

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),

✧ http://www.archives.gov/federal_register

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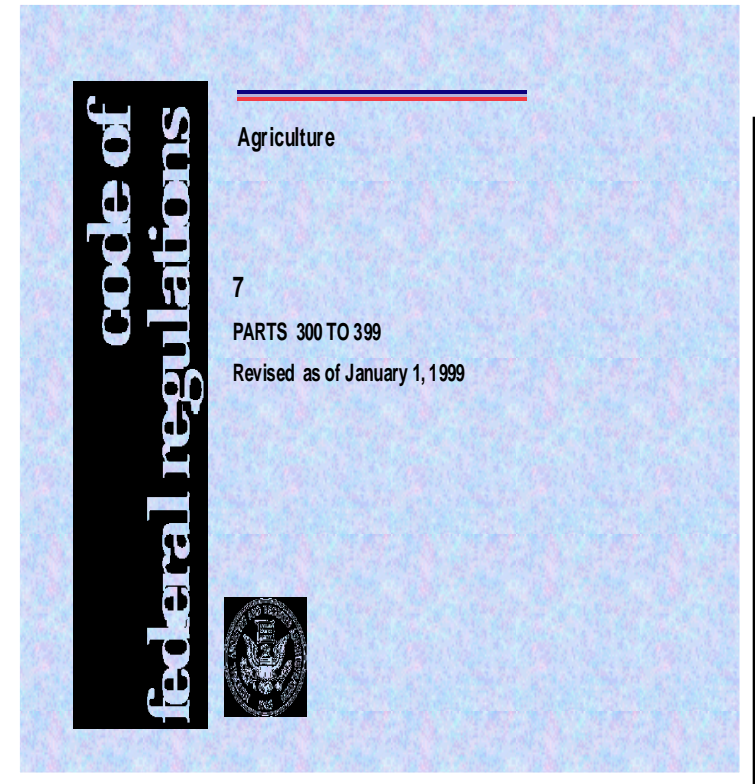
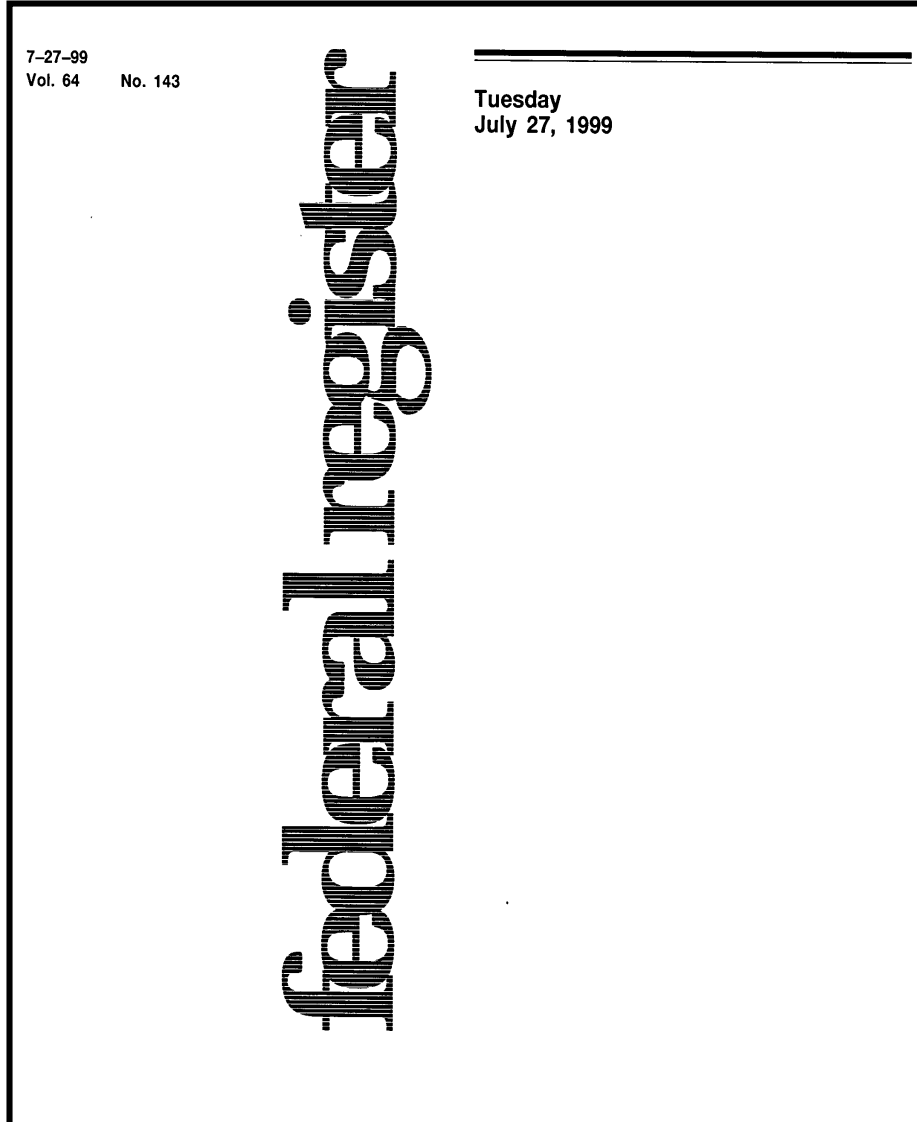
OFR and the Government Printing Office (GPO)

✧ GPO distributes the FR/CFR publication in print, on microfiche and via the World Wide Web at: <http://www.access.gpo.gov/nara>

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**

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



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

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

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

