Transforming E-rulemaking to Promote Public Participation and Efficiency

A joint public forum of the Administrative Conference and the Brookings Institution

Paul R. Verkuil
Chairman, Administrative Conference of the United States
November 30, 2010
The Administrative Conference “is a public-private partnership designed to make government work better.”

President Barack Obama
July 8, 2010
Live Tweet: #erulemaking

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Our Mandate

Arrange for federal agencies, assisted by outside experts, cooperatively [to] study mutual problems, exchange information, and develop recommendations for action [so that] private rights may be fully protected and federal responsibilities may be carried out expeditiously in the public interest (1964).

Added in 2004

• Promote public participation and efficiency in rulemaking and with regard to rulemaking, adjudication, licensing, and investigation:
  • Reduce unnecessary litigation
  • Improve the use of science
  • Improve the effectiveness of applicable laws

See 5 U.S.C. 591
Our Conference

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## Senior Fellows

<table>
<thead>
<tr>
<th>Name</th>
<th>Position and Years</th>
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<tbody>
<tr>
<td>William H. Allen</td>
<td>Retired Partner, Covington &amp; Burling LLP, Senior Fellow (1982-95)</td>
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<td>Betty Jo Christian</td>
<td>Partner, Steptoe &amp; Johnson LLP, Senior Fellow (1989-95)</td>
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<tr>
<td>Sally Katzen</td>
<td>Consultant and Visiting Professor New York University School of Law, Public Member (1988-93), Vice Chairman (1993), Acting Chairman (1993-94)</td>
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<td>William W. Cook Professor of Law, University of Michigan Law School, Senior Fellow (1988-95)</td>
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<td>Robert A. Anthony</td>
<td>Professor Emeritus, George Mason University School of Law, Chairman (1974-79), Senior Fellow (1982-95)</td>
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<td>Neil R. Eisner</td>
<td>Assistant General Counsel, United States Department of Transportation, Government Member (1982-95)</td>
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<td>Richard J. Leighton</td>
<td>Partner, Keller and Heckman LLP, Senior Fellow (1991-95)</td>
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<td>The Honorable Antonin G. Scalia</td>
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<td>Brian C. Griffin</td>
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<td>Malcolm S. Mason</td>
<td>Senior Fellow (1984-95)</td>
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<tr>
<td>The Honorable Loren A. Smith</td>
<td>Senior Judge, United States Court of Federal Claims, Chairman (1981-85), Senior Fellow (1985-95)</td>
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<td>Paul D. Kamenar</td>
<td>Senior Fellow (1990-95)</td>
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<tr>
<td>Alan B. Morrison</td>
<td>Lerner Family Associate Dean for Public Interest &amp; Public Service Law, The George Washington University Law School, Senior Fellow (1989-95)</td>
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<tr>
<td>Peter L. Strauss</td>
<td>Betts Professor of Law, Columbia Law School, Senior Fellow (1991-95)</td>
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Council of Independent Regulatory Agencies

- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Federal Communications Commission
- Federal Election Commission
- Federal Energy Regulatory Commission
- Federal Maritime Commission
- Federal Mine and Safety & Health Review Commission
- Federal Reserve Board
- Federal Trade Commission
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- Nuclear Regulatory Commission
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In progress -
• Federal Agency Preemption of State Law
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• e-Rulemaking
• FACA in the 21st Century
• Government in the Sunshine Act
• Immigration Adjudication
• Methods of Collaborative Governance
• Rulemaking Comments
• Science in the Administrative Process
• Midnight Regulations
Next Steps

53rd Plenary of the
Administrative Conference of the United States
December 9-10, 2010

Direct inquiries to ACUS Plenary Designated Federal Official,
Scott Rafferty, at srafferty@acus.gov.

For media inquiries, contact Kathy Kyle at
202.480.2091 or kkyle@acus.gov.
E-Rulemaking and the Courts

- Ossification issues

- What will record on review look like (74-4 redux)

- Consequences of online collaboration for rulemaking review—will there be a duty to participate (logical outgrowth test, etc.)

- How are the values of transparency, collaboration, efficiency and public participation to be measured
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