



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Recommendation 2010-1 Committee on Regulation FACT SHEET

fast facts

SCOPE

The project aims to improve agency procedures for complying with Federal requirements regarding consultation with State and local governments and for considering State interests in rulemakings that may result in the preemption of State law.

CURRENT STATUS

Recommendation was adopted at the 53rd Plenary Session and ACUS staff is working to implement the recommendation.

CONTACTS

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at a glance

ACUS RESEARCH

Administrative Conference research projects are gathered from many sources: from Congress, from other federal agencies, from public interest or other organizations, from academics and other experts, and from members of the public. The goal of the Recommendation 2010-1 is not to favor or disfavor preemption, but to improve agency procedures in potentially preemptive rulemakings.

By recommending procedures for consulting with state and local officials and resolving preemption questions during the rulemaking process, the Recommendation aims to improve efficiency, by avoiding future unnecessary and costly litigation over preemption issues, and fairness, by providing a systematic method of input from state and local sources. The Recommendation also seeks to increase transparency regarding internal agency policies and identifies ways to improve external mechanisms for enforcing the applicable federal requirements.

BACKGROUND

Executive Order 13132 requires agencies to consult with State and local governments and consider State and local interests when considering rules that may be preemptive. There appears to be consensus that the requirements of the preemption provisions of Executive Order 13132 are sound, but compliance has been inconsistent across administrations of both political parties. The goal of the recommendation is to improve agency procedures in potentially preemptive rulemakings.

RESOURCES

Project materials are available at on the ACUS website under Research>Current Research Projects.



current projects

projects in the pipeline

The following research projects are in the ACUS pipeline. Details forthcoming.

Immigration Adjudication

Science in the Administrative Process

Methods of Collaborative Governance

Midnight Rules

Government in the Sunshine Act

MEDIA CONTACT

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Government Contractor Ethics

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This project is evaluating to what extent regulations should be expanded in applying ethics rules to government contractor employees.

Purposeless Procedural Traps

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This project is aimed at identifying and recommending ways to eliminate purposeless procedural rules that result in the non-merits-based dismissal of claims by or against the federal government.

FACA in the 21st Century

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This project will explore agencies' best practices under FACA and potential improvements to promote the use of new media and "collaborative governance."

e-Rulemaking Innovations and Experiments

This study will review innovations and experiments in e-Rulemaking currently occurring at federal agencies. The study will identify innovations and best practices that might be incorporated into FDMS and regulations.gov or otherwise spread to other agencies.

Rulemaking Comments

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This study will review a variety of legal and practical issues that have arisen in connection with the "comment" phase of notice-and-comment rulemaking, including the timing, availability, confidentiality, and impact of comments, as well as agencies' duty to reply to comments.

Legal Issues in e-Rulemaking

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This project explores the legal issues that arise as agencies change from paper-based to electronic rulemaking.

Video Hearings

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ACUS is currently conducting an in-house project examining the use of video hearings by federal agencies, which will examine the costs and benefits of video hearings as they are currently used and the possibilities for expansion of use within federal agencies.