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 180.441 Quizalofop ethyl; tolerances for residues.

* * * * *

(c) Tolerances are established for the combined residues of the herbicide quizalofop-p ethyl ester [ethyl (R)-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [R-(2-(4-((6-quinoxalin-2-yl)oxy)phenoxy)propanoic acid], and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the following raw agricultural commodities;

Commodity	Parts per million
cottonseed	0.1
lentils	0.05

(d) Time limited tolerances to expire on June 14, 1999 are established for the combined residues of the herbicide quizalofop-p ethyl ester (ethyl (R)-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate) and it acid metabolite quizalofop-p [R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities:

Commodities	Parts per million
foliage of legume vegetables (except soybeans).	3.0
legume vegetables (succulent or dried) group.	0.25
sugarbeet, root	0.1
sugarbeet, top	0.5

PART 186—[AMENDED]

2. In part 186:

a. The authority for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

b. In 186.5250, by redesignating the existing paragraph and table as paragraph (a) and adding paragraph (b) to read as follows:

§ 186.5250 Quizalofop ethyl.

* * * * *

(b) A feed additive regulation to expire (insert date 3 years from date of publication in the Federal Register) is established to permit the combined residues of the herbicide quizalofop-p-ethyl ester [ethyl] (R)-2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoate], and its acid metabolite quizalofop-p [R-(2-(4-((6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester in or on sugar beet molasses at 0.2 part per million (ppm)

[FR Doc. 96–15040 Filed 6–13–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 106

[Docket No. RSP–1, Amdt. No. 106–11]

RIN 2137–ACXX

Direct Final Rule Procedure; Petitions for Rulemaking

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: To further the goals of Executive Order 12866 on Regulatory Planning and Review, and in response to the recommendations of the National Performance Review (NPR) and the former Administrative Conference of the United States, RSPA is implementing a new and more efficient procedure for adopting noncontroversial rules. This ''direct final rule'' procedure involves issuing a final rule providing notice and an opportunity to comment and stating that the rule will become effective on a specified date without further publication of the text of the rule if RSPA does not receive an adverse comment or notice of intent to file an adverse comment. If no adverse comment or notice of intent to file an adverse comment were received, RSPA would issue a subsequent notice in the Federal Register to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment were received, RSPA would issue a subsequent notice in the Federal Register to confirm that fact and withdraw the direct final rule before it goes into effect.

RSPA is also amending its rulemaking procedures to specify in more detail the required contents of a petition for rulemaking and provide that petitions for rulemaking and petitions for reconsideration will be reviewed and acted upon by the appropriate Associate Administrator or the Chief Counsel and that decisions of the Associate Administrator may be appealed to the Administrator.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy E. Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001; Telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

In Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993), the President set forth the Administration's regulatory philosophy and principles. The Executive Order contemplates an efficient and effective rulemaking process, including the conservation of limited government resources for carrying out its regulatory functions. Furthermore, ''Improving Regulatory Systems,'' an Accompanying Report of the National Performance Review, recognized the need to streamline the regulatory process and recommended the use of ''direct final'' rulemaking

procedures to reduce needless double review of noncontroversial rules.

The former Administrative Conference of the United States (ACUS) adopted Recommendation 95–4, ''Procedures for Noncontroversial and Expedited Rulemaking,'' which endorses direct final rulemaking as a procedure that can expedite rules in appropriate cases. (*See* 60 FR 43108; August 18, 1995.) (ACUS studied the efficiency, adequacy and fairness of the administrative procedures used by Federal agencies in carrying out administrative programs, and made recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States.) ACUS found direct final rulemaking appropriate where a rule is expected to generate no significant adverse comment. ACUS defined a significant adverse comment as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Under ACUS Recommendation 95–4, an agency would issue a final rule with a statement that the rule becomes effective automatically at a specified time, if the agency received no significant adverse comments. This would eliminate a second round of intra- and inter-agency review. If a significant adverse comment were received, the agency would withdraw the rule before the effective date and issue a notice of proposed rulemaking. As noted in the report, ''this approach avoids the second round of clearances and review, which otherwise delays rules, wastes time, and should be superfluous * * *. Theoretically, the second review ought to be very quick, but clearing any document through numerous government offices takes time. The paper shuffling also wastes reviewers' time by requiring them to look at something twice when once would have sufficed.'' (''Improving Regulatory Systems,'' p. 42.)

The Secretary of Transportation has directed administrations within the Department of Transportation (DOT) to focus on improvements that can be made in the way in which they propose and adopt regulations. This is consistent with both the letter and the spirit of the Executive Order and the NPR Recommendations.

II. Proposed Rule

In its December 18, 1995 Notice of Proposed Rulemaking (NPRM), 60 FR 65210, RSPA proposed to adopt, in a new § 106.39, direct final rulemaking procedures for noncontroversial rules, such as minor, substantive changes to regulations; incorporation by reference of the latest editions of technical or industry standards; and extensions of compliance dates. RSPA solicited comment on the advisability of using direct final rules for these categories of rules, as well as suggestions for other types of rules that could be issued as direct final rules.

RSPA stated that if it believed a rulemaking in these categories would be unlikely to result in significant adverse comment, it would use its proposed direct final rulemaking procedures. Under those proposed procedures, a direct final rule would advise the public that no significant adverse comments are anticipated and, unless a significant adverse comment or intent to submit a significant adverse comment is received, in writing, within a certain period of time (generally 60 days), the rule would become effective on a specified date (generally 90 days after publication). If no significant adverse comment or notice of intent to file significant adverse comment were received, RSPA proposed to issue a subsequent document advising the public of that fact and that the rule would become, or did become, effective on the date previously specified in the direct final rule. RSPA stated in the NPRM that direct final rules would not be subject to petitions for reconsideration under 49 CFR 106.35.

In the NPRM, RSPA also stated that if it received a significant adverse comment or notice of intent to file a significant adverse comment, it would publish a document in the Federal Register withdrawing the direct final rule, in whole or in part. If RSPA believed it could incorporate the adverse comment in a subsequent direct final rulemaking, without generating further significant adverse comment, RSPA proposed to do so. If RSPA believed that the significant adverse comment raised an issue serious enough to warrant a substantive response in a notice-and-comment process, RSPA stated that it could publish a notice of proposed rulemaking, following the procedures provided in 49 CFR §§ 106.11–106.29, which would give an opportunity to comment to persons who may not have commented earlier because they wanted the rule to go into effect immediately. RSPA proposed that, where a significant adverse comment applied to part of a rule and that part could be severed from the remainder of the rule (for example where a rule deleted several unrelated regulations), RSPA would adopt as final those parts of the rule that were not the subject of a significant adverse comment.

Furthermore, RSPA proposed to adopt ACUS's definition of ''significant adverse comment.'' Specifically, a significant adverse comment would be one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. RSPA noted that frivolous or insubstantial comments would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the commenter stated why the rule would be ineffective without the additional change.

RSPA also proposed to amend § 106.3 to clarify that RSPA's Chief Counsel has the delegated authority to conduct rulemaking proceedings, § 106.17 to clarify the procedures for participation by interested parties in the rulemaking process, and § 106.31 to specify in more detail the required contents of a petition for rulemaking.

RSPA further proposed to amend 49 CFR §§ 106.31, 106.33, 106.35 and 106.37 to provide that petitions for rulemaking and petitions for reconsideration be filed with the appropriate Associate Administrator or the Chief Counsel, who will review and issue determinations granting or denying the petitions in whole or part. RSPA also proposed to add a new § 106.38 to provide that any interested party may appeal a decision of an Associate Administrator or the Chief Counsel to RSPA's Administrator.

III. Discussion of Comments

RSPA received 25 written comments on the NPRM. The comments were submitted by chemical manufacturers, trade associations, transporters and one State agency. Commenters uniformly supported RSPA's efforts to streamline and clarify rulemaking procedures, cut costs and reduce regulatory burdens. Twenty-two of the commenters supported RSPA's proposal, with 14 of them suggesting changes to the proposal or requesting clarification. Only three commenters opposed the proposal. Two objected based on their belief that the proposal abrogated notice-and-comment procedures of the Administrative Procedure Act (APA), 5 U.S.C. 553. The third commenter asserted that RSPA failed to adequately justify the reasons for the proposed changes to the agency's regulatory procedures.

A detailed discussion of the comments, and RSPA's response to

them, is provided in the following summary.

A. ''Noncontroversial'' Rules

In the NPRM, RSPA proposed to implement direct final rulemaking procedures for adopting ''noncontroversial rules, such as minor, substantive changes to regulations, incorporation by reference of the latest edition of technical or industry standards, extensions of compliance dates . . . .'' RSPA received numerous requests for clarification of what constitutes a ''noncontroversial'' rule, including requests that RSPA provide a list of the types of rules that it considers noncontroversial. RSPA also received several comments stating that the proposed rule gives RSPA too much discretion to determine what is or is not controversial.

First, it would be impossible for RSPA to provide an all-inclusive list of the types of rules that would be handled under direct final rulemaking procedures. RSPA cannot accurately envision every type of rule that the agency might issue in the future. Also, RSPA cannot accurately predict whether those types of rules might lend themselves to direct final rulemaking procedures in every instance. Furthermore, developing such a list could lead to the inadvertent exclusion of some types of rules that are ideally suited to the direct final rule process. RSPA will not attempt to develop an all-inclusive list of the types of rules subject to direct final rule procedures. RSPA will, as proposed, review each rule on its individual merits to determine whether the agency believes the rule will be noncontroversial.

Commenters are correct that, as proposed in the NPRM, the agency has sole discretion in determining whether a rule is or is not controversial. RSPA does not agree, however, that this discretion is overly broad or subject to abuse. The nature of the proposed direct final rule process ensures that RSPA will make a good faith effort to ascertain which rules are truly noncontroversial. As proposed in the NPRM, a mere notice of intent to file an adverse comment is sufficient to terminate the direct final rule process. This alone ensures that RSPA will not waste its limited resources knowingly trying to promulgate a controversial rule under direct final rulemaking procedures. To the extent that the agency miscalculates the contentiousness of a rule, it will have to withdraw that rule. If the agency again decides to move forward on the same issue, it either would be with another direct final rule which addresses the concern voiced in the adverse comment and is, itself, open to public comment, or with a notice of proposed rulemaking using traditional notice-and-comment procedures. Consequently, it is in RSPA's best interest to make every reasonable effort to accurately determine the contentiousness of a rule before deciding to use direct final rulemaking procedures.

Several commenters also remarked that the incorporation of technical standards and industry standards into the Hazardous Materials Regulations (HMR) may be a controversial agency action. RSPA agrees that incorporating technical and industry standards into the HMR may be controversial. On the other hand, there are instances where industry itself has petitioned the agency to incorporate changes into the HMR, and the agency has done so by issuing those changes as a final rule—which was not preceded by an NPRM—without receiving any adverse comments. *See, e.g.,* RSPA Docket HM–166Z, Transportation of Hazardous Materials; Miscellaneous Amendments (59 FR 28487; June 2, 1994) (incorporating by reference the most recent editions of the American National Standards Institute, Inc. Standard N14.1, American Pyrotechnics Association Standard 87–1, Association of American Railroads Specification M–1102, Compressed Gas Association Pamphlet C–7, and Institute of Makers of Explosives Standard 22). Consequently, RSPA will continue to incorporate technical and industry standards into the HMR, without prior opportunity to comment, when the agency reasonably believes that the rule will be noncontroversial. The direct final rule process is an additional tool that the agency may use to do so.

Finally, several commenters expressed concern over RSPA's statement that minor substantive changes to the HMR may be noncontroversial and, thus, subject to direct final rulemaking procedures. Commenters questioned how a change can be minor, substantive and, at the same time, noncontroversial. On numerous occasions, RSPA has made minor, substantive changes to the HMR, without generating adverse comment. For example, in RSPA Docket HM–166Z, discussed above, RSPA revised 49 CFR 173.34(e)(15)(v) to permit cylinders manufactured after December 31, 1945, to be stamped with a five-point star. This action was taken in order to maintain consistency with 49 CFR 173.34(e)(15)(i), which was revised in RSPA Docket HM–166X (58 FR 50496; Sept. 27, 1993). As noted above, no adverse comments were received. Although the change to § 173.34(e)(15)(v) was substantive, it was minor in that it followed logically from significant changes that were made to § 173.34(e)(15)(i), and was necessary to maintain consistency.

Also, in RSPA Docket 222B (61 FR 6478; Feb. 20, 1996) RSPA proposed to amend 49 CFR 172.402 to add an exception from the requirement for subsidiary hazard labeling for certain packages of Class 7 (radioactive) materials that also meet the definition of another hazard class, except Class 9. Only one comment was received to RSPA's proposal to amend § 172.402, and that comment was fully supportive of RSPA's proposal. These actions made or proposed to make substantive yet minor changes to the HMR, and drew no adverse comment. Consequently, as proposed, RSPA will issue these types of substantive, yet minor amendments to the HMR through use of direct final rulemaking procedures.

B. Significant Adverse Comments

RSPA stated in its proposal that if, after publishing a direct final rule, it received no ''significant adverse comments'' or notice of an intent to file a significant adverse comment, the rule would become effective on a specified date without further publication of the text of the rule. RSPA defined ''significant adverse comment'' as one where ''the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.'' No commenter objected to the proposed definition of the term ''significant adverse comment,'' but several commenters objected to the word ''significant,'' stating that the term placed the burden of proof on industry and that the agency would have too much discretion to determine what is ''significant.'' Because no commenter found the proposed definition objectionable, only the terminology, RSPA will adopt the definition of ''significant adverse comment'', as proposed, but will delete the word ''significant'' from the term ''significant adverse comment.''

In addition, several commenters asked RSPA to clarify whether comments alleging increased costs, comments that agree with a proposal but suggest improvements, or comments requesting clarification would be considered sufficiently adverse to require withdrawal of a direct final rule. A comment alleging increased costs would generally be considered adverse. RSPA will not use the direct final rule process where it can reasonably anticipate that

a rule will result in increased costs. However, where the allegation of increased costs is, for example, clearly erroneous, the comment would not be considered sufficient to warrant withdrawal of the direct final rule.

A comment that agrees with the proposal but suggests an improvement would not generally be considered adverse. RSPA stated in the NPRM that ''a comment recommending a rule change in addition to the rule should not be considered a significant adverse comment, unless the commenter states why the rule would be ineffective without the additional change.'' By that statement, RSPA intended to convey that a comment would be considered adverse if it states that the rule would be intrinsically inappropriate without the suggested improvement or if it states that RSPA would be acting inappropriately if it were to adopt the rule without the suggested improvement. On the other hand, a comment might not be considered adverse where RSPA reasonably believes that incorporating the suggested improvement would be noncontroversial, *e.g.,* where the commenter identifies a section of the HMR that should be revised in order to maintain consistency between the identified section and a section amended in a direct final rule, such as the changes made in RSPA Docket HM–166Z to 49 CFR 173.34(e)(15)(v), discussed above. In that instance, after the direct final rule at issue becomes effective, RSPA would make the technical correction in a subsequent miscellaneous correction rulemaking.

Comments requesting clarification would not, in all cases, be considered adverse. For example, a commenter might ask the agency to clarify a particular proposal and at the same time give its own view of what it believes the agency intended. If the commenter has correctly understood the agency's intention, the comment is not adverse and should not result in the withdrawal of a direct final rule. On the other hand, if there is a substantive difference between the commenter's understanding and the agency's intention, and the commenter urges the agency to adopt the commenter's interpretation, the comment would more than likely be considered adverse.

In the NPRM, RSPA stated that frivolous or insubstantial comments would not be considered adverse. Several commenters asked RSPA to clarify those terms. Webster's Ninth New Collegiate Dictionary (1991) defines ''frivolous'' as ''1: of little weight or importance 2 a: lacking in seriousness * * *.'' ''Insubstantial'' is defined as ''lacking in substance or material nature.'' RSPA will only consider comments to be adverse where the commenter demonstrates some minimum level of seriousness of purpose—if RSPA would have responded to a comment in the course of a notice-and-comment rulemaking proceeding, it will consider that comment adverse under the direct final rule procedures. *See, e.g., Center for Auto Safety* v. *Peck,* 751 F.2d 1336, 1355 n. 15 (D.C. Cir. 1985) (agency need not respond to remote or insignificant comments); *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 394 (D.C. Cir. 1973) (''lack of agency response or consideration becomes of concern'' when comment is ''significant enough to step over the threshold requirement of materiality.'')

One commenter suggested that adverse comments be published in the Federal Register. As proposed, RSPA will publish a document in the Federal Register advising the public that an adverse comment or notice of intent to file an adverse comment has been received and that the direct final rule is being withdrawn. RSPA will not publish the full text of an adverse comment in that document, but will identify the commenter and the substance of its adverse comment. The full text of all comments will be available to the public through RSPA's public docket room, Room 8419, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

Finally, several commenters expressed concern with regard to RSPA's statement in the NPRM that ''[i]f RSPA believed it could incorporate [an] adverse comment in a subsequent direct final rulemaking, without generating further significant adverse comment, it could do so.'' Two commenters stated that this would circumvent notice-and-comment procedures under the APA. Another stated that a ''proposed'' direct final rule should look the same as the ''final'' direct final rule. RSPA believes that the commenters misconstrued RSPA's statement to mean that it might incorporate an adverse comment into a direct final rule that would not be subject to further public comment. RSPA merely intended to indicate by that statement that if the agency received an adverse comment, it would terminate the direct final rule at issue but might later initiate another direct final rule proceeding which incorporated the adverse comment. This second direct final rule proceeding, like the first, would be open for public comment.

C. Notice of Intent To File a Significant Adverse Comment

In the notice, RSPA proposed that the filing of a notice of intent to submit an adverse comment would be sufficient to cause the agency to withdraw a direct final rule. One commenter cautioned against giving the public an open-ended opportunity to halt a direct final rule proceeding on the strength of a notice of intent to file an adverse comment. The commenter suggested that RSPA set a time-frame by which an entity filing a notice of intent to file an adverse comment must actually submit its adverse comment; failure to actually submit the adverse comment would allow the direct final rule proceeding to continue, in the absence of any other adverse comments. Another commenter stated that a notice of intent to file an adverse comment should not derail a direct final rule, and argued that a minimum 60-day comment period was sufficient for the filing of substantive comments. The same commenter also noted that comments following a notice of intent to file adverse comments might not actually be adverse. A third commenter suggested that, in lieu of allowing commenters to file a notice of intent to file an adverse comment, the agency allow commenters to request an extension of the comment period when necessary.

RSPA has considered the comments on this issue and will adopt its original proposal. Nevertheless, RSPA will revisit this issue in a future rulemaking if it finds that commenters are abusing the procedure by failing to file adverse comments after they have notified the agency that they intend to do so and after the agency has withdrawn a direct final rule.

D. Severability

RSPA stated in the NPRM that if an adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (for example where a rule deletes several unrelated regulations), RSPA would adopt as final those parts of the rule that were not the subject of the adverse comment. Three commenters expressed the opinion that RSPA should only sever provisions of a direct final rule when they are clearly unrelated to the portion of the rule that was the subject of the adverse comment. RSPA agrees with the commenters that unless a provision of a direct final rule is clearly unrelated to a provision that is the subject of an adverse comment, as where a rule deletes several unrelated regulations, it will withdraw the entire rule.

E. Publication of Direct Final Rule in Federal Register

Two commenters suggested that RSPA follow the U.S. Coast Guard's procedure for publishing a direct final rule in the Federal Register—specifically, they suggest that RSPA publish the text of a direct final rule in the ''Rules'' section of the Federal Register and a cross-reference in the ''Proposed Rules'' section to ensure adequate public notice. RSPA will not adopt the recommended procedure at this time. However, if RSPA finds that publication of direct final rules in the ''Rules'' section of the Federal Register is not providing adequate notice to the public, the agency will revisit this issue.

F. Effective Date of Direct Final Rule

Section 553(d) of the APA states,

> The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—
> (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
> (2) interpretative rules and statements of policy; or
> (3) as otherwise provided by the agency for good cause found and published with the rule.

5 U.S.C. 553(d). Two commenters questioned whether RSPA's proposal would satisfy the 30-day notice requirement of § 553(d). Specifically, if no adverse comment or notice of intent to file one were received, RSPA proposed to issue a subsequent document advising the public of that fact and that the rule will become or did become effective on the date previously specified in the direct final rule. RSPA agrees that its proposed procedure might result in less than 30 days' notice because the document advising that a direct final rule will or did become effective might be published less than 30 days before the effective date of the direct final rule. One of the commenters suggested that RSPA (1) Identify in each direct final rule a date after the close of the comment period by which RSPA will notify the public when or if the rule will become effective and (2) specify an effective date that is at least 30 days after the public notice date. RSPA believes that the commenter's suggestion is a good one and, therefore, will adopt it as part of its direct final rule procedures.

G. Petitions for Reconsideration

Several commenters objected to RSPA's proposal not to allow petitions for reconsideration of direct final rules. They argued that the expedited nature of the direct final rule procedure dictates that petition for reconsideration procedures be kept in place to protect the public interest. After reviewing the comments on this issue, RSPA agrees that a party who has filed what it believes to be adverse comments with the agency may petition the agency for reconsideration if a direct final rule becomes effective despite its comments. Because of the expedited nature of direct final rule procedures, however, petitions for reconsideration of a direct final rule will not be accepted from anyone who did not participate in the comment phase of the direct final rule proceeding. The public interest is adequately protected by commenters' ability to cause the withdrawal of a direct final rule by the filing of a notice of intent to file adverse comments.

H. Administrative Procedure Act

Two commenters argued that direct final rule procedures abrogate the protections afforded to the public under the APA. One commenter stated that ''procedural due process protections afforded in the [APA] should not be truncated by unilateral agency action. Prior notice-and-comment rulemaking is an essential element of regulatory justice and provides legitimacy for agency actions.'' The other commenter stated that RSPA's proposal would ''curtail the procedural protections of the [APA] and simultaneously restrict review of actions taken under the new procedure.''

In recommending that agencies adopt direct final rule procedures, ACUS recognized and discussed the issue of compliance with APA notice-and-comment requirements. In Recommendation 95–4, ACUS stated,

> Under current law, direct final rulemaking is supported by two rationales. First, it is justified by the Administrative Procedure Act's ''good cause'' exemption from notice-and-comment procedures where they are found to be ''unnecessary.'' The agency's solicitation of public comment does not undercut this argument, but rather is used to validate the agency's initial determination. Alternatively, direct final rulemaking also complies with the basic notice-and-comment requirements in section 553 of the APA. The agency provides notice and opportunity to comment on the rule through its Federal Register notice; the publication requirements are met, although the information has been published earlier in the process than normal; and the requisite advance notice of the effective date required by the APA is provided.

60 FR 43111

The direct final rule procedures that RSPA is adopting are justified by the APA's ''good cause'' exemption from notice-and-comment procedures. Nevertheless, the procedures adopted by RSPA also give the public the opportunity to submit comments—where no adverse comments are received, the agency's determination that the rule would be noncontroversial is validated. Consequently, the interests of the public in the rulemaking process are adequately protected under RSPA's direct final rule procedures.

I. Petitions for Rulemaking

In proposed § 106.31(c), RSPA stated that where the potential impact of an action proposed in a petition for rulemaking is substantial, and information and data related to that impact are available to the petitioner, the agency may request the petitioner to provide information and data to assist in rulemaking analyses required under Executive Orders 12866 and 12612, the Regulatory Flexibility Act, the Paperwork Reduction Act and the National Environmental Policy Act. RSPA stated that it may request a petitioner to provide specific information regarding costs and benefits, direct effects, regulatory burdens, recordkeeping and reporting requirements, and environmental impacts of its proposed action, where such information is ''available to the petitioner.'' By ''available,'' RSPA means that the information is in petitioner's possession or obtainable by the petitioner. RSPA's proposal is consistent with ACUS Recommendation 86–6, Petitions for Rulemaking, which suggests how agencies may improve the handling of petitions for the issuance of rules. *See* 51 FR 46985; Dec. 30, 1986. Several commenters supported RSPA's proposal while several others objected to RSPA's proposal as a shifting of governmental functions to industry.

The APA requires Federal agencies to give interested persons the right to petition for the issuance, amendment or repeal of a rule and requires that Federal agencies give prompt notice of a denial of a petition, including a brief statement of the grounds for the denial. 5 U.S.C. 555(e). RSPA encourages the filing of well-supported petitions for rulemaking with the agency, and will consider all petitions that meet the criteria set forth in proposed § 106.31. RSPA's proposed requirements are intended to provide the agency with information that is essential to the agency's review of petitions for rulemaking that have a substantial impact on the public.

The APA does not require agencies to accept all petitions for rulemaking. Consequently, the agency will not consider a petition for rulemaking that is frivolous, that is unsupported, or that fails to adequately set forth information that the agency deems critical to a thorough evaluation of the petition. In

filing a petition for rulemaking, the burden is on the petitioner to provide supporting information and arguments as to why the agency should commit itself to the rulemaking proceeding being advocated by the petitioner.

J. Appeal to Administrator

RSPA received only one comment with respect to its proposal to add a new § 106.38 to provide that any interested party may appeal a decision of an Associate Administrator under § 106.33 or § 106.37 (concerning petitions for rulemaking and petitions for reconsideration, respectively) to the Administrator. The commenter supported RSPA's proposal but noted a lack of detail as to the required contents of a written appeal document. This final rule adopts § 106.38 as proposed and adds the right to appeal a decision of the Chief Counsel to the Administrator. At the appeal stage, all relevant documents that were considered by an Associate Administrator or the Chief Counsel in reaching his decision will be provided by the Associate Administrator or Chief Counsel to the Administrator for review; the party appealing the decision need not provide that information to the agency again. An appeal to the Administrator should identify the decision that is being appealed, state with particularity the aspects of the decision being appealed, and include any new information or arguments that the Administrator is being asked to consider.

K. Miscellaneous

One commenter asked RSPA to distinguish between the interim final rule procedures the agency has used in the past and the agency's proposed direct final rule procedures. Essentially, when an agency uses interim final rulemaking, it adopts a rule without prior public input, makes it immediately effective, and then invites post-promulgation comments directed towards the issue of whether the rule should be changed sometime in the future. The receipt of comments adverse to the interim final rule will not necessarily cause the agency to withdraw the interim final rule, but may lead to future amendments if the agency is persuaded that amendments are necessary. On the other hand, when an agency proposes a rule using direct final rule procedures, a single adverse comment or notice of intent to file an adverse comment will cause the agency to withdraw the rule, whether or not the agency is persuaded that amendments to the rule are necessary.

IV. Rulemaking Analysis and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The changes adopted in this rule do not result in any additional costs but result in modest cost savings to the public and to the agency. Because of the minimal economic impact of this rule, preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism'') and does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Oil, Pipeline safety.

In consideration of the foregoing, 49 CFR Part 106 is amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 40113, 60101–60125; 49 CFR 1.53.

2. In § 106.3, a new paragraph (d) is added to read as follows:

§ 106.3 Delegations.

* * * * *

(d) Chief Counsel.

3. In § 106.17, paragraph (a) is revised to read as follows:

§ 106.17 Participation by interested persons.

(a) Any interested person may participate in rulemaking proceedings by submitting comments in writing containing information, views or arguments in accordance with instructions for participation in the rulemaking document.

* * * * *

4. Section 106.31 is revised to read as follows:

§ 106.31 Petitions for rulemaking.

(a) Any interested person may petition the Associate Administrator to establish, amend, or repeal a substantive regulation, or may petition the Chief Counsel to establish, amend, or repeal a procedural regulation in parts 106 or 107.

(b) Each petition filed under this section must—

(1) Summarize the proposed action and explain its purpose;

(2) State the text of the proposed rule or amendment, or specify the rule proposed to be repealed;

(3) Explain the petitioner's interest in the proposed action and the interest of any party the petitioner represents; and

(4) Provide information and arguments that support the proposed action, including relevant technical, scientific or other data as available to the petitioner, and any specific known cases that illustrate the need for the proposed action.

(c) If the potential impact of the proposed action is substantial, and information and data related to that impact are available to the petitioner, the Associate Administrator or the Chief Counsel may request the petitioner to provide—

(1) The costs and benefits to society and identifiable groups within society, quantifiable and otherwise;

(2) The direct effects (including preemption effects) of the proposed action on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibilities among the various levels of government;

(3) The regulatory burden on small businesses, small organizations and small governmental jurisdictions;

(4) The recordkeeping and reporting requirements and to whom they would apply; and

(5) Impacts on the quality of the natural and social environments.

(d) The Associate Administrator or Chief Counsel may return a petition that does not comply with the requirements of this section, accompanied by a written statement indicating the deficiencies in the petition.

§ 106.33 [Amended]

5. Section 106.33 is amended by replacing the word ''Administrator'' with the words ''Associate Administrator or the Chief Counsel'' wherever it appears.

6. Section 106.33, paragraph (d) is revised to read as follows:

§ 106.33 Processing of Petition.

* * * * *

(d) *Notification*. The Associate Administrator or the Chief Counsel will notify a petitioner, in writing, of his decision to grant or deny a petition for rulemaking.

7. In § 106.35, the first sentence of paragraph (a) is revised to read as follows:

§ 106.35 Petitions for reconsideration.

(a) Except as provided in § 106.39(d), any interested person may petition the Associate Administrator for reconsideration of any regulation issued under this part, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under this part and contained in this part or in Part 107 of this Chapter. * * *

* * * * *

§ 106.35 [Amended]

8. In addition, in § 106.35, paragraphs (b), (c), and (d), the word ''Administrator'' is amended to read ''Associate Administrator or the Chief Counsel'' wherever it appears.

§ 106.37 [Amended]

9. In § 106.37, the word ''Administrator'' is amended to read ''Associate Administrator or the Chief Counsel'' wherever it appears.

10. Part 106 is amended by adding a new § 106.38 to read as follows:

§ 106.38 Appeals.

(a) Any interested person may appeal a decision of the Associate Administrator or the Chief Counsel, issued under § 106.33 or § 106.37, to the Administrator.

(b) An appeal must be received within 20 days of service of written notice to petitioner of the Associate Administrator's or the Chief Counsel's decision, or within 20 days from the date of publication of the decision in the Federal Register, and should set forth the contested aspects of the decision as well as any new arguments or information.

(c) It is requested, but not required, that three copies of the appeal be submitted to the Administrator.

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

11. Part 106 is amended by adding a new § 106.39 to read as follows:

§ 106.39 Direct final rulemaking.

(a) Where practicable, the Administrator will use direct final rulemaking to issue the following types of rules:

(1) Minor, substantive changes to regulations;

(2) Incorporation by reference of the latest edition of technical or industry standards;

(3) Extensions of compliance dates; and

(4) Other noncontroversial rules where the Administrator determines that use of direct final rulemaking is in the public interest, and that a regulation is unlikely to result in adverse comment.

(b) The direct final rule will state an effective date. The direct final rule will also state that unless an adverse comment or notice of intent to file an adverse comment is received within the specified comment period, generally 60 days after publication of the direct final rule in the Federal Register, the Administrator will issue a confirmation document, generally within 15 days after the close of the comment period, advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(c) For purposes of this section, an adverse comment is one which explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial will not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule will not be considered an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

(d) Only parties who filed comments to a direct final rule issued under this section may petition under § 106.35 for reconsideration of that direct final rule.

(e) If an adverse comment or notice of intent to file an adverse comment is received, a timely document will be published in the Federal Register advising the public and withdrawing the direct final rule in whole or in part. The Administrator may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking. A notice of proposed rulemaking will provide an opportunity for public comment, generally a minimum of 60 days, and will be processed in accordance with §§ 106.11–106.29.

Issued in Washington, D.C. on May 31, 1996, under the authority delegated in 49 CFR part 1.53 and RSPA Order 1100.2A (May 19, 1992).

Kelley S. Coyner,

Deputy Administrator.

[FR Doc. 96–14371 Filed 6–13–96; 8:45 am]

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Surface Transportation Board [1]

49 CFR Part 1312

[Ex Parte No. MC–220]

The Municipality of Anchorage, AK—Notices for Rate Increases for Alaska Intermodal Motor/Water Traffic; Petition for Rulemaking

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board is adopting a change in its regulations to require carriers filing new short-notice publications to send the filings to the subscriber not later than the time the copies for official filing are sent to the Board (unless the subscriber agrees in advance in writing that the publication may be sent to the subscriber within 5 working days after the time the copies are sent to the Board). This change will give subscribers earlier notice before the new rate goes into effect.

EFFECTIVE DATE: The final rule is effective July 14, 1996.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC or Commission) and transferred certain functions and proceedings to the Surface Transportation Board (Board). While section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA, the action at issue here, the adoption of new rules with application to future transportation and future tariff filings, necessitates analysis under the new law, and, therefore, this document applies the law in effect after enactment of the ICCTA. Citations are to the current sections of the statute, unless otherwise indicated. This document relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 13701–02 and 13521.