

Introduction to the Federal Regulatory Process

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When Congress changes an existing law or creates a new one, federal agencies such as HUD must usually implement the changes or the new law by modifying an existing regulation or by creating a new one. In addition, federal agencies can review existing regulations and amend them even when there are no changes to the underlying law. Both the creation of a new regulation and the modification of an existing regulation provide advocates with an opportunity to shape policy.

Congress passes legislation and the president, by signing that legislation, turns it into a law. Usually, these laws spell out the general intent of Congress but do not include all of the technical details essential to putting Congress' wishes into practice. Regulations add those details and usually present the law's requirements in language that is easier to understand.

Two publications are key to the federal regulatory process. The *Federal Register* is a daily publication that contains proposed regulations, final rules, and other official notices, presidential documents, and other items. All final regulations published in the *Federal Register* are eventually gathered together ("codified") in the *Code of Federal Regulations* (CFR). The HUD-related rules in the CFR are updated each April. The federal government uses the words "regulation" and "rule" interchangeably; however, technically HUD defines a "rule" as a document published in the *Federal Register* and a "regulation" as a rule that is codified in the CFR.

SUMMARY OF THE REGULATORY PROCESS

Proposed Regulations. In order to carry out laws, Congress gives federal agencies, such as HUD, the power to write rules to interpret laws and enforce them. When housing law is created or modified, HUD will draft suggested regulations that specify how the law is to be carried out. These are "proposed" regulations.

Before publishing proposed regulations, HUD must send them to the Office of Management and

Budget's Office of Information and Regulatory Affairs (OIRA), which has up to 90 days to review their consistency with Executive Order 12866. If OIRA judges the proposed regulations to be inconsistent, they are sent back to HUD "for further consideration." However, technically, HUD has authority from Congress to issue the rules.

Once cleared by OIRA, HUD must publish a "notice of proposed rulemaking" in the *Federal Register* that contains the proposed language of the regulations. The public must have an opportunity to submit written comments, and is generally given a 60-day period to comment.

Final Regulations. Once the comment period on a proposed rule is closed, HUD must consider all comments and may make changes based on them. Once those changes are complete, and after another review by OIRA, HUD publishes a final rule in the *Federal Register*.

In the introduction, or preamble, to the final rule, HUD must present all meaningful comments received and explain why each was accepted or rejected. In addition to the actual text of the changed or new regulations, the final rules must state a date when they will go into effect, generally 30 or 60 days in the future. However, before the final regulations do go into effect, they are sent to the Congressional subcommittee responsible for the subject matter, as well as to the Government Accountability Office (GAO), to ensure that the rules meet, but do not overstep, Congressional intent. It is not unusual for more than a year to pass between publication of a proposed rule and final implementation.

Other Regulatory Options. In addition to proposed and final rules, the regulatory process can occasionally include:

- **Advanced Notice of Proposed Rulemaking.** HUD can ask for information from the public to help it think about issues before developing proposed regulations.
- **Interim Final Rules.** HUD can issue regulations that are to be followed as if they are final, yet ask for continued public comment on some parts of the rules. Subsequent final rules can include changes based on any additional public comment.

- Supplemental Notice of Rulemaking. HUD may seek additional comment on a proposed rule in order to further focus consideration before issuing a final rule.
- Direct Final Rules. HUD can issue regulations thought to be minor and uncontroversial, but must withdraw them if negative comments are submitted.
- Negotiated Rulemaking. This is a seldom-used approach that engages knowledgeable people to discuss an issue and negotiate the language of a proposed regulation, which is then submitted to the *Federal Register*.
- Petition for Rulemaking. This is a process by which anyone can submit suggested regulations, along with supporting data and arguments in support of the suggestions. If HUD agrees, it will publish proposed rules; if HUD denies the petition, the denial must be in writing and include the basis for denial.
- Informal Meetings. HUD has the authority to gather information from people by using informal hearings or other forms of oral presentations. The transcript or minutes of such meetings will be on file in the Rules Docket.

The Role of Congress. Before HUD can publish a rule for comment or publish an interim rule, HUD must submit the rule to HUD’s Congressional authorizing committees for a review period of 15 calendar days (which does not depend on Congress being in session).

The Congressional Review Act (CRA) requires all federal agencies to submit final rules to Congress and the GAO. The CRA provides an expedited legislative process that allows Congress to overturn a rule if both houses pass a “resolution of disapproval” and the president signs the joint resolution of disapproval. Senate rules have a timetable for this expedited process – 60 days that the Senate is in session. More information about the Congressional Review Act is at: <http://bit.ly/2jc6UQy>.

HOW TO FIND PROPOSED AND FINAL REGULATIONS IN THE FEDERAL REGISTER

The Government Printing Office (GPO) publishes the *Federal Register* and the CFR.

- The current day’s *Federal Register* and links to browse back issues are at: <http://1.usa.gov/YlVw4v>
- A preview of the next day’s *Federal Register* is at: <http://bit.ly/2iVERG4>
- *Federal Register* notices for both proposed and final rules can be tracked by subscribing to a daily email of the table of contents of the *Federal Register* at: <http://bit.ly/2iNz1sY>

The public can read and copy comments made by others at HUD headquarters, or at: www.regulations.gov, which also provides all rules open for comment and enables electronic submission of comments.

HOW TO READ THE FEDERAL REGISTER

There are standard features in the *Federal Register* for both proposed and final rules. The opening heading will look like this (with different numbers and topics):

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR-4874-F-08]

RIN 2577-AC51

Revisions to the Public Housing Operating Fund Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD

ACTION: Final rule

Below the heading there will be:

SUMMARY: This is a short presentation of what is proposed or implemented and what the related issues and rulemaking objectives are.

DATES: Here is either: “*Comment due date*,” the date by which comments to proposed rules are due; or “*Effective Date*,” the date the final rule will go into effect.

ADDRESSES: For proposed regulations only, this section provides the room number and street address for sending written comments, although it is now preferable to submit comments electronically at www.regulations.gov

FOR FURTHER INFORMATION CONTACT: The name of a major HUD staff person responsible for the

issue is presented, along with a phone number and office address.

SUPPLEMENTARY INFORMATION: This section is often called the “preamble” and can go on for many pages. It contains a detailed discussion of the issues and the rule-making objectives. The law or sections of a law that give legal authority for the regulations are generally mentioned. With final rules, there must also be a discussion of all of the significant public comments submitted, along with HUD’s reasons for accepting or rejecting them.

List of Subjects in *nn* CFR Part *nnn*: The actual changes begin at this heading. Key words are presented here.

Then there is a sentence that says “Accordingly, for the reasons described in the preamble, HUD revises [or proposes to revise] *nn* CFR Part *nnn* to read as follows.”

The sections of the regulations subject to change then follow in numerical order.

At the very end the document is dated and “signed” by the appropriate HUD official.

SENDING COMMENTS ABOUT PROPOSED REGULATIONS

It is best to submit comments electronically. In the “Search for” box at www.regulations.gov, enter either the Docket number or the RIN number. That will take you to the rule page. On the right is “Comment Now.” Rather than type comments in the “Comment” box, it is probably best to use the “Upload File(s)” option below the Comment box to upload a PDF of your comments. To view all submitted comments click on “Open Docket Folder.”

Be sure to follow the guidance provided in the “ADDRESSES” section of the proposed rule. For example, regarding proposed changes to the Consolidated Plan rules one would have addressed comments to:

Regulations Division, Office of General Counsel
Room 10276
Department of Housing and Urban
Development
451 Seventh Street, SW
Washington, DC 20410-0500
RE: Docket No. FR-4923-P-01; HUD 2004-
0028
Revisions and Updates To Consolidated Plan

It is very important to indicate the docket number, and it is helpful to include the subject title as it appeared in the heading of the proposed rule. There is no set format for writing comments, although HUD’s “How do I prepare effective comments?” (<http://bit.ly/2jjqVcg>) is a useful guide. It is best to indicate which of the proposed rules are of concern by citing them and commenting on them individually. For example:

ABC Tenant Organization thinks that there are problems with proposed section 91.315(k)(3) because...

We strongly endorse proposed section 91.205(b)(1) because...

Advocates should rely on their experiences to explicitly state why they agree or disagree. When there is disagreement, suggest words that address the concern. Don’t just write about the problems; be sure to tell HUD what is beneficial. Declaring support for key provisions is often essential to counterbalance negative comments from those in opposition.

THE CODE OF FEDERAL REGULATIONS

All final rules published in the Federal Register are eventually “codified,” collected and placed in the CFR. To look up a rule that has not changed in the past year, turn to the CFR, which is generally updated each April for HUD-related rules. All titles updated through 2017 are available at: <http://bit.ly/2qb7i5f>

There are 50 “titles” in the CFR, each representing a broad topic. HUD-related regulations are in Title 24. Each title is divided into “parts” that cover specific program areas. For example, within Title 24, Part 93 covers the national Housing Trust Fund rules and Part 982 lays out the Housing Choice Voucher program rules.

In addition, the GPO provides the Electronic Code of Federal Regulations (e-CFR). Although it is not an official legal edition of the CFR, it is an editorial compilation of CFR material and *Federal Register* amendments that is updated daily. Access the e-CFR at <http://bit.ly/YlVWrv>. On the e-CFR home page select Title 24 from the dropdown box and a list of HUD-related “parts” will appear.

TALKING ABOUT REGULATIONS

Two levels of regulatory citation have already been mentioned, the “title” and the “part.” Below that comes the “section” that covers one provision of a program rule, and then a “paragraph” that provides specific requirements.

For example, the Public Housing Authority Plan regulations are in Title 24 at Part 903, written as 24 CFR 903. Resident Advisory Boards (RABs) and their role in developing the annual PHA Plan are presented in Section 13, cited as 24 CFR 903.13. “Paragraph” (c) specifies that PHAs must consider the recommendations made by the RAB, and subparagraph (c)(1) goes into more detail by requiring PHAs to include a copy of the RAB’s recommendations with the Plan. This is written as 24 CFR 903.13(c)(1).

FOR MORE INFORMATION

National Low Income Housing Coalition,
202-662-1530, www.nlihc.org

National Archives and Records Administration has a good online tutorial at: <http://bit.ly/2ijLMIo>

Office of the Federal Register, <http://bit.ly/2jbBM3I>

HUD’s Office of General Counsel has an Overview of HUD’s Rulemaking Process at:
<http://bit.ly/2hYyekB>