

How Law is Made circa 2005

"Between a balanced republic and a democracy, the difference is like that between order and chaos." Chief Justice John Marshall

Democratic form of government
Now

Republican form of government
Then

Guaranteed to every State in the Union; Article IV, sec.4.

Acts of Congress are supreme Law of the Land. See Constitution of Virginia, 1870.

Constitution of the United States
Constitution shall be supreme Law of the Land, Article 6.

Article 1
Congress

Article 2
President

Article 3
Judiciary

Outside the Constitution

Under Constitutional Authority

Acts of Congress

Agencies

Executive Departments

One supreme Ct. and inferior cts.

Have no executive Power
No Constitutional authority, therefore must use a statute **and** a substantive regulation to create an obligation.

Offices and Duties created by Congress

Congress shall establish the whole judicial power of the United States
Judges appointed as Officers of the United States.

Employees of the Government
(President cannot terminate employees.)

Officers of the United States
(President could terminate Officer's appointment.)

President appointed all Officers of the United States, by and with consent of Congress.

Administrative Departments performing under inquisitorial rules, usurping the Executive Dept.

Executive Departments are to execute, enforce and investigate violations of the law under constitutional constraints.

Courts exercise adversarial rules to determine whether laws passed by Congress or the President are legal.

Gives the appearance of the American form of government, but is not.

Do not exist any longer:

- No Officers of the United States.
- No Offices or executive Departments.
- No Laws of the United States to execute.
- No Article 3 jurisdiction or courts.
- No Constitutionally "guaranteed" Republican Form of Government.

Federal Register ("F.R.")
Publication 44 USC 1501 et seq.

Administrative Committee of the Federal Register, 44 USC 1506

Code of Federal Regulations ("CFRs")

Requirements for publication:

- Document includes any rule or regulation issued by an agency; 1 CFR 1.1
- All documents having general applicability and legal effect are to be published in the F.R.; 1 CFR 1.1, 2.5, 5.2, 5.9, 8.1.

Requirements upon publication:

- Agency is responsible for accurately publishing its documents; 1 CFR 21.41.
- Agency **must clearly cite the statutory authority**; 1 CFR 21.40, 21.52, 22.2. (Note: For the regulation to be substantive.)
- Agency must identify itself at the beginning of the document; 1 CFR 22.1.

The United States District Court is not a true United States court established under article 3 of the Constitution. It is created by congress under Article 4, sec.3 of the Constitution. It resembles the jurisdiction of an Article 3 court but its true character is a mere territorial court.

See Balzac v. People of Porto Rico, 258 U.S. 312 (1922)

Internal Revenue Service ("IRS")

The IRS is an agency; 26 CFR 601.101(a).

Under 26 CFR 601.101(b), Regulations administered by the IRS are contained in Title 26 of the CFRs. (Note: Not contained in any other title.)

Agency creates three types of regulations:

(Are mixed together in the CFRs.)

- | | | |
|---|---|---|
| Substantive | Interpretative | Procedural (Administrative) |
| The only rule that has " force and effect of law " upon any American. | Rules indicating what the agency views as its duty under the mandate of Congress. | Identifies the internal workings of the agency. |

In order for a regulation to have the "**force and effect of law**," it must have certain **substantive characteristics** and be the product of certain procedural requisites.
See Chrysler v. Brown, 441 U.S. 301 (1979)

... agency's failure to comply with the rule-making requirements of the APA **is fatal** ... and ... agency action taken in disregard of statutory rulemaking procedures is **void**.

See State of Ohio v. U.S., 862 F.2d 1237 (1988) (Discussed further on page 2.)

Parallel Table of Authorities	
United States Code	Code of Federal Regulations
(Statutory Authority)	(Substantive Regulation)
Title 26:	
6321 (Lien)	27 Part 70
6331 (Levy)	27 Part 70

Why are the only regulations with a **legal duty to perform** for Lien or Levy contained only in Title 27 (ATF) of the CFRs? The IRS cannot use these as mandated by Congress, see 5 USC 552(a)(1). (Discussed further on page 2.)

How does one determine the difference between the three types of regulations?

See Page 2