



Participation of Senate-Confirmed Officials in Administrative Adjudication

Committee on Adjudication

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1 Tens of thousands of federal agency officials participate in administrative adjudication.
2 Most are members of the career civil service hired and supervised under the civil service laws.
3 Several thousand, like administrative law judges (ALJs) and many other administrative judges,
4 are appointed by a department head.¹ Some, like many agency heads, are appointed by the
5 President with the advice and consent of the Senate. It is to such “PAS” officials that federal
6 laws typically assign authority to adjudicate matters, and it is PAS officials who—by rule,
7 delegation of authority, and the development of norms, practices, and organizational cultures—
8 work with career civil servants and other officials to structure systems of administrative
9 adjudication and oversee their operation, ensuring some measure of political accountability.

10 PAS officials often participate indirectly and directly in administrative adjudication.
11 Indirectly, they may establish agency subunits and positions responsible for adjudicating cases.
12 They may appoint and supervise adjudicators,² and they may appoint and supervise, or oversee
13 the appointment and supervision of, other adjudicative personnel. PAS officials may coordinate

¹ See *Lucia v. United States*, 585 U.S. 237 (2018). Under the Constitution’s Appointments Clause, art. II § 2, cl. 2, “Officers of the United States” must be appointed through presidential nomination and Senate confirmation, except that “Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” The Supreme Court has interpreted the term “Department” in this context to mean “a freestanding component of the Executive Branch, not subordinate to or contained within any other such component.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 511 (2010).

² See *Lucia*, 585 U.S. at 251 (holding that administrative law judges employed by the Securities and Exchange Commission are “Officers of the United States” and must be appointed in accordance with the Appointments Clause).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

14 with the President and Congress to help ensure that adjudicative subunits have the resources they
15 need to adjudicate cases in a fair, accurate, consistent, efficient, timely, and politically responsive
16 manner.³ PAS officials may also establish rules of procedure and practice to structure
17 administrative adjudication,⁴ and they may develop substantive rules that supply the law in
18 adjudications.

19 Additionally, PAS officials may participate directly in administrative adjudication,
20 serving as the final, executive-branch decision maker in cases arising under the statutes they
21 administer.⁵ Although questions regarding whether, when, and how PAS officials participate
22 directly in the adjudication of cases are not new, they have gained new salience in recent years.
23 Most notably, in *United States v. Arthrex*,⁶ the Supreme Court held that a statute providing for
24 the administrative resolution of certain patent disputes violated the Appointments Clause by
25 vesting final decisional authority in adjudicators in the U.S. Patent and Trademark Office's
26 Patent Trial and Appeal Board, whose members are neither PAS officials nor subject to at-will
27 removal. The Court remedied the violation by holding unenforceable the statutory restraint on
28 the authority of a PAS official, the Director of the Patent and Trademark Office, to review the
29 Board's decisions.

30 While Congress has, for some programs, determined by statute whether, when, and how
31 PAS officials participate directly in the adjudication of cases, for many programs, Congress has
32 given agencies the discretion to develop procedures and practices that are effective and
33 appropriate for the specific programs they administer. This Recommendation provides a

³ See Admin. Conf. of the U.S., Recommendation 2023-7, *Improving Timeliness in Agency Adjudication*, 89 Fed. Reg. 1513 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2021-10, *Quality Assurance Systems in Agency Adjudication*, 87 Fed. Reg. 1722 (Jan. 12, 2022).

⁴ See, e.g., Admin. Conf. of the U.S., Recommendation 2018-5, *Public Availability of Adjudication Rules*, 84 Fed. Reg. 2142 (Feb. 6, 2019); see also Admin. Conf. of the U.S., Recommendation 2023-5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*, 89 Fed. Reg. 1509 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2016-4, *Evidentiary Hearings Not Required by the Administrative Procedure Act*, 81 Fed. Reg. 94,314 (Dec. 23, 2016).

⁵ See Admin. Conf. of the U.S., Recommendation 2020-3, *Agency Appellate Systems*, 86 Fed. Reg. 6618 (Jan. 22, 2021).

⁶ 141 S. Ct. 1970 (2021).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

34 framework to help agencies develop effective procedures and practices, when required or
35 appropriate, for direct participation by PAS officials in the adjudication of individual cases.

36 It does not address whether Congress or agencies should, for constitutional or other
37 reasons, provide for direct participation by PAS officials in the adjudication of individual cases
38 under specific programs. Nor does this recommendation address the broader question of whether
39 and when agencies should develop policies through rulemaking, adjudication, setting
40 enforcement priorities, or other means. Of course, Congress and agencies must pay careful
41 attention to such questions and ensure that laws, rules, and policies comport with applicable legal
42 requirements.

43 To develop effective and appropriate procedures and practices, agencies must consider, in
44 addition to applicable constitutional and statutory requirements, the characteristics of PAS
45 officials and the potential consequences of such characteristics for fair, accurate, consistent,
46 efficient, and timely adjudication. While there is wide variation among PAS positions and PAS
47 officials, at least five characteristics commonly distinguish PAS positions and officials from
48 other agency positions and officials, especially career civil servants.

49 First, as the Administrative Conference has previously noted, there are often numerous
50 vacancies in PAS positions.⁷ Frequent vacancies exist for several reasons, including delays
51 related to the appointments process. When adjudicative functions are assigned to PAS positions,
52 vacancies in those positions can affect the timeliness of adjudication. At some agencies, for
53 example, vacancies or the lack of a quorum have resulted in long delays.⁸

54 Second, there is relatively high turnover in PAS positions, and PAS officials almost
55 always serve in their positions for a shorter time than career civil servants. Thus PAS officials
56 may lack preexisting relationships with agency employees, knowledge of agency processes, and

⁷ See Admin. Conf. of the U.S., Recommendation 2019-7, *Acting Agency Officials and Delegations of Authority*, 84 Fed. Reg. 71,352 (Dec. 27, 2019).

⁸ See Matthew A. Gluth, Jeremy S. Graboyes & Jennifer L. Selin, *Participation of Senate-Confirmed Officials in Administrative Adjudication* 58–61 (Apr. 12, 2024) (draft report to the Admin. Conf. of the U.S.).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

57 the specialized adjudicative expertise that career adjudicators develop as a result of their work
58 and experience in this area.

59 Third, unlike civil servants who are hired without regard to political affiliation, activity,
60 or beliefs,⁹ PAS officials are often nominated by the President at least in part *because* of their
61 political affiliation, activity, or beliefs. PAS officials are also subject to removal by the President,
62 although a statute may impose for-cause or other limitations on removal. Unlike officials
63 appointed by a department head or the President alone, however, PAS officials are also
64 confirmed by the Senate, which may make them more attentive to Congress than career agency
65 officials.¹⁰ On the one hand, such exposure to politics may help ensure that agency decision
66 making, including the development of policy through case-by-case adjudication, remains
67 publicly accountable. And given their relationships with the President, other political appointees,
68 and Congress, PAS officials may be well equipped to address systemic problems, identified
69 through the adjudication of cases, that require intra- or interbranch coordination. On the other
70 hand, the involvement of political appointees in administrative adjudication may raise concerns
71 about the impartiality and objectivity of agency decision making.¹¹

72 Fourth, unlike career adjudicators, who are often appointed based on prior adjudicative or
73 litigation experience,¹² PAS officials are often appointed for other reasons such as prior
74 experience in a particular industry or familiarity with a particular policy domain. PAS officials
75 may have better access to substantive, subject-matter expertise than other agency decision
76 makers, which may improve the quality of policies developed through case-by-case adjudication.
77 On the other hand, they may lack experience or familiarity with the procedural aspects of
78 administrative adjudication.

⁹ 5 U.S.C. § 2301.

¹⁰ See Gluth, Graboyes & Selin, *supra* note 8, at 45–46.

¹¹ See *id.* at 56–57.

¹² See Admin. Conf. of the U.S., Recommendation 2019-2, *Agency Recruitment and Selection of Administrative Law Judges*, 84 Fed. Reg. 38,930 (Aug. 8, 2019).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

79 Fifth, PAS officials often sit atop agency hierarchies, and statutes often assign PAS
80 officials, especially the heads of cabinet departments, a broad range of responsibilities,
81 potentially including the administration of multiple programs and, under any given program,
82 multiple functions (e.g., rulemaking, investigation, prosecution) in addition to adjudication.¹³
83 Such responsibilities can provide PAS officials with a unique opportunity to coordinate
84 policymaking within and across programs, promote consistent decision making, and gain better
85 awareness of the adjudicative and regulatory systems for which they are statutorily responsible.
86 On the other hand, PAS officials may lack the capacity to decide cases in a fair, accurate,
87 consistent, efficient, and timely manner. The combination of adjudicative and non-adjudicative
88 functions (e.g., investigation, prosecution, rulemaking) in a single decision maker may also raise
89 concerns about the integrity of agency proceedings and the effectiveness of agency
90 policymaking.¹⁴

91 Considering these and other characteristics, and consistent with statutory and regulatory
92 requirements, agencies must determine whether participation by PAS officials in the adjudication
93 of cases provides an effective mechanism for directing and supervising systems of administrative
94 adjudication and, if it does, what procedures and practices will permit PAS officials to adjudicate
95 cases in a manner that best promotes fairness, accuracy, consistency, efficiency, and timeliness.
96 The Conference has addressed some of these issues in previous recommendations, most notably
97 in Recommendation 68-8, *Delegation of Final Decisional Authority Subject to Discretionary*
98 *Review by the Agency*;¹⁵ Recommendation 83-3, *Agency Structures for Review of Decisions of*
99 *Presiding Officers Under the Administrative Procedure Act*;¹⁶ Recommendation 2018-4, *Recusal*
100 *Rules for Administrative Adjudicators*;¹⁷ Recommendation 2020-3, *Agency Appellate Systems*;¹⁸

¹³ See Gluth, Graboyes & Selin, *supra* note 8, at 46–48.

¹⁴ See *id.* at 62–63.

¹⁵ 38 Fed. Reg. 19,783 (July 23, 1973).

¹⁶ 48 Fed. Reg. 57,461 (Dec. 30, 1983).

¹⁷ 84 Fed. Reg. 2139 (Feb. 6, 2019).

¹⁸ 86 Fed. Reg. 6618 (Jan. 22, 2021).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

101 and Recommendation 2022-4, *Precedential Decision Making in Agency Adjudication*.¹⁹
102 Recognizing that agencies must consider applicable constitutional and statutory requirements and
103 the unique characteristics of the programs they administer, this Recommendation builds on these
104 earlier recommendations but focuses exclusively on identifying best practices to help agencies
105 determine whether, when, and how PAS officials should participate directly in the adjudication
106 of individual cases.

RECOMMENDATION

Determining Whether and When Officers Appointed by the President With the Advice and Consent of the Senate—PAS Officials—Should Participate in the Adjudication of Cases

- 107 1. When a statute authorizes a PAS official or collegial body of PAS officials to adjudicate
108 matters arising under the statute, and such authority is delegable as a constitutional and
109 statutory matter, the agency ordinarily should delegate to one or more non-PAS
110 adjudicators responsibility for conducting initial proceedings (i.e., receiving and
111 evaluating evidence and arguments and issuing a decision). PAS officials, individually or
112 as a collegial body, who retain statutory authority to conduct initial proceedings should
113 exercise such authority only if a matter is exceptionally significant or broadly
114 consequential, and they have the capacity to personally receive and evaluate evidence and
115 arguments and issue a decision in a fair, accurate, consistent, efficient, and timely
116 manner.
- 117 2. When a statute authorizes a PAS official or a collegial body of PAS officials to
118 adjudicate matters arising under the statute or review lower-level decisions rendered by
119 other adjudicators, and such authority is delegable as a constitutional and statutory
120 matter, the agency should determine in which types of cases it would be beneficial for a
121 PAS official or collegial body of PAS officials to review lower-level decisions rendered
122 by other adjudicators and in which it would be more appropriate to delegate final

¹⁹ 88 Fed. Reg. 2312 (Jan. 13, 2023).



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

123 decision-making authority to a non-PAS official (e.g., an agency “Judicial Officer”) or a
124 collegial body of non-PAS officials (e.g., a final appellate board). Circumstances in
125 which it may be beneficial for an agency to provide for review by a PAS official or a
126 collegial body of PAS officials include:

- 127 a. Cases that involve legal or factual issues that are exceptionally significant or
128 broadly consequential;
- 129 b. Cases that involve a novel or important question of law, policy, or discretion,
130 such that direct participation by one or more PAS officials would promote
131 centralized or politically accountable coordination of policymaking; and
- 132 c. When participation by one or more PAS officials in the adjudication of
133 individual cases would promote consistent decision making by agency
134 adjudicators.

135 3. When it would be beneficial to provide for review by a PAS official or a collegial body
136 of PAS officials, the agency should, consistent with constitutional and statutory
137 requirements, determine the appropriate structure for such review. Structural options
138 include:

- 139 a. *Providing the only opportunity for administrative review of lower-level*
140 *decisions.* This option may be appropriate when caseloads are relatively low
141 and individual cases frequently raise novel or important questions of law,
142 policy, or discretion.
- 143 b. *Delegating first-level review authority to a non-PAS official, such as an*
144 *agency “Judicial Officer,” or appellate board and retaining authority to*
145 *exercise second-level administrative review in exceptional circumstances.*
146 This option may be appropriate when caseloads are relatively high and
147 individual cases only occasionally raise novel or important questions of law,
148 policy, or discretion or have significant consequences beyond the parties to
149 the case.
- 150 c. *Delegating final review authority to another PAS official.* This option may be
151 appropriate, for example, when individuals, by virtue of holding another PAS



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 152 position, have greater access to subject-matter expertise or greater capacity to
153 adjudicate cases in a fair, accurate, consistent, efficient, and timely manner.
- 154 d. *For collegial bodies of PAS officials, delegating first-level review authority to*
155 *a single member or panel, and retaining authority for the collegial body as a*
156 *whole to exercise second-level (and final) administrative review.* This option
157 may be appropriate when a collegial body manages a relatively high caseload
158 and most individual cases do not raise novel or important questions of law,
159 policy, or discretion or have significant consequences beyond the parties to
160 the case.

Initiating Review by PAS Officials

- 161 4. An agency ordinarily should provide that a decision subject to review by a PAS official
162 or a collegial body of PAS officials becomes final and binding after a specified number
163 of days unless, as applicable:
- 164 a. A party or other interested person files a petition for review, if a statute
165 entitles a party or other interested person to such review;
- 166 b. A PAS official or collegial body of PAS officials exercises discretion to
167 review the decision upon petition by a party or other interested person;
- 168 c. A PAS official or collegial body of PAS officials exercises discretion to
169 review the lower-level decision upon referral by the adjudicator or appellate
170 board (as a body or through its chief executive or administrative officer) that
171 issued the decision;
- 172 d. A PAS official or collegial body of PAS officials exercises discretion to
173 review the decision upon request by a federal official who oversees a program
174 impacted by a decision, or his or her delegate; or
- 175 e. A PAS official or collegial body of PAS officials exercises discretion to
176 review the decision sua sponte.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 177 5. When a PAS official or collegial body of PAS officials serves as a first-level reviewer, an
178 agency should develop a policy for determining the circumstances in which such review
179 may be exercised. Review may be warranted if there is a reasonable probability that:
- 180 a. The adjudicator who issued the lower-level decision committed a prejudicial
181 procedural error or abuse of discretion;
 - 182 b. The lower-level decision includes an erroneous finding of material fact;
 - 183 c. The adjudicator who issued the lower-level decision erroneously interpreted
184 the law or agency policy;
 - 185 d. The case presents a novel or important issue of law, policy, or discretion; or
 - 186 e. The lower-level decision presents a recurring issue or an issue that agency
187 adjudicators have decided in different ways, and the PAS official or officials
188 can resolve the issue more accurately and efficiently through precedential
189 decision making.
- 190 6. When a PAS official or collegial body of PAS officials serves as a second-level reviewer,
191 an agency should determine the circumstances in which such review may be warranted.
192 To avoid multilevel review of purely factual issues, the agency should limit second-level
193 review by a PAS official or collegial body of PAS officials to circumstances in which
194 there is a reasonable probability that:
- 195 a. The case presents a novel or important issue of law, policy, or discretion, or
 - 196 b. The first-level reviewer erroneously interpreted the law or agency policy.
- 197 7. When agency rules permit parties or other interested persons to file a petition requesting
198 that a PAS official or a collegial body of PAS officials review a lower-level decision and
199 review is discretionary, the agency should require that petitioners explain in the petition
200 why such review is warranted with reference to the grounds for review identified in
201 Paragraph 5 or 6, as applicable. Agency rules should permit other parties or interested
202 persons to respond to the petition or file a cross-petition.
- 203 8. An agency should provide that if a PAS official or collegial body of PAS officials, or a
204 delegate, does not exercise discretion to grant a petition for review within a set time
205 period, the petition is deemed denied.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 206 9. In determining whether to provide for interlocutory review by a PAS official or collegial
207 body of PAS officials of rulings by agency adjudicators, an agency should evaluate
208 whether such review can be conducted in a fair, accurate, consistent, efficient, and timely
209 manner, considering the best practices identified in Recommendation 71-1, *Interlocutory*
210 *Appeal Procedures*.
- 211 10. When a PAS official or collegial body of PAS officials exercises discretion to review a
212 lower-level decision (e.g., by granting a petition or accepting a referral), the agency
213 should:
- 214 a. Notify the parties;
 - 215 b. Provide a brief statement of the grounds for review; and
 - 216 c. Provide the parties a reasonable time to submit written arguments.

PAS Official Review Process

- 217 11. A PAS official or collegial body of PAS officials who reviews a lower-level decision
218 ordinarily should limit consideration to the evidence and legal issues considered by the
219 adjudicator who issued that decision. The PAS official or collegial body of PAS officials
220 should consider new evidence and legal issues, if at all, only if the proponent of new
221 evidence or a new legal issue shows that it is material to the outcome of the case and that,
222 despite his or her due diligence, it was not available when the record closed. In such
223 situations, the PAS official or collegial body of PAS officials should determine whether it
224 would be more effective to consider the new evidence or legal issue or instead to remand
225 the case to another adjudicator for further development and consideration.
- 226 12. An agency should provide a PAS official or collegial body of PAS officials discretion to
227 permit oral argument on his or her own initiative or upon a party's request if doing so
228 would assist the PAS official(s) in deciding the matter.
- 229 13. In cases when a PAS official or collegial body of PAS officials will decide a novel or
230 important question of law, policy, or discretion, the agency should provide the PAS
231 official(s) discretion to solicit arguments from interested members of the public, for



232 example by inviting amicus participation, accepting submission of written comments, or
233 holding a public hearing to receive oral comments.

Integrity of the Decision-Making Process

234 14. Each agency at which PAS officials participate in the adjudication of individual cases
235 should establish a process for considering whether participation by a particular PAS
236 official in a case would violate government-wide or agency-specific ethics standards and
237 should determine whether and, if so, in what circumstances PAS officials should recuse
238 themselves from participating in a case.

Coordination of Policymaking and Decision Making by Agency Adjudicators

239 15. An agency ordinarily should treat decisions of PAS officials as precedential if they
240 address novel or important issues of law, policy, or discretion, or if they resolve recurring
241 issues or issues that other agency adjudicators have decided in different ways. Unless the
242 agency treats all decisions of PAS officials as precedential, in determining whether and
243 under what circumstances to treat such decisions as precedential, the agency should
244 consider the factors listed in Paragraph 2 of Recommendation 2022-4, *Precedential*
245 *Decision Making in Agency Adjudication*.
246 16. Each agency should review periodically petitions for review and decisions rendered by
247 PAS officials to determine whether issues raised repeatedly indicate that the agency, its
248 adjudicators, or the public may benefit from notice-and-comment rulemaking or
249 development of guidance.

Adjudicative Support for PAS Officials

250 17. When a PAS official or collegial body of PAS officials adjudicates individual cases,
251 agencies should assign or delegate case-related functions to non-PAS officials, when
252 appropriate, including:
253 a. Performing routine tasks such as managing dockets and case filings;



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 254 managing proceedings, including the submission of materials and the
255 scheduling of oral arguments;
- 256 b. Responding to routine motions;
- 257 c. Dismissing, denying, and granting petitions for review in routine
258 circumstances when such action is clearly warranted, for example when a
259 petition is untimely, a party requests to withdraw a petition, or the parties to a
260 proceeding agree to a settlement;
- 261 d. Conducting the preliminary review of lower-level decisions, evidence, and
262 arguments;
- 263 e. Conducting the preliminary evaluation of petitions for review and petitions for
264 reconsideration;
- 265 f. Identifying unappealed decisions that may warrant review by a PAS official or
266 collegial body of PAS officials;
- 267 g. Encouraging settlement and approving settlement agreements;
- 268 h. Conducting legal and policy research;
- 269 i. Recommending case dispositions;
- 270 j. Preparing draft decisions and orders for review and signature by a PAS
271 official or collegial body of PAS officials;
- 272 k. Transmitting decisions and orders to parties and making them publicly
273 available; and
- 274 l. Staying decisions and orders pending judicial review or reconsideration by a
275 PAS official or collegial body of PAS officials.
- 276 18. When a PAS official or collegial body of PAS officials adjudicates individual cases, the
277 agency should determine which offices or officials are best suited to perform assigned or
278 delegated functions such as those in paragraph 17 in a fair, accurate, consistent, efficient,
279 and timely manner. Possibilities include:
- 280 a. Adjudicators and staff who serve at an earlier level of adjudication;
- 281 b. Full-time appeals counsel;
- 282 c. Advisors to a PAS official;



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 283 d. The chief legal officer or personnel under his or her supervision; and
284 e. A Clerk or Executive Secretary or personnel supervised by such officials.
285 In making such determinations, the agency should ensure adequate separation between
286 personnel who support a PAS official or collegial body of PAS officials in an
287 adjudicative capacity and those who support the PAS official(s) in an investigative or
288 prosecutorial capacity.

Transparency

- 289 19. Each agency should provide updated access on its website to decisions issued by PAS
290 officials, whether or not designated as precedential, and associated supporting materials.
291 In publishing decisions, the agency should redact identifying details to the extent required
292 to prevent an unwarranted invasion of personal privacy and any information that
293 implicates sensitive or legally protected interests involving, among other things, national
294 security, law enforcement, confidential business information, personal privacy, or minors.
295 In indexing decisions on its website, the agency should clearly indicate which decisions
296 are issued by PAS officials.
- 297 20. Each agency ordinarily should presume that oral arguments and other review proceedings
298 before PAS officials are open to public observation. Agencies may choose to close such
299 proceedings, in whole or in part, to the extent consistent with applicable law and if there
300 is substantial justification to do so, as described in Recommendation 2021-6, *Public*
301 *Access to Agency Adjudicative Proceedings*.

Development and Publication of Procedures for Adjudication by PAS Officials

- 302 21. Each agency should promulgate and publish procedural regulations governing the
303 participation of PAS officials in the adjudication of individual cases in the *Federal*
304 *Register* and codify them in the *Code of Federal Regulations*. These regulations should
305 cover all significant procedural matters pertaining to adjudication by PAS officials. In
306 addition to those matters identified in Paragraph 2 of Recommendation 2020-3, *Agency*
307 *Appellate Systems*, such regulations should address, as applicable:



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 308 a. Whether and, if so, which PAS officials may participate directly in the
309 adjudication of cases;
- 310 b. The level(s) of adjudication (e.g., hearing level, first-level appellate review,
311 second-level appellate review) at which a PAS official or collegial body of
312 PAS officials have or may assume jurisdiction of a case (see Paragraphs 1–3);
- 313 c. Events that trigger participation by a PAS official or collegial body of PAS
314 officials (see Paragraph 4);
- 315 d. An exclusive, nonexclusive, or illustrative list of circumstances in which a
316 PAS official or collegial body of PAS officials will or may review a decision
317 or assume jurisdiction of a case, if assumption of jurisdiction or review is
318 discretionary (see Paragraphs 5–6);
- 319 e. The availability, timing, and procedures for filing a petition for review by a
320 PAS official or collegial body of PAS officials, including any opportunity for
321 interlocutory review, and whether filing a petition is a mandatory prerequisite
322 to judicial review (see Paragraphs 7 and 9);
- 323 f. The actions the agency will take upon receiving a petition (e.g., grant, deny, or
324 dismiss it), and whether the agency’s failure to act on a petition within a set
325 period of time constitutes denial of the petition (see Paragraph 8);
- 326 g. The form, contents, and timing of notice provided to the parties to a case when
327 proceedings before a PAS official or collegial body of PAS officials are
328 initiated (see Paragraphs 9–10);
- 329 h. The record for decision making by a PAS official or collegial body of PAS
330 officials and the opportunity, if any, to submit new evidence or raise new legal
331 issues (see Paragraph 11);
- 332 i. Opportunities for oral argument (see Paragraph 12);
- 333 j. Opportunities for public participation (see Paragraph 13);
- 334 k. The process for considering whether participation by a PAS official in a case
335 would violate government-wide or agency-specific ethics standards and, if so,



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 336 in what circumstances PAS officials should recuse themselves from
337 participating in a case (see Paragraph 14);
- 338 l. The treatment of decisions by PAS officials as precedential (see Paragraph
339 15);
- 340 m. Any significant delegations of authority to agency adjudicators; appellate
341 boards; staff attorneys; clerks and executive secretaries; other support
342 personnel; and, in the case of collegial bodies of PAS officials, members who
343 serve individually or in panels consisting of fewer than all members (see
344 Paragraphs 17–18);
- 345 n. Any delegations of review authority or alternative review procedures in effect
346 when a PAS position is vacant or a collegial body of PAS officials lacks a
347 quorum; and
- 348 o. The public availability of decisions issued by PAS officials and supporting
349 materials, and public access to proceedings before PAS officials (see
350 Paragraphs 19–20).
- 351 22. An agency should provide updated access on its website to the regulations described in
352 Paragraph 21 and all other relevant sources of procedural rules and related guidance
353 documents and explanatory materials.