



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## Committee on Regulation

Minutes

September 24, 2012

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### Members Attending

Russell Frisby, Chair	Carl Malamud, Public Member	Peter Strauss, Senior Fellow
Michelle Borzillo, Alternate (FDIC)	David Michaels, Govt. Member	James Tozzi, Public Member
Bridget Dooling, Govt. Member	Alan Morrison, Senior Fellow	Richard Wiley, Senior Fellow
Susan Dudley, Public Member	Jonathon Rose, Senior Fellow	Michael Fitzpatrick, Public Member

### ACUS Staff Attending

Paul Verkuil, Chairman	Gretchen Jacobs, Research Director
Reeve Bull, Staff Counsel	

### Invited Guests Attending

Jamie Conrad, Public Attendee	Francesca Grifo, Public Attendee	Wendy Wagner, Consultant
Curtis Copeland, Consultant		

The meeting commenced on September 24 in the conference room of the Administrative Conference of the United States (ACUS).

**Meeting Opening:** Professor Wagner outlined potential changes to the draft recommendation, including the addition of new recommendations and refinement of existing recommendations. Specific changes include taking conceptual steps to integrate a priori principles as a fifth step, including a more robust discussion of literature review, looking at the “bells and whistles” on several recommendations, and bolstering certain points that were not entirely clear. The final report will include the portion addressing executive review of science-based regulations, regardless of whether the final recommendation includes that topic. Mr. Frisby voiced his



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support for the general directions of these revisions, especially broadening beyond best practices addressed in the initial report.

**Science vs. Non-Science:** Mr. Tozzi asked Professor Wagner to elaborate on the portion of the report wherein she says that the line between science and policy is not clear and that it is not helpful to draw brighter lines. Professor Wagner explained that we should not be caught up in the question of science v. policy, but should look more generally at the processes at each juncture. She is not recommending that the distinction be jettisoned, only that it is not really a focus of any recommendation, and that the a priori principles will include default judgments.

**Dissent Policy:** Ms. Dooling asked several questions about authorship/attribution, and Professor Wagner responded that she is not sure there is enough research to give a “one size fits all” recommendation here. Authorial rights should be given to non-scientists, and it needs to be clear that the focus is only on science, not the effects of non-science. Professor Wagner agreed and noted that she will not attempt to draw lines between science and non-science.

Ms. Dudley suggested looking at whether some of these recommendations create incentives to blur the line between science and policy. Professor Wagner indicated that she is considering allowing scientists to publish their findings in peer reviewed literature as a way around that. Mr. Michaels suggested that the recommendation should state that agencies “should consider” this approach.

Mr. Conrad noted that a dissent policy could disincentivize efforts to reach consensus.

Professor Strauss commented that credit for participating in reports at the junior level can limit suppression of junior staff’s ideas, which can be a problem. Junior staff members tend to be the actual scientists, and their dissents tend to be more factual.

Mr. Fitzpatrick explained how the Holdren memo attempted to grapple with dissent policies and that this could be a good tool because it creates a good balance. As to the junior/senior issue, we should look at what can be expressed internally as opposed to what can be promulgated externally. Ms. Grifo agreed and further outlined issues and limitations regarding agency employee dissents.

Various people suggested looking at the Keystone Center Report to get ideas on how to approach certain issues, including steps for peer review.

The committee next moved to the recommendation on Benefit-Cost Analysis at Independent Regulatory Agencies. Mr. Copeland offered an overview of his findings to date. He explained that the goal of the project is to look at whether independent agencies are preparing cost-benefits analyses. If they are, he will look at how they are doing so and will consider best practices in their processes. He will look at cross-cutting analyses and agency specific analytical requirements, and he will examine major rules issued by independent agencies for guidance and



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interview agency representatives concerning the extent to which they have undertaken benefit-cost analyses.

Attendees posed the following questions to Mr. Copeland (his response is included in parentheses).

1. What is the projected timeframe for the report? (It will likely be complete prior to the February deadline.)
2. How much capability do independent regulatory agencies actually have to do benefit-cost analyses? (The Congressional Budget Office scores certain bills; ones specific to the Securities and Exchange Commission and the Commodity Futures Trading Commission indicated that each would require more resources.)
3. When you describe analysis that does occur, could you compare it to what would occur under Circular A-4? (Part of reason to focus on major rules only is to facilitate this).
4. Do independent agencies designate rules in the same way that executive branch agencies do? (This is a slippery slope because most generally do not designate things as “major” rules. This is too big of an issue to address here.)

Chairman Verkuil ended the meeting by explaining that CIRA has already been involved in the process, and that ACUS will circulate the report to them to obtain their input.