

PARTS 1–2 [RESERVED]

PART 3—PETITIONS FOR RULEMAKING

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AUTHORITY: 5 U.S.C. 301, 553(e); 6 U.S.C. 112.

SOURCE: 81 FR 47286, July 21, 2016, unless otherwise noted.

§ 3.1 Definitions.

As used in this part:

Component means each separate organizational entity within the U.S. Department of Homeland Security (DHS) that reports directly to the Office of the Secretary.

DHS means the U.S. Department of Homeland Security, including its components.

Rulemaking petition means a petition to issue, amend, or repeal a rule, as described at 5 U.S.C. 553(e).

§ 3.3 Applicability.

(a) *General requirement.* Except as provided in paragraph (b) of this section, this part prescribes the exclusive process for interested persons to submit a rulemaking petition on a matter within DHS's jurisdiction.

(b) *Exceptions*—(1) *U.S. Coast Guard.* This part does not apply to any petition for rulemaking directed to the U.S. Coast Guard. Such petitions are governed by 33 CFR 1.05–20.

(2) *Federal Emergency Management Agency.* This part does not apply to any petition for rulemaking directed to the Federal Emergency Management Agency. Such petitions are governed by 44 CFR 1.18.

§ 3.5 Format and mailing instructions.

(a) *Format.* A rulemaking petition must include in a prominent location—

(1) The words “Petition for Rulemaking” or “Rulemaking Petition;” and

(2) The petitioner's name and a mailing address, in addition to any other contact information (such as telephone

number or email) that the petitioner chooses to include.

(b) *Mailing instructions*—(1) *General mailing address.* Any interested person may submit a rulemaking petition by sending it to the following address: U.S. Department of Homeland Security, Office of the General Counsel, Mail Stop 0485, Attn: Regulatory Affairs Law Division, 245 Murray Lane SW., Washington, DC 20528–0485.

(2) *Transportation Security Administration mailing address.* Any interested person may submit a rulemaking petition regarding a Transportation Security Administration program or authority directly to the Transportation Security Administration by sending it to the following address: Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attn: Regulations and Security Standards Division, 601 South 12th Street, Arlington, VA 20598–6002.

(3) DHS does not accept rulemaking petitions delivered by courier.

§ 3.7 Content of a rulemaking petition.

(a) DHS will be better positioned to understand and respond to a rulemaking petition if the petition describes with reasonable particularity the rule that the petitioner is asking DHS to issue, amend, or repeal, and the factual and legal basis for the petition. For instance, DHS would be better able to understand and respond to a petition that includes—

(1) A description of the specific problem that the requested rulemaking would address;

(2) An explanation of how the requested rulemaking would resolve this problem;

(3) Data and other information that would be relevant to DHS's consideration of the petition;

(4) A description of the substance of the requested rulemaking; and

(5) Citation to the pertinent existing regulations provisions (if any) and pertinent DHS legal authority for taking action.

(b) [Reserved]

§ 3.9

§ 3.9 Responding to a rulemaking petition.

(a) *Public procedure.* DHS may, in its discretion, seek broader public comment on a rulemaking petition prior to its disposition under this section.

(b) *Disposition.* DHS may respond to the petition by letter or by FEDERAL REGISTER publication. DHS may grant or deny the petition, in whole or in part.

(c) *Grounds for denial.* DHS may deny the petition for any reason consistent with law, including, but not limited to, the following reasons: The petition has no merit, the petition is contrary to pertinent statutory authority, the petition is not supported by the relevant information or data, or the petition cannot be addressed because of other priorities or resource constraints.

(d) *Summary disposition.* DHS may, by written letter, deny or summarily dismiss without prejudice any petition that is moot, premature, repetitive, or frivolous, or that plainly does not warrant further consideration.

PART 4 [RESERVED]

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

- 5.1 General provisions.
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- 5.20 General provisions.
- 5.21 Requests for access to records.
- 5.22 Responsibility for responding to requests for access to records.

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- 5.23 Responses to requests for access to records.
- 5.24 Classified information.
- 5.25 Administrative appeals for access requests.
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Subpart C—Disclosure of Information in Litigation

- 5.41 Purpose and scope; definitions.
- 5.42 Service of summonses and complaints.
- 5.43 Service of subpoenas, court orders, and other demands or requests for official information or action.
- 5.44 Testimony and production of documents prohibited unless approved by appropriate Department officials.
- 5.45 Procedure when testimony or production of documents is sought; general.
- 5.46 Procedure when response to demand is required prior to receiving instructions.
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- 5.48 Considerations in determining whether the Department will comply with a demand or request.
- 5.49 Prohibition on providing expert or opinion testimony.

APPENDIX A TO SUBPART C OF PART 5—SERVICE OF PROCESS OF SUMMONSES, COMPLAINTS, AND SUBPOENAS

APPENDIX A TO PART 5—FOIA/PRIVACY ACT OFFICES OF THE DEPARTMENT OF HOMELAND SECURITY

APPENDIX B TO PART 5 [RESERVED]

APPENDIX C TO PART 5—DHS SYSTEMS OF RECORDS EXEMPT FROM THE PRIVACY ACT

AUTHORITY: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301; 6 U.S.C. 142; DHS Del. No. 13001, Rev. 01 (June 2, 2020).

Subpart A also issued under 5 U.S.C. 552.

Subpart B also issued under 5 U.S.C. 552a and 552 note.

SOURCE: 68 FR 4056, Jan. 27, 2003, unless otherwise noted.