

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



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

President Barack Obama
July 8, 2010

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



Live Tweet: #erulemaking



acusgov



brookingsgs



americaspeaks



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



Our Council



Preeti D. Bansal
(Vice Chair)
General Counsel, OMB

Ronald A. Cass
(Member)
Chair, Center for the
Rule of Law

Michael A. Fitzpatrick
(Member)
Associate Administrator,
OIRA

**Mariano-Florentino
Cuellar**
(Member)
Professor, Stanford Law

Julius Genachowski
(Member)
Chairman, FCC

**Patricia McGowan
Wald**
(Member)
D.C. Circuit Judge (ret.)

Theodore B. Olson
(Member)
Former Solicitor
General

Thomas E. Perez
(Member)
Assistant Attorney
General, Civil Rights
DOJ

Thomasina V. Rogers
(Member)
Chair, OSHRC

Jane C. Sherburne
(Member)
General Counsel
BNY Mellon

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



Our Conference

The membership of the Conference, also known as the Assembly, includes the Chairman, the Council, members from approximately 50 federal executive departments and agencies and independent regulatory boards and commissions, and 40 members of the public representing diverse views and backgrounds.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Members

Fred W. Alvarez

Partner, Wilson Sonsini Goodrich & Rosati
San Francisco, CA
Assistant Secretary of Labor (1987-89)
EEOC Commissioner (1984-87)

Walter Dellinger

Partner, O'Melveny & Myers LLP
Washington, DC
Acting Solicitor General (1996-97); Assistant
Attorney General, Office of Legal Counsel
(1993-96)

Jody Freeman

Archibald Cox Professor of Law
Harvard Law School
White House Counselor for Energy and Climate
Change (2009-10)

James E. Johnson

Partner, Debevoise & Plimpton
New York, NY
Under Secretary of the Treasury for Enforcement
(1998-2001)

Jodie Z. Bernstein

Of Counsel, Kelley Drye & Warren LLP
Washington, DC
Director, FTC Bureau of Consumer Protection
(1995-2001)
General Counsel, EPA (1977-79) and Department
of Health and Human Services (1979-80)

Susan E. Dudley

Research Professor, Trachtenberg School of Public
Policy and Public Administration
The George Washington University
Administrator, OMB Office of Information and
Regulatory Affairs (2007-09)

H. Russell Frisby, Jr.

Partner, Stinson Morrison Hecker LLP
Washington, DC
Former Chair, ABA Section of Administrative Law
and Regulatory Practice

John M. Kamensky

Senior Fellow, IBM Center for the Business of
Government
Former Deputy Director, National Partnership for
Reinventing Government

Lisa Schultz Bressman

Associate Dean for Academic Affairs and
Professor of Law
Vanderbilt University Law School

Christopher Edley, Jr.

William H. Orrick Jr. Distinguished Chair and
Dean, UC Berkeley School of Law
Associate Director
Office of Management and Budget (1993-95)

Patti Goldman

Vice President for Litigation, Earthjustice

Peter D. Keisler

Partner, Sidley Austin
Washington, DC
Acting Attorney General (2007); Assistant
Attorney General, Civil Division (2003-07)

James Ming Chen

Dean and Professor of Law, Louis D. Brandeis
School of Law, University of Louisville

Cynthia R. Farina

Professor, Cornell Law School
Principal Researcher, e-Rulemaking Initiative

Philip J. Harter

Professor of Law Emeritus, University of Missouri
Former Chair, ABA Section of Administrative Law
and Regulatory Practice
Senior Staff Attorney, Administrative Conference
of the United States (1975-77)

Simon Lazarus

Public Policy Counsel
National Senior Citizens Law Center
Associate Director, White House Domestic Policy
Staff (1977-81)

John F. Cooney

Partner, Venable LLP, Washington, DC
Assistant and Deputy General Counsel for
Litigation and Regulatory Affairs, OMB (1982-87)

David C. Frederick

Partner, Kellogg, Huber, Hansen, Todd, Evans &
Figel
Washington, DC
Assistant to the Solicitor General (1996-2001)

Michael E. Herz

Professor of Law
Benjamin N. Cardozo School of Law
Chair Elect, ABA Section of Administrative Law
and Regulatory Practice

Ronald M. Levin

Henry Hitchcock Professor of Law
Washington University School of Law
Former Chair, ABA Section of Administrative Law
and Regulatory Practice

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



Public Members

Carl Malamud
President and Founder, Public.Resource.Org

Gillian E. Metzger
Professor of Law, Columbia Law School

Saikrishna B. Prakash
Sullivan & Cromwell Professor of Law
University of Virginia Law School

Larry D. Thompson
Senior Vice President and General Counsel, Pepsico
Deputy Attorney General (2001-03)

Jerry L. Mashaw
Sterling Professor of Law, Yale Law School

David W. Ogden
Partner, Wilmer Cutler Pickering Hale and Dorr
Deputy Attorney General (2009-10); Assistant
Attorney General, Civil Division (1999-2001)

Richard L. Revesz
Dean and Lawrence King Professor of Law
New York University School of Law

James J. Tozzi
Member, Board of Directors
Center for Regulatory Effectiveness
Assistant Director, Office of Management and
Budget (1977-80)
Deputy Administrator, OMB Office of Information
and Regulatory Affairs (1980-83)

Randolph J. May
President, Free State Foundation
Former Chair
ABA Section of Administrative Law and Regulatory
Practice

John A. Payton
President and Director-Counsel, NAACP Legal
Defense and Educational Fund, Inc.
Former President, D.C. Bar

Alasdair S. Roberts
Rappaport Professor of Law and Public Policy,
Suffolk University Law School
Fellow, National Academy of Public Administration

John Vittone
Chief Administrative Law Judge
Department of Labor (Retired)
Administrative Law Section Delegate, ABA Board of
Governors

Doris Meissner
Senior Fellow and Director, US Immigration Policy
Program, Migration Policy Institute
Commissioner, Immigration and Naturalization
Service (1993-2000)

Richard J. Pierce, Jr.
Lyle T. Alverson Professor of Law, The George
Washington University Law School

Teresa Wynn Roseborough
Deputy General Counsel
Metropolitan Life Insurance Company
Deputy Assistant Attorney General, Office of Legal
Counsel (1994-96)

Helgi C. Walker
Partner, Wiley Rein
Washington, DC
Associate Counsel to the President (2001-03)

Nina Mendelson
Professor of Law
University of Michigan Law School

Michael K. Powell
Senior Advisor, Providence Equity Partners
Commissioner and Chairman, Federal
Communications Commission (1997-2005)

Max Stier
President and CEO, Partnership for Public Service
Deputy General Counsel, Department of Housing
and Urban Development (1999-2001)
Fellow, National Academy of Public Administration

Allison M. Zieve
Director, Public Citizen Litigation Group

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



Senior Fellows

William H. Allen

Retired Partner,
Covington & Burling LLP
Senior Fellow (1982-95)

Betty Jo Christian

Partner, Steptoe & Johnson LLP
Senior Fellow (1989-95)

Sally Katzen

Consultant and Visiting Professor New
York University School of Law
Public Member (1988-93), Vice
Chairman (1993), Acting Chairman
(1993-94)

Sallyanne Payton

William W. Cook Professor of Law
University of Michigan Law School
Senior Fellow (1988-95)

Edward L. Weidenfeld

Founder
The Weidenfeld Law Firm, P.C.
Senior Fellow (1992-95)

Robert A. Anthony

George Mason University Foundation
Professor Emeritus, George Mason
University School of Law
Chairman (1974-79), Senior Fellow
(1982-95)

Neil R. Eisner

Assistant General Counsel, United States
Department of Transportation
Government Member (1982-95)

Richard J. Leighton

Partner, Keller and Heckman LLP
Senior Fellow (1991-95)

The Honorable Antonin G. Scalia

Associate Justice, United States Supreme
Court
Chairman (1972-74), Public Member
(1978-82), Senior Fellow (1982-95)

Richard E. Wiley

Partner, Wiley Rein LLP
Senior Fellow (1984-95)

Warren Belmar

Chairman of the Board, Clean Economy
Network Education Fund
Public Member (1986-95), Senior
Fellow (1995)

Brian C. Griffin

Chairman of the Board, Clean Energy
Systems Inc.
Chairman (1992-93), Senior Fellow
(1993-95)

Malcolm S. Mason

Senior Fellow (1984-95)

The Honorable Loren A. Smith

Senior Judge, United States Court of
Federal Claims
Chairman (1981-85), Senior Fellow
(1985-95)

Marshall J. Breger

Professor of Law, Catholic University
Columbus School of Law
Chairman (1985-91), Senior Fellow
(1991-95)

Paul D. Kamenar

Senior Fellow (1990-95)

Alan B. Morrison

Lerner Family Associate Dean for Public
Interest & Public Service Law
The George Washington University Law
School
Senior Fellow (1989-95)

Peter L. Strauss

Betts Professor of Law, Columbia Law
School
Senior Fellow (1991-95)

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



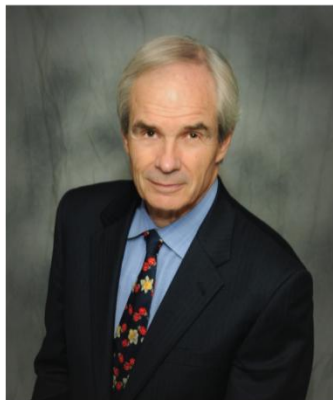
Council of Independent Regulatory Agencies

- 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



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Staff



Paul R. Verkuil
Chairman

Reeve T. Bull
Attorney Advisor

Tenille Davis
Administrative Assistant

Gabrielle Guy
Paralegal

Kathy Kyle
Communications Director

Jeffrey Lubbers
Special Counsel

Michael T. McCarthy
Executive Director

Shawne C. McGibbon
General Counsel

Funmi E. Olorunnipa
Attorney Advisor

Sherland Peterson
EA to the Chairman

David M. Pritzker
Deputy General Counsel

Scott J. Rafferty
Senior Counsel

William R. Richardson
Senior Counsel

Emily F. Schleicher
Attorney Advisor

Harry M. Seidman
Administrative Director

Jonathan R. Siegel
Director of Research & Policy

Pending Projects

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



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES



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



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Connect with us...

Join our Mailing List at info@acus.gov

ONLINE

www.acus.gov

info@acus.gov



www.facebook.com/ACUSgov



www.twitter.com/ACUSgov



www.youtube.com/ACUSgov



www.dipity.com/ACUSgov



www.flickr.com/ACUSgov



www.livestream.com/administrativeconferenceoftheus



www.Linkedin.com/administrative-conference-of-the-united-states



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

