



## ACUS Plenary to Cover Four Recommendations

*Regulatory Policy Commentary*

June 13, 2011

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This week, the [Administrative Conference of the United States](#) will hold its second plenary session since it reconvened in March 2010. It will be the [54<sup>th</sup> plenary session](#) of the [Conference](#), an independent federal agency [first established](#) by Congress in 1968. Its [membership](#) includes both “federal officials and experts with diverse views and backgrounds from both the private sector and academia.”

On the [agenda](#) for the meeting are recommendations in four areas, [e-rulemaking](#), [rulemaking comments](#), [government contractor ethics](#), and [video teleconferencing technology for administrative hearings](#).

The [e-Rulemaking recommendations](#) focus on several legal issues unique to e-rulemaking, including “whether agencies have a legal obligation to ensure that a person reads every individual comment received, even when comment-processing software reports that multiple comments are identical or nearly identical;” “whether agencies have a legal obligation to prevent the publication of certain types of information that may be included in comments submitted in e-Rulemaking,” agency obligations regarding compiling and maintaining rulemaking dockets, and issues regarding the record for judicial review in e-Rulemaking proceedings.

The [recommendations](#) regarding procedures for [public commenting](#) on rulemaking address the duration of comment periods, the provision of opportunities for stakeholders to reply to comments that have previously been submitted, the potential staleness of comments when proposals take a number of years to finalize, the confidentiality and anonymity of comments, and the effects of comments on the content of agency regulations.

The [government contractor ethics](#) recommendations are aimed at ensuring that “services provided by government contractors—particularly those services that are similar to those performed by government employees—are performed with integrity and that the public interest is protected.” If approved by the Conference on Friday, they would encourage the Federal Acquisition Regulatory Council (FAR Council) to issue model language in the Federal Acquisition Regulation (FAR) to guide agency officials who administer “contracts that pose particular risks of government contractor employee personal conflicts of interest or misuse of non-public information.”

The recommendation regarding [video teleconferencing technology](#) (VTC) is aimed at “agencies with high volume caseloads that do not currently use VTC as a regular practice in administrative hearings and/or other adjudicatory proceedings and that may benefit from the use of it to improve efficiency and/or reduce costs.” It “suggests that agencies should use VTC only after conducting an analysis of the costs and benefits of VTC use and determining that such use would improve efficiency (i.e. timeliness and costs of adjudications) and would not impair the fairness of the proceedings or the participants’ satisfaction with them.”