

[REDACTED]
Individual Report

I found it slightly difficult to quantify, in hours, my work on the statute given that much of my duties were oriented toward communication and coordination. As a result, I have attempted to categorize my contributions to the GEEPS Act, though admittedly there is some overlap between categories. Please find the exhibits, referenced below, attached following this report.

Editing

I was exclusively responsible for editing every draft of each section as well as compiling those drafts into a comprehensive statute. My fellow coordination team member, [REDACTED] was exclusively responsible for the rules section. For each section, I performed edits on at least two and sometimes three or four drafts. Because consistent formatting is, visually at least, the initial step towards cohesion, my initial edit was focused on making sure each section shared the same layout and numbering. Some initial edits were more time consuming than others—the more boilerplate taken from existing statutes, the more time consuming the formatting. The length of the particular section draft was also a factor. On average, the initial edit for each section took between 30 minutes and 75 minutes. I have attached an example of an initial draft section I received as Exhibit A, and the draft after my initial changes as Exhibit B. I created a protocol for the class, asking each team to make changes to the documents I had formatted and remanded. Teams followed this request for the most part, but I found that, perhaps due to Microsoft Word issues, I had some slight formatting issue to correct in each subsequent draft from the teams, which added a few minutes work in each case.

Secondly, I reviewed each section, looking for substantive issues. This took place mostly on second or third drafts. I attempted to strike a delicate balance—pointing out things that did not make sense or seemed doctrinally questionable to me, while still being deferential to each “expert” team. By and large I was deferential, though when I did make substantive comments I tried to be as respectful as possible. Exhibit C (email and document with green highlights) is attached as an example of substantive comments with regard to a second draft of the rulemaking section. Some sections, such as the Inspector General or Offices Under the Commission sections required very little substantive editing. Secondary edits took between 15 minutes and one hour.

Third, I edited for structure. The overall organization of the statute and agency will be further discussed below, however in the editing process I looked for duplicative, conflicting, or

otherwise inconsistent language. For example, at least three or four draft sections contained judicial review portions. Knowing that we intended to have all judicial review provisions contained within one section, I took out each of those parts and forwarded to the Judicial Review Team for inclusion. See Exhibit C (red highlights) and 4/17 Email and Attachment to [REDACTED]. Similarly I suggested changes to make the HEAT and OCE (then called Inspection) sections more cohesive. Additionally, I parsed each section for general definitions and placed *most* definitions in a standalone section. I also broke apart the Commission Section and Practice Under the Commission sections, Rulemaking and Adjudication, and facilitated the inclusion of sections on Offices Under the Commission and Advisory Committees. I also drafted the title section of the statute. Because this was more overarching work and was done in conjunction with other edits, it is difficult to determine exactly how long I spent on this portion of the project. Conservatively, I would estimate I spent four or five hours on this portion of the project.

Finally, I combined each section into the final, comprehensive document and completed one final edit. This took roughly 2 hours.

Organization

After conferring with Professor Corrada and [REDACTED] we decided on the basic order of the statute. I was responsible for implementing the proposed organization of the sections and ensuring that nothing was duplicated or missing. This involved a fair amount of moving sections around, as discussed above. It also involved the creation of new sections and subchapters (such as the Main Title and Definitions). Furthermore, it necessitated the creating of subchapters (§4a and 4b) in the case of the Offices Under the Commission and Advisory Committees. I did this for two reasons: One, because both operated directly under the Commission, it made sense to have those offices and committees in a subsection, and two, we were far enough along that moving those sections to §5 would have necessitated reordering almost the entire statute which would have been counterproductive so late in the process. Most of this was done in conjunction with my editing duties, so it is difficult to accurately determine how much time was spent on this particular aspect.

Second, I created a diagram of our agency's structure. The first draft was done based on the order of the statute, as well as my own thoughts about what might make sense. We discussed



the diagram in class and I implemented the changes. The initial and second draft took, collectively, roughly an hour to complete. For examples of both drafts, see Exhibit E and F.

Third, I organized the agenda for class discussions of the statute. Understanding that we had very limited time, I tried as best I could to prioritize the issues we need to discuss. For example, the Office of Compliance and Enforcement was in a large part born through our class discussions. Additionally, the overlapping duties and information sharing provisions between the HEAT Team, Licensing, and Office of Enforcement were a large concern. I made that the first or second issue of discussion in class, and was able to both gather ideas and build a basic consensus. Prior to our final class, Professor Corrada listed some issues in an email to the class. For our final class, I tried to prioritize for our class discussion based on the issues I felt would drive the statute forward. For example, we spent a portion of the class discussing state law preemption, which resulted in an entirely new section creating a right of action against park operators. On the other hand, we did not spend as much time discussing whether or not the policy section passed the delegation test. This was deliberate and I feel as though, for the most part, we focused on things of importance. For more on the issues I highlighted for class discussion, see Exhibit F.

I also organized deadlines for each team concerning rough and final drafts, though I attempted to be somewhat flexible. I based the final section deadlines on the overall deadline Professor Corrada placed on the class.

Additionally, after attending the fact team's presentation, I attempted to start a list of issues raised by the book which our statute needed to address. *See* GEEPS Law Wiki. Originally I had intended this to be a topical index for the statute, although frankly it did not seem to gain much traction and I think eventually morphed into the § 14 rules.

Communication

I was the point person for all section drafts, and this involved a fair amount of email communication—both requesting changes and processing changes sent to me. Some of this was done in mass emails to the entire class, other time it was done in emails to teams of individuals. In addition to interacting with the teams for their respective sections, I also interacted with individual classmates who drafted or edited different portions, even assigning individuals or teams to complete certain tasks that arose during the editing process. I've attached an example

of some of the email interactions I had where Professor Corrada was not CC'd as Exhibit G. Again, the time spent on this is difficult to quantify, though for the last two weeks of class I would estimate I there were times I fielded multiple emails per hour. I tried to reply promptly in each case, and most of the time was able to respond immediately, or by the end of the day.

██████ and I also communicated within the final few days. She reviewed the statute for issues and I also reviewed the rule section she was responsible for. I corresponded with her about getting final approval from the fact team as well.

Concerning the TWEN discussion boards and Wiki, I tried to post some substantive comments throughout the semester on TWEN, but was most active during the final two weeks of class. I also posted the completed drafts to the Wiki and emailed the complete statute to the class (both a preliminary draft and a final draft). The Final GEEPS Discussion board was busy over the last two weeks as well, and I tried to be punctual and helpful with my comments. I also started some threads where I felt were needed to elicit additional class discussion. Throughout I tried as best I could to present the class with two or three options, rather than just asking for general feedback, so as to work towards building a consensus.

Presentation

I presented during three class periods and in each instance created a Power Point presentation to aid the class in processing the material. The three Power Point presentations are attached as Exhibits D, E, and F. As I mentioned above, I attempted to structure the presentations to, one, give the class an idea of the progress we had collectively made on the statute, and, two, make efficient use of our class time to ensure that the most pressing issues were discussed first. Creating the Power Point slides and preparing for the class presentation took approximately two hours total.

Conclusions

The categories mentioned above necessarily overlap. Such overlap is not intended to artificially inflate my contributions; rather my intent is to express the four facets of my involvement in the most comprehensive way possible. In the end, as the point person for the statute, the editing process (as captured in email correspondence) and the final GEEPS Act are the best indicators of the quantity and quality of my group and individual contributions.



Commission Makeup and Procedures

I. GEEPS Commission

(A) Composition; function of Commission

(1) There is established an independent regulatory commission to be known as the Genetically Engineered and Extinct Prehistoric Species (GEEPS) Commission which shall be composed of seven members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least five members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

(2) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in this chapter), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

(3) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(4) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(5) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

(B) Appointment of members

(1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than four members of the Commission shall be members of the same political party.

(3) Three members of the Commission shall be representatives of private industry. The other four members shall be from the public sector.

(C) Term of office

Each member shall serve for a term of seven years, each such term to commence on July 1, except that of the seven members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, one for five years, one for six years and one for seven years to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the GEEPS Commission, each such term shall be deemed to have begun July 1, 2012.

(D) Submission of appointments to Senate

Such initial appointments shall be submitted to the Senate within 180 days of [the last day of this class].

(E) Removal of members; prohibition against engagement in business or other employment

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment while serving as a member of the Commission. Upon completion of service on the Commission, no member shall serve as an executive officer for any private corporation whose activities fall within the provisions of this Act.

(F)

Conflict of Interest

Members of the commission and employees of the agency are declared to be in positions of public trust. In order to ensure the confidence of the people of the United States in the integrity of the agency, its employees, and the commission, the following restrictions shall apply:

(1) Acceptance of fees, commissions, gifts, or other considerations prohibited

No officer, attorney, or other employee of the agency shall, directly or indirectly, be the beneficiary of, receive or solicit any fee, commission, gift, or other consideration of monetary value for or in connection with any transaction or business under this chapter other than such salary, fee, or other compensation as she may receive as such officer, attorney, or employee of the agency.

(a) Notwithstanding any other provision of this statute, the following exceptions shall apply to the rule against acceptance of gifts:

- (i) Unsolicited gifts with a monetary value of \$20.00 or less;
- (ii) Gifts clearly received on behalf of a familial or personal relationship;
- (iii) Free attendance to an event or function at which the officer, attorney or employee is speaking or presenting on behalf of the agency; and
- (iv) Gifts given as an award or honorary degree for work conducted on behalf of the agency.

(2) Acquisition of interest in a regulated entity by certain officers or employees of the Commission for GEEPs prohibited; 3-year period

Except as otherwise provided in this subsection, no officer or employee of the Agency who acts on or reviews applications, investigates or enforces regulations set forth under this statute may acquire, directly or indirectly, any financial interest in such regulated entity for a period of three years after the date on which such officer or employee ceases to be employed by the Commission.

(3) Prohibitions

(a) Any officer, attorney or employee of this agency, including but not limited to Commissioner, Commissioner member, Advisory Committee member, Inspector or Enforcer, shall not—

- (i) carry out any inspections of any operation in which such certifying agent, or employee of such certifying agent has, or has had, a financial interest, including the provision of consultancy services; or
- (ii) accept payment, gifts, or favors of any kind from the business or entity inspected other than prescribed fees; or
- (iii) be financially interested (directly or otherwise) in any business entity falling under regulation by GEEPs; or
- (iv) be in the employment of, or accept gratuities from, any such entity; or
- (v) be engaged in any other kind of activity specified by regulation of the GEEPs Commission as involving a conflict of interest; provided, however, that the GEEPs Commission may by regulation provide exceptions to the restrictions of this section as the GEEPs Commission determines are consistent with the purposes of this section.

(b) Prohibition with respect to personnel of official or Federal agencies and business or governmental entities related to such agencies; substantial stockholder; use of official inspection service; authority delegation; report to Congressional committees

- (i) No official agency or a Federal agency delegated authority under this chapter, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the commercial transportation, storage, merchandising, or other commercial handling of grain, or the use of official inspection service; and no business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial



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interest in, any official agency or a Federal agency delegated inspection authority. Further, no substantial stockholder in any incorporated official agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official agency.

(ii) A substantial stockholder of a corporation shall be any person holding 2 per centum or more, or one hundred shares or more, of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to another entity if it owns or controls, or is owned or controlled by, such other entity, or both entities are owned or controlled by another entity.

(iii) If a Federal governmental agency is delegated authority to perform official inspection, or a Federal governmental agency is designated as an official agency, the GEEPs Commission shall specify the officials and other personnel thereof to which the conflict of interest provisions of this subsection (2) apply.

(4) Penalties

(a) Any persons violating any provision of this section shall, upon conviction thereof, be punished by the following:

(i) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than two years or fined in the amount set forth in this title, or both.

(ii) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under any provision of this section and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$200,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under any provision of this section, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

(5) Review of Advisory Committee Members' Outside Interests

The Designated Federal Officer or alternate for each GEEPs advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

(6) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

(7) This section is to be considered supplemental to all other criminal or civil statutory, or common law regulations and penalties set forth under federal or state law including, but not limited to, the Standards of Ethical Conduct codified at 5 C.F.R. § 2635, and the following federal statutes: 18 U.S.C. §§ 203, 205, 207-09, as enforced under 18 U.S.C. § 216.



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II. Functions of the Commission

(a) Those functions of the GEEPS Commission, hereinafter referred to as the "Commission", concerned with:

(1) policy formulation;

(2) rulemaking, as promulgated in Section (a) of Rulemaking and Adjudication, except that those matters that do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;

(3) orders and adjudications, as promulgated in Section (b) of Rulemaking and Adjudication;

shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Geeps Commission, hereinafter referred to as the "Chairman", and to the staff through the Chairman.

(b)(1) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

(i) Secretary of the Commission,

(ii) General Counsel,

(iii) Director of the Office of Policy Evaluation,

(iv) Director of Hazard Elimination Agency Team (HEAT),

(v) Director of the Office of Compliance and Enforcement,

(vi) Dinosaur Park Safety and Licensing Board Panel,

(vii) Dinosaur Park Safety and Licensing Appeal Panel,

(viii) Director of GEEPS Standards Development Office.

III. Practice Before the Commission

(a) **Representing oneself.** In any proceeding, an individual may appear on his or her own behalf.

(b) **Representing others.** In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(c) **Former Commission employees.** Former employees of the Commission are not barred from representing parties before the Commission so long as they do not violate the provisions governing Conflicts of Interest under this Title.

(d) **Designation of address for service; notice of appearance; power of attorney; withdrawal.**

(1) **Representing oneself.** When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding under the Commission's authority, he or she shall file with the Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) **Representing others.** When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding under the Commission's authority, that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) **Power of attorney.** Any individual appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

(4) **Withdrawal.** Any person seeking to withdraw his or her appearance in a representative capacity shall file



a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on all interested parties in the proceeding. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

(e) Suspension and disbarment.

(1) Generally. The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of any provision of GEEPS or the rules and regulations thereunder.

(2) Certain professionals and convicted persons. Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person who has been convicted of a felony or a misdemeanor involving a person/organization/organism regulated by GEEPS shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

(3) Temporary suspensions. An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) of this section more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) of this section has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, genetic engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of GEEPS or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of GEEPS or of the rules and regulations thereunder.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) of this section may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii) of this section, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this section, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this section or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this section and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) of this section without admitting the facts set forth in the complaint shall be presumed for all



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purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) Filing of prior orders. Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this section shall promptly file with the Secretary of the Commission a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section.

(5) Reinstatement.

(i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e) (3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this section shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this section may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

(6) Other proceedings not precluded. A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this section shall not preclude another proceeding brought under these same paragraphs.

(7) Public hearings. All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

(f) Practice defined. For the purposes of these Rules of Practice, practicing before the Commission shall include, but shall not be limited to:

(1) Transacting any business with the Commission; and

(2) The preparation of any statement, opinion or other paper by any attorney, genetic engineer or other professional or expert, filed with the Commission in any licensing application, notification, safety or enforcement proceeding, rulemaking proceeding, or submission of other documents with the consent of such attorney, genetic engineer or other professional or expert.



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§ 2 Commission Makeup and Procedures

§2.1 GEEPS Commission

§ 2.1.1 Composition and Function of Commission

(a) There is established an independent regulatory commission to be known as the Genetically Engineered and Extinct Prehistoric Species (GEEPS) Commission which shall be composed of seven members, each of whom shall be a citizen of the United States. The President shall designate one member of the Commission as Chairman thereof to serve as such during the pleasure of the President. The Chairman may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all meetings of the Commission and a quorum for the transaction of business shall consist of at least five members present. Each member of the Commission, including the Chairman, shall have equal responsibility and authority in all decisions and actions of the Commission, shall have full access to all information relating to the performance of his duties or responsibilities, and shall have one vote. Action of the Commission shall be determined by a majority vote of the members present. The Chairman (or Acting Chairman in the absence of the Chairman) shall be the official spokesman of the Commission in its relations with the Congress, Government agencies, persons, or the public, and, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission, and shall report thereon to the Commission from time to time or as the Commission may direct. The Commission shall have an official seal which shall be judicially noticed.

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(b) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (a) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman, and except as otherwise provided in this chapter), (b) the distribution of business among such personnel and among administrative units of the Commission, and (c) the use and expenditure of funds.

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(c) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

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(d) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

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There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

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§ 2.1.2 Appointment, Term, and Removal of Members

(a) Appointment

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(1) Members of the Commission shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Appointments of members pursuant to this subsection shall be made in such a manner that not more than four members of the Commission shall be members of the same political party.

(3) Three members of the Commission shall be representatives of private industry. The other four members shall be from the public sector.

(b) Term of Office

Each member shall serve for a term of seven years, each such term to commence on July 1, except that of the seven members first appointed to the Commission, one shall serve for one year, one for two years, one for three years, one for four years, one for five years, one for six years and one for seven years to be designated by the President at the time of appointment; and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. For the purpose of determining the expiration date of the terms of office of the five members first appointed to the GEEPS Commission, each such term shall be deemed to have begun July 1, 2012.

(c) Submission of appointments to Senate

Such initial appointments shall be submitted to the Senate within 180 days of passage of the Act.

(d) Removal of members; prohibition against engagement in business or other employment

Any member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No member of the Commission shall engage in any business, vocation, or employment while serving as a member of the Commission. Upon completion of service on the Commission, no member shall serve as an executive officer for any private corporation whose activities fall within the provisions of this Act.

§ 2.1.3 Conflict of Interest

Members of the commission and employees of the agency are declared to be in positions of public trust. In order to ensure the confidence of the people of the United States in the integrity of the agency, its employees, and the commission, the following restrictions shall apply:

(a) Acceptance of fees, commissions, gifts, or other considerations prohibited

No officer, attorney, or other employee of the agency shall, directly or indirectly, be the beneficiary of, receive or solicit any fee, commission, gift, or other consideration of monetary value for or in connection with any transaction or business under this chapter other than such salary, fee, or other compensation as she may receive as such officer, attorney, or employee of the agency.

(I) Notwithstanding any other provision of this statute, the following exceptions shall apply to the rule against acceptance of gifts:

- (i) Unsolicited gifts with a monetary value of \$20.00 or less;
- (ii) Gifts clearly received on behalf of a familial or personal relationship;
- (iii) Free attendance to an event or function at which the officer, attorney or employee is speaking or presenting on behalf of the agency; and
- (iv) Gifts given as an award or honorary degree for work conducted on behalf of the agency.

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(b) Acquisition of Interest in a Regulated Entity

Except as otherwise provided in this subsection, no officer or employee of the Agency who acts on or reviews applications, investigates or enforces regulations set forth under this statute may acquire, directly or indirectly, any financial interest in such regulated entity for a period of three years after the date on which such officer or employee ceases to be employed by the Commission.

(c) Prohibitions

(1) Any officer, attorney or employee of this agency, including but not limited to Commissioner, Commissioner member, Advisory Committee member, Inspector or Enforcer, shall not—

- (i) carry out any inspections of any operation in which such certifying agent, or employee of such certifying agent has, or has had, a financial interest, including the provision of consultancy services; or**
- (ii) accept payment, gifts, or favors of any kind from the business or entity inspected other than prescribed fees; or**
- (iii) be financially interested (directly or otherwise) in any business entity falling under regulation by GEEPs; or**
- (iv) be in the employment of, or accept gratuities from, any such entity; or**
- (v) be engaged in any other kind of activity specified by regulation of the GEEPs Commission as involving a conflict of interest; provided, however, that the GEEPs Commission may by regulation provide exceptions to the restrictions of this section as the GEEPs Commission determines are consistent with the purposes of this section.**

(2) Prohibition with respect to personnel of official or Federal agencies and business or governmental entities related to such agencies; substantial stockholder; use of official inspection service; authority delegation; report to Congressional committees

(i) No official agency or a Federal agency delegated authority under this chapter, or any member, director, officer, or employee thereof, and no business or governmental entity related to any such agency, shall be employed in or otherwise engaged in, or directly or indirectly have any stock or other financial interest in, any business involving the commercial transportation, storage, merchandising, or other commercial handling of grain, or the use of official inspection service; and no business or governmental entity conducting any such business, or any member, director, officer, or employee thereof, and no other business or governmental entity related to any such entity, shall operate or be employed by or directly or indirectly have any stock or other financial interest in, any official agency or a Federal agency delegated inspection authority. Further, no substantial stockholder in any incorporated official agency shall be employed in or otherwise engaged in, or be a substantial stockholder in any corporation conducting any such business, or directly or indirectly have any other kind of financial interest in any such business; and no substantial stockholder in any corporation conducting such a business shall operate or be employed by or be a substantial stockholder in, or directly or indirectly have any other kind of financial interest in, any official agency.

(ii) A substantial stockholder of a corporation shall be any person holding 2 per centum or more, or one hundred shares or more, of the voting stock of the corporation, whichever is the lesser interest. Any entity shall be considered to be related to

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another entity if it owns or controls, or is owned or controlled by, such other entity, or both entities are owned or controlled by another entity.

(iii) If a Federal governmental agency is delegated authority to perform official inspection, or a Federal governmental agency is designated as an official agency, the GEEPs Commission shall specify the officials and other personnel thereof to which the conflict of interest provisions of this subsection (2) apply.

§ 2.1.4 Penalties

(a) Any persons violating any provision of this section shall, upon conviction thereof, be punished by the following:

- (i) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than two years or fined in the amount set forth in this title, or both.
- (ii) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined in the amount set forth in this title, or both.

(b) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under any provision of this section and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$200,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(c) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under any provision of this section, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

§ 2.1.5 Committee Review

(a) The Designated Federal Officer or alternate for each GEEPs advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

§ 2.1.6 Testimony and Ethics

(a) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.

(b) This section is to be considered supplemental to all other criminal or civil statutory, or common law regulations and penalties set forth under federal or state law including, but not limited to, the Standards of Ethical Conduct codified at 5 C.F.R. § 2635, and the following federal statutes: 18 U.S.C. §§ 203, 205, 207-09, as enforced under 18 U.S.C. § 216.

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§ 2.2 Functions of the Commission

(a) Those functions of the GEEPS Commission, hereinafter referred to as the "Commission", concerned with:

- (1) policy formulation;
- (2) rulemaking, as promulgated in Section (a) of Rulemaking and Adjudication, except that those matters that do not pertain to policy formulation orders or adjudications shall be reserved to the Chairman of the Commission;
- (3) orders and adjudications, as promulgated in Section (b) of Rulemaking and Adjudication; shall remain vested in the Commission. The Commission may determine by majority vote, in an area of doubt, whether any matter, action, question or area of inquiry pertains to one of these functions. The performance of any portion of these functions may be delegated by the Commission to a member of the Commission, including the Chairman of the Geeps Commission, hereinafter referred to as the "Chairman", and to the staff through the Chairman.

(b) With respect to the following officers or successor officers duly established by statute or by the Commission, the Chairman shall initiate the appointment, subject to the approval of the Commission; and the Chairman or a member of the Commission may initiate an action for removal, subject to the approval of the Commission:

- (1) Secretary of the Commission,
- (2) General Counsel,
- (3) Director of the Office of Policy Evaluation,
- (4) Director of Hazard Elimination Agency Team (HEAT),
- (5) Director of the Office of Compliance and Enforcement,
- (6) Dinosaur Park Safety and Licensing Board Panel,
- (7) Dinosaur Park Safety and Licensing Appeal Panel,
- (8) Director of GEEPS Standards Development Office,

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III. Practice Before the Commission

(a) Representing oneself. In any proceeding, an individual may appear on his or her own behalf.

(b) Representing others. In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(c) Former Commission employees. Former employees of the Commission are not barred from representing parties before the Commission so long as they do not violate the provisions governing Conflicts of Interest under this Title.

(d) Designation of address for service; notice of appearance; power of attorney; withdrawal.

(1) Representing oneself. When an individual first makes any filing or otherwise appears on his or her own behalf before the Commission or a hearing officer in a proceeding under the Commission's authority, he or she shall file with the Commission, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) Representing others. When a person first makes any filing or otherwise appears in a representative capacity before the Commission or a hearing officer in a proceeding under the Commission's authority, that person shall file with the Commission, and keep current, a written notice stating the name of the proceeding; the representative's name, business address and telephone number; and the name and address of the person or persons represented.

(3) Power of attorney. Any individual appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

(4) Withdrawal. Any person seeking to withdraw his or her appearance in a representative capacity shall file a notice of withdrawal with the Commission or the hearing officer. The notice shall state the name, address, and telephone number of the withdrawing representative; the name, address, and telephone number of the person for whom the appearance was made; and the effective date of the withdrawal. If the person seeking to withdraw knows the name, address, and telephone number of the new representative, or knows that the person for whom the appearance was made intends to represent him- or herself, that information shall be included in the notice. The notice must be served on all interested parties in the proceeding. The notice shall be filed at least five days before the proposed effective date of the withdrawal.

(e) Suspension and disbarment.

(1) Generally. The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

- (i) Not to possess the requisite qualifications to represent others; or
- (ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or
- (iii) To have willfully violated, or willfully aided and abetted the violation of any provision of GEEPS or the rules and regulations thereunder.

(2) Certain professionals and convicted persons. Any attorney who has been suspended or disbarred by a court of the United States or of any State; or any person who has been convicted of a



felony or a misdemeanor involving a person/organization/organism regulated by GEEPS shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation or conviction within the meaning of this section shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether an appeal of such judgment or order is pending or could be taken.

(3) Temporary suspensions. An order of temporary suspension shall become effective upon service on the respondent. No order of temporary suspension shall be entered by the Commission pursuant to paragraph (e)(3)(i) [K1] of this section more than 90 days after the date on which the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) of this section has become effective, whether upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, genetic engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of GEEPS or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by the Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of GEEPS or of the rules and regulations thereunder.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) [K2] of this section may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii) of this section, the Commission shall either lift the temporary suspension, or set the matter down for hearing at a time and place designated by the Commission, or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii) of this section, the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) of this section or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) of this section and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he

or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner may not contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph

(e)(3)(i)(A) of this section without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) Filing of prior orders. Any person appearing or practicing before the Commission who has

been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this section shall promptly file with the Secretary of the Commission a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section.

Filing of prior orders. Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this section shall promptly file with the Secretary of the Commission a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section. (5)

Reinstatement.

(i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e) (3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this section shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this section may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

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Filing of prior orders. Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth in paragraph (e)(3) of this section shall promptly file with the Secretary of the Commission a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree or finding shall not impair the operation of any other provision of this section.

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(6) Other proceedings not precluded. A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this section shall not preclude another proceeding brought under these same paragraphs.

(7) Public hearings. All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

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(6) Other proceedings not precluded. A proceeding brought under paragraph (e)(1), (e)(2) or (e)(3) of this section shall not preclude another proceeding brought under these same paragraphs.

(7) Public hearings. All hearings held under this paragraph (e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.



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ent: Sunday, April 22, 2012 9:01 PM
To: [Redacted]
Cc: Corrada, Roberto
Subject: Rulemaking and Adjudication Stuff
Attachments: Adjudication Draft 4-22.docx; Rulemaking Draft 4-22.doc

Changes are attached. There's a little editing to be done on the rulemaking section and some questions about adjudication.

THANK YOU for separating out the definitions. Huge help to me.

Rulemaking

Comment on Major/Minor issues.

I added the notice section from above as well. I'm not sure if you want major and minor rules to have different notice requirements. Also, I was under the impression that Negotiated rulemaking and formal rulemaking never coexisted. Clearly they're interacting here, albeit only in the proposal stage.

My suggestion would be this: Same proposal/notice requirements for major and minor rules. Different comment requirements.

Also, formal/informal rulemaking and major/minor rules have no relationship as far as I know. That is to say informal rulemaking can make major rules. We might consider ditching the major/minor rule distinction as it really only matters for congressional review. Have the same rulemaking procedure for everything, and just be a little more explicit about giving the agency authority to make emergency rules.

Negotiated Rulemaking:

I like the section, and I think Negotiated Rulemaking has some merit in our situation. If you could, please try to break up the section a bit with some headings. It kinda runs together. I think I understand when Negotiated Rulemaking is appropriate, but I'm just a little unclear on what the Commission DOES with the committee's final report. I placed this section on the GEEPS Discussion board to see what the rest of the class thinks.

Adjudication:

I think there is a ton of great stuff in this section. I think we need a more explicit reference to the APA because I'm assuming that's where we're getting our procedures from. Maybe something as simple as "§ 556 and 557 apply except where they conflict with this section." Right now there really isn't much about the actual hearing procedure. Again, that's fine because we have the APA, but for our classmates sake at least, let's at least note that.

Overall, this is very thorough. And again, you guys are the experts here, not me, so my comments come as a first time reader.

Thanks for the hard work.

Cheers,

[Redacted]

J.D. Candidate 2013
 University of Denver Sturm College of Law

[Redacted]



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§ 8 Rulemaking Procedure

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§ 8.1 Rulemaking Authority

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The Agency shall have the authority to promulgate rules in furtherance of the policy, goals, and purpose of this act.

§ 8.2 Minor Rules

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(a) With the exception of instances where negotiated rulemaking is employed in accordance with section 8.1.3 of this chapter, and instances where the proposed rule is a major rule as defined Section 1 of this Act, any action for the issuance, amendment, or repeal of any regulation under this title, shall begin by a proposal made

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(1) by the Secretary on his own initiative,

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(2) by an Advisory Committee, or

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by petition of any interested person, showing reasonable grounds therefor, filed with the Secretary.

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(b) General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include--

(1) a statement of the time, place, and nature of public rule making proceedings;

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(2) reference to the legal authority under which the rule is proposed; and

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(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

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(c) Once a proposed rule is published in this manner:

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(a) The Secretary shall afford all interested persons an opportunity to present their views thereon, orally or in writing.

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(b) As soon as practicable thereafter, but not earlier than 60 days after the publication of the proposed rule, the Secretary shall make such rule final and publish it in the Federal Register.

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The rule shall become effective at such time as may be specified therein, but not earlier than 30 days after the final rule is published, unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

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¶

Deleted: The Commission shall provide for a 30-day post-promulgation comment period for--¶

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Deleted: Any rule adopted under the emergency provision of section (c)(3), and



(d) ~~The Commission shall provide for a 30-day post-promulgation comment period for--~~

(1) ~~Any rule adopted under the emergency provision of section and~~

~~For any post-promulgation comments received, the Secretary shall publish a statement in the Federal Register containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.~~

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(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

§ 8.3 Major Rules

1) if a proposed rule is a major rule as defined by [THE DEFINITION SECTIONS], it must be proposed through a negotiated rulemaking under section 8.3 of this Act.

2) General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. ~~The notice shall include--~~

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~~(4) a statement of the time, place, and nature of public rule making proceedings;~~

~~(5) reference to the legal authority under which the rule is proposed; and~~

~~(6) either the terms or substance of the proposed rule or a description of the subjects and issues involved.~~

3) ~~_____~~

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4) Within 30 days after the notice is published, the Secretary shall hold a public hearing on the record for the purpose of receiving evidence relevant and material to the proposed rule.

5) The public hearing shall be held in accordance with 5 U.S.C. §§ 556 and 557, as provided below:

- Comment [K2]: Is there anything Act specific below? If not, let's just refer to the APA for procedures.
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5)- The hearing shall be presided by:

(i) the agency;

(ii) one or more members of the body which comprises the agency; or

(iii) one or more administrative law judges appointed under section 3105 of this title.



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5) Subject to published rules of the agency and within its powers, employees presiding at hearings may--

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with 5 U.S.C. § 557 ; and

(11) take other action authorized by agency rule consistent with this subchapter.

(f) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(g) At the hearing, any interested person may be heard in person or by representative. As soon as practicable after completion of the hearing, the Secretary shall make the final rule public. Such rule shall be based only on substantial evidence of record at such hearing and shall set forth, as part of the rule, detailed findings of fact on which the rule is based. The Secretary shall specify in the rule the date on which it shall take effect, except that it shall not be made to take effect prior to the ninetieth day after its



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publication unless the Secretary finds that emergency conditions exist necessitating an earlier effective date, in which event the Secretary shall specify in the order his findings as to such conditions.

- (h) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with 5 U.S.C. § 557 and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

§ 8.3 Negotiated Rulemaking

- (a) The Commission shall establish a negotiated rulemaking committee whenever a proposed rule is a major rule as defined in [DEFINITION SECTION].

- (b) The Commission may establish a negotiated rulemaking committee to negotiate and develop any other proposed rule, if the Secretary determines that the use of the negotiated rulemaking procedure is in the interest of efficiency. In making such a determination, the Secretary shall consider whether:

- (1) there is a need for a rule;
- (2) there are a limited number of identifiable interests that will be significantly affected by the rule;
- (3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified under this subsection and are willing to negotiate in good faith to reach a consensus on the proposed rule;
- (4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- (5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;
- (6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
- (7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

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Comment [K4]: Please parse this out a bit more. Right now it's a little long and unwieldy as all one section. Try to group committee establishment together, committee discussions together, etc.
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Comment [K5]: Again, this doesn't quite seem to live with the above. I'll leave it in for now I suppose.
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Comment [K6]: This seems like a more logical place to start.
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(c) If the Commission ~~establishes~~ a negotiated rulemaking committee, the Commission shall publish in the Federal Register and, as appropriate, in trade or other specialized publications, a notice which shall include:

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- (1) an announcement that the Commission intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;
- (2) a description of the subject and scope of the rule to be developed, and the issues to be considered;
- (3) a list of the interests which are likely to be significantly affected by the rule;
- (4) a list of the persons proposed to represent such interests and the person or persons proposed to represent the Commission;
- (5) a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment;
- (6) a description of administrative support for the committee to be provided by the agency, including technical assistance;
- (7) a solicitation for comments on the proposal to establish the committee, and the proposed membership of the negotiated rulemaking committee; and
- (8) an explanation of how a person may apply or nominate another person for membership on the committee, as provided under subsection (b).

(d) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under subsection (b)(1)(D) may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule.

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(e) If after considering comments and applications submitted under subsection (b), the Commission determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular

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rulemaking, the Commission may establish a negotiated rulemaking committee. In establishing and administering such a committee, the Commission shall comply with the Federal Advisory Committee Act with respect to such committee, except as otherwise provided in this subchapter.

(f) The Commission shall limit membership on a negotiated rulemaking committee to 25 members, unless the Commission head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the Commission.

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(g) The Commission shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance.

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(h) Each negotiated rulemaking committee established under this subchapter shall consider the matter proposed by the Commission for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.

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(i) If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall transmit to the Commission a report containing the proposed rule. If the committee does not reach a consensus on a proposed rule, the committee may transmit to the Commission a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials.

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(j) In addition to the report required by subsection (7), a committee shall submit to the Commission the records required under section 10(b) and (c) of the Federal Advisory Committee Act.

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(k) The Commission shall make all reasonable efforts to incorporate the consensus reached by the committee into the draft of the proposed rule and publish is for notice and comment in accordance with section (a) of this chapter.

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§ 8.4 Review Procedure

Comment [K8]: The JR team has this language and SHOULD be incorporating it. If there's anything you're ultra concerned about them including, send them an email.

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(a) All challenges to rules or procedures shall be made pursuant to § 13 of this Act.

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<#>¶
<#>If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence. ¶

<#>¶
<#>Upon the filing of the petition referred to in paragraph (a) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Secretary refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall by its judgment order the Secretary to take action, with respect to such regulation, in accordance with law. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. ¶

<#>¶
<#>The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in this Act ¶

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there are a limited number of identifiable interests that will be significantly affected by the rule;

there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

can adequately represent the interests identified under paragraph (B); and are willing to negotiate in good faith to reach a consensus on the proposed rule;

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In a case of actual controversy as to the validity of any order under subsection (a)(2) of this section, any person who will be adversely affected by such order if placed in effect may at any time prior to the ninetieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in this Act.

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

Upon the filing of the petition referred to in paragraph (a) of this subsection, the court shall have jurisdiction to affirm the order, or to set it aside in whole or in part, temporarily or permanently. If the order of the Secretary refuses to issue, amend, or repeal a regulation and such order is not in accordance with law the court shall by its judgment order the Secretary to take action, with respect to such regulation, in accordance with law. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in this Act.

Any action instituted under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

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GEEPS Act

*Additions, Corrections,
Modifications*

April 17, 2012

- GEEPS Act Proposed Structure**
- Policy
 - Commission
 - *Inspector General*
 - *Licensing*
 - Inspection
 - Rulemaking and Adjudication
 - Enforcement
 - Judicial Review

- Sections Needed**
- Inspector General
 - Licensing
 - **Other Possibilities (from Commission Section)**
 - Office of Compliance and Enforcement
 - Park Safety and Licensing Board
 - Park Safety and Licensing Appeal
 - GEEPS Standards Development Office
 - **OTHER THOUGHTS?**

- Biotech Industry Issues Addressed by Statute**
- Types of Dinosaurs and Plants
 - Recordkeeping Section?
 - Control of Biotech Companies
 - Licensing Section?
 - Extraterritoriality
 - Policy Section Sufficient?
 - Secrecy Issues – Espionage
 - Recordkeeping/Inspection Section

- Biotech Issues: Other**
- Post accident accountability – Bankruptcy
 - ????

- Park/Dino Safety Issues Addressed**
- Safety of People/Employees/Dinosaurs
 - (In Part) Inspection Section and HEAT Team
 - Inspection of Parks/Facilities
 - Inspection Section w/ changes



Park/Dino Safety Issues

- Reproduction?
- Contact with Ecosystem?
- Lysine?
- Supervisory Role of GEEPS Agency?

Onward

- Add Sections
- Edit Sections for Constitutionality
- Edit Sections for JP Issues
- Format
- Combine
 - Review for consistency
 - Return to teams for changes approval
 - Return to class for final approval

Other Thoughts?

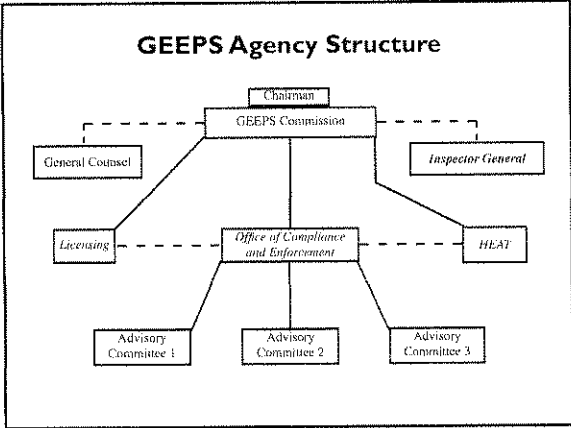


GEEPS Act

*Team Reports
and Statute Structure*

- Statute Structure**
1. Definitions
 2. Policy
 3. Effect – Extraterritoriality and Preemption
 4. Commission
 5. Licensing
 6. Inspection
 7. Office of Compliance

- Statute Structure**
8. Rulemaking
 9. Adjudication
 10. Enforcement
 11. Practice Before Commission
 12. Inspector General
 13. Judicial Review





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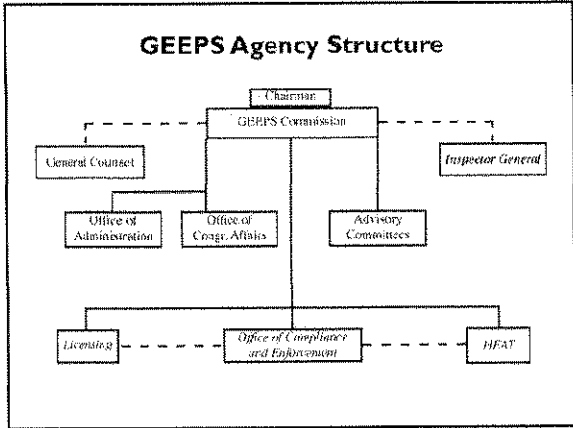
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GEEPS Act

*Statute Structure
and Final Comments*

- Statute Structure**
1. Definitions
 2. Policy
 3. Effect – Extraterritoriality and Preemption
 4. Commission
 - a) Offices
 - b) Advisory Committees
 5. Licensing
 6. OCE

- Statute Structure**
7. HEAT
 8. Rulemaking
 9. Adjudication
 10. Enforcement
 11. Practice Before Commission
 12. Inspector General
 13. Judicial Review



Agency Rules

- Comments and Suggestions**
- Rulemaking Section
 - Major and Minor Rules
 - Negotiated Rulemaking
 - OCE
 - Board versus Executive Secretary
 - Camara and Inspections



Comments and Suggestions

- **Enforcement**
 - Warnings/Prohibitions/Civil/Criminal

- **Effect**
 - Civil suits . . . A good idea?

- **Policy**
 - Too broad a delegation?



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Ex G.

From: [REDACTED]
Sent: Thursday, April 26, 2012 9:32 PM
To: [REDACTED]
Subject: Additional provisions to recover damages from dino parks
Attachments: § 3 Effect Draft 4-26.docx

Hi [REDACTED]

I added section 13.3 to the "effect" draft, which is actually several subsections (13.3.1, 13.3.2, etc.) regarding claims heard by the Commission to award damages to people hurt by dinos. I modelled it after the Federal Employees Compensation Act, although it developed into something different. I didn't really know where else to put this language, but now the "effect" section needs to be called the "effect and recovery of damages" section or something.

I also needed to remove the language in section 13.1 saying that the Act doesn't preempt state tort claims; I can't track changes for some reason so I just marked this sentence using the "strikethrough" feature... this will need to be deleted.

We talked in class about me writing a memo on what kind of federal caps there are on damages (esp. in the employment context). I am still planning on doing this -- tomorrow morning sometime -- and posting it to TWEN. But at any rate I don't think it matters for the statute because the language I drafted allows all actual damages against dino parks but does not allow claims against the US gov't.

I hope my draft makes sense! Let me know if it is way off of what we discussed in class I and I will try another stab at it Friday morning. Sorry for the late rush on my end, but I appreciate your hard work on this.

From: [REDACTED]
Sent: Tuesday, April 24, 2012 3:40 PM
To: [REDACTED]
Subject: Wiki Up - (Administrative Law Seminar)

Class,
The Wiki is UP. All 14 sections are up there.

Couple things:

Make sure the concerns Professor Corrada put in his email are addressed if they are in your section. (The big ones we took care of in class today)

DO NOT make changes to the Wiki. Either send me the provision you want added or swapped out, or make the changes to the *most recent* draft I emailed back to you, track changes in Word, and send back to me. If you change the Wiki, a. I won't know what you changed, and b. it might not make the final statute. The Wiki is just to make things manageable to look at.

Please get [REDACTED] any rule suggestions you have, or issues from the book you think the statute does not address.

I'm working all day Friday, so ideally I'd like to have your changes by 8pm or so Thursday night. But, if you email me Thursday night and say you're still working, then anytime Friday is fine. If everything is done Thursday night, I'll send out a final version then. Otherwise, Saturday sometime.

Best of luck, and thanks again for all your prompt responses. It helps me out a ton.

Cheers,
[REDACTED]



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From: [REDACTED]
Sent: Tuesday, April 24, 2012 11:01 AM
To: [REDACTED]
Subject: Changes to Judicial Review
Attachments: Judicial Review Switch Up.docx

Hey [REDACTED],

I've attached some changes to judicial review. Here are some explanations:

1. The 13.4 Section attached should completely replace the current section.
2. The 13.4(2) Section is new and explains the appeals process in more detail. I'm not sure what you want to call it. Maybe 13.5 and push all the other numbers back one.
3. I've changed a few things in 13.9. The things I have changed are bolded so you know what they are. I only go down to 13.9(b)(1). After that the section remains the same.

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Ex G.

From: [REDACTED]
Sent: Friday, April 27, 2012 7:53 PM
To: [REDACTED]
Subject: RE: Rulemaking and Adjudication Stuff
Attachments: §8 Rulemaking Draft 4-27.doc

Hey guys,

I put [REDACTED] corrections in [REDACTED] document (now titled '§8 Rulemaking Draft 4-27'). Feel free to let me know if you have any questions. Terribly sorry for getting this to you so late [REDACTED]. Thanks for all your work; great job everyone!

Kind Regards,

[REDACTED]
J.D. Candidate 2013
University of Denver Sturm College of Law
[REDACTED] Denver Journal of International Law and Policy
[REDACTED]

From: [REDACTED]
Sent: Thursday, April 26, 2012 10:54 PM
To: [REDACTED]
Subject: RE: Rulemaking and Adjudication Stuff

You guys have anything for me? I'll be posting the final version tomorrow afternoon.

From: [REDACTED]
Sent: Monday, April 23, 2012 9:49 PM
To: [REDACTED]
Cc: Corrada, Roberto
Subject: RE: Rulemaking and Adjudication Stuff

Hey Team,
I hate to be a stickler here, but I need you to put the changes in the document I sent back to you (now titled § 8 Rulemaking Draft 4-22). Your changes are great and super helpful. Unfortunately, they're not to the document I already edited, formatted and sent back, and I don't want to get the versions mixed up at this point and screw up both of our work.

No hurry. We'll just use the older version tomorrow with a mind toward the changes.

Thanks, and sorry to be a pain about this.

Cheers,
[REDACTED]

From: [REDACTED]
Sent: Monday, April 23, 2012 8:26 PM
To: [REDACTED]
Cc: Corrada, Roberto
Subject: RE: Rulemaking and Adjudication Stuff



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Hi everyone,

Attached are some minor changes, mostly formatting. I tried to more accurately reflect when we are doing negotiated rulemaking and when we aren't. In addition, I hope this clarifies that there are different things that happen in each instance. But, maybe it doesn't? We can discuss this some tomorrow.

Yours in Solidarity,

[REDACTED]
[REDACTED]:
American Civil Liberties Union

National Lawyers Guild

"I'll let you be in my dreams if I can be in yours"

- Bob Dylan

From: [REDACTED]
Sent: Sunday, April 22, 2012 11:16 PM
To: [REDACTED]
Cc: Corrada, Roberto
Subject: RE: Rulemaking and Adjudication Stuff

Hey [REDACTED]..

Thanks for all your work.
I believe we did want to keep some possible formal rule making with negotiated rule making. (correct me if I'm wrong rest of the rule making team) We're blazing new trail so to speak.

Thanks
[REDACTED]
[REDACTED]
JD Candidate 2012
BA Special Education
[REDACTED]

From: [REDACTED]
Sent: Sunday, April 22, 2012 11:00 PM
To: [REDACTED]
Cc: Corrada, Roberto
Subject: RE: Rulemaking and Adjudication Stuff

Thanks for all your help with this, [REDACTED].

Ex G.

We meant for the major/minor provisions to interact with the formal/informal rulemaking in different ways, and for the comment requirements to be different. Not for Congressional review purposes, but for imposing different procedural requirements for different types of rules. Perhaps we could be more clear. I will take a look at this tomorrow and see if I can't make some edits to more clearly define what we're doing and how to do it.

Yours in Solidarity,



American Civil Liberties Union

National Lawyers Guild

"I'll let you be in my dreams if I can be in yours"

- Bob Dylan

From: [REDACTED]
Sent: Sunday, April 22, 2012 9:00 PM
To: [REDACTED]
Cc: Corrada, Roberto
Subject: Rulemaking and Adjudication Stuff

Changes are attached. There's a little editing to be done on the rulemaking section and some questions about adjudication.

THANK YOU for separating out the definitions. Huge help to me.

Rulemaking

Comment on Major/Minor issues.

I added the notice section from above as well. I'm not sure if you want major and minor rules to have different notice requirements. Also, I was under the impression that Negotiated rulemaking and formal rulemaking never coexisted. Clearly they're interacting here, albeit only in the proposal stage.

My suggestion would be this: Same proposal/notice requirements for major and minor rules. Different comment requirements.

Also, formal/informal rulemaking and major/minor rules have no relationship as far as I know. That is to say informal rulemaking can make major rules. We might consider ditching the major/minor rule distinction as it really only matters for congressional review. Have the same rulemaking procedure for everything, and just be a little more explicit about giving the agency authority to make emergency rules.

Negotiated Rulemaking:

I like the section, and I think Negotiated Rulemaking has some merit in our situation. If you could, please try to break up the section a bit with some headings. It kinda runs together. I think I understand when Negotiated Rulemaking is appropriate, but I'm just a little unclear on what the Commission DOES with the committee's final report. I placed this section on the GEEPS Discussion board to see what the rest of the class thinks.

Adjudication:



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I think there is a ton of great stuff in this section. I think we need a more explicit reference to the APA because I'm assuming that's where we're getting our procedures from. Maybe something as simple as "\$ 556 and 557 apply except where they conflict with this section." Right now there really isn't much about the actual hearing procedure. Again, that's fine because we have the APA, but for our classmates sake at least, let's at least note that.

Overall, this is very thorough. And again, you guys are the experts here, not me, so my comments come as a first time reader.

Thanks for the hard work.

Cheers,

[REDACTED]

[REDACTED]

J.D. Candidate 2013
University of Denver Sturm College of Law

[REDACTED]

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Ex. 6

From: [REDACTED]
Sent: Tuesday, April 24, 2012 3:32 PM
To: [REDACTED]
Subject: RE: Changes to Judicial Review

[REDACTED]
Couple things I need:
A general rulemaking grant – I'll put it in rulemaking section.

Look through Licensing Heat, and OCE and make sure there's stuff in there about sharing information.

Anything else on Corrada's list that we didn't cover you can take a crack at. As always, anything you draft should be sent to me.

Thanks man.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, April 24, 2012 11:01 AM
To: [REDACTED]
Subject: Changes to Judicial Review

hey [REDACTED],

I've attached some changes to judicial review. Here are some explanations:

1. The 13.4 Section attached should completely replace the current section.
2. The 13.4(2) Section is new and explains the appeals process in more detail. I'm not sure what you want to call it. Maybe 13.5 and push all the other numbers back one.
3. I've changed a few things in 13.9. The things I have changed are bolded so you know what they are. I only go down to 13.9(b)(1). After that the section remains the same.

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From: [Redacted]
Sent: Thursday, April 26, 2012 11:18 PM
To: [Redacted]
Subject: Re: Final GEEPS Judicial Review Edit

And I hate to bother you again, but I noticed one small error. In §13.3(c) in Judicial Review it starts by saying: "Notwithstanding the previous two subsections..." - That is supposed to be "subsections" not "subsectiones." Sorry to make you go look for such a small thing.

On Thu, Apr 26, 2012 at 10:51 PM, [Redacted] wrote:

Great. Thanks.

From: [Redacted]
Sent: Thursday, April 26, 2012 6:47 PM
To: [Redacted]
Subject: Final GEEPS Judicial Review Edit

Hey [Redacted]

Here is my final edit of the Judicial Review section, which is my section along with [Redacted] Mostly it was making sure everything made sense and worked together as well as small corrections in the wording.

Thanks,

[Redacted]

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