

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 24: Housing and Urban Development

PART 10—RULEMAKING: POLICY AND PROCEDURES

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AUTHORITY: 42 U.S.C. 3535(d).

SOURCE: 44 FR 1606, Jan. 5, 1979, unless otherwise noted.

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Subpart A—General

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§10.1 Policy.

It is the policy of the Department of Housing and Urban Development to provide for public participation in rulemaking with respect to all HUD programs and functions, including matters that relate to public property, loans, grants, benefits, or contracts even though such matters would not otherwise be subject to rulemaking by law or Executive policy. The Department therefore publishes notices of proposed rulemaking in the FEDERAL REGISTER and gives interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation. It is the policy of the Department that its notices of proposed rulemaking are to afford the public not less than sixty days for submission of comments. For some rules the Secretary will employ additional methods of inviting public participation. These methods include, but are not limited to, publishing Advance Notices of Proposed Rulemaking (ANPR), conducting public surveys, and convening public forums or panels. An ANPR will be used to solicit public comment early in the rulemaking process for significant rules unless the Secretary grants an exception based upon legitimate and pressing time constraints. Unless required by statute, notice and public procedure will be omitted if the Department determines in a particular case or class of cases that notice and public procedure are impracticable, unnecessary or contrary to the public interest. In a particular case, the reasons for the determination shall be stated in the rulemaking document. Notice and public procedure may also be omitted with respect to statements of policy, interpretative rules, rules governing the Department's organization or its own internal practices or procedures, or if a statute expressly so authorizes. A final substantive rule will be published not less than 30 days before its effective date, unless it grants or recognizes an exemption or relieves a restriction or unless the rule itself states good cause for taking effect upon publication or less than 30 days thereafter. Statements of policy and interpretative rules will usually be made effective on the date of publication.

[44 FR 1606, Jan. 5, 1979, as amended at 47 FR 56625, Dec. 20, 1982]

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§10.2 Definitions.

(a) *Rule or Regulation* means all or part of any Departmental statement of general or particular applicability and future effect designed to: (1) Implement, interpret, or prescribe law or policy, or (2) describe the Department's organization, or its procedure or practice requirements. The term *regulation* is sometimes applied to a rule which has been published in the Code of Federal Regulations.

(b) *Rulemaking* means the Departmental process for considering and formulating the issuance, modification, or repeal of a rule.

(c) *Secretary* means the Secretary or the Under Secretary of Housing and Urban Development, or an official to whom the Secretary has expressly delegated authority to issue rules.

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§10.3 Applicability.

(a) This part prescribes general rulemaking procedures for the issuance, amendment, or repeal of rules in which participation by interested persons is required by 5 U.S.C. or by Department policy.

(b) The authority to issue rules, delegated by the Secretary, may not be redelegated unless expressly permitted.

(c) This part is not applicable to a determination by HUD under 24 CFR part 966 (public housing) or 24 CFR part 950 (Indian housing) that the law of a jurisdiction requires that, prior to eviction, a tenant be given a hearing in court which provides the basic elements of due process ("due process determination").

[44 FR 1606, Jan. 5, 1979, as amended at 61 FR 13273, Mar. 26, 1996]

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§10.4 Rules docket.

(a) All documents relating to rulemaking procedures including but not limited to advance notices of proposed rulemaking, notices of proposed rulemaking, written comments received in response to notices, withdrawals or terminations of proposed rulemaking, petitions for rulemaking, requests for oral argument in public participation cases, requests for extension of time, grants or denials of petitions or requests, transcripts or minutes of informal hearings, final rules and general notices are maintained in the Rules Docket Room (Room 5218), Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. All public rulemaking comments should refer to the docket number which appears in the heading of the rule and should be addressed to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

(b) Documents relating to rulemaking proceedings are public records. After a docket is established, any person may examine docketed material at any time during regular business hours, and may obtain a copy of any docketed material upon payment of the prescribed fee. (See part 15 of this title).

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Subpart B—Procedures

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§10.6 Initiation of rulemaking.

Rulemaking proceedings may be initiated on the Secretary's motion, or on the recommendation of a Federal, State, or local government or government agency, or on the petition of any interested person.

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§10.7 Advance Notice of Proposed Rulemaking.

An Advance Notice of Proposed Rulemaking issued in accordance with §10.1 of this part is published in the FEDERAL REGISTER and briefly outlines:

(a) The proposed new program or program changes, and why they are needed;

(b) The major policy issues involved;

(c) A request for comments, both specific and general, as to the need for the proposed rule and the provisions that the rule might include;

(d) If appropriate, a list of questions about the proposal that will elicit detailed comments;

(e) If known, an estimate of the reporting or recordkeeping requirements, if any, that the rule would impose; and

(f) Where comments should be addressed and the time within which they must be submitted.

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§10.8 Notice of proposed rulemaking.

Each notice of proposed rulemaking required by statute or by §10.1 is published in the FEDERAL REGISTER and includes:

(a) The substance or terms of the proposed rule or a description of the subject matter and issues involved;

(b) A statement of how and to what extent interested persons may participate in the proceeding;

(c) Where participation is limited to written comments, a statement of the time within which such comments must be submitted;

(d) A reference to the legal authority under which the proposal is issued; and

(e) In a proceeding which has provided Advance Notice of Proposed Rulemaking, an analysis of the principal issues and recommendations raised by the comments, and the manner in which they have been addressed in the proposed rulemaking.

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§10.10 Participation by interested persons.

(a) Unless the notice otherwise provides, any interested person may participate in rulemaking proceedings by submitting written data, views or arguments within the comment time stated in the notice. In addition, the Secretary may permit the filing of comments in response to original comments.

(b) In appropriate cases, the Secretary may provide for oral presentation of views in additional proceedings described in §10.12.

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§10.12 Additional rulemaking proceedings.

The Secretary may invite interested persons to present oral arguments, appear at informal hearings, or participate in any other procedure affording opportunity for oral presentation of views. The transcript or minutes of such meetings, as appropriate, will be kept and filed in the Rules Docket.

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§10.14 Hearings.

(a) The provisions of 5 U.S.C. 556 and 557, which govern formal hearings in adjudicatory proceedings, do not apply to informal rule making proceedings described in this part. When opportunity is afforded for oral presentation, such informal *hearing* is a nonadversary, fact-finding proceeding. Any rule issued in a proceeding under this part in which a hearing is held is not based exclusively on the record of such hearing.

(b) When a hearing is provided, the Secretary will designate a representative to conduct the hearing, and if the presence of a legal officer is desirable, the General Counsel will designate a staff attorney to serve as the officer.

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§10.16 Adoption of a final rule.

All timely comments are considered in taking final action on a proposed rule. Each preamble to a final rule will contain a short analysis and evaluation of the relevant significant issues set forth in the comments submitted, and a clear concise statement of the basis and purpose of the rule.

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§10.18 Petitions for reconsideration.

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with §10.20.

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§10.20 Petition for rulemaking.

(a) Any interested person may petition the Secretary for the issuance, amendment, or repeal of a rule. Each petition shall:

(1) Be submitted to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, Washington, DC 20410;

(2) Set forth the text of substance of the rule or amendment proposed or specify the rule sought to be repealed;

(3) Explain the interest of the petitioner in the action sought; and

(4) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) No public procedures will be held directly on the petition before its disposition. If the Secretary finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate. If the Secretary finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Secretary may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

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