

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



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The Administrative Conference “is a public-private partnership designed to make government work better.”

President Barack Obama
July 8, 2010



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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



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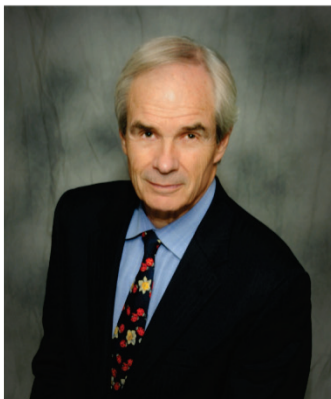
Council of Independent Regulatory Agencies

- 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
- National Labor Relations Board
- Nuclear Regulatory Commission
- Occupational Safety & Health Review Commission
- Postal Regulatory Commission
- Securities and Exchange Commission
- Surface Transportation Board
- U.S. International Trade Commission



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In progress -

- Federal Agency Preemption of State Law
- Ethics for Government Contractor Employees

Approved -

- 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



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Next Steps

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

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E-Rulemaking and the Courts

- Ossification issues
- What will record on review look like (74-4 redux)
- Consequences of on line 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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