

# ***The Federal Register Publication System:***

## ***WHAT IT IS AND HOW TO USE IT***

Office of the Federal Register  
National Archives and Records  
Administration

2010

Introduction

## **Federal Register Workshop**

### **Presenter:**

**Jim Hemphill**

**Special Assistant to the Director of the Federal  
Register**

✧ Telephone: 202-741-6001

✧ e-mail: jim.hemphill@nara.gov

### **Sponsored by:**

**Office of the Federal Register (OFR),**

✧ [www.federalregister.gov](http://www.federalregister.gov)

✧ [www.ofr.gov](http://www.ofr.gov)

**National Archives and Records Administration  
(NARA)**

✧ [www.archives.gov/](http://www.archives.gov/)

**Federal Register publications are produced by:**

**OFR and the Government Printing Office (GPO)**

✧ GPO: [www.fdsys.gov](http://www.fdsys.gov)

## What topics will this workshop cover ?

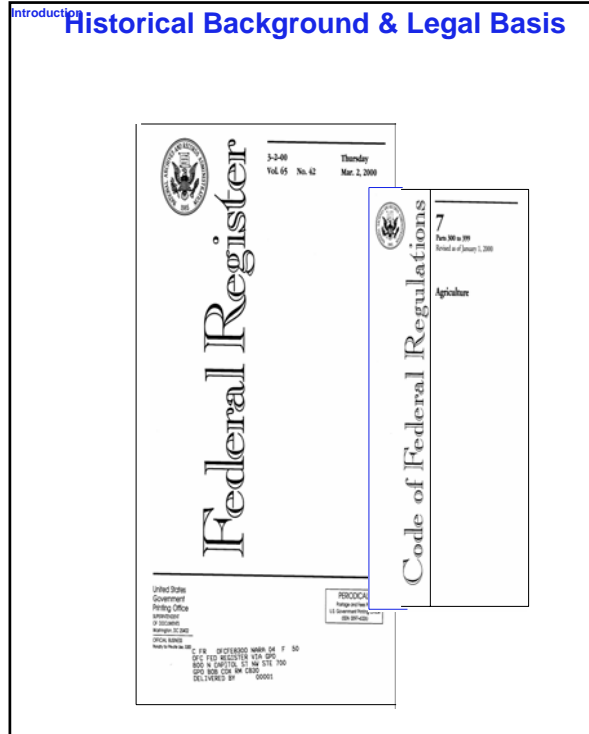
- Historical background and legal basis
- The regulatory process and the role of the public
- Organization the *Federal Register* and CFR
- Relationships among Public Laws, the FR and CFR
- Research tools and Finding Aids

## Publications

- **Public Laws**
  - ◇ Slip Laws
  - ◇ *U.S. Statutes-at-Large*  
(contrast to the *United States Code* – U.S.C.)
- ***U.S. Government Manual***
- **Compilation of Presidential Documents**
  - ◇ (formerly the *Weekly Compilation of Presidential Documents*)

## Other Duties

- **Constitutional Amendments**
- **Electoral College**



- Introduction
- ## Why was the Federal Register System Established ?
- **New Deal Legislation**
    - ✧ A growing government
    - ✧ New agencies regulating new areas
  - **Lack of Process**
    - ✧ No centralized publication system
  - **Lack of Access**
    - ✧ No centralized filing system
  - **Lack of Organization**
    - ✧ No organization to the system
  - **Constitutional Issues**
    - ✧ Separation of Powers
    - ✧ Due Process
    - ✧ Fairness

## Federal Regulatory Process – the Congressional Response

- Legal structure:
  - ✧ The Federal Register Act
  - ✧ The Administrative Procedure Act (APA)
  - ✧ Congressional Review Act
  - ✧ Other individual laws
- Designed to allow Federal agencies to issue and enforce legally effective regulations

## Federal Register Act

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

- Established a central location
  - ✧ Office of the Federal Register
- Established a means of publicizing
  - ✧ The daily Federal Register
- Established a system of organization
  - ✧ The Code of Federal Regulations

## Effect of Publishing in the *Federal Register*

- Official notice
- Legal authority of the agency
- Documents evidentiary status
- Shows how and when the CFR will be amended

## Administrative Procedure Act

Enacted: June 11, 1946    Cite: 5 U.S.C. 551 et seq.

- **Established a *Process***
  - Requires Proposed Rules
  - Delays Effective Date 30- to 60-days
  - “due process” – ensures fairness
- **Established *Public Participation***
  - Requires Notice
  - Requires Taking Comments
  - “notice and comment” – ensures democratic values

## **Congressional Review Act**

Part of the Small Business Regulatory  
Enforcement Fairness Act of 1996 (P.L. 104-  
121)

**Additional procedural requirements to  
ensure:**

### ***Legislative Oversight***

Major and significant regulatory  
actions

### ***Separation of Powers***

Constitutionally adequate veto of  
regulations

## **Other Parts of the Federal; Regulatory Process**

- Agency Dockets
- Administrative Requirements
- Regulatory Review (OIRA)

## **Agency Dockets**

- **A Single Rulemaking Activity**
- **All related materials**
- **Public Information**
- **Federal Docket Management System (FDMS)**

## **Administrative Requirements**

- **Regulatory Analyses**
  - ◇ **Legislative**
  - ◇ **Executive Order**

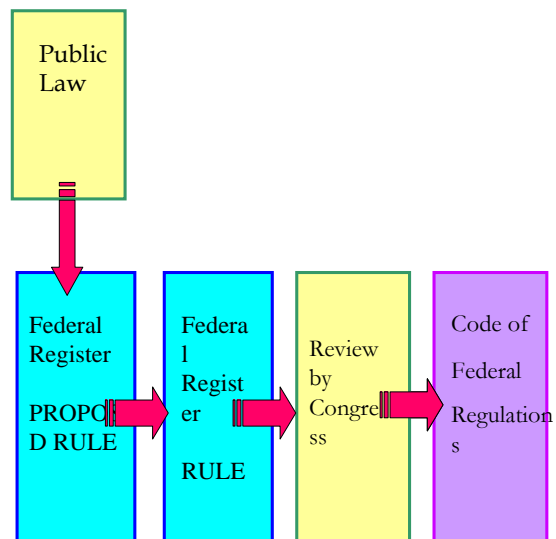
## Regulatory Review

### Administration's policy input

- Office of Information and Regulatory Analysis (OIRA)
- Policy review
- Regulatory Agenda

Introduction

## The Regulatory Process



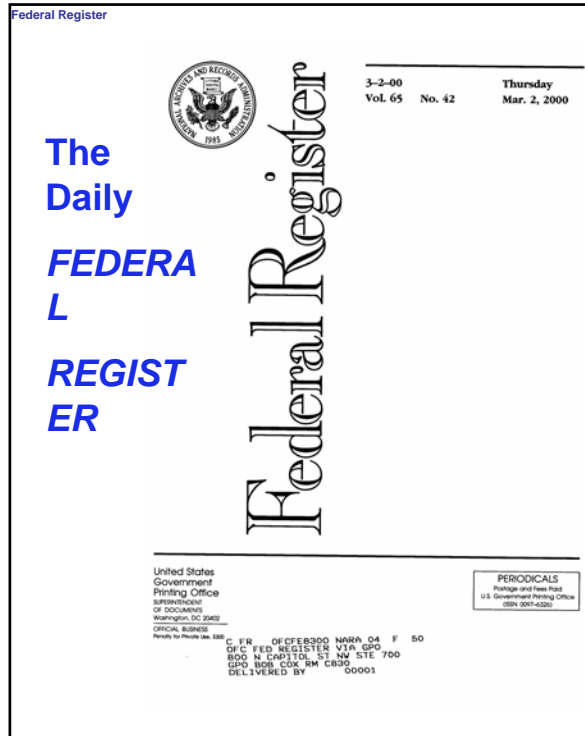


## Summary – Why was the Federal Register System Established?

- Lack of Access – Office of the Federal Register
  - ✧ No centralized filing system
- Lack of Process – Federal Register publication
  - ✧ No centralized publication system
- Lack of Organization – Code of Federal Regulations
  - ✧ No organization to the system
- Constitutional Issues – Notice & Comment/  
Congressional Review
  - ✧ Separation of Powers
  - ✧ Due Process
  - ✧ Fairness

## Comparison of Laws and Rules

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



Federal Register

## The Federal Register

- An official daily legal publication
- Informs citizens of:
  - ◇ rights and obligations
  - ◇ opportunities for funding and Federal benefits
  - ◇ actions of Federal agencies for accountability to public
- Citation: 64 FR 34567 (June 5, 1999)

## **Federal Register Documents**

### **Document categories:**

- 1. Presidential Documents**
- 2. Rules and Regulations**
- 3. Proposed Rules**
- 4. Notices**

### **Additional sections:**

- **Corrections**
- **Separate Parts**
- **Reader Aids**

## **Proposed Rule**

- **Announces possible changes to the CFR**
- **Sets out proposed regulatory text or describes proposal**
- **Solicits public comment on proposal**
- **Initiates the “notice and comment rulemaking” process under the APA (5 U.S.C. 553)**

## What Types of documents are in the Proposed Rules section ?

- **Proposed Rules**
  - ◇ AKA: "Notice of Proposed Rulemaking" (NPRM)
- **Preliminary Rulemaking Documents**
- **Miscellaneous proposals and updates**

## Standard Preamble Headings & Captions

Headings ↓  
subject matter

Agency name, CFR title and part(s), docket info,

Captions ↓

- **AGENCY:**
- **ACTION:**
- **SUMMARY:**
- **DATES:**
- **ADDRESSES:**
- **FOR FURTHER INFORMATION CONTACT:**
- **SUPPLEMENTARY INFORMATION:**

## **Advance Notices and Preliminary Rulemaking Documents**

**Advance Notice of Proposed Rulemaking**

**Petition for Rulemaking**

**Negotiated Rulemaking (“RegNeg”) document**

## **Miscellaneous Proposed Rule Documents**

- ◇ **Extension of time to submit comments on proposed rule**
- ◇ **Further notice of proposed rulemaking to make changes in response to comments or events**
- ◇ **Withdrawal of proposed rule**
- ◇ **Annual review of regulations -- opportunity to comment**

## What is the Rules and Regulations Section of the *Federal Register* ?

- **Documents with:**
  - ◇ Final legal effect
  - ◇ General applicability to the public
- **Most, rules amend and are codified in the CFR**

## Final Rule

- **Generally issued to amend the CFR**
- **Finalizes a proposed rule**
- **Takes final action without a prior proposed rule**
- **Effective Dates:**
  - ◇ At least 30 days from date of publication
  - ◇ At least 60 days from date of publication for major rules
  - ◇ On date of publication
    - » emergency
    - » good cause

## What Types of Documents are in the Rules & Regulations Section ?

- Final Rules
- Interim Final Rules
- Direct Final Rules
- Documents that relate to previous rules & regulations

## Standard Preamble Headings & Captions

**Heading** Agency name, CFR title and part(s), docket info,  
subject matter

**Captions**

- AGENCY:
- ACTION:
- SUMMARY:
- DATES:
- ADDRESSES:
- FOR FURTHER INFORMATION CONTACT:
- SUPPLEMENTARY INFORMATION:

## Final Rule Amendments and Regulatory Text

- Follow the “Supplementary Information” section of the Preamble
- The “List of Subjects”
- Numbered amendatory instructions specifically state how the CFR will be amended

## Interim Final Rule

### Issued:

- ◇ To react to an emergency situation
- ◇ To relieve unnecessary restrictions on the public
- ◇ To take public comments on interim action

### Effective:

- ◇ On date of publication; or
- ◇ Less than 30 days from date of publication

### Comment Period:

- ◇ Yes



## Direct Final Rule

### Issued:

- ✧ Non-controversial actions

### Effective:

- ✧ 30, 60 to 90 days from date of publication, if it is not withdrawn due to adverse comments

### Is there a comment period?

- ✧ Yes

### Withdrawn:

- ✧ Monitor the *Federal Register* for a withdrawal document

## Documents that Relate to Previous Rules & Regulations

### Examples:

- ✧ Interpretive Rule; Policy Statement on Enforcement; Clarification
- ✧ Temporary Rule; Deviation; Waiver
- ✧ Establishment, Delay, Suspension of Effective Date
- ✧ Reconsideration of recently issued Final Rule
- ✧ Withdrawal or Confirmation of Direct Final Rule

**CONTINUE**