

WHY MUST WE USE THIS PROCESS?

The Administrative Procedure Act (5 U.S.C. 551 et seq.)

This Act contains the basic requirements for Federal rulemaking. For most rulemaking, the Act requires:

- (1) Publication in the Federal Register of a proposed rule, including either the terms or substance of the proposed rule.
- (2) Opportunity for public participation in rulemaking through submission of written comments on the proposed rule.
- (3) Publication in the Federal Register of a final rule, including a statement of basis and purpose.
- (4) An effective date for the final rule that is at least 30 days after publication in the Federal Register, unless the rule relieves restrictions, grants an exemption, or there is other good cause for making an exception.

This kind of rulemaking is called "informal" or "notice and comment" rulemaking.

Publication in the Federal Register has certain legal effects:

- o It provides official notice of a document's existence and content
- o It indicates that the document was properly issued
- o It provides evidence that is judicially noticed by a court of law

Regulations that are not published in the Federal Register in accordance with the Administrative Procedure Act may not be upheld in a court of law. Therefore, any rules that an agency wishes to enforce should be published in the Federal Register. *See Memorandum for Agency Regulatory Contacts, January 26, 1994.*