Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States adopted three recommendations at its hybrid (virtual and in-person) Eighty-third Plenary Session: Agency Investigative Procedures; Consultation with State, Local, and Tribal Governments in Regulatory Policymaking; and Public Participation in Agency Adjudication.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2025–1, Adam Cline; Recommendation 2025–2, Becaja Caldwell; and Recommendation 2025–3, Lea Robbins. For each of these recommendations the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.*

The Assembly of the Conference met during its Eighty-third Plenary Session on June 12, 2025, to consider three proposed recommendations and conduct other business. All three recommendations were adopted.

Recommendation 2025–1, *Agency Investigative Procedures.* This recommendation provides best practices for agencies that promote accuracy, efficiency, and fairness in investigations of specific regulated entities. It provides guidance on initiating investigations; exchanging and considering evidence and arguments; issuing subpoenas and warrants; and deciding whether to terminate an investigation, negotiate with the subject of an investigation, or pursue an action in an administrative or judicial tribunal.

Recommendation 2025–2, *Consultation with State, Local, and Tribal Governments in Regulatory Policymaking.* This recommendation provides agencies with best practices regarding consultation with state, local, and tribal governments in the development and implementation of regulatory policies. It provides guidance on developing policies for consultation; designating officials responsible for overseeing and facilitating consultation; publicizing consultation opportunities; and adopting procedures to promote effective consultation with state, local, and tribal officials.

Recommendation 2025–3, *Public Participation in Agency Adjudication.* This recommendation provides agencies with best practices regarding public participation in administrative adjudications. It provides guidance on circumstances in which public participation may be appropriate; options for public participation; and methods for facilitating public participation effectively.

The Conference based its recommendations on research reports and prior history that are posted at: *https://www.acus.gov/event/83rd-plenary-session.*

Authority: 5 U.S.C. 595.

Dated: June 24, 2025.

Shawne C. McGibbon,

General Counsel.

Appendix—Recommendations of the Administrative Conference of the United States

Administrative Conference Recommendation 2025–1

Agency Investigative Procedures

Adopted June 12, 2025

Many federal agencies are responsible for detecting, investigating, and prosecuting potential violations of the statutes and regulations they administer.[1] Administrative investigation processes may involve a decision to initiate an investigation; requests for information and the exchange of evidence between an agency and the subject of an investigation; compulsory process, such as the issuance of a subpoena or warrant, to gather information from the subject of an investigation; consideration of evidence by the agency; and a decision to negotiate with the subject, settle the matter, initiate an action in an administrative or judicial tribunal, or terminate the investigation.[2] The Administrative Conference previously has recommended best practices for compiling and publishing enforcement manuals;[3] making settlement agreements publicly available;[4] allocating resources efficiently;[5] and using algorithmic tools, including artificial intelligence, to promote accuracy and efficiency in agency enforcement.[6] The Conference has specifically recommended that, subject to available resources, agencies responsible for investigating and prosecuting potential violations of the laws that they administer ''should develop an enforcement manual if doing so would improve communication of enforcement-related policies to agency personnel and promote the fair and efficient performance of enforcement functions consistent with established policies.''[7] Building on those recommendations, this Recommendation identifies best practices to improve transparency, fairness, and efficiency in agency investigations and help agencies carry out their regulatory missions effectively.

Statutes and agency rules govern how agencies allocate enforcement authority, including the authority to conduct investigations and direct the activities of

[1] This Recommendation does not address investigations conducted for general factfinding or policymaking purposes, routine inspections, accident or incident investigations when the agency lacks authority to initiate an enforcement action, or criminal investigations.

[2] Aram A. Gavoor, Administrative Investigations Best Practices 1–2 (May 20, 2025) (report to the Admin. Conf. of the U.S.).

[3] Admin. Conf. of the U.S., Recommendation 2022–5, *Regulatory Enforcement Manuals,* 88 FR 2314 (Jan. 13, 2023).

[4] Admin. Conf. of the U.S., Recommendation 2022–6, *Public Availability of Settlement Agreements in Agency Enforcement Proceedings,* 88 FR 2315 (Jan. 13, 2023); *see also* Admin. Conf. of the U.S., Recommendation 2023–1, *Proactive Disclosure of Agency Legal Materials,* ¶ 1(b), (d), 88 FR 42678, 42679 (July 3, 2023).

[5] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2012–7, *Agency Use of Third-Party Programs to Assess Regulatory Compliance,* 78 FR 2941 (Jan. 15, 2013); Admin. Conf. of the U.S., Recommendation 79–3, *Agency Assessment and Mitigation of Civil Money Penalties,* 44 FR 38824 (July 3, 1979).

[6] Admin. Conf. of the U.S., Recommendation 2024–5, *Using Algorithmic Tools in Regulatory Enforcement,* 89 FR 106406 (Dec. 30, 2024).

[7] Recommendation 2022–5, *supra* note 3, at 2314.

enforcement personnel. But aside from the Administrative Procedure Act's guarantee of the right to counsel for the subjects of investigations,[8] statutes typically leave many procedural aspects of investigations to agencies' discretion.[9] Many agencies with enforcement authority have compiled enforcement manuals that provide enforcement personnel with a ''comprehensive resource regarding enforcement-related laws and policies'' and seek to ''improve awareness of and compliance with relevant policies while promoting [public] transparency.'' [10]

Agency investigative procedures vary depending on, among other things, the statutes to which the agency is subject and the rules the agency adopts to implement them, the severity and nature of violations the agency investigates, the availability of agency resources, the urgency of the need to respond to a particular situation, and the public interest. The formality of an investigation also can determine the methods used by an agency. For example, some agencies collect informal information or review information collected in the course of supervising regulated entities before determining whether to initiate a formal investigation. Other agencies, by contrast, conduct a more formal investigation almost immediately after learning of a possible violation, for example during a routine inspection.[11]

Agencies may also solicit information and evidence from the subjects of investigations, using either voluntary or compulsory processes. Voluntary processes offer a subject an opportunity to present its position to the agency and present a holistic picture for the enforcement personnel upon receiving notice and before the agency moves forward with an action in an administrative or judicial tribunal.[12] Compulsory processes compel a person, in the course of an investigation, to produce testimony, records, information, or things or to submit to a search. These include subpoenas and warrants.[13]

Agencies differ in the discretion delegated to enforcement personnel in their investigative processes. For example, at some agencies, the authority to initiate investigations and carry out compulsory processes lies with agency heads or individual members of the agency, or other senior officials; other agencies give wide discretion to lower-level enforcement personnel for the same processes. Agency practices also vary in whether and when notice is provided to subjects of investigations, and in the agency's ability, and personnel authorized, to engage in negotiations and settlements or decide if an enforcement action is warranted. Some agencies utilize expedited settlement procedures, also termed fast-track settlement or pre-complaint settlement. Compared to traditional settlements, these processes typically are for minor and easily correctible violations, reduce penalties and minimize transaction costs while allowing agencies to achieve their enforcement goals, and save agency time and resources.[14] In some cases, agencies are required, under statutes and regulations, to work in tandem with the Department of Justice and an assistant U.S. attorney to draft or carry out certain compulsory processes.[15]

To improve the efficiency, effectiveness, fairness, and transparency of agency investigative procedures, this Recommendation provides best practices to agencies to prepare and, when appropriate, add to their publicly available enforcement manuals, (1) standards and processes regarding the authority of personnel to conduct investigations; (2) criteria used to determine whether to initiate an investigation; (3) notice, communication, and evidentiary procedures for the subjects of investigations, including compulsory processes; (4) criteria to consider when weighing evidence; and (5) criteria governing end-stage processes such as negotiation, settlement, no-action decisions, or the initiation of an action in an administrative or judicial tribunal.[16] In offering the best practices that follow, the Conference recognizes that agencies conduct investigations at different stages, utilize different investigative methodologies, and have varying goals and statutory duties. Agencies should account for these differences when implementing this Recommendation. In developing these procedures, agencies should also account for concerns that settlements may be inappropriate in some circumstances.

Recommendation

Disclosure and Transparency

1. Agencies should include in their enforcement manuals information about agency investigative procedures consistent with Recommendation 2022–5, *Regulatory Enforcement Manuals.* Such information should address the use of electronic submissions and, consistent with Recommendation 2024–5, *Using Algorithmic Tools in Regulatory Enforcement,* artificial intelligence.

2. Agencies should determine, before taking investigative actions, such as using a compulsory process, whether and to what extent they may be required by statute or otherwise, to coordinate with another agency. Agencies should disclose in their enforcement manuals the circumstances in which and the extent to which they must coordinate with another agency when conducting an investigation.

Initiating Investigations

3. Agencies should establish, and include in their enforcement manuals, procedures that clearly explain whether enforcement personnel may initiate investigations independently or whether they must first gain approval from a supervisor or other agency official.

4. Agencies should provide enforcement personnel with clear criteria to determine whether to proceed with an investigation.

Investigative Methods

5. When agencies seek information, either formally or informally, from the subjects of an initiated investigation, they should communicate to the subjects:

a. The scope and general nature of the investigation;

b. The potential violations of statutes or regulations being investigated;

c. The date by which the subject must submit the information or otherwise respond to the request, including procedures for requesting an extension of time;

d. Whether any challenge or appeal process exists regarding the request;

e. Whether the information is being sought through a compulsory or voluntary process; and

f. Whether refusal to provide the information sought may result in a compulsory process.

6. Agencies should develop clear procedures, and include such procedures in enforcement manuals, for facilitating the exchange of information and evidence between the subject of an investigation and the agency.

7. When agencies engage in compulsory processes, they should clearly specify the basis in law for their action and whether any conduct or forbearance of conduct by the subject gave rise to the action. Agencies should provide adequate time for the subjects of investigations to respond to compulsory processes before seeking judicial intervention.

8. Agency officials initiating a compulsory process under their delegated authority should notify the relevant agency head when they use such a process.

9. As applicable, agencies should establish processes for administrative review of decisions regarding compulsory processes. When agencies issue an order through a compulsory process, they should allow the subject of the compulsory process to seek higher agency review on an interlocutory basis or at least allow for review before the agency seeks judicial enforcement.

Determining the Appropriate Course of Action Following an Investigation

10. Agencies should provide, and include in their enforcement manuals, instructions to enforcement personnel on considering evidence for purposes of determining whether to initiate or recommend initiating an action in an administrative or judicial tribunal, including the standard of proof an agency must meet in administrative proceedings, whether that standard differs from the preponderance of the evidence standard used by federal district courts in civil cases, and where the burden of proof rests in particular cases.

11. Agencies should provide, and include in enforcement manuals, the relevant factors that enforcement personnel should consider,

[8] *See* 5 U.S.C. 555(b); *see also* Admin. Conf. of the U.S., Statement #16, *Right to Consult with Counsel in Agency Investigations,* 59 FR 4677 (Feb. 1, 1994).

[9] *See, e.g.,* 42 U.S.C. 9604 (Comprehensive Environmental Response, Compensation, and Liability Act); 12 U.S.C. 5562 (Dodd-Frank Act); 47 U.S.C. 401–16 (Communications Act of 1934).

[10] Recommendation 2022–5, *supra* note 3.

[11] Gavoor, *supra* note 2, at 4–6, 27–28.

[12] *Id.* at 16–17.

[13] *Id.* at 8–13.

[14] *See generally id.* at 16–17, 55–57, 117–19.

[15] *See id.* at 7–8, 11–19.

[16] Recommendation 2022–5, *supra* note 3, at 2314.

including when preparing any supporting documentation such as justification memoranda, in recommending that the agency offer or enter into a settlement with the subject of an investigation, terminate the investigation, or initiate an action in an administrative or judicial tribunal.

12. Agencies should provide notice to the subjects of investigations before initiating an action in an administrative or judicial tribunal unless there are compelling reasons not to do so. The notice should include:

a. A statement that the agency has found substantial grounds for initiating an action against the subject based on alleged misconduct;

b. A detailed factual description of the alleged misconduct;

c. The legal basis for the action;

d. An invitation to respond to the evidence against the subject, as applicable;

e. Information about opportunities to submit additional evidence or argument before the agency initiates the action, as applicable; and

f. The forum and venue in which the action will take place.

13. When agencies terminate investigations, they should notify the subjects of investigations that they have done so unless there are compelling reasons not to do so.

Negotiation and Settlement Procedures

14. Agencies should develop procedures, and include such procedures in enforcement manuals, for entering into negotiations with the subjects of investigations. Such procedures should specify considerations to assist enforcement personnel in determining whether and to what extent agencies should negotiate with the subject of an investigation, including:

a. Relevant agency policies or past practices;

b. The nature of the alleged misconduct;

c. Relevant past misconduct, if any, by the subject of the investigation;

d. Whether the subject of the investigation would be more likely, because of such negotiation, to come into compliance with the agency's interpretation of the regulation or statute at issue;

e. Whether an expedited settlement would adequately achieve agency goals within the scope of statutory authority while saving agency time and resources; and

f. Whether the public interest would weigh in favor of negotiating a settlement.

15. Agencies should provide, and include in enforcement manuals, the relevant factors for enforcement personnel to consider when determining whether settlement is appropriate and clearly state who at the agency can propose, discuss, or enter into settlement agreements.

Administrative Conference Recommendation 2025–2

Consultation With State, Local, and Tribal Governments in Regulatory Policymaking

Adopted June 12, 2025

Many federal actions significantly affect state, local, and tribal governments. When federal agencies engage in regulatory policymaking or take actions implementing regulatory policy that may affect state, local, or tribal governments, they should coordinate and consult with such governments as well as those organizations that represent those entities. For the purposes of this Recommendation, ''regulatory policymaking'' refers to the formulation and implementation of regulations, legislative comments or proposed legislation, guidance, issuance of permits and licenses, and other policy statements or actions that have substantial direct effects on one or more states, local governments, or Indian tribes; the relationship between the federal government and the states or Indian tribes; or the distribution of power and responsibilities between the federal government and the states or Indian tribes. Regulatory policymaking may also include the rescission of regulatory actions or policies. Although state, local, and tribal governments may participate in regulatory policymaking through notice-and-comment rulemaking and similar processes, those processes are not a substitute for direct consultation between governments. Further, while informal outreach can be a valuable source of information, it is not a substitute for an agency's consultation requirement.[1] Moreover, consultation with state, local, and tribal governments improves federal regulatory policymaking and reflects the distinctive relationships that the federal government has with state and local governments and with tribal governments.

Consultation with state and local governments promotes values of cooperative federalism. The relationship between the federal government and state and local governments is rooted in the nation's traditions and reflected in the Constitution's creation of a federal system. Within this scheme of constitutional federalism, there has long been an expectation that the federal government engage with state and local governments on regulatory policymaking and implementation.

Consultation with tribal governments reflects the unique government-to-government relationship between tribes and the United States and the federal policy of promoting tribal self-determination. Consultation may also reflect a tribal role in implementing statutory responsibilities in a cooperative federalism framework. Formal government-to-government consultation, which requires direct engagement between tribal governments and the United States, reflects a long history of intergovernmental relations that stretches back to the Founding. Today, tribal consultation is consistent with the ''unique trust responsibility of the United States to protect and support Indian tribes and Indians'' [2] and the ''duty of the federal government to promote tribal self-determination regarding governmental authority and economic development.'' [3]

For these reasons, the Administrative Conference has repeatedly emphasized the importance of effective consultation with state, local, and tribal governments. It has, among other things, encouraged agencies to develop internal policies and processes to better ensure timely consultation with state and local officials;[4] follow certain best practices when consulting with state and local officials on regulations that may preempt state laws;[5] adopt rules for obtaining the views of state, local, and tribal governments in notice-and-comment rulemaking;[6] involve state, local, and tribal governments in retrospective review of federal agency rules;[7] and work with state and local governments to provide effective notice of regulatory developments to potentially interested persons.[8]

Consultation takes place according to several statutes and executive orders. The Unfunded Mandates Reform Act (UMRA) requires agencies to ''develop an effective process to permit offices of State, local, and tribal governments . . . to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.'' [9] Executive

[1] Seth Davis & Daniel B. Rodriguez, Consultation with State, Local, and Tribal Governments in Regulatory Policymaking 53–54 (May 29, 2025) (report to the Admin. Conf. of the U.S.).

[2] Indian Trust Asset Reform Act, 25 U.S.C. 5601.

[3] *Id.* § 5602; *see also* Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5302(a) (recognizing ''the obligation of the United States to respond to the strong expression of the Indian people for self-determination''), (b) (recognizing the federal government's responsibility to establish a ''meaningful Indian self-determination policy'' allowing ''effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services''). For the purposes of this Recommendation, the Conference refers to ''tribal governments'' as those that are ''federally recognized'' pursuant to applicable laws and statutes. *See, e.g.,* 25 U.S.C. 479. Federal appropriations laws call for consultation with Alaska Native Corporations on the same basis as Indian tribes under Executive Order 13175. *See* Consolidated Appropriations Act, 2004, Public Law 108–199, div. H, § 161, 118 Stat. 3, 452 (2004), as amended by Consolidated Appropriations Act, 2005, Public Law 108–447, div. H, § 518, 118 Stat. 2809, 3267 (2004). The Department of the Interior maintains a publicly available list of federally recognized tribes. *See Tribal Leaders Directory Page,* U.S. Dep't of Interior, *https://www.bia.gov/service/tribal-leaders-directory* (last visited Apr. 28, 2025).

[4] Admin. Conf. of the U.S., Recommendation 2010–1, *Agency Procedures for Considering Preemption of State Law,* 76 FR 81 (Jan. 3, 2011).

[5] Admin. Conf. of the U.S., Recommendation 84–5, *Preemption of State Regulation by Federal Agencies,* 49 FR 49838 (Dec. 24, 1984).

[6] Admin. Conf. of the U.S., Recommendation 2020–1, *Rules on Rulemakings,* 86 FR 6613 (Jan. 22, 2021).

[7] Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules,* 79 FR 75114 (Dec. 17, 2014).

[8] Admin. Conf. of the U.S., Recommendation 2022–2, *Improving Notice of Regulatory Changes,* 87 FR 39798 (July 5, 2022).

[9] 2 U.S.C. 1534. Program-specific statutes, particularly in the environmental context, also require consultation for certain categories of federal regulatory actions. *See, e.g.,* National Historic Preservation Act of 1966, 54 U.S.C. 300101 *et seq.; see also* Energy Policy Act, 43 U.S.C. 1337(p)(7). Consultation also takes place against the backdrop of the Administrative Procedure Act, including its prohibition on ex parte communications in formal rulemaking and adjudication. *See* 5 U.S.C. 556, 557; *see also* Admin. Conf. of the U.S., Recommendation

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Order 13132, *Federalism,*[10] and Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,*[11] require agencies [12] to consult with relevant state, local, and tribal government officials when ''formulating and implementing'' regulatory policies that have federalism or tribal implications. The executive orders require each agency to establish an ''accountable process'' for ensuring ''meaningful and timely'' consultation, designate officials with principal responsibility for implementing the executive orders, and coordinate with the Office of Management and Budget (OMB). And when an agency develops a proposed regulation that imposes ''substantial direct compliance costs'' on state, local, or tribal governments, preempts state or tribal law, or has federalism or tribal implications, it must consult early in the development process and explain its consultation efforts in the preamble to the regulation.

Despite the framework of UMRA and Executive Orders 13132 and 13175, there remains great variety among agencies' rules, policies, and practices for consultation. For example, many agencies have adopted a publicly accessible tribal consultation policy and designated an official with principal responsibility for consultation with tribal governments. On the other hand, few agencies have adopted a publicly accessible state and local consultation policy or designated an official with principal responsibility for consultation with state and local governments. Agencies appear to have widely varying understandings of the purposes and goals of consultation generally and the potential benefits and costs of consultation in particular circumstances. And although there has been some convergence on common standards for tribal consultation, significant variations remain in agency policies and practices. This variety presents challenges to effective consultation between federal agencies and state, local, and tribal governments and can lead to misunderstandings and inefficiencies.[13]

Recognizing the important benefits of consultation for federal regulatory policymaking and implementation, this Recommendation provides best practices to help agencies develop rules, policies, and practices that promote effective consultation with state, local, and tribal governments. It encourages agencies to be transparent about their policies, adopt practices that foster meaningful consultation, and establish mechanisms for assessing performance. In adopting the practices that follow, agencies must be mindful of their unique missions and demands on scarce resources. This Recommendation also identifies potential actions for consideration by OMB, consistent with its mission and resources, and by Congress, that may improve consultation between federal agencies and state, local, and tribal governments in regulatory policymaking and implementation.

Recommendation

Consultation With State and Local Government Officials

1. Agencies that have regulatory policies or take actions that may have implications for or otherwise be of interest to state and local governments should designate a ''federalism consultation official'' who will serve as a primary point of contact for state and local governments seeking to consult or otherwise communicate with an agency and will have primary responsibility for coordinating consultations with state and local governments in regulatory policymaking and implementation.

2. Agencies, in consultation with state and local officials and organizations that represent them, should develop consultation policies that encourage candid, thorough, and timely exchange of views. Such policies should include:

a. The procedures for determining as a threshold matter whether a regulatory policy or action has federalism implications;

b. The circumstances in which consultation should occur, such as when:

i. There is a reasonable basis to find that a policy or action may impose federal intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (2 U.S.C. 658(5)), or have federalism implications, as defined in Executive Order 13132;

ii. A state or local government requests consultation; or

iii. A regulatory policy or action may affect or otherwise be of interest to state or local officials;

c. Options for structuring consultation, including consultations on individual matters and standing advisory committees;

d. The procedures for consultation, including the notice, timing, and format of consultations (see Paragraphs 9 and 12), and considerations for determining whether the agency should engage in more than one consultation on a particular matter (see Paragraph 10), consistent with available resources and any need to act expeditiously;

e. The practices for ensuring that key staff and personnel who participate in and support a consultation understand the laws and policies governing consultation with state and local governments, the topics of the regulatory policy or action under consideration, issues the policy or action may raise for state and local communities, and the various positions of state and local government attendees;

f. The procedures the agency will use to communicate to state and local officials how the agency used their input; and

g. The procedures for keeping records of consultative activities, including documenting the status or outcome of each matter on which consultation occurred (see Paragraph 11).

3. Agencies should develop, make publicly available, and periodically update consultation web pages that provide easy access to:

a. The consultation policy described in Paragraph 2;

b. Contact information for the agency's designated federalism consultation official; and

c. Upcoming, ongoing, and recent consultation activities.

Consultation With Tribal Government Officials

4. Agencies that have regulatory policies or take actions that may have implications for or otherwise be of interest to tribal governments should designate a ''tribal consultation official'' who will serve as a primary point of contact for tribal governments seeking to consult or otherwise communicate with the agency and will have primary responsibility for coordinating consultation with tribal governments in regulatory policymaking and implementation. In determining whom to designate, agencies should consider individuals with training on and experience with tribal sovereignty and governance, the Indian trust responsibility, and tribal cultures and histories.

5. Government-to-government consultation between tribal governments and federal agencies should be an opportunity for a two-way exchange of information and dialogue between high-level officials of tribal nations and the United States (see Paragraph 6(b)). In conducting formal government-to-government consultations with tribal governments, agencies should ensure that a high-level agency official attends such consultations. Agencies should clearly distinguish consultation from other forms of communication such as listening sessions and informal communications between agency officials and tribal officials, which also may be necessary and appropriate.

6. Agencies, in consultation with tribal governments and communication with authorized intertribal organizations, should develop consultation policies that encourage candid, thorough, and timely exchange of views. Such policies should include:

a. The procedures for determining as a threshold matter whether a regulatory policy or action has tribal implications, recognizing that tribes may have rights and interests beyond their current territories or reservations;

b. A definition of consultation that acknowledges the government-to-government relationship between tribal nations and the United States and recognizes tribal consultation as a timely two-way exchange of information and dialogue between official representatives of tribal nations and the United States;

c. A commitment to respecting tribal sovereignty, treaty rights, reserved rights, and other rights as well as the trust responsibility and the unique legal relationship between tribal nations and the United States and a commitment to considering tribal laws, traditions, and practices;

d. The circumstances in which consultation should occur, such as when:

i. There is a reasonable basis to find that a regulatory policy or action may impose federal intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (2 U.S.C. 658(5)), or have tribal implications, as defined in Executive Order 13175;

2014–4, ''*Ex Parte*'' *Communications in Informal Rulemaking,* 79 FR 35993 (June 25, 2014).

[10] 64 Fed. Reg 43255 (Aug. 10, 1999).

[11] 65 FR 67249 (Nov. 9, 2000).

[12] Although the executive orders do not apply to independent regulatory agencies, those agencies are ''encouraged'' to comply with them.

[13] Davis & Rodriguez, *supra* note 1, at 5–7.

ii. A tribal government requests consultation; or

iii. A regulatory policy or action may affect or otherwise be of interest to tribal nations;

e. Options for structuring consultation, including consultations on individual matters and standing advisory committees;

f. The procedures for consultation, including the notice, timing, and format of consultations (see Paragraphs 9 and 12); considerations for determining whether the agency should engage in more than one consultation on a particular matter (see Paragraph 10); and which federal agency personnel should attend consultations (see Paragraph 5), consistent with available resources and any need to act expeditiously;

g. The practices for ensuring that key staff and personnel who participate in and support a consultation understand the laws and policies governing consultation with tribal governments, the topics of the regulatory policy or action under consideration, issues the policy or action may raise for tribal communities, and the various positions of tribal government attendees;

h. The procedures the agency will use to communicate to tribal officials how the agency used their input; and

i. The procedures for keeping records of consultative activities, including documenting the status or outcome of each matter on which consultation occurred (see Paragraph 11) and responding to tribal requests that sensitive information be kept confidential.

7. Agencies should develop, make publicly available, and periodically update consultation web pages that provide easy access to:

a. The consultation policy described in Paragraph 6;

b. Contact information for the agency's designated tribal consultation official; and

c. Upcoming, ongoing, and recent consultation activities.

Procedures for Consultation

8. Agencies should ensure that their designated federalism consultation official and designated tribal consultation official communicate regularly with each other, as appropriate.

9. When agencies develop regulatory policies or take actions that may have federalism or tribal implications, they generally should consult with state, local, and tribal officials as early as feasible in the decision-making process, consistent with available resources and any need to act expeditiously. In the context of rulemaking, consultation normally should precede the issuance of a notice of proposed rulemaking. In other contexts—including the development of general policy statements, interpretive rules, other forms of guidance, and issuance of permits or licenses—consultation should occur early enough to ensure meaningful dialogue.

10. Consistent with Recommendation 2014–4, ''*Ex Parte*'' *Communications in Informal Rulemaking,* agencies should consult with state, local, and tribal officials on an ongoing basis throughout the development, issuance, or implementation of a regulatory policy or action that has federalism or tribal implications. In determining whether to have subsequent consultations following an initial consultation, agencies should consider whether:

a. The circumstances have changed materially since the initial consultation;

b. Significant issues or points of disagreement remain unresolved;

c. The proposed regulatory policy or action is complex or likely to be controversial;

d. A significant amount of time has elapsed such that the information collected during the initial consultation may be outdated;

e. Circumstances were such that prior consultations were not as effective as they could have been;

f. The potential benefits of subsequent consultation merit the commitment of scarce agency resources; and

g. Any need for the agency to act expeditiously, such as in the case of an emergency or when Congress has imposed a statutory deadline by which the agency must promulgate a rule or take other action.

11. When agencies propose or adopt regulations that have federalism or tribal implications, they should include the following information in the preamble to such regulations, unless precluded by laws governing confidentiality:

a. Which state, local, or tribal officials the agency contacted to solicit input as to whether a given regulatory policy or action may have federalism or tribal implications;

b. When such state, local, or tribal officials were contacted; and

c. What questions the agency asked such state, local, or tribal officials to ascertain whether a proposed regulatory policy or action would have federalism or tribal implications—and, if so, what implications—with respect to, among other things, budgetary considerations, effectiveness, and implementation.

12. Agencies should conduct consultations in such a way that they are accessible to the officials whom state, local, or tribal governments select to participate. When feasible and appropriate, agencies should utilize technology as a means to expand access to consultations for state, local, and tribal officials.

Oversight of the Consultation Process

13. Agencies periodically should review consultations and assess their effectiveness, efficiency, and compliance with applicable laws and policies. Agencies should assign the responsibility for review to the federalism consultation official or tribal consultation official, as applicable, or to a dedicated agency working group.

14. In light of its past recognition of the need for a tribal advisor, the Office of Management and Budget (OMB) should consider establishing a tribal advisor, as well as a federalism advisor, to advise the Director of OMB regarding agency consultation activities and promote effective consultation practices.

15. OMB should issue guidance that encourages agencies to adopt the best practices identified in this Recommendation for consulting with state, local, and tribal governments in regulatory policymaking and implementation. OMB should develop such guidance in consultation with such governments.

Considerations for Congress

16. In order to facilitate efficiency among agencies and to reduce potential costs, Congress should consider identifying the appropriate agency or agencies that would develop and make publicly available:

a. Lists of representative national organizations of state and local and tribal governments that agencies should contact respecting consultations;

b. Centralized websites where state, local, and tribal governments can learn about opportunities to consult with federal agencies.

17. Congress, in considering future amendments to the Freedom of Information Act (5 U.S.C. 552(b)), should include protecting certain information deemed sensitive by tribal governments and afford agencies discretion to safeguard information shared during tribal consultations.

Administrative Conference Recommendation 2025–3

Public Participation in Agency Adjudication

Adopted June 12, 2025

Public participation can improve the quality, legitimacy, and accountability of agency decision making.[1] The Administrative Conference has issued many recommendations to improve public participation in agency rulemaking, but agency adjudications likewise present opportunities for public participation.[2] For purposes of this Recommendation, ''adjudication'' has the same broad meaning as used in the Administrative Procedure Act (APA)[3] and thus includes frontline decisions about whether to grant or deny applications and policy implementation decisions that do not resolve disputes between the government and a private party or between two private parties (*e.g.,* agency determinations on public infrastructure projects).[4]

When agencies use adjudication to make policy, members of the public may offer information or views that can help agencies make more informed decisions. Public input can help improve the quality of adjudicative decisions by identifying problems that an agency has not anticipated, proposing solutions it has not considered, and identifying unintended consequences of

[1] *See* Michael Sant'Ambrogio & Glen Staszewski, Public Engagement with Agency Rulemaking 9–16 (Nov. 19, 2018) (report to the Admin. Conf. of the U.S.); *see also* Admin. Conf. of the U.S., Recommendation 2023–2, *Virtual Public Engagement in Agency Rulemaking,* 88 FR 42680 (July 3, 2023).

[2] *See Public Participation,* Admin. Conf. of the U.S., *https://acus.gov/public-participation* (last visited Mar. 4, 2025).

[3] ''Adjudication,'' as defined by the APA, means any agency process for the formulation of an ''order''—that is, a ''final disposition . . . of an agency in a matter other than rulemaking but including licensing.'' 5 U.S.C. 551.

[4] *Cf.* Michael Asimow, Admin. Conf. of the U.S., Federal Administrative Adjudication Outside the Administrative Procedure Act 8–11 (2019).

certain actions.[5] In addition, agency adjudicative decisions may affect the interests of, or otherwise be of concern to, persons who are not parties to the adjudication. By allowing the public opportunities to participate in administrative adjudications, agencies can gather more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for and confidence in their actions.

Just as in rulemaking, the APA permits ''interested persons'' to participate in agency adjudications ''[s]o far as the orderly conduct of public business permits.''[6] Many agencies offer opportunities for members of the public to participate in adjudications. These opportunities often take the form of intervention, amicus participation, and public notice and comment.[7] There may also be opportunities for broader and more innovative forms of public engagement—such as listening sessions, targeted outreach, and the use of advisory committees—particularly during early stages or informal levels of adjudicative processes.

Because agency adjudications vary significantly, agencies must consider their own circumstances in determining whether to provide opportunities for public participation in their adjudications. As a general matter, agencies must consider whether public input would be of value in deciding legal, policy, and factual questions that come before them for adjudication. To ensure that relevant interests and views are considered, public participation may be especially useful in agency adjudications that are influenced significantly by legislative facts (*i.e.,* those of general relevance) and involve or may substantially affect the broader public or persons beyond the parties.[8] This category of adjudication includes, for example, grants or denials of permission, such as rulings on applications for permits, licenses, or waivers, as well as discretionary policy determinations regarding specific public projects, such as the selection of the route for an interstate highway.[9]

In contrast, public participation is generally unnecessary when the parties themselves can provide all the relevant information and views, because the agency will have what it needs to make an accurate and informed decision.[10] This is especially true in adjudications that are significantly influenced by adjudicative facts (*i.e.,* those specific to the parties), which tend not to affect the interests of nonparties and usually involve disputes between only two parties.[11] This category of adjudication includes the resolution of routine claims or disputes, such as enforcement actions and benefits determinations. Even in this category of adjudication, however, public participation may be useful when an adjudication may establish precedent or policy, or require complex scientific or technical determinations.[12]

Even when public input may be valuable, agencies must consider when and how to provide opportunities for participation by interested persons beyond the parties. Not all methods for public participation will be appropriate in all circumstances. For example, agency adjudications are often structured as multilevel proceedings (*e.g.,* initial level, hearing level, appellate review level), and methods for public participation that may work well at one level may not be appropriate at other levels. In addition, prohibitions on ex parte contacts (common in hearing-level and appellate proceedings) and limitations on the admission of new evidence (common in appellate proceedings) may restrict the range of options for public participation at particular levels of adjudication.

Agencies may also find it is necessary to restrict participation to interested persons who have a direct stake in a particular adjudication. Although it may be beneficial in some adjudications to invite participation by the general public, in other adjudications, allowing participation beyond a limited set of interested persons may be repetitious, unduly complicate or delay the proceeding, require the unnecessary expenditure of resources by the agency or private parties, violate statutory confidentiality requirements, or adversely affect the rights or interests of private parties.[13] In addition, there may be good reasons to restrict participation—not to mention public access more broadly—in adjudications that involve sensitive interests or information.[14]

The Conference previously addressed public participation in agency adjudication in Recommendation 71–6, *Public Participation in Administrative Hearings,* and recommended that public participation, specifically through intervention, be freely allowed in trial-type, on-the-record adjudicative proceedings when agency action is likely to affect the interests of persons who are not parties to the proceedings.[15] More recently, the Conference has recommended that agencies consider soliciting amicus briefs or public comments when ''they expect to designate a decision as precedential, particularly in cases of significance or high interest,''[16] and provide agency heads with the discretion to solicit arguments from interested members of the public when deciding a novel or important question of law, policy, or discretion.[17]

This Recommendation expands on the Conference's previous recommendations by identifying best practices for public participation in agency adjudications in light of technological advancements and evolving methods for participating in agency decision making. In doing so, the Conference recognizes and emphasizes that agency practices must give due regard to the rights of the private parties in an adjudication—especially in regulatory enforcement proceedings—under the Constitution, the APA and other statutes, and basic principles of administrative fairness.

Recommendation

Opportunities for Public Participation in Agency Adjudication

1. When appropriate, considering the variations in purpose, complexity, governing law, and degree of public interest in administrative adjudications, agencies should provide opportunities for public participation in their adjudications. This is particularly true when doing so would allow members of the public to protect affected interests or present information or views that are relevant and not otherwise represented in the adjudication, unless the agency reasonably determines that public participation would unduly complicate or delay the adjudication.

2. Agencies generally should allow and encourage public participation in agency adjudications that are significantly influenced by legislative facts (*i.e.,* those of general relevance) as opposed to adjudicative facts (*i.e.,* those specific to the parties) and have the potential to substantially affect the broader public or persons beyond the parties.

3. When agencies provide opportunities for public participation in adjudications, they should do so early in the adjudicative process, especially when adjudications involve grants or denials of permission or other discretionary determinations involving large-scale public projects, to streamline the decision-making process while simultaneously ensuring that relevant interests and views are considered.

Methods for Facilitating Public Participation in Agency Adjudication

4. When adjudications may establish precedents or make important policy decisions in the resolution of routine claims or disputes, agencies should consider allowing interested persons to intervene as parties or submit amicus briefs. In developing or revising rules governing who may participate as an intervenor in a proceeding, agencies should use the factors listed in Recommendation 71–6, *Public Participation in Administrative Hearings,* such as the nature of the contested issues, the precise interest of the nonparties and their ability to present relevant information or views not otherwise or adequately represented in the adjudication, and the effect of public participation on the agency's operations.

[5] Michael Sant'Ambrogio & Glen Staszewski, Public Participation in Agency Adjudication 6 (May 16, 2025) (report to the Admin. Conf. of the U.S.).

[6] 5 U.S.C. 555(b).

[7] Sant'Ambrogio & Staszewski, *supra* note 5, at 14–18.

[8] *Id.* at 32–33.

[9] *See Citizens to Pres. Overton Park* v. *Volpe,* 401 U.S. 402 (1971); Asimow, *supra* note 4, at 9–10.

[10] Sant'Ambrogio & Staszewski, *supra* note 5, at 7–8.

[11] *See* Admin. Conf. of the U.S., Recommendation 2020–3, *Agency Appellate Systems,* 86 FR 6618 (Jan. 22, 2021).

[12] *See* Admin. Conf. of the U.S., Recommendation 2024–3, *Senate-Confirmed Officials and Administrative Adjudication,* 89 FR 56276 (July 9, 2024); Recommendation 2020–3, *supra* note 11.

[13] Admin. Conf. of the U.S., Recommendation 71–6, *Public Participation in Administrative Hearings,* 38 FR 19789 (July 23, 1973).

[14] *Cf.* Admin. Conf. of the U.S., Recommendation 2021–6, *Public Access to Agency Adjudicative Proceedings,* 87 FR 1715 (Jan. 12, 2022).

[15] Recommendation 71–6, *supra* note 13.

[16] Admin. Conf. of the U.S., Recommendation 2022–4, *Precedential Decision Making in Agency Adjudication,* 88 FR 2312 (Jan. 13, 2023).

[17] Recommendation 2024–3, *supra* note 12.

5. When adjudications involve unusually complex or novel issues of law, fact, or discretion, agencies should develop mechanisms for intervention or amicus participation when doing so would be helpful to resolve the individual case or set agency-wide policy.

6. When adjudicating questions involving grants or denials of permission, such as permit applications, or nonadversarial discretionary policy matters involving, among other things, specific public projects, agencies should solicit public input by, for example:

a. Hosting public forums available through different media;

b. Convening focus groups;

c. Issuing requests for information in the **Federal Register**;

d. Conducting targeted outreach to facilitate opportunities for meeting with interested and potentially affected persons;

e. Using ombuds; and

f. Holding virtual or hybrid public meetings, hearings, and listening sessions with interested members of the public.

7. Agencies should determine whether there are opportunities for broader and more innovative forms of public engagement in their adjudicative processes that involve interactive discussion and ongoing dialogue between agencies and interested members of the public. For example, in appropriate circumstances, agencies should consider establishing procedures that provide opportunities for public participation by interested or affected persons prior to the filing of applications for grants or denials of permission, such as permit applications. Such enhanced forms of public participation may also be useful when adjudicating discretionary policy determinations regarding important public projects.

Communication and Transparency

8. Agencies should publicize administrative adjudications that may affect members of the public, alert potentially affected persons that their interests may be at stake, and provide advance notice of available opportunities to participate in adjudications to interested members of the public through means that are likely to reach them, including, for example:

a. Social media posts;

b. Email alerts;

c. Press releases;

d. **Federal Register** notices;

e. Direct mailings and advertisements in the area where the affected public is located;

f. Targeted outreach to groups that are likely to be interested in and able to represent otherwise unrepresented interests and views; and

g. Coordination with other federal agencies; state, local, and tribal governments; and community-based organizations and businesses, trade and professional associations, advocacy groups, and other nongovernmental organizations that can help distribute and publicize information about administrative adjudications and available opportunities to participate to interested or potentially affected members of the public.

9. Agencies should establish and make available to the public procedural rules and general policies for public participation that address their practices for involving members of the public in their adjudications.

10. Agencies should maintain dedicated web pages that include: (a) explanatory materials that educate the public on how to participate effectively in administrative adjudications, and (b) information in plain language about opportunities for interested members of the public to participate in specific adjudications.

11. As appropriate and subject to available resources, agencies should provide the public with access to electronic dockets for individual cases that contain comprehensive information about all filings and decisions, as well as relevant public input, public comments, and reports or recommendations from federal advisory committees.

Data Collection and Retrospective Review

12. Agencies should solicit and collect feedback and suggestions from members of the public who have participated in their adjudications, as well as agency adjudicators and staff, about their experiences. Subject to the Paperwork Reduction Act and any other legal requirements, agencies should consider using surveys, focus groups, listening sessions and other meetings, and online feedback forms and complaint portals. Agencies also should consider consulting with nongovernmental organizations, advocacy groups, and other private sector representatives who assist members of the public to obtain this information.

13. Agencies should periodically evaluate the effectiveness of their rules and policies addressing public participation in their adjudications, consider feedback from public participants and agency adjudicators and staff, and revise their rules and policies as appropriate.

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Reinstatement

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and reinstatement under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by July 28, 2025. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Organic Survey.

OMB Control Number: 0535–0249.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. Originally, the Organic Survey was designed to be conducted once every five years as a mandatory follow-on-survey to the 2007 Census of Agriculture and then every five years after that.

Need and Use of the Information: This collection of data will support requirements within the Agricultural Act of 2014. Under Section 11023 some of the duties of the Federal Crop Insurance Corporation (FCIC) are defined as ''(i) IN GENERAL—As soon as possible, but not later than the 2015 reinsurance year, the Corporation shall offer producers of organic crops price elections for all organic crops produced in compliance with standards issued by the Department of Agriculture under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) that reflect the actual retail or wholesale prices, as appropriate, received by producers for organic crops, as