



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Participation of Senate-Confirmed Officials in Administrative Adjudication

Committee on Adjudication

Draft Recommendation for Committee | April 17, 2024

1 Tens of thousands of federal agency officials participate in administrative adjudication.
2 Most are members of the career civil service hired and supervised under the civil service laws.
3 Several thousand, like administrative law judges (ALJs) and many other administrative judges,
4 are appointed by a department head.¹ Some, like many agency heads, are appointed by the
5 President with the advice and consent of the Senate. It is to such “PAS” officials that federal
6 laws typically assign authority to adjudicate matters, and it is PAS officials who—by rule,
7 delegation of authority, and the development of norms, practices, and organizational cultures—
8 structure systems of administrative adjudication and oversee their operation, ensuring some
9 measure of political accountability.

10 There is wide variation in the structural attributes of PAS positions and officials, but
11 certain attributes distinguish all or many PAS positions and officials from other agency officials,
12 especially civil servants. First, as the Administrative Conference has previously noted, there are
13 often numerous vacancies in PAS positions. These pervasive vacancies exist for several reasons,
14 including delays related to the presidential-nomination and Senate-confirmation process.² Second

¹ See *Lucia v. United States*, 585 U.S. 237 (2018). Under the Constitution’s Appointments Clause, Art. II § 2, cl. 2, “Officers of the United States” must be appointed through presidential nomination and Senate confirmation, except that “Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” The Supreme Court has interpreted the term “Department” in this context to mean “a freestanding component of the Executive Branch, not subordinate to or contained within any other such component.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 511 (2010).

² See Admin. Conf. of the U.S., Recommendation 2019-7, *Acting Agency Officials and Delegations of Authority*, 84 Fed. Reg. 71,352 (Dec. 27, 2019).



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15 and relatedly, there is relatively high turnover in PAS positions, and PAS officials often serve in
16 their positions for a shorter time than career civil servants. Third, unlike career civil servants
17 who are hired “on the basis of relative ability, knowledge, and skills” and retained “on the basis
18 of the adequacy of their performance” without regard to political affiliation, activity, or beliefs,³
19 PAS officials are often nominated by the President *because* of their political affiliation,
20 activities, or beliefs. PAS officials are also subject to removal by the President, although a statute
21 may impose for-cause limitations on removal. Unlike officials appointed by the President alone,
22 however, PAS officials are also confirmed by the Senate, which may make them more
23 responsive to Congress than other agency officials. Fourth, unlike career civil servants, PAS
24 officials may lack preexisting knowledge of agency processes or relationships with agency
25 employees, and they often lack prior adjudicative experience. Fifth, organizationally, PAS
26 officials often sit atop agency hierarchies. And finally, statutes often assign PAS officials,
27 especially the heads of cabinet departments, a broad range of responsibilities, potentially
28 including the administration of multiple programs and, under any given program, multiple
29 functions (e.g., rulemaking, investigation, prosecution) in addition to adjudication.⁴

30 PAS officials participate directly and indirectly in administrative adjudication. Indirectly,
31 they establish agency subunits and positions responsible for adjudicating cases, and they appoint
32 and supervise, or oversee the appointment and supervision of, adjudicative personnel.⁵ PAS
33 officials may coordinate with the President and Congress to ensure that adjudicative subunits
34 have the resources they need to adjudicate cases in a fair, accurate, consistent, efficient, and

³ 5 U.S.C. § 2301.

⁴ See Matthew Gluth, Jeremy S. Graboyes & Jennifer L. Selin, Participation of Senate-Confirmed Officials in Administrative Adjudication 30–52 (Apr. 12, 2024) (draft report to the Admin. Conf. of the U.S.).

⁵ See Admin. Conf. of the U.S., Recommendation 2020-5, *Publication of Policies Governing Agency Adjudicators*, 86 Fed. Reg. 6622 (Jan. 22, 2021).



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35 timely manner.⁶ PAS officials also establish rules of procedure and practice to structure
36 adjudication,⁷ and they develop substantive rules that supply the law in adjudications.

37 PAS officials may also participate directly in administrative adjudication, serving as the
38 final, executive-branch decision maker in cases arising under the statutes they administer.⁸ Direct
39 participation by PAS officials in administrative adjudication can serve a number of objectives.
40 First, it can provide a means for coordinating policymaking and ensuring that agencies' policies
41 are politically accountable. Second, PAS officials may have better access to subject-matter
42 expertise than other agency decision makers, which may improve the quality of policies
43 developed through case-by-case adjudication. Third, by participating directly in the adjudication
44 of cases, PAS officials can gain better awareness of the adjudicative and regulatory systems for
45 which they are statutorily responsible. Relatedly, given their relationships with the President,
46 other political appointees, and Congress, PAS officials may also be well equipped to address
47 systemic problems requiring intra- or interbranch coordination. Fourth, direct participation by
48 PAS officials may promote consistent decision-making by agency adjudicators. Finally, PAS
49 officials may be especially well equipped to address politically sensitive matters that arise in the
50 course of adjudicating individual cases.⁹

51 At the same time, there may be concerns associated with the direct participation of PAS
52 officials in the adjudication of cases. First, as a practical matter, PAS officials—who often have
53 many statutory responsibilities and may oversee large programs—may lack the capacity to

⁶ See Admin. Conf. of the U.S., Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*, 89 Fed. Reg. 1513 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 Fed. Reg. 1722 (Jan. 12, 2022).

⁷ See, e.g., Admin. Conf. of the U.S., Recommendation 2018-5, *Public Availability of Adjudication Rules*, 84 Fed. Reg. 2142 (Feb. 6, 2019); see also Admin. Conf. of the U.S., Recommendation 2023-5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*, 89 Fed. Reg. 1509 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*, 81 Fed. Reg. 94,314 (Dec. 23, 2016).

⁸ See Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021).

⁹ See Matthew A. Gluth, Jeremy S. Graboyes & Jennifer L. Selin, *Participation of Senate-Confirmed Officials in Administrative Adjudication 56–57* (Apr. 12, 2024) (draft report to the Admin. Conf. of the U.S.).



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54 decide cases in a fair, accurate, consistent, efficient, and timely manner. Second, the combination
55 of certain functions (e.g., investigation, prosecution, rulemaking) in a single decision maker may
56 raise concerns about the integrity of agency proceedings or the effectiveness of agency
57 policymaking. Third, PAS officials may lack the specialized expertise that adjudicators who are
58 not political appointees develop over the course of their careers. And finally, many PAS
59 positions are characterized by high turnover and frequent vacancies, which can also affect
60 fairness, accuracy, inter-decisional consistency, efficiency, and timeliness. (At some agencies,
61 vacancies or the lack of a quorum have resulted in long delays.)¹⁰

62 Congress has, for some programs, determined by statute whether, when, and how PAS
63 officials participate directly in the adjudication of cases. Such determinations gained new
64 salience after *United States v. Arthrex*,¹¹ in which the Supreme Court held that one congressional
65 choice—divesting any PAS official of authority to review decisions of the Patent Trial and
66 Appeal Board—violated the Appointments Clause of the Constitution.¹² Opinions in previously
67 decided cases also shape how Congress structures administrative adjudication.¹³

68 For other programs, agency officials must determine whether, when, and how PAS
69 officials participate directly in the adjudication of cases. They must consider constitutional and
70 statutory requirements, the potential advantages and disadvantages of direct participation by PAS
71 officials, and the performance of mechanisms for indirect participation. When an agency
72 determines that one or more PAS officials should participate directly in the adjudication of
73 individual cases, it must determine the procedures and organizational structure that will permit

¹⁰ See Matthew Gluth, Jeremy S. Graboyes & Jennifer L. Selin, Participation of Senate-Confirmed Officials in Administrative Adjudication 58–61 (Apr. 12, 2024) (draft report to the Admin. Conf. of the U.S.).

¹¹ 141 S. Ct. 1970 (2021).

¹² U.S. Const., art. II, § 2.

¹³ See, e.g., *Lucia v. United States*, 585 U.S. 237 (2018); *Edmond v. United States*, 520 U.S. 651 (1997); *Wiener v. United States*, 357 U.S. 349 (1958).



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74 the PAS official(s) to adjudicate cases in a fair, accurate, consistent, efficient, and timely
75 manner.

76 The Conference has addressed some of these issues in previous recommendations, most
77 notably in Recommendation 68-8, *Delegation of Final Decisional Authority Subject to*
78 *Discretionary Review by the Agency*;¹⁴ Recommendation 83-3, *Agency Structures for Review of*
79 *Decisions of Presiding Officers Under the Administrative Procedure Act*;¹⁵ Recommendation
80 2018-4, *Recusal Rules for Administrative Adjudicators*;¹⁶ Recommendation 2020-3, *Agency*
81 *Appellate Systems*;¹⁷ and Recommendation 2022-4, *Precedential Decision Making in Agency*
82 *Adjudication*.¹⁸

83 Unlike these earlier recommendations, this Recommendation focuses exclusively on
84 direct participation by PAS officials(s) in the adjudication of individual cases. This
85 Recommendation provides best practices to help agencies determine whether it is appropriate for
86 a PAS official(s) to participate directly in the adjudication of cases arising under the different
87 programs they administer and, when it is, to choose the appropriate structure, procedures, and
88 practices for their participation. It also recommends that each agency that administers a program
89 involving the adjudication of cases develop publicly available regulations regarding whether,
90 when, and how PAS official(s) participate directly in the adjudication of such cases. This
91 Recommendation does not address whether agencies should, for constitutional or other reasons,
92 provide for direct participation by PAS officials in adjudication under specific programs.

93 The Conference recognizes that each agency and each program has its own mission,
94 serves different communities, adjudicates according to a distinct set of legal requirements, has
95 different resources available to it, and faces different operational realities. Agencies must

¹⁴ 38 Fed. Reg. 19,783 (July 23, 1973).

¹⁵ 48 Fed. Reg. 57,461 (Dec. 30, 1983).

¹⁶ 84 Fed. Reg. 2139 (Feb. 6, 2019).

¹⁷ 86 Fed. Reg. 6618 (Jan. 22, 2021).

¹⁸ 88 Fed. Reg. 2312 (Jan. 13, 2023).

Commented [JG1]: Question for Committee: Should the Recommendation define “adjudication.” Recommendation 2020-3, *Agency Appellate Systems*, was limited to adjudications involving legally required evidentiary hearings, though it noted that agencies might apply it “to appellate review of decisions arising from other hearings, depending on their formality.” Compare with Rec. 2023-7, *Improving Timeliness in Agency Adjudication*, which does not define “adjudication.”



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96 consider these and other relevant factors in considering what role PAS official(s) should play in
97 their adjudication systems.

RECOMMENDATION

Determining Whether and When a PAS Official(s) Will Participate in the Adjudication of Cases

- 98 1. When a statute authorizes an officer appointed by the President by and with the consent
99 of the Senate (a PAS official) or a collegial body of PAS officials to adjudicate matters
100 arising under the statute, and such authority is delegable as a constitutional and statutory
101 matter, the agency ordinarily should delegate to one or more non-PAS adjudicators
102 responsibility for conducting initial proceedings (i.e., receiving and evaluating evidence
103 and arguments and issuing a decision). PAS officials, individually or as a collegial body,
104 who retain authority to conduct initial proceedings should exercise such authority only if
105 a matter is exceptionally significant, broadly consequential, or politically sensitive, and
106 they have the capacity to personally receive and evaluate evidence and arguments and
107 issue a decision in a fair, accurate, consistent, efficient, and timely manner.
- 108 2. When a statute authorizes a PAS official or a collegial body of PAS officials to
109 adjudicate matters arising under the statute or review decisions rendered by other
110 adjudicators, and such authority is delegable as a constitutional and statutory matter, the
111 agency should determine whether it would be beneficial for a PAS official or collegial
112 body of PAS officials to review decisions rendered by lower-level adjudicators or
113 whether it would be more appropriate to delegate final decision-making authority to a
114 non-PAS official (e.g., a judicial officer) or a collegial body of non-PAS officials (e.g., a
115 final appellate board). Circumstances in which it may be beneficial to provide for review
116 by a PAS official(s) include:
- 117 a. When a case involves legal or factual issues that are exceptionally significant,
118 broadly consequential, or politically sensitive;



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- b. When a case involves a novel or important question of law, policy, or discretion, such that direct participation by the PAS official(s) would promote centralized or politically accountable coordination of policymaking;
 - c. When participation in the adjudication of individual cases would provide the PAS official(s) with greater awareness of how the agency’s adjudicative or regulatory system is functioning; and
 - d. When participation by the PAS official(s) in the adjudication of individual cases would promote consistent decision making by lower-level adjudicators.
3. When it would be beneficial to provide for review by a PAS official(s), the agency should, consistent with constitutional and statutory requirements, determine the appropriate structure for such review. Structural options include:
- a. *Providing the only opportunity for administrative review of decisions rendered by lower-level adjudicators.* Participation by PAS officials in “first-level” review may be appropriate when caseloads are relatively low and individual cases frequently raise novel or important questions of law, policy, or discretion.
 - b. *Delegating first-level review authority to a judicial officer or appellate board and retaining authority to exercise second-level administrative review in exceptional circumstances.* Participation by PAS officials in “second-level” review may be appropriate when caseloads are relatively high and individual cases infrequently raise novel or important questions of law, policy, or discretion or have significant consequences beyond the parties to the case.
 - c. *Delegating final review authority to another PAS office.* This option may be appropriate, for example, when individuals who hold the other office, by virtue of holding that office, have greater access to subject-matter expertise or greater capacity to adjudicate cases in a fair, accurate, consistent, efficient, and timely manner.
 - d. *For collegial bodies of PAS officials, delegating first-level review authority to a single member or panel, and retaining authority for the collegial body as a*



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148 *whole to exercise second-level (and final) administrative review.* This option
149 may be appropriate when a collegial body manages a relatively high caseload
150 and most individual cases do not raise novel or important questions of law,
151 policy, or discretion or have significant consequences beyond the parties to
152 the case.

Initiating Review by a PAS Official(s)

- 153 4. An agency ordinarily should provide that a decision subject to review by a PAS
154 official(s) becomes final and binding after a specified number of days unless some event
155 triggers participation by the PAS official(s). Events that may trigger participation by the
156 PAS official(s) include, as appropriate:
- 157 a. A party or other interested person files a petition requesting review of the
158 decision of a lower-level adjudicator by the PAS official(s);
 - 159 b. A lower-level adjudicator or an appellate board (as a body or through its chief
160 executive or administrative officer) refers a decision to the PAS official(s) for
161 review;
 - 162 c. A federal official who oversees a program impacted by a decision, or his or
163 her delegate, requests review of the decision; and
 - 164 d. The PAS official(s) exercises authority to review a decision on his or her own
165 motion.
- 166 5. Unless the law entitles a party or other interested person to review of a decision of a
167 lower-level adjudicator by a PAS official(s) as a matter of right, an agency should
168 provide that the PAS official(s) retains discretion to affirm summarily, review, decline to
169 review, or take no action with regard to the decision. The agency should determine the
170 circumstances in which the PAS official(s) may review a case. Circumstances in which
171 first-level review by a PAS official(s) may be appropriate include:
- 172 a. A prejudicial procedural error or abuse of discretion was committed in the
173 conduct of the proceeding;



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- 174 b. The lower-level decision embodies a finding or conclusion of material fact
175 which is erroneous or clearly erroneous;
- 176 c. The lower-level decision embodies a legal conclusion which is erroneous;
- 177 d. The lower-level decision embodies an exercise of discretion or decision of law
178 or policy which is important; and
- 179 e. The lower-level decision presents a recurring issue or an issue that lower-level
180 adjudicators have decided in different ways, and the PAS official(s) can
181 resolve the issue more accurately and efficiently through precedential decision
182 making.
- 183 To avoid multilevel review of purely factual issues, second-level review by a PAS
184 official(s) should be limited to circumstances in which:
- 185 a. There is a novel or important issue of law, policy, or discretion, or
- 186 b. The first-level reviewer erroneously interpreted the law or agency policy.
- 187 6. When parties or other interested persons are permitted to file a petition requesting that a
188 PAS official(s) review a decision of a lower-level adjudicator, and review is
189 discretionary, the agency should require that petitioners explain in the petition why
190 review by the PAS official(s) is warranted.
- 191 7. When parties or other interested persons are permitted to file a petition for review, and a
192 PAS official(s) has discretion to grant or deny petitions, an agency should consider
193 providing that if a PAS official(s) or his or her delegate does not grant a petition within a
194 set time period, the petition is deemed denied.
- 195 8. In determining whether to provide interlocutory review by a PAS official(s) of rulings by
196 lower-level adjudicators, an agency should consider the best practices identified in
197 Recommendation 71-1, *Interlocutory Appeal Procedures*, and evaluate whether
198 interlocutory appeals can be decided in a fair, accurate, consistent, efficient, and timely
199 manner.



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Procedures for Review by a PAS Official(s)

- 200 9. When a PAS official(s) exercises discretion to review a decision or assume jurisdiction of
201 a case on his or her own motion, upon referral by a lower-level adjudicator or an
202 appellate board, or upon request by another federal official who oversees a program
203 impacted by a decision, the PAS official(s) should notify the parties, provide a brief
204 statement of the grounds for taking such action, and provide the parties a reasonable time
205 to submit written arguments.
- 206 10. When a PAS official(s) grants a petition for review, he or she should notify all other
207 parties to the case that he or she has done so and provide them a reasonable time to
208 respond to the petition or file a counterpetition.
- 209 11. When a PAS official(s) reviews the decision of a lower-level adjudicator, he or she
210 ordinarily should limit his or her consideration to the evidence and legal issues
211 considered by the lower-level adjudicator. The PAS official(s) should consider new
212 evidence and arguments, if at all, only if the proponent of new evidence or a new legal
213 issue shows that it is material to the outcome of the case and that, despite his or her due
214 diligence, it was not available when the record closed. In such contexts, the PAS
215 official(s) should determine whether it would be more effective for the PAS official(s) to
216 consider the new evidence or legal issue or instead to remand the case to a lower-level
217 adjudicator for further development and consideration.
- 218 12. An agency should provide the PAS official(s) discretion to permit oral argument on his or
219 her own initiative or upon a party's request if doing so would assist the PAS official(s) in
220 deciding a matter in a fair, accurate, consistent, efficient, and timely matter.
- 221 13. In cases when a PAS official(s) will decide a novel or important question of law, policy,
222 or discretion, the agency should consider soliciting arguments from interested members
223 of the public, for example by inviting amicus participation, accepting submission of
224 written comments, or holding a public hearing to receive oral comments.
- 225 14. Each agency at which PAS officials participate in the adjudication of individual cases
226 should establish a process for considering whether participation by a particular PAS
227 official in a case would violate government-wide or agency-specific ethics laws and



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228 regulations and should determine whether and, if so, in what circumstances PAS officials
229 should recuse themselves from participating in a case.

Coordination of Policymaking

- 230 15. An agency ordinarily should treat the decision of a PAS official(s) as precedential if it
231 addresses a novel or important issue of law, policy, or discretion, or if it resolves a
232 recurring issue or an issue that lower-level adjudicators have decided in different ways.
233 Unless the agency treats all decision of a PAS official(s) as precedential, in determining
234 whether to treat other decisions as precedential, the agency should consider the factors
235 listed in Paragraph 2 of Recommendation 2022-4, *Precedential Decision Making in*
236 *Agency Adjudication*.
- 237 16. Each agency periodically should review petitions for review and decisions rendered by a
238 PAS official(s) to determine whether issues raised repeatedly indicate a need for notice-
239 and-comment rulemaking or other general policymaking by the agency.

Adjudicative Support for a PAS Official(s)

- 240 17. A PAS official(s) should assume the burden of personal decision for any case in which he
241 or she participates.
- 242 18. Agencies should delegate routine functions that do not require personal attention by a
243 PAS official(s), including, when appropriate:
- 244 a. Conducting the initial evaluation of petitions for review and petitions for
245 reconsideration;
 - 246 b. Dismissing, denying, and granting petitions for review in routine
247 circumstances when such action is clearly warranted, for example when a
248 petition is untimely, a party requests to withdraw a petition, or the parties to a
249 proceeding agree to a settlement;
 - 250 c. Identifying unappealed decisions that may warrant review by the PAS
251 official(s);
 - 252 d. Managing dockets and case filings;



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- 253 e. Managing proceedings, including the submission of materials and the
254 scheduling of oral arguments;
- 255 f. Responding to routine motions;
- 256 g. Encouraging settlement and approving settlement agreements;
- 257 h. Conducting the initial review of lower-level decisions, evidence, and
258 arguments;
- 259 i. Conducting legal and policy research;
- 260 j. Recommending case dispositions;
- 261 k. Drafting decisions and orders for review and signature by a PAS official(s);
- 262 l. Transmitting decisions and orders to parties and making them publicly
263 available; and
- 264 m. Staying decisions and orders pending judicial review or reconsideration by the
265 PAS official(s).
- 266 19. For each delegated function, the agency should determine the office or official(s) best
267 suited to perform it in a fair, accurate, consistent, efficient, and timely manner. Options
268 include:
- 269 a. Lower-level adjudicators and staff;
- 270 b. Full-time appeals counsel;
- 271 c. Advisors to a PAS official(s);
- 272 d. The chief legal officer or personnel under his or her supervision; and
- 273 e. A Clerk or Executive Secretary or personnel under his or her supervision.
- 274 In making such determinations, the agency should ensure adequate separation between
275 personnel who support a PAS official(s) in an adjudicative capacity and those who
276 support the PAS official(s) in an investigative or prosecutorial capacity.

Transparency

- 277 20. Each agency should provide updated access on its website to decisions issued by a PAS
278 official(s), whether or not designated as precedential, and associated supporting
279 materials. In publishing decisions, the agency should clearly indicate which decisions are



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280 precedential. The agency should also redact any information that is sensitive or otherwise
281 protected from disclosure, and redact identifying details to the extent required to prevent
282 an unwarranted invasion of personal privacy. In indexing decisions, the agency should
283 clearly indicate which decisions are issued by a PAS official(s).

284 21. Each agency ordinarily should presume that oral arguments and other review proceedings
285 before a PAS official(s) are open to public observation. Agencies may choose to close
286 such proceedings, in whole or in part, to the extent consistent with applicable law and if
287 there is substantial justification to do so, as described in Recommendation 2021-6, *Public*
288 *Access to Agency Adjudicative Proceedings*.

Development and Publication of Procedures for Adjudication by PAS Official(s)

289 22. Each agency should promulgate and publish procedural regulations governing the
290 participation of PAS official(s) in the adjudication of individual cases in the *Federal*
291 *Register* and codify them in the *Code of Federal Regulations*. These regulations should
292 cover all significant procedural matters pertaining to adjudication by PAS official(s). In
293 addition to those matters identified in Paragraph 2 of Recommendation 2020-3, *Agency*
294 *Appellate Systems*, such regulations should address, as applicable:

- 295 a. Whether and, if so, which PAS official(s) may participate directly in the
296 adjudication of cases;
- 297 b. The level(s) of adjudication (e.g., hearing level, first-level appellate review,
298 second-level appellate review) at which the PAS official(s) has or may assume
299 jurisdiction of a case (see Paragraphs 1–3);
- 300 c. Events that trigger participation by the PAS official(s) (see Paragraph 4);
- 301 d. An exclusive, nonexclusive, or illustrative list of circumstances in which the
302 PAS official(s) will or may review a decision or assume jurisdiction of a case,
303 if assumption of jurisdiction or review is discretionary (see Paragraph 5);
- 304 e. The availability, timing, and procedures for filing a petition for consideration
305 by the PAS official(s), including any opportunity for interlocutory review, and



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- 306 whether filing a petition is a mandatory prerequisite to judicial review (see
307 Paragraphs 6 and 8);
- 308 f. The actions the agency will take upon receiving a petition (e.g., grant, deny, or
309 dismiss it), and whether the agency's failure to act on a petition within a set
310 period of time constitutes denial of the petition (see Paragraph 7);
- 311 g. The form, contents, and timing of notice provided to the parties to a case when
312 proceedings before the PAS official(s) are initiated (see Paragraphs 9–10);
- 313 h. The record for decision making by the PAS official(s) and the opportunity, if
314 any, to submit new evidence or raise new legal issues (see Paragraph 11);
- 315 i. Opportunities for public participation (see Paragraph 12);
- 316 j. Opportunities for oral argument (see Paragraph 13);
- 317 k. The process for considering whether participation by a PAS official in a case
318 would violate government-wide or agency-specific ethics laws and
319 regulations, and any standards for recusal (see Paragraph 14);
- 320 l. The treatment of decisions by a PAS official(s) as precedential (see Paragraph
321 15);
- 322 m. Any significant delegations of authority to lower-level adjudicators; appellate
323 boards; staff attorneys; clerks and executive secretaries; other support
324 personnel; and in the case of multimember agencies, members individually or
325 panels consisting of fewer than all members (see Paragraphs 17–19);
- 326 n. Any delegations of review authority or alternative review procedures in effect
327 when a PAS position is vacant or a collegial body of PAS officials lacks a
328 quorum; and
- 329 o. The public availability of decisions issued by a PAS official(s) and supporting
330 materials, and public access to proceedings before a PAS official(s) (see
331 Paragraphs 20–21).
- 332 23. An agency should provide updated access on its website to the regulations described in
333 Paragraph 22 and all other relevant sources of procedural rules and related guidance
334 documents and explanatory materials.