

§ 106.33

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 for Hazardous Materials Safety 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 pre-emption 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 for Hazardous Materials Safety 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.

[Amdt. 106-11, 61 FR 30180, June 14, 1996, as amended by Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 106.33 Processing of petition.

(a) *General.* Unless the Associate Administrator or the Chief Counsel otherwise specifies, no public hearing, argument, or other proceeding is held directly on a petition before its disposition under this section.

(b) *Grants.* If the Associate Administrator or the Chief Counsel determines that the petition contains adequate justification, he or she initiates rulemaking action under this subpart.

(c) *Denials.* If the Associate Administrator or the Chief Counsel determines that the petition does not justify rulemaking, the petition is denied.

(d) *Notification.* The Associate Administrator or the Chief Counsel will notify a petitioner, in writing, of the de-

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cision to grant or deny a petition for rulemaking.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-11, 61 FR 30181, June 14, 1996; Amdt. 106-13, 61 FR 51336, Oct. 1, 1996]

§ 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. It is requested, but not required, that three copies be submitted. The petition must be received not later than 30 days after publication of the rule in the FEDERAL REGISTER. Petitions filed after that time will be considered as petitions filed under §106.31. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, the petitioner must state the reason they were not presented to the Associate Administrator or the Chief Counsel within the prescribed time.

(c) The Associate Administrator or the Chief Counsel does not consider repetitious petitions.

(d) Unless the Associate Administrator or the Chief Counsel otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-11, 61 FR 30181, June 14, 1996; Amdt. 106-13, 61 FR 51337, Oct. 1, 1996]

§ 106.37 Proceedings on petitions for reconsideration.

(a) The Associate Administrator or the Chief Counsel may grant or deny, in whole or in part, any petition for reconsideration without further proceedings, except where a grant of the petition would result in issuance of a new final rule. In the event that the

Associate Administrator or the Chief Counsel determines to reconsider any regulation, a final decision on reconsideration may be issued without further proceedings, or an opportunity to submit comment or information and data as deemed appropriate may be provided. Whenever the Associate Administrator or the Chief Counsel determines that a petition should be granted or denied, the Office of the Chief Counsel prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and the Associate Administrator or the Chief Counsel issues it to the petitioner. The Associate Administrator or the Chief Counsel may consolidate petitions relating to the same rules.

(b) It is the policy of the Associate Administrator or the Chief Counsel to issue notice of the action taken on a petition for reconsideration within 90 days after the date on which the regulation in question is published in the FEDERAL REGISTER, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact and the date by which it is expected that action will be taken is issued to the petitioner and published in the FEDERAL REGISTER.

[40 FR 31768, July 29, 1975. Redesignated by Amdt. 102-1, and Amdt. 106-1, 43 FR 43306, Sept. 25, 1978, as amended by Amdt. 106-11, 61 FR 30181, June 14, 1996; Amdt. 106-13, 61 FR 51337, Oct. 1, 1996]

§ 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.

[Amdt. 106-11, 61 FR 30181, June 14, 1996]

§ 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