

The Secretary of the U.S. Department of Transportation, Pete Buttigieg, signed the following final rule on March 24, 2021, and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule. Please refer to the official version in a forthcoming *Federal Register* publication, which will appear on the *Federal Register's* Web site (www.federalregister.gov). Once the official version of this document is published in the *Federal Register*, this version will be removed from the Internet and replaced with a link to the official version.

DEPARTMENT OF TRANSPORTATION

[4910-9X]

Office of the Secretary

14 CFR Part 302, 399

49 CFR Parts 1, 5, 7, 106, 389, 553, and 601

RIN 2105-AF00

Administrative Rulemaking, Guidance, and Enforcement Procedures

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule removes the Department's internal policies and procedures relating to the issuance of rulemaking and guidance documents from the Code of Federal Regulations. In addition, this final rule removes regulations concerning the initiation and conduct of enforcement actions, including administrative enforcement proceedings and judicial enforcement actions brought in Federal court.

DATES: Effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The Department is issuing this final rule in response to two recently issued executive orders. Executive Order (E.O.) 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation” (January 20, 2021), revokes several executive orders that directed action by the Federal Government in the context of rulemaking, guidance, and regulatory enforcement. It also directs the Director of the Office of Management and Budget and heads of agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing any of the revoked orders, as appropriate and consistent with applicable law. E.O. 13990, “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis” (January 20, 2021), directs all executive departments and agencies to review immediately and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions that conflict with the objectives stated in E.O. 13990.

On December 27, 2019, the Department published a final rule, “Administrative Rulemaking, Guidance, and Enforcement Procedures” (84 FR 71714), that codified at 49 CFR part 5 the Department’s internal procedures relating to the review and clearance of rulemaking and guidance documents, as well as the initiation and conduct of enforcement actions. In accordance with 49 CFR 5.21, “Policy updates and revisions,” the Department has reviewed the amendments made to 49 CFR Part 5 by that final rule to determine whether any revisions are necessary in light of E.O. 13992 and E.O. 13990.

Many of the policies and procedures codified at 49 CFR Part 5 were prompted by executive orders that have since been revoked by E.O. 13992.¹ As a result, the Department will rescind those policies and procedures, or portions thereof, that implemented or enforced any of the revoked orders. This final rule removes from 49 CFR part 5 those provisions that reflect revoked policies and procedures that are no longer in effect.

With respect to the provisions of 49 CFR part 5 that are not directly attributable to now-revoked executive orders, the Department has determined to rescind many of the other regulations promulgated on December 27, 2019, concerning rulemaking, guidance documents, and enforcement actions for four primary reasons. First, the Department has found that a majority of the provisions contained in 49 CFR part 5 not directly attributable to the now-revoked executive orders solely apply to the Department's internal operations and thus need not be codified in the Code of Federal Regulations. Second, the regulations found in 49 CFR part 5 are duplicative of existing procedures contained in internal departmental procedural directives.² Because these procedures are already contained in existing internal procedures, it is not necessary that they also be

¹ For purposes of this rulemaking, the relevant revoked executive orders include the following: E.O. 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), E.O. 13777 of February 24, 2017 (Enforcing the Regulatory Reform Agenda), E.O. 13891 of October 9, 2019 (Promoting the Rule of Law Through Improved Agency Guidance Documents), and E.O. 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication).

² See, e.g., U.S. Department of Transportation, DOT Order 2100.6, "Policies and Procedures for Rulemakings," available at <https://www.transportation.gov/regulations/2018-dot-rulemaking-order>. Note that, consistent with the authorities described in this final rule, DOT is also reviewing the procedures and policies contained in this order to determine what revisions are necessary.

published in the Code of Federal Regulations in order for them to be effective. Third, with regard to the regulations on enforcement matters, many of these provisions are derived from the Administrative Procedure Act (APA) and significant judicial decisions and thus need not be adopted by regulation in order to be effective. Application of the APA and these decisions to enforcement matters can be accomplished by internal directives as the Department deems necessary and appropriate. Therefore, 49 CFR Part 5, Subpart D – Enforcement Procedures is rescinded in its entirety. Fourth, removing these provisions from 49 CFR part 5 ensures that the Department is able to effectively and efficiently promulgate new Federal regulations and other actions to support the objectives stated in E.O. 13990.

The Code of Federal Regulations will continue to include those provisions that impact the public’s ability to interact with the Department on rulemaking matters and activities. For example, the Department will maintain in 49 CFR Part 5 procedures for the public to petition for rulemakings and exemptions. In addition to rulemakings and exemptions, the Department’s procedures, as amended in 2019, explicitly provided for the public to petition for retrospective reviews of existing rules and the modification or rescission of guidance documents. While the Department is revising its petition procedures to remove references to retrospective reviews and guidance document petitions, the Department will nevertheless accept and process these types of petitions. The revised petition procedures thus define “rule” expansively, consistent with the APA, to ensure that the Department will continue to consider a broad range of requests from the public regarding our regulatory programs.

E.O. 13992 also directs agencies to take prompt action to rescind any rules or regulations, or portions thereof, implementing revoked executive orders, as appropriate and consistent with applicable law, that threaten to frustrate the Federal Government's ability to confront urgent challenges facing the Nation, including the coronavirus disease 2019 pandemic, economic recovery, racial justice, and climate change. The Department is reviewing its internal procedures (e.g., DOT Order 2100.6) and will revise them accordingly. As a result, departmental internal procedures will be updated to reflect the call of E.O. 13992 to revoke those procedures that reflect outdated policy that could hamstring the Department's ability to respond quickly and effectively to the challenges facing our Nation.

This final rule also makes a number of conforming edits to the regulations of its subcomponent operating administrations to ensure that they are updated properly to reflect the repeal of certain provisions of 49 CFR part 5.

Administrative Procedure Act

Under the Administrative Procedure Act, the normal notice and comment procedures do not apply to an action that is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A). Since this final rule revises only internal processes applicable to the Department's administrative procedures, this is a rule of agency procedure for which notice and comment are not required.

Rulemaking Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not a significant regulatory action under Executive Order

12866. The Department does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice that does not change the Department's procedures in and of itself. This action merely removes duplicative regulations from the Code of Federal Regulations that would be better managed in departmental operating procedures.

B. Regulatory Flexibility Act

Since notice and comment rulemaking is not necessary for this rule, the analytical provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601–612) do not apply.

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires agencies to ensure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (August 4, 1999), and DOT has determined that this action will not have a substantial direct effect or federalism implications on the States and would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Therefore, consultation with the States is not necessary.

D. Executive Order 13175 (Tribal Consultation)

This final rule has been analyzed in accordance with the principles and criteria

contained in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Because this rulemaking does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this final rule.

F. National Environmental Policy Act

The agency has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, “Procedures for Considering Environmental Impacts” (44 FR 56420, October 1, 1979). Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to update the Department’s administrative procedures for rulemaking, guidance documents, and enforcement actions. The agency does not

anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

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 the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

14 CFR Part 302

Administrative practice and procedure, Air carriers, Airports, Postal Service.

49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 5

Administrative practice and procedure.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 553

Administrative practice and procedure, Motor vehicle safety.

49 CFR Part 601

Authority delegations (Government agencies), Freedom of information, Organization and functions (Government agencies).

In consideration of the foregoing, the Office of the Secretary of Transportation amends 14 CFR parts 302 and 399, and 49 CFR parts 5, 106, 389, 553, and 601, as follows:

Title 14—Aeronautics and Space

PART 302—RULES OF PRACTICE IN PROCEEDINGS

1. The authority citation for part 302 continues to read as follows:

Authority: 39 U.S.C. 5402; 42 U.S.C. 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, and 471.

2. Revise § 302.16 to read as follows:

§ 302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation or guidance document, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5.3).

PART 399—STATEMENTS OF GENERAL POLICY

3. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 41712, 40113(a).

4. Revise § 399.75 by revising paragraph (b) to read as follows:

§ 399.75 Rulemakings relating to unfair and deceptive practices.

* * * * *

(b) *Procedural requirements.* When issuing a proposed regulation under paragraph (a) of this section, unless the regulation is specifically required by statute, the Department shall adhere to the following procedural requirements:

* * * * *

§ 399.79 [Revised]

5. Revise § 399.79 by removing the first sentence of paragraph (e)(1).

Title 49—Transportation

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 322.

7. Amend § 1.27 by revising paragraph (e) to read as follows:

§ 1.27 Delegations to the General Counsel.

* * * * *

(e) Respond to petitions for rulemaking or petitions for exemptions in accordance with 49 CFR 5.3 (Petitions), and notify petitioners of decisions in accordance with 49 CFR 5.3(d)(5).

* * * * *

8. The authority citation for part 5 continues to read as follows:

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

9. Revise part 5 to read as follows:

PART 5 —ADMINISTRATIVE PROCEDURES

Subpart A —GENERAL

Sec.

5.1 Applicability.

Subpart B —Rulemaking Procedures

5.3 Petitions

5.5 Public contacts in informal rulemaking.

5.7 Policy updates and revisions.

5.9 Disclaimer.

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 subsection, 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 Web site 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, D.C. 20590, or electronically by e-mailing: 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 subsection 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.

§ 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.

PART 7—PUBLIC AVAILABILITY OF INFORMATION

9. The authority citation for part 7 continues to read as follows:

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600; E.O. 13392.

10. Amend § 7.12 by revising paragraph (a)(2) to read as follows:

§ 7.12 What records are available in reading rooms, and how are they accessed?

(a) * * *

(2) Statements of policy and interpretations that have been adopted by DOT;

* * * * *

PART 106—RULEMAKING PROCEDURES

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

Authority: 49 U.S.C. 5101-5127; 49 CFR 1.53.

12. Amend § 106.40 by revising paragraph (d)(1) to read as follows:

§ 106.40 Direct final rule.

* * * * *

(d) * * *

(1) If we receive an adverse comment, we will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act.

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PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER

SAFETY REGULATIONS

13. The authority citation for part 389 continues to read as follows:

Authority: 49 U.S.C. 113, 501 et seq., subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114-94, 129 Stat. 1312, 1536; 42 U.S.C. 4917; and 49 CFR 1.87.

§ 389.13 [Revised]

14. Amend § 389.13 by removing the first sentence of paragraph (a).

15. Amend § 389.39 by revising paragraph (d)(1) to read as follows:

§ 389.39 Direct final rulemaking procedures

* * * * *

(d) * * *

(1) If FMCSA receives an adverse comment within the comment period, it will either publish a document withdrawing the direct final rule before it becomes effective and may issue an NPRM, or proceed by any other means permitted under the Administrative Procedure Act.

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PART 553—RULEMAKING PROCEDURES

16. The authority citation for part 553 is revised to read as follows:

Authority: 49 U.S.C. 322, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.95.

17. Amend § 553.14 by revising paragraphs (d) to read as follows:

Secretary.