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 four recommendations at the fully virtual Eighty-fourth Plenary Session: Obtaining Government Records for Use in Agency Proceedings; Temporary Rules; Organization, Management, and Operation of Agency Adjudication Offices; and Federal Agency Collaboration with State, Tribal, Local, and Territorial Governments.

FOR FURTHER INFORMATION CONTACT: For Recommendations 2026–1 and 2026–2, Eyal Lurie-Pardes; Recommendation 2026–3, Lea Robbins; and Recommendation 2026–4, Becaja Caldwell. 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-fourth Plenary Session on January 21, 2026, to consider four proposed recommendations and conduct other business. All four recommendations were adopted.

Recommendation 2026–1, *Obtaining Government Records for Use in Agency Proceedings,* provides agencies with best practices for making government records available for use in agency proceedings in order to promote the fairness, accuracy, consistency, timeliness, and efficiency of agency decision making. It provides guidance on procedures by which private parties and agency decision makers may obtain federal records for use in agency proceedings—both when the parties bear responsibility for obtaining the records and when the agency decision maker holds that responsibility.

Recommendation 2026–2, *Temporary Rules,* identifies best practices for temporary rules. Temporary rules cease to be effective after a specific calendar date or upon the occurrence of a future event unless an agency takes action to extend the rule, make it permanent, or repeal it. The proposed recommendation provides guidance to agencies on determining whether to issue a temporary rule, drafting and publishing temporary rules, conducting timely assessments of temporary rules and taking appropriate action, and developing internal procedures for temporary rules. It also recommends that Congress consider how specific agencies might use temporary rules to respond efficiently and effectively to emergencies.

Recommendation 2026–3, *Organization, Management, and Operation of Agency Adjudication Offices,* provides agencies with best practices for organizing, managing, and operating agency adjudication offices. It encourages agencies to collect, analyze, and use data to identify and adopt the organizational, management, and operational practices that are best suited to each agency's particular circumstances and most effective in promoting fairness, accuracy, consistency, efficiency, and timeliness in the adjudications they conduct.

Recommendation 2026–4, *Federal Agency Collaboration with State, Tribal, Local, and Territorial Governments,* provides agencies with a framework that federal agencies should use to identify and collaborate more effectively with relevant state, tribal, local, and territorial governments (STLTGs). It provides guidance on practices agencies can adopt when initiating, managing, and evaluating collaborations with STLTGs that promote a culture of improved coordination and strengthen working relationships between governments.

The Conference based its recommendations on research reports and prior history that are posted at: *https://www.acus.gov/event/84th-plenary-session.*

Authority: 5 U.S.C. 595.

Dated: February 9, 2026.

Shawne C. McGibbon,

General Counsel.

Appendix—Recommendations of the Administrative Conference of the United States

Administrative Conference Recommendation 2026–1

Obtaining Government Records for Use in Agency Proceedings

Adopted January 21, 2026

Federal agencies conduct a vast number of administrative proceedings each year, including proceedings to decide applications for benefits, services, licenses, and permits, as well as enforcement actions against persons suspected of violating the law.[1] In order for agency officials and private parties to participate meaningfully in a proceeding, they frequently need access to government records [2] made, collected, received, or maintained by the federal agency conducting the proceeding or another federal agency.

Although agencies are responsible for maintaining government records, agency decision makers and parties who participate in agency proceedings often face challenges in obtaining them. A record may not be collected or maintained by the same agency or organizational unit that is responsible for conducting a proceeding or in a format that is readily usable or disclosable in the proceeding. Agencies may lack sufficient resources to collect or provide the necessary records in a timely manner, especially in complex or high-volume proceedings. When private parties are responsible for obtaining records, they may face administrative burdens in understanding what records they need and where to find them, and in

[1] This Recommendation addresses agency proceedings that meet the definition of ''adjudication'' under the Administrative Procedure Act (APA). *See* 5 U.S.C. 551(7). It does not address proceedings that meet the APA's definition of ''rule making.'' *See id.* § 551(5).

[2] Several statutes define what constitutes a ''record.'' *See, e.g.,* 5 U.S.C. 552(f)(2), 552a(a)(4); 44 U.S.C. 3301(a)(1)(A).

navigating agency processes for requesting or obtaining them.[3]

When designed well and implemented effectively, certain procedural and technological reforms for accessing government records have the potential to reduce burdens on agencies and private parties and to promote the fairness, accuracy, efficiency, and timeliness of agency proceedings.

Some agencies have robust programs for efficiently collecting records for use in their proceedings while minimizing burdens on private parties to gather and provide that information themselves. In some cases, agencies obtain records from within the agency. For example, the U.S. Department of Veterans Affairs administers a variety of benefits programs by, among other things, making records from its Veterans Health Administration available to adjudicators in the agency's Veterans Benefits Administration.[4]

Agencies also frequently obtain records from other federal agencies to reduce administrative burdens, particularly in proceedings related to benefits or services.[5] Many agencies have information-sharing agreements under the Computer Matching and Privacy Protection Act of 1988, which governs certain automated data sharing between federal agencies and includes procedural requirements to ensure that shared information is accurate and used only for authorized purposes.[6] For example, the Department of Education allows applicants to prefill answers to some questions on the Free Application for Federal Student Aid by automatically transferring relevant federal tax return information using a consent-based information-sharing process developed by the Department and the Internal Revenue Service.[7] Agencies may also enter into memoranda of understanding or other agreements to share information.[8]

In other circumstances, private parties to agency proceedings may need to obtain records from agencies, whether for the purpose of providing them to the agency conducting the proceeding (a process sometimes called ''request and return'') or for their own use in a proceeding.[9] For example, consistent with Administrative Conference recommendations,[10] many agencies allow parties in adjudications involving an evidentiary hearing to inspect non-privileged materials in agency files or seek production of non-privileged records through discovery. However, discovery is circumscribed or unavailable in some contexts, and, even when it is available, it may not provide all the records the parties need in such proceedings.[11] In proceedings in which discovery is unavailable or does not provide the needed records, parties may need to file individual requests under the Freedom of Information Act,[12] the Privacy Act,[13] or agency-specific procedures to obtain the records. Although such requests may be useful in some circumstances or necessary in the absence of other available methods, they may not be the most efficient option for parties or agencies, especially when the agency conducting the proceeding already maintains the records at issue.[14]

To reduce burdens on parties and agencies associated with accessing records, agencies have established other systems and processes that parties can use to access records independently. Some agencies use online self-help portals that allow parties to obtain records about themselves or their past interactions with the agency more quickly and efficiently.[15] However, portals are costly to establish and maintain and may not be worth the expense if parties rarely seek to obtain records. Many agencies also proactively disclose records, especially previous decisions that parties may find useful in understanding agency policies and interpretations of the law.[16]

This Recommendation identifies best practices for making government records available for use in agency proceedings. It addresses circumstances in which the agency has the responsibility for obtaining records, when records are shared among different agency components, when records are shared among different agencies for use in determining an applicant's eligibility for benefits or services, and when private parties bear the responsibility for obtaining records. This Recommendation also offers best practices for how agencies should make records available in agency proceedings in order to promote the fairness, accuracy, consistency, timeliness, and efficiency of agency decision making.

Recommendation

Making Records Available in General

1. Unless prohibited by law or permitted by an exception established by law allowing withholding of records, an agency should make relevant records that it maintains available to:

a. Relevant officials internally;

b. Relevant officials at other agencies when needed for administrative proceedings to determine an applicant's eligibility or ineligibility for benefits or services, or the level of such benefits or services; and

c. Private parties participating in such proceedings or preparing to initiate such proceedings.

With regard to the public generally, unless prohibited by law or permitted by an exception established by law allowing withholding of records, an agency should make agency legal materials available to the extent practicable.

2. When private parties request records that pertain to them, an agency should not withhold access to those records solely based on the privacy interests of requesting parties.

3. When determining how to make records available for use in administrative proceedings, an agency should consider, among other things, the following factors:

a. Whether the agency is required by statute to make the record available using a particular method;

b. Whether a particular method promotes fairer, more efficient, more accurate, or timelier use of a record in a proceeding as compared to other methods; and

c. Whether a particular method is less costly or burdensome to the government or private parties compared to other methods.

Internal Agency Procedures for Making Records Available for Use by Agency Officials

4. When a record is needed for use in a proceeding, an agency should ensure that relevant agency officials can easily obtain it, preferably in electronic format, unless it would be impracticable to do so.

5. An agency should not require parties to request and return records for the agency's use in proceedings if the agency already maintains the records.

6. When parties submit information to an agency in connection with a proceeding, the agency should supplement the party's submission with relevant information from the agency's records when feasible and appropriate, such as by prepopulating a party's application form with information previously submitted by the party or otherwise maintained by that agency or, with the consent of the party, another federal agency with whom information sharing is permissible under governing law.

Interagency Sharing of Records

7. When an agency regularly needs information created, collected, or maintained by another agency for use in determining an applicant's eligibility for benefits or services

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[3] *See* Admin. Conf. of the U.S., Recommendation 2023–6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings,* 89 FR 1511 (Jan. 10, 2024).

[4] *See* Margaret B. Kwoka, Obtaining Government Records for Use in Agency Proceedings 12–13 (Dec. 11, 2025) (report to the Admin. Conf. of the U.S.).

[5] This Recommendation does not cover records of state and local agencies, although federal agencies often obtain such records for use in their proceedings. *See* 5 U.S.C. 552a(a)(10).

[6] 5 U.S.C. 552a(a)(8); *see also* Natalie R. Ortiz, Cong. Rsch. Serv., R47325, Computer Matching and Privacy Protection Act: Data Integration and Individual Rights (2022).

[7] 26 U.S.C. 6103(l); U.S. Dep't of Educ., Privacy Act of 1974; Matching Program, 88 FR 42052 (June 29, 2023).

[8] *See* Kwoka, *supra* note 4, at 7.

[9] *See id.* at 5.

[10] *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* ¶ 10, 81 FR 94314, 94315 (Dec. 23, 2016); Admin. Conf. of the U.S., Recommendation 70–4, *Discovery in Agency Adjudication,* 38 FR 19786 (July 23, 1973); *see also* Michael Asimow, Admin. Conf. of the U.S., Federal Administrative Adjudication Outside the Administrative Procedure Act 75, 86–87 (2019).

[11] *See* Kwoka, *supra* note 4, at 36–37.

[12] 5 U.S.C. 552.

[13] *Id.* at § 552a.

[14] *See* Kwoka, *supra* note 4, at 28–32, 47–48; *see also* 5 U.S.C. §552, 552(a).

[15] *See* Kwoka, *supra* note 4, at 44–45; *cf.* Admin. Conf. of the U.S., Recommendation 2023–4, *Online Processes in Agency Adjudication,* 88 FR 42681 (July 3, 2023).

[16] *See* Admin. Conf. of the U.S., Recommendation 2022–4, *Precedential Decision Making in Agency Adjudication,* ¶ 11–12, 15–16, 88 FR 2312 (Jan. 13, 2023); Admin. Conf. of the U.S., Recommendation 2017–1, *Adjudication Materials on Agency websites,* 82 FR 31039 (July 5, 2017). Such records my also include legal materials, which are ''documents that establish, interpret, apply, explain, or address the enforcement of legal rights and obligations, along with constraints imposed, implemented, or enforced by or upon an agency.'' *See* Admin. Conf. of the U.S., Recommendation 2023–1, *Proactive Disclosure of Agency Legal Materials,* 88 FR 42678 (July 3, 2023).

it should consult with the other agency to determine whether the records containing that information are fit for the purpose of determining eligibility and how the records should be used. When determining whether such records are fit for such purpose, the agency should consider, among other things, their accuracy, completeness, timeliness, and relevance. If the records are fit for use in proceedings regularly conducted by the recipient agency, the source agency and the recipient agency should enter into an interagency agreement for the sharing of records.

8. Consistent with Recommendation 2012–5, *Improving Coordination of Related Agency Responsibilities,* an agency should make interagency agreements for sharing records publicly available and regularly assess their effectiveness.

Procedures for Parties To Obtain Records in Agency Adjudications Involving an Evidentiary Hearing

9. An agency should allow parties in adjudications involving an evidentiary hearing to inspect non-privileged materials in agency files or seek production of non-privileged records through discovery, consistent with Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* and Recommendation 70–4, *Discovery in Agency Adjudication.*

Procedures for Parties To Submit Individual Requests for Records

10. An agency should establish written procedures for parties to submit individual requests for records that are regularly needed in proceedings, including records the parties previously submitted, unless other procedures for obtaining the records (such as those established under the Freedom of Information Act (FOIA)) are sufficient or otherwise warranted based on the factors described in Paragraph 3.

11. An agency should publish the procedures described in Paragraph 10 in the **Federal Register** and codify them in the *Code of Federal Regulations.* The procedures should specify the records that parties may request and how parties should request them, how the agency will review and respond to requests (including, as practicable, the agency's expected timeframe for responding), and whether parties may request review of the agency's response by a higher-level agency official.

12. When an agency has authority to withhold records pursuant to an exemption established by law, but when the application of the exemption is not mandatory and no other law prohibits disclosure, the agency should consider making discretionary disclosures of the records in response to individual requests when those records are needed for use in administrative proceedings.

13. When a party submits an individual request for a record that is needed for use in a proceeding, the agency should consider staying the proceeding or extending deadlines in the proceeding to allow the party sufficient time to obtain and review the records.

Online Self-Help Portals for Parties To Obtain Records About Themselves

14. An agency should consider establishing an online self-help portal to allow parties to obtain records about themselves when parties regularly request specific categories of records for which little or no redaction is necessary.

15. When offering an online self-help portal, an agency should include relevant records submitted by parties and relevant decisional documents issued by the agency that were made available to the parties during the proceeding. As applicable, agencies should follow the best practices for organization, user guidance, and cybersecurity described in Recommendation 2023–4, *Online Processes in Agency Adjudication.*

Proactive Public Disclosure

16. An agency should consider making records publicly available beyond what is required by law when such records would be useful to parties in administrative proceedings, including decisions and filings associated with prior adjudicative proceedings consistent with Recommendation 2017–1, *Adjudication Materials on Agency websites.*

17. When an agency proactively makes records publicly available, it should organize and index such records to allow parties to locate the information they need efficiently.

Other Considerations When Making Records Available in Proceeding

18. When not prohibited by law, an agency should consider using informal or ad hoc methods for making records available if doing so would avoid the use of more costly methods for obtaining the same information. For example, preferred methods could include providing an explanation for an agency decision by email rather than requiring the party to file a FOIA request for the same information.

19. An agency should not charge fees for requesting and obtaining records for use in administrative proceedings unless such fees are required by law.

20. To the extent practicable, an agency should design its records to enable faster disclosure, whether upon request, through a portal, or on an online database, such as by allowing automatic redaction of private information.

Administrative Conference Recommendation 2026–2

Temporary Rules

Adopted January 21, 2026

When an agency promulgates a rule,[1] it typically intends that the rule will remain in effect indefinitely until the agency amends or repeals it. However, an agency may also promulgate a rule that will cease to be effective after a specific calendar date or upon the occurrence of a future event unless the agency takes action to extend the rule, make it permanent, or repeal it. This Recommendation refers to such rules as ''temporary rules.'' [2]

There may be several advantages to adopting a temporary rule. For example, when an agency intends a rule to address a time-limited issue, adopting a temporary rule enables the agency to promulgate and repeal the rule efficiently in a single proceeding and can help to avoid public confusion. A temporary rule may also give an agency the flexibility to address emergency situations or deviate temporarily from a regulatory framework while clarifying for the public that the deviation is of limited duration. In addition, using temporary rules enables an agency to commit to updating the rule or reviewing its effectiveness after a specified period. This can promote consideration of public feedback in rapidly evolving circumstances.

At the same time, there may be disadvantages associated with temporary rules. For example, an agency must commit to expending limited resources to determine whether a temporary rule should be extended, made permanent, or allowed to expire and, if warranted, must take additional action to extend it or make it permanent. When agencies do not monitor their temporary rules effectively or lack anticipated resources to make updates, they may unintentionally allow such rules to expire or may mistakenly allow expired rules to remain in the *Code of Federal Regulations* (CFR). This could impede agency program operations, create public confusion, and undermine predictability and confidence. In addition, frequent changes to regulatory

[1] This Recommendation applies to ''rules'' as defined in the Administrative Procedure Act (APA) (5 U.S.C. 551(4)), except that it does not address interpretive rules and general statements of policy for which the agency has invoked the APA's exemption from notice-and-comment procedures. *See* 5 U.S.C. 553(b). However, when invoking the exemption for interpretive rules and general statements of policy, agencies may take into account the provisions of this Recommendation to the extent applicable.

[2] The term ''temporary rule'' is used differently in some contexts. For example, some courts and agencies use the term to refer to interim final rules. *See* Eyal Lurie-Pardes, Temporary Rules 7 (Dec. 18, 2025) (report to the Admin. Conf. of the U.S.). Unlike the rules that this Recommendation addresses, interim final rules do not expire. *See* Admin. Conf. of the U.S., Recommendation 2024–6, *Public Participation in Agency Rulemaking Under the Good Cause Exemption,* 89 Fed. Reg. 106408 (Dec. 30, 2024). In addition, as discussed below, the Office of the Federal Register (OFR) has a special process for publishing ''temporary rules,'' which it defines as rules that ''respond[ ] to a situation that requires a rule be effective for a short, definable period of time.'' Nat'l Archives & Records Admin., Off. of the Fed. Reg., Federal Register Document Drafting Handbook 3–67 (Aug. 2018 Edition, Revision 2.2, June 2025), *https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf* [hereinafter Document Drafting Handbook]. An earlier recommendation of the Administrative Conference similarly defines ''temporary rules'' as ''those that address a temporary emergency or expire by their own terms within a relatively brief period.'' Admin. Conf. of the U.S., Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking,* 60 Fed. Reg. 43110 (Aug. 18, 1995). This Recommendation uses the term ''temporary rules'' to encompass a broader range of rules because it addresses any rule that expires after a specific calendar date or upon the occurrence of a future event absent agency action to extend the rule or make it permanent.

frameworks resulting from numerous temporary rules may undermine regulatory certainty, making it difficult for regulated parties to adjust their behavior or make long-term compliance decisions. Such changes may also require the public to expend additional resources to monitor, and provide the agency with input on, temporary rules. More frequent changes could also lead to more frequent agency expenditures for related public communication, record development, impact analysis, or consultations (such as with state, local, and tribal governments [3]).

Agencies regularly use temporary rules in at least five circumstances. First, agencies use temporary rules to establish or amend a regulatory framework for a limited period. For example, the Coast Guard uses temporary rules to establish temporary safety zones, security zones, and special local regulations for marine events, fireworks displays, bridge construction, and other occurrences that might pose a safety concern.[4]

Second, agencies use temporary rules to respond to unforeseen emergencies that necessitate immediate and often short-term modifications to existing regulatory frameworks. For example, many agencies adopted temporary rules during the COVID–19 pandemic that altered preexisting regulatory frameworks for a defined period or for the duration of the public health emergency as determined by the Secretary of Health and Human Services.[5]

Third, agencies use temporary rules to implement statutory changes and judicial decisions in a timely manner. For example, the National Marine Fisheries Service once promulgated a rule temporarily reinstating an earlier rule to implement a district court ruling invalidating the rule that replaced it.[6]

Fourth, agencies use temporary rules to amend rules that they must update on an annual, biennial, or other recurring basis, as mandated by law.[7] For example, the Environmental Protection Agency uses temporary rules to set annual standards for ''nationally applicable renewable fuel volume targets'' under the Clean Air Act.[8]

Fifth, agencies use temporary rules as a vehicle for regulatory learning. Rules establishing pilot programs, demonstration projects, and other regulatory experiments, for example, often are effective for limited periods.[9] Agencies may also promulgate temporary rules as a means of committing to retrospective review of those rules.[10]

There are several considerations involved in developing, promulgating, and managing temporary rules. First, when an agency chooses to promulgate a temporary rule, it must determine when the rule should expire. There is significant variation in the duration of temporary rules, ranging from several hours to several years. In some cases, the agency knows or can reasonably predict how long the rule should be in effect. In other cases, agencies anticipate that conditions will change but lack sufficient certainty regarding the timing of the change.

Agencies must also consider how they will promulgate a temporary rule and, if warranted, provide an opportunity for the public to participate in the rulemaking. Agencies are generally subject to the rulemaking requirements of 5 U.S.C. 553, including the requirements for notice and comment, when they promulgate temporary rules. However, because temporary rules are often used to address emergencies or implement statutory changes or judicial decisions, agencies frequently find good cause to forgo pre-promulgation notice and comment.[11] Some agencies also have specific statutory authority to promulgate temporary rules without pre-promulgation notice and comment, especially in emergency situations.[12]

Agencies must also consider how to publish temporary rules in the **Federal Register** and the CFR. If an agency publishes a temporary rule in the **Federal Register** using a standard final rule document, the Office of the Federal Register (OFR) will codify the rule in the CFR but will not remove it from the CFR when the rule expires. As a result, the agency would need to publish a new rule in the **Federal Register** to remove the rule from the CFR as of the date it is no longer effective. An agency might use this approach to remove a temporary rule from the CFR when it ceases to be effective based on an event that occurs after the publication of the initial temporary rule.

Alternatively, agencies may publish a specific type of temporary rule document in the **Federal Register** if they want OFR to remove the rule from the CFR when it is no longer effective. As explained in OFR's *Document Drafting Handbook,* agencies can use this process when the temporary rule ''responds to a situation that requires a rule be effective for a short, definable period of time.'' [13] Under this process, the agency must specify the calendar date that the rule becomes effective and the calendar date the rule expires in the **DATES** caption of the rulemaking document published in the **Federal Register**.[14] OFR will then ensure that the temporary rule does not appear in the CFR after it expires.[15] With the approval of the Director of the Federal Register, agencies may also designate sections of the CFR with a ''T'' to identify them as temporary.[16] This can be particularly helpful when an agency wishes to maintain a specific section-numbering system after a regulatory transition period or when the agency issues temporary rules on a recurring basis.

This Recommendation identifies best practices for temporary rules, including guidelines for determining when to issue a temporary rule, drafting and publishing temporary rules, conducting timely assessments of temporary rules and taking appropriate action, and developing internal procedures for temporary rules. It also recommends that Congress consider how specific agencies might use temporary rules to respond efficiently and effectively to emergencies.

Recommendation

Determining Whether To Issue a Temporary Rule

1. If an agency determines or reasonably expects that a rule will only be necessary for a limited time, it should consider issuing a temporary rule—that is, a rule that will cease to be effective after a specific calendar date or upon the occurrence of a future event unless the agency takes action to extend the rule. Circumstances in which it may be appropriate to issue a temporary rule include:

[3] *See* Admin. Conf. of the U.S., Recommendation 2025–2, *Consultation with State, Local, and Tribal Governments in Regulatory Policymaking,* 90 Fed. Reg. 27517 (June 27, 2025).

[4] *See, e.g.,* 83 Fed. Reg. 2060 (Jan. 16, 2018).

[5] *See, e.g.,* 85 Fed. Reg. 19326 (Apr. 6, 2020); 85 Fed. Reg. 17285 (Mar. 27, 2020).

[6] 79 Fed. Reg. 36433 (June 27, 2014).

[7] Lurie-Pardes, *supra* note 2, at 16–17.

[8] *See, e.g.,* 87 Fed. Reg. 39600 (July 1, 2022).

[9] *See, e.g.,* 89 Fed. Reg. 57353 (July 15, 2024); 85 Fed. Reg. 74875 (Nov. 24, 2020).

[10] For example, since the 1980s, the Social Security Administration has included calendar expiration dates in rules that amend the Listing of Impairments that the agency uses to evaluate disability claims. The agency includes expiration dates to ensure it periodically reviews and updates listings to reflect advances in medical knowledge. *See, e.g.,* 88 Fed. Reg. 37704 (June 8, 2023); *see also* 50 Fed. Reg. 50068, 50071 (Dec. 6, 1985). ACUS has issued several recommendations encouraging agencies to create ''a culture of retrospective review,'' identify regulations that are subject to periodic retrospective review, establish a review plan for them, and disclose whether and how they use algorithmic tools to support retrospective review. *See* Admin. Conf. of the U.S., Recommendation 2023–3, *Using Algorithmic Tools in Retrospective Review of Agency Rules,* 88 Fed. Reg. 42681 (July 3, 2023); Admin. Conf. of the U.S., Recommendation 2021–2, *Periodic Retrospective Review,* 86 Fed. Reg. 36080 (July 8, 2021); Admin. Conf. of the U.S., Recommendation 2017–6, *Learning from Regulatory Experience,* 82 Fed. Reg. 61783 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules,* 79 Fed. Reg. 75114 (Dec. 17, 2014); Admin. Conf. of the U.S., Recommendation 95–3, *Review of Existing Agency Regulations,* 60 Fed. Reg. 43108 (Aug. 18, 1995).

[11] 5 U.S.C. 553(b)(B). The Conference has identified best practices for rulemaking in such circumstances. *See* Recommendation 2024–6, *supra* note 2. Neither this Recommendation nor Recommendation 2024–6 addresses the circumstances under which agencies may lawfully assert the good cause exemption.

[12] *See, e.g.,* 16 U.S.C. 1533(b)(7).

[13] Document Drafting Handbook, *supra* note 2, at 3–67. OFR generally does not designate rules as temporary if their duration exceeds three years.

[14] Under OFR's process, agencies generally must specify the calendar date after which the rule expires. Otherwise, OFR approval would be necessary. For example, during the COVID-19 pandemic, OFR allowed certain rules to be classified as temporary based on the expiration of the ''public health emergency'' to be determined by the Secretary of HHS after issuance of the rules. *See* Lurie-Pardes, *supra a note* 2, at 8 n.55.

[15] Document Drafting Handbook, *supra* note 2, at 3–67. OFR also ensures that temporary rules are accurately reflected in the Electronic Code of Federal Regulations (eCFR), which is a web version of the CFR that is updated daily but is not an official legal edition of the CFR. *See eCFR, Nat'l Archives & Records Admin., https://www.ecfr.gov* (last visited Dec. 4, 2025). If the rule's duration is at least several days but less than one year, it will appear in the eCFR but may not necessarily appear in the annual printed volumes of the CFR. *See* Lurie-Pardes, *supra* note 2, at 8.

[16] Document Drafting Handbook, *supra* note 2, at 3–67.

a. When the rule responds to a condition of finite duration;

b. When the rule responds to an emergency, even if the exact duration of the emergency is initially unknown;

c. When the rule responds to a statutory amendment, judicial decision, or other situation temporarily while the agency develops a more permanent approach; and

d. When a statute requires, or the rule requires or would benefit from, updating on an annual or other periodic basis.

2. An agency should consider whether issuing a temporary rule would help the agency learn from regulatory experience. Circumstances in which it may be appropriate to issue a temporary rule for this purpose include:

a. When the rule establishes a pilot program, demonstration project, or other form of regulatory experimentation; and

b. When the agency seeks to commit to retrospective review of a rule and has sufficient resources to conduct the retrospective review and take appropriate follow-up rulemaking action, if any, before the rule expires.

3. In deciding whether to designate a rule as temporary, agencies should consider a variety of factors, including:

a. Whether doing so would increase efficiency by combining issuance and repeal of the rule;

b. Whether the agency or regulated parties would benefit from increased flexibility to deviate temporarily from a regulatory framework;

c. Whether benefits are likely to ensue from committing to review a rule in advance, such as with pilot or demonstration projects;

d. The feasibility of reviewing the rule after a certain specified period, including the burden on agency staff and resources;

e. The risk that the agency may unintentionally allow the rule to expire and the consequences of that expiration; and

f. Whether doing so would undermine the need for regulatory certainty.

Drafting and Publishing a Temporary Rule

4. When an agency promulgates a temporary rule, it should:

a. Explain in the preamble to the rule (and to the proposed rule, if applicable) why the rule is effective for a limited period and how the agency determined that period;

b. If it contemplates further action, discuss in any preamble what action the agency currently contemplates taking to extend the rule, amend it, or make it permanent; and

c. Specify the effective period of the rule in the text of the rule published in the *Code of Federal Regulations* (CFR).

5. If an agency intends for the Office of the Federal Register (OFR) to automatically remove a temporary rule from the CFR when it expires on a specific date, the agency should indicate in the ''ACTION'' caption of the document published in the **Federal Register** that the rule is ''temporary'' and specify in the ''DATES'' caption of the document the calendar date after which the rule expires.

6. Even if an agency does not intend for OFR to remove a temporary rule from the CFR when it expires, the agency should still consider referring to the rule as ''temporary'' (including in the ''ACTION'' caption of the document published in the **Federal Register**) when doing so would promote clarity.

7. When an agency provides that a rule will expire upon the occurrence of a future event rather than on a specific calendar date, the agency should explain in the preamble to the rule how the public can determine when the event has occurred. As soon as practicable after determining the specific calendar date upon which such a rule has expired or will expire, the agency should inform the public of that date and, when necessary, repeal the rule by publishing a new rule in the **Federal Register**.

8. An agency should consider requesting a numbering deviation from the Director of the Federal Register pursuant to 1 CFR 21.14(b) to include a ''T'' in the section number of any temporary rule when doing so would promote clarity.

9. An agency that promulgates a high volume of temporary rules should consult with OFR in developing a standardized template for drafting such rules.

Conducting a Timely Assessment of a Temporary Rule and Taking Appropriate Action

10. The extension of a temporary rule is a separate rulemaking requiring an agency, absent an exception, to (a) publish a notice of proposed rulemaking in the **Federal Register** to extend the rule, (b) explain in the notice why the agency proposes to extend the rule, and (c) invite public comment on the extension. If an agency for good cause finds that pre-promulgation notice and public procedure are impracticable, unnecessary, or contrary to the public interest, it should follow the practices for obtaining public input on the rule identified in Recommendation 2024–6, *Public Engagement in Agency Rulemaking Under the Good Cause Exemption,* and Recommendation 2018–7, *Public Engagement in Rulemaking.*

11. If an agency anticipates that it may need to extend a temporary rule or make the rule permanent, it should develop a timeline for assessing the rule and taking any appropriate action sufficiently before the rule expires to avoid uncertainty.

Developing An Internal Policy on Temporary Rules

12. An agency should develop an internal policy on temporary rules. The policy, which should be made available to relevant agency personnel and the public, should address:

a. Circumstances in which it may be appropriate for the agency to issue a temporary rule;

b. Considerations for determining when a temporary rule should expire;

c. Procedures for drafting a temporary rule;

d. Procedures for submitting a temporary rule to OFR for publication in the **Federal Register** and the CFR;

e. Procedures for obtaining public input on a temporary rule, including with respect to whether and when the rule should expire;

f. Procedures for assessing whether a temporary rule should be extended, amended, made permanent, or allowed to expire; and

g. Procedures for extending a temporary rule, including public notice and any opportunities for public participation.

Recommendation for Congress

13. When Congress specifically provides for an agency's emergency rulemaking authority, it should consider whether it would be beneficial specifically to authorize the agency to promulgate rules that are effective for a limited period without pre-promulgation notice and comment. In doing so, Congress should specify how long such rules may remain in effect, identify any required opportunities for post-promulgation public participation, and set forth any procedure for extending such rules.

Administrative Conference Recommendation 2026–3

Organization, Management, and Operation of Agency Adjudication Offices

Adopted January 21, 2026

Most agencies that adjudicate cases have specific components, below the agency-head level, that are responsible primarily for conducting hearings or reviewing the decisions of lower-level adjudicators.[1] These components, referred to in this Recommendation as ''adjudication offices,'' go by many names, including ''Office of Hearings and Appeals,'' ''Office of Administrative Law Judges,'' ''Appeals Council,'' and ''Board of Appeals.''

There is considerable variation in the organization, management, and operation of adjudication offices. For example, some adjudication offices perform both hearing and appellate functions, while some agencies assign those functions to separate offices. Some adjudication offices are centralized, while others are distributed across locations nationwide. Some adjudication offices are headed by an adjudicator (often designated a ''chief judge'' or ''chair''), while others are headed by an official who is not an adjudicator (often designated a ''director''). Still other adjudication offices incorporate aspects of both models, in which a chief judge or chair oversees adjudication-related matters, and a director oversees operational matters, such as technology, human resources, budget planning, office space, and procurement. In some adjudication offices, support personnel are assigned to specific adjudicators, while in other offices, support personnel are managed centrally. Some adjudication offices have dedicated resources for technology and human resources, while others rely on separate agency components for such services. Some adjudication offices

[1] This Recommendation does not address adjudications not involving an evidentiary hearing, *see* Admin. Conf. of the U.S., Recommendation 2023–5, *Best Practices for Adjudication Not Involving an Evidentiary* Hearing, 89 FR 1509 (Jan. 10, 2024), nor does it address offices that issue decisions subject to de novo review by an administrative law judge, administrative judge, or agency head (*e.g.,* initial determinations regarding applications for benefits). Additionally, this Recommendation does not address adjudication by Senate-confirmed officials, which was the subject of Recommendation 2024–3, *Senate-Confirmed Officials and Administrative Adjudication,* 89 FR 56276 (July 9, 2024).

have devoted considerable resources to developing centralized manuals and handbooks to guide adjudicative personnel, while others have not systematically recorded their practices.

Important aspects of organization, management, and operation include the assignment of duties to an adjudication office; the placement of an adjudication office within an agency hierarchy; the geographical distribution of adjudicators and support personnel; the division of an adjudication office into smaller subunits, including local offices, and the management of those subunits; the functions and duties assigned to managers; the availability and use of performance management tools, including performance metrics, expectations, appraisal (when permitted), and feedback and training; the development and implementation of caseload management practices; and the allocation and use of technology, personnel, and other resources.[2]

Statutes or governmentwide regulations may determine important aspects of the organization, management, and operation of adjudication offices. Some adjudication offices are established by statute, for example, and the statutes that establish those offices may specify requirements for organizing, managing, and operating them. In cases of formal adjudication, the Administrative Procedure Act requires, among other things, that agencies generally separate adjudicative personnel from investigative and prosecutorial personnel,[3] prohibit ex parte communications between agency decision makers and interested persons outside the agency,[4] assign administrative law judges (ALJs) to cases in rotation so far as practicable,[5] and abstain from assigning duties to ALJs that are inconsistent with their duties and responsibilities.[6] Agencies are also prohibited from rating the job performance of ALJs or granting them awards and incentives.[7] Additionally, agencies are required to publish descriptions of their central and field organization in the **Federal Register**.[8]

Nonetheless, agencies may retain significant discretion in how they organize, manage, and operate their adjudication offices. As the Administrative Conference has recognized, how agencies exercise that discretion can have a significant impact on the fairness, accuracy, consistency, efficiency, and timeliness of agency adjudication. The Conference has recommended, for example, that agencies establish organizational units, supervisory structures, and central and field operations that enhance timely decision making.[9] The Conference has also adopted recommendations regarding, among other things, the separation of adjudicative personnel from investigative and prosecutorial personnel;[10] ex parte communications;[11] supervision of adjudicative personnel;[12] provision of training for adjudicative personnel;[13] development and use of production measures and expectations;[14] use of quality assurance techniques;[15] and access to technology, personnel, and other resources.[16] Additionally, the Conference has recommended that agencies make certain organizational, management, and operational materials available to the public, including policies governing the appointment and supervision of agency adjudicators,[17] guidance documents and explanatory materials relating to adjudicative procedures,[18] and case processing data and goals.[19] Such transparency enhances the legitimacy and accountability of agency decisions, promotes uniformity in agency adjudications, and increases public support for and confidence in agency actions. Building on these recommendations, this Recommendation offers agencies a general framework for organizing, managing, and operating adjudication offices.

Of course, agencies and adjudication offices vary greatly in terms of their mission; the legal requirements under which they operate; the volume, complexity, and variation of their caseloads; their workforce needs; the management challenges they face; and the resources available to them. Because of these variations, the Conference has encouraged agencies to collect, analyze, and use data to evaluate and improve the timeliness, efficiency, and quality of their adjudications.[20] Such data also allow agencies to identify the organizational, management, and operational practices that are best suited to their particular circumstances and most effective in promoting fairness, accuracy, consistency, efficiency, and timeliness in the adjudications they conduct.

Recommendation

Information Collection and Use

1. Agencies, particularly those that adjudicate a high volume of cases, should ensure that electronic case management or other systems track, at a minimum, the following information necessary for determining how to organize, manage, and operate their adjudication offices:

a. Data for assessing the timeliness of decision making, as described in Recommendation 2023–7, *Improving Timeliness in Agency Adjudication;*

b. Data for assessing the quality of decision making, as described in Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication;*

c. Data regarding the allocation and use of technology, funding, office space, and other resources; and

d. Data regarding the use and performance of adjudication office personnel, including, as applicable:

i. The type and number of adjudicators and support personnel within and across adjudication offices;

ii. The type and number of cases assigned to adjudicators and support personnel during a standard reporting period (*e.g.,* week, month, quarter, year);

iii. The number of decisions written by adjudicators and support personnel during a standard reporting period; and

iv. The amount of time, by case type, that adjudication offices take to complete the decisional process, including the time it takes for (1) support personnel to perform case management tasks such as case intake, docketing, assignment, scheduling, and completion; (2) adjudicators to commence and complete hearings; (3) adjudicators or support personnel to review case files and issue legally sound and policy-compliant decisions; and (4) appellate adjudicators to complete their review of hearing-level decisions.

2. Agencies should seek assessments, including responses to structured inquiries, as well as more general types of feedback on the organization, management, and operation of adjudication offices. Sources of feedback may include agency adjudicators and support personnel, other government personnel both inside and outside the agency, parties to adjudicative proceedings and their representatives, and other non-government organizations and interested persons.

3. Agencies should undertake more tailored inquiries when necessary to help assess specific issues related to the

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[2] *See* Jennifer Lee Koh, Organization, Management, and Operation of Agency Adjudication Offices (Dec. 4, 2025) (report to the Admin. Conf. of the U.S.).

[3] 5 U.S.C. 554(d).

[4] *Id.* §§ 554(d)(1), 557(d).

[5] *Id.* § 3105.

[6] *Id.*

[7] 5 CFR 930.206; *see also* 5 U.S.C. 4301(2)(D).

[8] 5 U.S.C. 552(a)(1)(A), (a)(2)(C).

[9] Admin. Conf. of the U.S., Recommendation 2023–7, *Improving Timeliness in Agency Adjudication,* ¶ 13, 89 FR 1513, 1515 (Jan. 10, 2024).

[10] Admin. Conf. of the U.S., Recommendation 2016–4, *Evidentiary Hearings Not Required by the Administrative Procedure Act,* ¶ 3, 81 FR 94314, 94315 (Dec. 23, 2016).

[11] *Id.* ¶ 2.

[12] Admin. Conf. of the U.S., Recommendation 2019–9, *Recruiting and Hiring Agency Attorneys,* 84 FR 71355 (Dec. 27, 2019).

[13] Admin. Conf. of the U.S., Recommendation 2023–4, *Online Processes in Agency Adjudication,* ¶ 23, 88 FR 42681, 42684 (July 3, 2023); Recommendation 2023–7, *supra* note 9, ¶ 21.

[14] Under OFR's process, agencies generally must specify the calendar date after which the rule expires. Otherwise, OFR approval would be necessary. For example, during the COVID–19 pandemic, OFR allowed certain rules to be classified as temporary based on the expiration of the ''public health emergency'' to be determined by the Secretary of HHS after issuance of the rules. *See* Lurie-Pardes, *supra* note 2, at 8 n.55.

[15] Admin. Conf. of the U.S., Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication,* 87 FR 1722 (Jan. 12, 2022).

[16] Admin. Conf. of the U.S., Recommendation 2018–3, *Electronic Case Management in Federal Administrative Adjudication,* 83 FR 30686 (June 29, 2018); Recommendation 2023–7, *supra* note 9, ¶ 16.

[17] Admin. Conf. of the U.S., Recommendation 2020–5, *Publication of Policies Governing Agency Adjudicators,* ¶ 1, 86 FR 6622, 6623 (Jan. 22, 2021).

[18] Admin. Conf. of the U.S., Recommendation 2018–5, *Public Availability of Adjudication Rules,* ¶ 1, 84 FR 2142, 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2020–3, *Agency Appellate Systems,* ¶ 21, 86 FR 6618, 6620 (Jan. 22, 2021); Recommendation 2016–4, *supra* note 10, ¶ 29.

[19] Recommendation 2023–7, *supra* note 9, ¶ 25.

[20] Recommendation 2023–7, *supra* note 9; Recommendation 2023–4, *supra* note 13; Recommendation 2021–10, *supra* note 15; Recommendation 2018–3, *supra* note 16.

organization, operation, and management of their adjudication offices.

4. Agencies should use the information described in Paragraphs 1–3 to help them determine, among other things:

a. The most suitable organizational placement of adjudication offices within the broader agency hierarchy and the internal hierarchy of each adjudication office;

b. Whether and how to subdivide the adjudication office (*e.g.,* based on geography or subject matter);

c. The roles and responsibilities of adjudicators and support personnel, including how to best utilize and assign support personnel (*e.g.,* assigning teams of support personnel to specific adjudicators or pooling staff resources);

d. Reasonable performance metrics or expectations for adjudicators and support personnel; and

e. Appropriate tools for managing adjudicators and support personnel.

Management and Resources

5. Agencies should designate high-level officials within their adjudication offices who are responsible for performing or overseeing essential management duties or, when appropriate, liaising with other agency components that perform such duties. Essential management duties include:

a. Managing operations and resources, such as technology, human resources, budget planning, office space, and procurement;

b. Managing case workloads, such as intake, docketing, assignment, scheduling, and completion;

c. Performing quality assurance and reviewing work product;

d. Facilitating the appointment, supervision, and training of adjudicators;

e. Hiring, supervising, and training support personnel, including conducting performance appraisals;

f. Handling personnel matters;

g. Developing and implementing office procedures and policies;

h. Communicating with members of the public;

i. Reporting to the agency head and communicating with other relevant components of the agency; and

j. Coordinating periodic evaluative and strategic planning activities.

6. In determining which type of high-level official to assign management duties (*e.g.,* a head adjudicator such as a chief judge or chair, or a head official who is not an adjudicator such as a director), agencies should consider the size, caseload, resources, and capacity of the adjudication office and the subject matter expertise required to efficiently perform necessary management tasks. Based on these factors, agencies should consider dividing management tasks between high-level officials when appropriate.

7. The heads of adjudication offices should report directly to the agency head or deputy agency head, as appropriate, unless a statute provides otherwise or such a reporting structure would adversely affect the integrity of agency adjudications.

8. Agencies should decide whether to assign cases to adjudicators with management responsibilities and, if so, determine the size of their caseload (*e.g.,* full, partial, or minimal) by balancing the adjudicator's management duties with the agency's adjudicative needs.

9. Agencies should permit and encourage use of a broad range of tools for managing adjudicators and support personnel, including:

a. Data-based timeliness and productivity measures or expectations, as described in Recommendation 2023–7, *Improving Timeliness in Agency Adjudication;*

b. Quality assurance techniques, as described in Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication;*

c. Training, both general and focused;

d. Peer feedback and collaboration;

e. Performance appraisals for non-ALJ adjudicators and adjudication office support personnel; and

f. Handbooks, manuals, bench books, and similar materials that supplement codified regulations by prescribing case management practices.

10. Agencies should provide high-volume adjudication offices with dedicated human, financial, technological, and other resources to support operational needs and increase adjudicative capacity. Adjudication offices that rely on shared or agency-wide resources should have designated personnel with primary responsibility for liaising with other components of the agency for specific resource issues.

11. Agencies should modernize electronic systems, particularly those that are necessary to (a) support adjudicative processes, such as case management and technology, and (b) collect accurate and quality data.

Strategic Planning

12. Agencies should engage periodically in evidence-based and transparent evaluation of their organizational, management, and operational practices to assess whether current practices are meeting agency goals and adjudicative needs. In doing so, agencies should use the information described in Paragraphs 1–3 to assess, among other things:

a. Organizational structures and the placement of adjudication offices within the broader agency hierarchy;

b. Internal reporting structures of adjudication offices;

c. Roles and responsibilities of management officials, including the assignment of cases to adjudicators with management responsibilities;

d. Resource allocation to and within an adjudication office, including the use and assignment of adjudicators and support personnel; and

e. Performance metrics or expectations for adjudicators and support personnel.

Communication and Transparency

13. Agencies should publish, and update as necessary, the following materials on their websites:

a. Organizational charts that include both (i) the internal hierarchy of adjudication offices, and (ii) where each adjudication office is located within the broader agency hierarchy;

b. Descriptions of the positions responsible for performing or overseeing essential management duties or liaising with separate agency components that perform such duties;

c. Policies and practices governing the appointment and supervision of adjudicators, as described in Recommendation 2020–5, *Publication of Policies Governing Agency Adjudicators,* and, as appropriate, support personnel;

d. Brief explanations of an adjudication office's operation, such as the processes for case intake, docketing, assignment, scheduling, and completion; and

e. Any handbooks, manuals, bench books, or similar materials that supplement codified regulations by prescribing case management practices, as described in Recommendation 2018–5, *Public Availability of Adjudication Rules.*

14. Agencies should publish in the **Federal Register** descriptions of how their adjudication offices are organized and the functions of those offices.

15. Agencies should make reasonable efforts to raise public awareness of upcoming changes to their adjudication offices, especially those that have the potential to affect significantly the rights of parties or other interested persons.

16. When agencies use performance metrics in appraising the performance of employees, as defined in 5 U.S.C. 4301, and members of the Senior Executive Service, or in setting expectations for ALJs, who are not subject to performance appraisals, they should disclose publicly such metrics or expectations and explain how they were developed. For adjudicators and support personnel who are subject to performance appraisals, agencies should disclose publicly (a) how they use such measures to appraise employee performance, and (b) whether employees are eligible for incentive awards based on such performance.

Administrative Conference Recommendation 2026–4

Federal Agency Collaboration With State, Tribal, Local, and Territorial Governments

Adopted January 21, 2026

Many federal agencies regularly collaborate with state, tribal, local, and territorial governments (STLTGs) to administer federal programs. Some collaborations are required by law, while others are initiated voluntarily by agencies themselves. Some collaborations are relatively formal, while others are relatively informal. Some collaborations are short in duration while others persist for decades or longer. Federal agencies collaborate with STLTGs to carry out many administrative functions, including permitting and licensing,[1] regulatory enforcement,[2] benefits administration,[3] and

[1] For example, the U.S. Army Corps of Engineers collaborates with state and local environmental agencies when it reviews requests from non-federal interests to construct navigation projects for harbors. *See* 33 U.S.C. 2233.

[2] For example, the Drug Enforcement Administration cooperates with state, local, and tribal agencies concerning the traffic and abuse of controlled substances. *See, e.g.,* 21 U.S.C. 873.

[3] For example, under the Patient Protection and Affordable Care Act, the Department of Health and Human Services oversees states' operation and enforcement of certain insurance exchanges. *See, e.g.,* 42 U.S.C. 18031; *see also* 42 U.S.C. 18041.

resource management.[4] The nature and type of collaboration can also vary widely. For example, federal agencies may be required to consult with STLTGs when they engage in regulatory policymaking, a specific form of collaboration that the Administrative Conference addressed in a recent recommendation.[5] Across the federal government, collaborations with STLTGs serve as critical conduits for implementing many federal programs.[6]

When used and managed successfully, collaborations with STLTGs enable federal agencies to administer programs more effectively. Successful collaborations can help federal agencies meet specific local needs and foster innovation. They also allow federal agencies and STLTGs to allocate scarce resources more efficiently, leverage external capabilities, and promote greater participation in federal administration.

At the same time, federal agencies frequently face challenges in initiating and managing collaborations with the 50 states, 574 federally recognized tribes, five territories and the District of Columbia, and more than 90,000 local governments with which they may collaborate. For example, the complexity of the legal and policy frameworks governing the actions of federal agencies and STLTGs can make it difficult for all individuals involved in collaborations to understand their roles and responsibilities.[7] Federal agencies and STLTGs may also lack sufficient human, financial, technological, or other resources to collaborate effectively.[8] Changes in personnel within federal agencies and STLTGs may pose challenges for maintaining working relationships over time. In addition, federal agencies and STLTGs may lack the authority or practical means to communicate and collaborate effectively on an ongoing basis toward common goals.[9] Successful collaboration requires an understanding of the unique needs of each STLTG, rather than applying a uniform approach.

Federal agencies have adopted a range of practices to overcome challenges, collaborate more effectively, and create enduring working relationships with STLTGs. For example, federal agencies have adopted practices to ensure they communicate with relevant STLTGs at the outset of a collaboration and throughout its duration; work with STLTGs to identify common objectives and plan strategically; clarify leadership, points of contact, and processes; adopt performance management techniques for collaborating; sustain relationships and ensure continuity through major changes, including changes in personnel or political leadership and changes in relevant law; and obtain feedback on and evaluate and strengthen collaborations. Federal agencies have also developed guidelines [10] to assist personnel who work with STLTGs and entered into formal written agreements with STLTGs when doing so helps establish shared terminology, definitions, and standard operating procedures, and promotes transparency and accountability in implementation. Federal agencies have also benefited from convening advisory committees that include STLTG representatives and from engaging with national organizations that represent STLTGs.

In Recommendation 2025–2, the Conference identified best practices for consulting with state, local, and tribal governments in regulatory policymaking. Building on Recommendation 2025–2, this Recommendation provides a framework that federal agencies should use to identify and collaborate more effectively with relevant STLTGs in a broader range of contexts. It encourages agencies to adopt practices for initiating, managing, and evaluating collaborations with STLTGs that promote a culture of improved coordination and strengthen working relationships between governments. In adopting the practices that follow, agencies must be mindful of their unique missions and demands on scarce resources.

Recommendation

Facilitating Collaboration Generally With State, Tribal, Local, and Territorial Governments (STLTGs)

1. Federal agencies should establish organizational units, supervisory structures, and central and field operations, as appropriate, that establish or reinforce collaboration with STLTGs and facilitate appropriate communication among agency personnel involved in collaborations at all levels.

2. Federal agencies should develop or maintain general guidelines to assist personnel in initiating, managing, and evaluating collaborations with STLTGs. Among other things, the guidelines should provide information about collaborating with different types of STLTGs and highlight their differences and commonalities.

3. Federal agencies should collaborate with STLTGs, even if not required to do so by law, when doing so would help agencies meet specific local needs and foster innovation; allow agencies to allocate scarce resources more efficiently; allow agencies to benefit from the expertise and resources of other entities; promote greater participation in federal administration; or otherwise help agencies administer federal programs more effectively.

4. For each program, federal agencies should designate one or more officials in an appropriate office who will be primarily responsible for initiating, coordinating, and evaluating collaborations with STLTGs with an awareness of the different types of STLTGs and their differences and commonalities.

5. Federal agencies should identify and reduce, as appropriate, administrative burdens that STLTGs face when collaborating with federal agencies, for example by:

a. Reducing regulatory burdens;

b. Simplifying application and reporting processes;

c. Enhancing the availability of technical assistance; or

d. Providing funding opportunities.

6. Federal agency personnel involved in intergovernmental affairs, regional offices, and other agency personnel should meet regularly with STLTGs to coordinate their relationships.

7. When federal agencies draft annual strategic and performance plans pursuant to the Government Performance and Results Act (31 U.S.C. 1115b, 1120(b)), they should describe how they collaborate with STLTGs to achieve performance goals.

8. Federal agencies should review and update as necessary their Human Capital Operating Plans (5 CFR pt. 250) to ensure their hiring and position management needs are aligned properly with their operational goals for collaboration with STLTGs.

Initiating Specific Collaborations With STLTGs and Responding to Major Changes

9. Early in the implementation of federal programs and following major changes—such as changes in personnel or political leadership or changes in relevant law—federal agencies should develop a list of those STLTGs that are most relevant to their work and determine whether, when, and how to collaborate with relevant STLTGs. In reaching their determination, agencies should engage with:

a. Government personnel involved in intergovernmental affairs, regional offices, and other relevant agency personnel;

b. STLTGs;

c. Relevant advisory committees and similar entities that include STLTG representatives;

d. National organizations that represent STLTGs; and

e. Other persons interested in or affected by the collaboration.

10. When establishing a collaboration with an STLTG or revisiting a collaboration in light of a major change, federal agencies

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[4] For example, the Federal Highway Administration works with state, local, and tribal governments to facilitate transportation planning. *See, e.g.,* 23 U.S.C. 134–135, 201–202.

[5] Admin. Conf. of the U.S., Recommendation 2025–2, *Consultation with State, Local, and Tribal Governments in Regulatory Policymaking,* 90 FR 27518 (June 27, 2025).

[6] The Conference has identified several areas in which federal agencies should consider collaborating with STLTGs, including to improve notice of regulatory changes to interested persons; promote timeliness in agency adjudication; publicize opportunities for public participation in agency decision making; and reduce burdens on the public in administrative processes. *See, e.g.,* Admin. Conf. of the U.S., Recommendation 2022–2, *Improving Notice of Regulatory Changes,* 87 FR 39798 (July 5, 2022); Admin. Conf. of the U.S., Recommendation 2023–7, *Improving Timeliness in Agency Adjudication,* 89 FR 1513 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2025–3, *Public Participation in Agency Adjudication,* 90 FR 27519 (June 27, 2025); and Admin. Conf. of the U.S., Recommendation 2023–6, *Identifying and Reducing Burdens on the Public in Administrative Processes,* 89 FR 1511 (Jan. 10, 2024).

[7] *See* Pamela J. Clouser McCann & Jennifer L. Selin, Federal Agency Collaboration with State, Local, Tribal, and Territorial Governments 39, 43–44 (Dec. 5, 2025) (report to the Admin. Conf. of the U.S.).

[8] *See id.* at 41–42.

[9] *See id.* at 41–47.

[10] *See, e.g., EPA Policy for the Administration of Environmental Programs on Indian Reservations,* Env't Prot. Agency, *https://www.epa.gov/tribal/epa-policy-administration-environmental-programs-indian-reservations-epa-indian-policy* (last visited Sept. 22, 2025).

should discuss the following topics with the STLTG and, as appropriate, formalize agreements in writing:

a. The nature and type of the collaboration (*e.g.,* provision of financial assistance, consultation, technical support);

b. The legal and policy frameworks that govern the actions of federal officials and the STLTG;

c. Objectives for the collaboration and metrics for determining whether the collaboration is successful;

d. The leadership and points of contact for the federal agency and the STLTG;

e. Procedures for managing the collaboration and communicating with the STLTG, including mechanisms for obtaining feedback and evaluating the collaboration;

f. The information the federal agency and the STLTG may and will share with each other and the public, and the processes by which such information will be shared; and

g. The human, financial, technological, and other resources available to the federal agency and the STLTG.

Strengthening Specific Collaborations With STLTGs

11. Federal agencies should develop guidelines to assist personnel involved in specific collaborations in coordinating and managing them. Such guidelines should:

a. Identify the official responsible for making significant decisions regarding the collaboration;

b. Establish mechanisms to ensure relevant personnel communicate regularly;

c. Establish mechanisms to ensure relevant personnel coordinate their communications with STLTGs;

d. Specify processes for documenting engagements with STLTGs;

e. Specify processes for sharing information with or receiving information from the STLTG, including information that may be sensitive or protected by law; and

f. Establish mechanisms for obtaining STLTG feedback and acting on it as appropriate.

12. Federal agencies should ensure that personnel involved in a collaboration with an STLTG receive training as needed on topics including:

a. The laws and policies governing the actions of the STLTG;

b. Best practices for engaging with the STLTG;

c. Guidelines for sharing information with or receiving information from the STLTG, including information that may be sensitive or protected by law; and

d. Procedures for managing the collaboration and communicating with the STLTG.

13. To understand on-the-ground conditions and available resources and to foster stronger working relationships, federal officials involved in collaborations with STLTGs, should:

a. Involve personnel in their regional and local offices in collaborations with STLTGs, as appropriate;

b. Visit the states, localities, tribal nations, and territories with which they collaborate; and

c. Attend conferences and meetings in which STLTGs participate and otherwise take advantage of opportunities to interact with STLTGs in person.

14. To facilitate coordination among agency personnel and ensure continuity of operations, federal agencies should develop or maintain repositories of records and information related to specific collaborations with particular STLTGs. Such repositories may include information such as:

a. Any written agreements between the federal agency and STLTGs (see Paragraph 10);

b. Federal agency officials' substantive communication as part of collaborations;

c. The guidelines to assist personnel involved in specific collaborations (see Paragraph 11); and

d. The points of contact for the STLTG.

Evaluating Collaborations With STLTGs

15. Federal agencies should provide opportunities on an ongoing or periodic basis for the following persons and entities to provide feedback on their collaborations with STLTGs:

a. Agency personnel involved in collaborations with STLTGs;

b. STLTGs;

c. Relevant advisory committees and similar entities that include STLTG representatives;

d. National organizations that represent STLTGs; and

e. Other persons interested in or affected by the collaboration.

16. Federal agencies should collect information about their collaborations with STLTGs to evaluate performance in achieving the objectives for their collaborations, implement improvements, and engage in strategic planning. Such information should include:

a. How collaborations develop over time; and

b. Progress in achieving the performance metrics for collaborations.

17. Federal agencies should have a community of practice to share information about their experiences with and practices for improving collaboration with STLTGs.

Public Availability of Information About Collaborations With STLTGs

18. Federal agencies should provide up-to-date information on their websites describing:

a. Collaborations with STLTGs;

b. The leadership and points of contact for the federal agency for specific collaborations (see Paragraph 10(d));

c. The federal agency official(s) with primary responsibility for coordinating and evaluating collaborations with STLTGs (see Paragraph 4);

d. A general point of contact for STLTG collaborations;

e. Written agreements regarding collaborations, as appropriate (see Paragraph 10); and

f. Information about opportunities to provide feedback on collaborations (see Paragraph 15).

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2026–0001]

Ball Horticultural Company: Availability of a Petition for a Determination of Nonregulated Status and Draft Plant Pest Risk Assessment for Red Flower Petals African Marigold (Tagetes erecta) Event pBALL123–022–BE113.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Ball Horticultural Company seeking a determination of nonregulated status for African marigold (*Tagetes erecta*) event pBALL123–022–BE113 which has been developed using genetic engineering to produce red flower petals. We are making the petition and draft plant pest risk assessment available for public review and comment.

DATES: We will consider all comments that we receive on or before April 13, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2026–0001 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2026–0001, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Avenue #AP760, Beltsville, MD 20705.

The petition, draft plant pest risk assessment, and any comments we receive on this docket may be viewed at *www.regulations.gov,* or in our reading room, which is located in 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Pearson, Biotechnology Regulatory Services, APHIS, USDA, 5601 Sunnyside Avenue, AP100–3–WS–1151, Beltsville, MD 20705; (301) 851–3944; email: *alan.pearson@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of