

THE RULEMAKING PROCESS

KEY STEPS IN
PUBLISHING OUR
PROPOSED RULE



RULEMAKING IS GENERALLY A TWO-STEP PROCESS

- **Proposed Rule**
- Provides generally for 60 days of public comment.
- **Final Rule**
- Addresses the public comments on proposed rule.
- Takes effect 30 days after publication.

BYPASSING THE PROPOSED RULE

- Express Statutory Authority.
- Good Cause Finding by Agency:
 - Impracticable;
 - Unnecessary; or
 - Contrary to the Public Interest.
- 24 CFR 10.1
- 5 U.S.C. 553(b)

INTERIM RULE

- Takes Effect 30 Days After Publication.
- Provides Generally for 60 Days of Public Comment.
- Followed-Up By Issuance of Final Rule That Addresses Public Comments.

COMMITTEE GOAL:

Publication of a
Proposed Rule in the
Federal Register



STEP 1: SUBMIT REPORT TO HUD SECRETARY

- Specifies items on which Committee reached consensus.
- Need not be actual text of the proposed rule.
- May include any additional information or materials – including items on which consensus was not reached.

STEP 2: HUD CLEARANCE

- Respect for Negotiations.
- Typical Clearance Period is 10 Business Days.

STEP 3: OMB REVIEW

- Executive Order 12866, “Regulatory Planning and Review” (issued September 30, 1993).
- Section 6 of the Order provides for OMB review of “significant regulatory actions.”
- OMB has 90 calendar days to review a rule.
- NAHASDA rules are always considered “significant.”

A RULE IS “SIGNIFICANT” IF IT WILL LIKELY --

- Have an annual effect on the economy of \$100 million or more;
- Materially and adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;
- Materially alter the budgetary impact or recipient rights and obligations of a program; or
- Raise novel legal or policy issues.

STEP 4: CONGRESSIONAL REVIEW

- Section 7(o) of the Department of HUD Act.
- HUD's authorizing committees may request to review any rule listed on HUD's Regulatory Agenda.
- In practice, Congress reviews all HUD rules issued for public comment (proposed rules and interim rules).
- Review period is for 15 calendar days.

STEP 5: SUBMIT TO *FEDERAL REGISTER*

- Publication typically occurs 3 to 5 business days after submission.

TIME FRAME RECAP

- HUD Clearance (10 calendar days).
- OMB Review (90 calendar days).
- Congressional Review (15 calendar days).
- Processing by *Federal Register* (5 business days).

ESTIMATED PUBLICATION DATE

- 120 Days (4 months) from the date the Committee submits its report to the Secretary.

NEXT STEPS

- Consider and develop responses to public comments.
- Same process applies to the development of the final rule (except no Congressional review).