The Federal Register Publication System:

WHAT IT IS
AND
HOW TO USE IT

Office of the Federal Register
National Archives and Records Administration

1999
Welcome to the Federal Register Workshop

This program is sponsored by:
Office of the Federal Register (OFR),
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What topics will this workshop cover?

- Historical background and legal basis of the Federal Register (FR) / Code of Federal Regulations (CFR) publication system
- The regulatory process and the role of the public
- Organization of the daily *Federal Register* and important elements of typical documents
  - Proposed Rules, Rules, Notices and Presidential documents
- Organization of the CFR and the relationships among Public Laws, the FR and CFR
- Research tools to find information in print and online publications
Introduction

Historical Background & Legal Basis of the Federal Register / CFR Publication System

Tuesday
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Agriculture

PARTS 300 TO 399
Revised as of January 1, 1999
Why was the Federal Register System Established?

- New Deal legislation of the 1930's delegated responsibility from Congress to agencies to regulate complex social and economic issues.
- Citizens needed access to new regulations to know their effect in advance.
- Agencies and Citizens needed a centralized filing and publication system to keep track of rules.
- Courts began to rule on “secret law” as a violation of right to due process under the Constitution.
What Triggers Rulemaking?

- Legislation, Congressional hearings/reports
- Executive orders and OMB Circulars
- Court Orders
- Agencies act on own initiative to carry out mission
  See the Unified Agenda for regulatory plans
- Petitions for Rulemaking and informal requests from affected parties
- Federal Advisory Committee Recommendations
- Emergency situations, technological developments
- Political Factors
What is the Federal Regulatory Process?

- **Legal structure** established by the combined requirements of:
  - The Federal Register Act
  - The Administrative Procedure Act (APA)
  - Many individual laws, such as those affecting health, safety, commerce and the environment

- Federal agencies use the regulatory process to **issue and enforce** legally effective regulations
What is the Federal Register Act?

Enacted: July 26, 1935        Cite: 44 U.S.C. Chap. 15

The Federal Register Act established the basic legal structure of the regulatory system:

- **Central location** for filing documents for public inspection

- The daily *Federal Register* -- a single, uniform publication for Executive agency rules and notices and Presidential documents

- The *Code of Federal Regulations* -- a codification (numerical arrangement) of rules (added in 1937)
What is the Effect of Publishing in the *Federal Register*?

- Provides **official notice** of a document's existence, its contents and legal effect
  - indicates date of issuance and the effective date of actions

- Specifies the **legal authority** of the agency
  - delegation of authority from Congress

- Gives documents **evidentiary status**
  - makes them admissible in court
  - establishes FR text as true copy of original signed document

- Shows how and when the CFR will be amended
What is the Administrative Procedure Act?
Enacted: June 11, 1946    Cite: 5 U.S.C. 551 et seq.

Added procedural requirements to ensure:

- **due process** (fairness)
  
  Generally:
  - Rules can’t be enforced if not published in Federal Register
  - Rules can’t be effective until 30 days after publication
  - Must publish statements of organization and procedure for the “who and how” to contact at the agency

- **public participation** (notice and comment rulemaking)
  
  Agencies:
  - Must give notice of proposed rules
  - Must take public comments and respond in final rule
  - Must state the legal basis and purpose of their actions
## Comparison of Laws and Rules

<table>
<thead>
<tr>
<th>Congress Passes Laws</th>
<th>Executive Agencies Issue Rules</th>
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<tbody>
<tr>
<td>Publish in Slip Law/Statutes at Large</td>
<td>Publish in Federal Register</td>
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<tr>
<td>Codified in U.S. Code</td>
<td>Codified in CFR</td>
</tr>
<tr>
<td>Power comes from Constitution</td>
<td>Power delegated by Congress</td>
</tr>
<tr>
<td>Courts review for constitutionality</td>
<td>Courts review for constitutionality &amp; limits of delegated authority arbitrary and capricious actions Administrative Procedure Act reqs.</td>
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<td><strong>Representative Democracy:</strong></td>
<td><strong>Participatory Democracy:</strong></td>
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<td>Congress acts collectively to represent the will of the people</td>
<td>Agencies must seek and consider public comment on benefits of rules v. burdens and costs</td>
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<td>Set broad social and economic goals and legal requirements</td>
<td>Prescribe specific legal requirements to meet goals</td>
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Overview of Rulemaking Process

1. **Grant of rulemaking authority**
   - Congress delegates authority directly to agencies
   - President may delegate constitutional authority to subordinates
   - President or Agency Head may re-delegate authority to subordinates

2. **Proposed Rule stage**
   - OMB Reviews under E.O. 12866.
   - Agencies publish Proposed Rule in FR for public comment

3. **Final Rule stage**
   - OMB Reviews again under E.O. 12866
   - Agencies publish final rule in FR
     » responds to comments, amends CFR, sets effective date

4. **Congressional review**
   - Agencies submit rules to Congress and GAO (could nullify rule)

5. **Effective date**
   - 30 day minimum, 60 days for major rule, no minimum for good cause
   - Agency may delay or withdraw rule before it becomes effective
The following discussion and examples track a rule from the grant of authority in law to the proposed rule, the final rule, and codification in the CFR.

**Public Law**

**Federal Register**

**PROPOSED RULE**

**Federal Register**

**RULE**

**Code of Federal Regulations**

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