

§ 106.40 Direct final rule.

A direct final rule makes regulatory changes and states that the regulatory changes will take effect on a specified date unless PHMSA receives an adverse comment or notice of intent to file an adverse comment within the comment period—generally 60 days after the direct final rule is published in the Federal Register.

(a) *Actions taken by direct final rule.* We may use direct final rulemaking procedures to issue rules that do any of the following:

- (1) Make minor substantive changes to regulations.
- (2) Incorporate by reference the latest edition of technical or industry standards.
- (3) Extend compliance dates.
- (4) Make noncontroversial changes to regulations. We must determine and publish a finding that use of direct final rulemaking, in this situation, is in the public interest and unlikely to result in adverse comment.

(b) *Adverse comment.* An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

- (1) A comment recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states why the direct final rule would be ineffective without the change.
- (2) A frivolous or irrelevant comment.

(c) *Confirmation of effective date.* We will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes, if we have not received an adverse comment or notice of intent to file an adverse comment. The confirmation document tells the public the effective date of the rule—either the date stated in the direct final rule or at least 30 days after the publication date of the confirmation document, whichever is later.

(d) *Withdrawing a direct final rule.* (1) If we receive an adverse comment or notice of intent to file an adverse comment, we will publish a document in the Federal Register before the effective date of the direct final rule advising the public and withdrawing the direct final rule in whole or in part.

(2) If we withdraw a direct final rule because of an adverse comment, we may incorporate the adverse comment into a later direct final rule or may publish a notice of proposed rulemaking.

(e) *Appeal.* You may appeal PHMSA's issuance of a direct final rule (see §106.115) only if you have previously filed written comments (see §106.60) to the direct final rule.