



## **Recommendation 69-8**

### **Elimination of Certain Exemptions from the APA Rulemaking Requirements**

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(Adopted October 21-22, 1969)

#### **Recommendation**

In order to assure that Federal agencies will have the benefit of the information and opinion that can be supplied by persons whom regulations will affect, the Administrative Procedure Act requires that the public must have opportunity to participate in rulemaking proceedings. The procedures to assure this opportunity are not required by law, however, when rules are promulgated in relation to "public property, loans, grants, benefits, or contracts." These types of rules may nevertheless bear heavily upon nongovernmental interests. Exempting them from generally applicable procedural requirements is unwise. The present law should therefore be amended to discontinue the exemptions to strengthen procedures that will make for fair, informed exercise of rulemaking authority in these as in other areas.

Removing these statutory exemptions would not diminish the power of the agencies to omit the prescribed rulemaking procedures whenever their observances were found to be impracticable, unnecessary, or contrary to the public interest. A finding to that effect can be made, and published in the Federal Register, as to an entire subject matter concerning which rules may be promulgated. Each finding of this type should be no broader than essential and should include a statement of underlying reasons rather than a merely conclusory recital.

Wholly without statutory amendment, agencies already have the authority to utilize the generally applicable procedural methods even when formulating rules of the exempt types now under discussion. They are urged to utilize their existing powers to employ the rulemaking procedures provided by the Administrative Procedure Act, whenever appropriate, without awaiting a legislative command to do so.



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## Citations:

38 FR 19784 (July 23, 1973)

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1 ACUS 29