

Administrative Conference of the United States 56th Plenary Session

DHS Proposed Amendments

Recommendation No. 5: ACUS Committee on Collaborative Governance

Improving Coordination of Related Agency Responsibilities

Amendment: Recommendation 1(a), page 6:

- (1) DHS offers a clarifying amendment, to acknowledge that agencies currently coordinate with each other on a regular basis, often via processes and procedures that are already documented.
- (2) As the Recommendation's preamble states, in many instances, the effect of this recommendation will be to urge agencies to "memorialize agency interactions and agreements" in documented policies.
- (3) We believe that in its current form, Recommendation 1(a) does not put sufficient emphasis on the importance of documenting, rather than merely "adopting," certain coordination policies and procedures.

Accordingly, we suggest the following amendment to Recommendation 1(a):

Federal agencies that share overlapping or closely related responsibilities should adopt policies and procedures ~~for facilitating~~ to document ongoing coordination efforts, or to facilitate additional coordination with other agencies.

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Amendment: Recommendation 1(a), page 6:

- (1) DHS agrees that by “improving efficiency, effectiveness, and accountability, [agency] coordination can help overcome potential dysfunctions created by shared regulatory space.”
- (2) DHS is concerned, however, that the Recommendation may be read to require agencies to develop documented coordination policies for every instance of “shared, overlapping or closely related jurisdiction or operation that might require, or benefit from, interagency coordination.” Recommendation 1(a), page 5.
- (3) DHS believes that it would not advance the interests of efficiency, effectiveness, and accountability to document every such opportunity for coordination.
- (4) Many coordination practices are not sufficiently complex for documentation to be helpful; others are demonstrably successful, and others still involve shifting players and are not amenable to formal documentation.
- (5) DHS believes that given the need for agencies to prioritize scarce resources, and notwithstanding the non-binding nature of Conference recommendations, the Conference should explicitly acknowledge a role for agency discretion in this area.

Accordingly, we suggest the following amendment to Recommendation 1(a):

Federal agencies that share overlapping or closely related responsibilities should adopt policies ~~and~~or procedures, as appropriate, for facilitating coordination with other agencies.

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Amendment: Recommendation 4(b), page 8:

- (1) DHS offers a substantive amendment, to account for the range of situations in which consultation requirements arise.
- (2) DHS engages in consultation pursuant to statutory and legal requirements on a regular basis, on matters ranging from environmental protection to immigration and intelligence policy.
- (3) DHS believes that the resources required to engage in such consultation are not always significant, and may not justify the administrative burden of sharing agency resources in every instance of consultation.
- (4) DHS also believes that legal consultation requirements usually operate to protect the equities of both the “consulting” and the “consulted” agencies. In light of the shared benefits of consultation, DHS does not believe it is appropriate for the “consulting” agency to bear a disproportionate burden in every instance.

Accordingly, we suggest the following amendment to Recommendation 4(b):

Further, an action agency, on whom a duty to consult with other agencies falls, should ~~commit to contribute~~ consider contributing a share of its resources, as appropriate and to the extent it possesses the discretion to do so, to support joint technical and analytic teams, even if those resources will be consumed in part by other agencies.