



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

September 30, 2019

SUBMITTED VIA REGULATIONS.GOV

Ms. Jennifer Tiedeman  
U.S. Department of Energy  
Office of the General Counsel (GC-33), 6A-179  
1000 Independence Avenue SW  
Washington, DC 20585

Re: Proposed Agency Guidance Rulemaking

Dear Ms. Tiedeman:

On behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS), I call your attention to two recommendations of ACUS and associated reports that may help inform the Department's response to the petition:

- **Recommendation 2017-5, *Agency Guidance Through Policy Statements***, which provides best practices to agencies on the formulation and use of policy statements. It lists steps that agencies can take to remain flexible in their use of policy statements and to encourage, when appropriate, public participation in the adoption or modification of policy statements.<sup>1</sup> *See also* Nicholas Parrillo, *Federal Agency Guidance: An Institutional Perspective* (Oct. 12, 2017) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/sites/default/files/documents/parrillo-agency-guidance-final-report.pdf>.
- **Recommendation 2019-1, *Agency Guidance Through Interpretive Rules***, which identifies ways agencies can offer the public the opportunity to propose alternative approaches to those presented in an interpretive rule and to encourage, when appropriate, public participation in the adoption or modification of interpretive rules.<sup>2</sup> *See also* Blake Emerson and Ronald Levin, *Agency Guidance Through Interpretive Rules* (May 28, 2019) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/sites/default/files/documents/ACUS%20IR%20final%20report.5.28.2019.pdf>.

In submitting this comment, ACUS takes no position on the merits of the petition. Please contact me at [tphillips@acus.gov](mailto:tphillips@acus.gov) or 202-480-2080 if you have questions or would like further information.

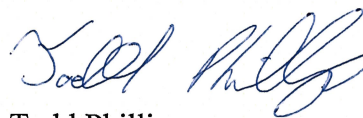
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<sup>1</sup> 82 Fed. Reg. 61,734 (Dec. 29, 2017).

<sup>2</sup> 84 Fed. Reg. 38,927 (Aug. 8, 2019).

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Sincerely,



Todd Phillips  
Attorney Advisor and Counsel for  
Congressional Affairs

Attachments: Recommendation 2017-5, *Agency Guidance Through Policy Statements*  
Nicholas Parrillo, *Federal Agency Guidance: An Institutional Perspective*  
Recommendation 2019-1, *Agency Guidance Through Interpretive Rules*  
Blake Emerson and Ronald Levin, *Agency Guidance Through Interpretive Rules*