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 Administrative Conference of the United States adopted four recommendations at its Fifty-eighth Plenary Session. The appended recommendations address ways to improve the adjudication of Social Security disability benefits, best practices for use of benefit-cost analysis in rulemaking by independent regulatory agencies, transparency in agencies’ scientific decisionmaking, and best practices for agencies with respect to the administrative record in informal rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For Recommendation 2013–1, Amber Williams; for Recommendations 2013–2 and 2013–3, Reeve Bull; for Recommendation 2013–4, Stephanie Tatham. For all four recommendations the address and phone 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 for improvements to agencies, the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)). For further information about the Conference and its activities, see http://www.acus.gov. At its Fifty-eighth Plenary Session, held June 13–14, 2013, the Assembly of the Conference adopted four recommendations. Recommendation 2013–1, “Improving Consistency in Social Security Disability Adjudications,” identifies ways to improve the adjudication of Social Security disability benefits claims before administrative law judges and the Appeals Council, suggests changes to the evaluation of opinion evidence from medical professionals, and encourages the agency to enhance data capture and reporting.


Recommendation 2013–3, “Science in the Administrative Process,” promotes transparency in agencies’ scientific decision-making, including: articulation of questions to be informed by science information; attribution for agency personnel who contributed to scientific analyses; public access to underlying data and literature; and conflict of interest disclosures for privately funded research used by the agencies in licensing, rulemaking, or other administrative processes.

Recommendation 2013–4, “The Administrative Record in Informal Rulemaking,” offers best practices for agencies in the compilation, preservation, and certification of records in informal rulemaking, and supports the judicial presumption of regularity for agency administrative records except in certain limited circumstances.

The Appendix (below) sets forth the full texts of these four recommendations. The Conference will transmit them to affected agencies and to appropriate committees of the United States Congress. The recommendations are not binding, so the relevant agencies, the Congress, and the courts will make decisions on their implementation.

The Conference based these recommendations on research reports that it has posted at: http://www.acus.gov/meetings-and-events/ plenary-meeting/58th-plenary-session/. A video of the Plenary Session is available at the same web address, and a transcript of the Plenary Session will be posted once it is available.

**Dated:** July 3, 2013.

Paul R. Verkuil, Chairman.

**APPENDIX—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES**

**Administrative Conference Recommendation 2013–1**

**Improving Consistency in Social Security Disability Adjudications**

Adopted June 13, 2013

The Administrative Conference of the United States (Conference) has undertaken many studies over the years relating to the Social Security disability benefits system. It has issued a number of recommendations specifically directed at improving the Social Security Administration’s (SSA’s) initial application and appeals processes, as well as other recommendations more generally designed to improve agency adjudicatory procedures. The Conference last issued a recommendation on the Social Security disability benefits system over twenty years ago. The system has grown substantially since that time. Approximately 3.3 million disability claims are now filed annually, which represents a 57% increase since 1990. In a program of this size, adjudicating disability benefits claims in a fair, consistent, 

1 The Social Security Act created two programs—Social Security Disability Insurance and Supplemental Security Income—to provide monetary benefits to persons with disabilities who satisfy these programs’ respective requirements. See 42 U.S.C. 401(b), 1381 (2011).


and timely manner is a monumental challenge.

Those cases flow through a nationwide, multi-step process, by which SSA determines whether a claimant is disabled and eligible for benefits. State agencies make initial disability determinations using federal guidelines. Claimants may file (and pursue) their own claims or they may choose to enlist the assistance of a representative, who may or may not be a lawyer.6 If benefits are denied, claimants may request reconsideration (in most states). If benefits are denied after reconsideration, claimants may request a hearing before an Administrative Law Judge (ALJ). ALJs adjudicate nearly 800,000 cases a year.7 In FY 2011, about 56% of disability benefit claims were allowed at the ALJ hearing stage, though more recent figures show a decline in this rate.8 ALJ hearings, which may be in-person or by video teleconferencing, are conducted using a de novo evidentiary hearing, and generally follow the Administrative Procedure Act’s adjudication procedures. Although ALJs preside at the hearings, decisionwriters typically write decisions for ALJs based on instructions. Usually, decisionwriters are not assigned to specific ALJs, but serve instead as part of a “pool” in each hearing office from which writing assignments for decisions are made.

Appeals Council review is the final step in the administrative process. The Appeals Council is comprised of about 125 appellate adjudicators who typically take action—without oral argument—individually or in two-member panels.10 The Appeals Council has discretionary authority to grant, deny, or dismiss a claimant’s request for review, as well as remand the case back to an ALJ or issue a decision.11 In FY 2012, the Appeals Council processed over 166,000 requests for review, a 30.7% increase from FY 2011.12 In addition to processing requests for review, the Appeals Council has authority to review all types of unappealed decisions (i.e., allowances or benefit denials) on its “own motion” through the use of selective sampling techniques.13 Currently, the Appeals Council’s “own motion” review docket draws from a national random sample of ALJ allowance decisions as a quality assurance mechanism; the Appeals Council has not yet legislated ALJ denial decisions, and has declined to use its selective sampling authority to identify and review unappealed cases with a high likelihood of error in recent years.14 In FY 2012, the Appeals Council completed random review of 7,074 ALJ allowance decisions.15 The Appeals Council publishes its decisions only rarely, in the form of Appeals Council Interpretations (ACIs), and its decisions sometimes serve as the basis for Social Security Rulings. Claimants who disagree with the final administrative decision may seek initial judicial review in federal district court.

Adjudicators and other agency employees at both the ALJ hearing level and Appeals Council level use electronic case management systems to help manage their workflow and to provide case-related management information. The current system in use at the hearing level is the Case Processing Management System (CPMS), while the Appeals Council level uses the Agency Council Review Processing System (ARPS). Not only do adjudicators and other staff use CPMS and ARPS in their day-to-day work, but the agency also uses data from these systems to identify and address trends and anomalies existing at the various levels of the disability adjudication. While SSA has endeavored to build effective data reporting systems, limitations still exist that relate to data capture and linking the various systems. Not only does SSA process an extraordinary number of claims through a national, multi-tiered system, but, in doing so, the agency tries to ensure that decisionmaking is consistent and accurate at all levels of adjudication, and that legally sufficient decisions are issued that can withstand review by federal courts. Consistency and accuracy, which have suffered under the strain of administering such a sprawling program, to be sure, an ALJ faces an enormous task in adjudicating hundreds of cases annually.16 Nonetheless, divergent allowance rates among ALJs suggest that claims are being resolved in an inconsistent, if not inaccurate, manner.17 The Appeals Council similarly struggles to fulfill its error-correction and quality-review roles. That these steps may have room for improvement is evidenced by the 45% rate at which cases are remanded by the agency from federal courts in recent years.18 Bringing greater consistency and accuracy to the disability claims adjudication process will enhance the fairness and integrity of the program.

One area of particular concern—due to its apparent contribution to a high demand rate—is SSA’s treating source rule, which generally affords “controlling weight” to the opinions of a claimant’s treating physician, psychologist, or other acceptable medical source.19 In the early 1990s, SSA sought to bring greater clarity and uniformity to the assessment of medical evidence by establishing regulatory standards for such evaluations. In practice, however, this evidentiary rule has not delivered on its promise of improving consistency. In recent years, erroneous application of the treating source rule has been cited as the basis for

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6 The administrative process for adjudication of Social Security disability claims is nonadversarial in nature. See, e.g., 42 U.S.C. § 404(g) (2012) (describing agency’s administrative review process as “informal” and “nonadversary”); Mathews v. Eldridge, 424 U.S. 119, 125 (1976) (“The hearing is nonadversary and the SSA is not represented by counsel.”); Richardson v. Perales, 402 U.S. 389, 403 (1971) (“We bear in mind that [SSA] operates essentially, and is intended so to do, as an adjudicator and not as an advocate or adversary.”).


11 The Conference believes that its 1987 conclusion that “a principal mandate” of the Appeals Council is “to recommend and, when appropriate, implement adjudicatory principles and decisional standards for the disability determination process” remains valid today. See ACUS Recommendation 87–7, supra note 2.

12 Soc. Sec. Admin., Office of Appellate Operations, Executive Director’s Broadcast, at 1 (Oct. 19, 2012) [hereinafter Exec. Dir. Broadcast]. Of these 166,000 requests for review, the Appeals Council dismissed or denied 78.3% of the requests, remanded 18.6% of the cases back to ALJs, and issued decisions (i.e., fully favorable, partially favorable, or unfavorable) in 2.6% of the cases. Id. at 2.

13 As the name connotes, random sampling involves selection of hearing level cases for Appeals Council review from a national pool without regard for case characteristics or correctness, otherwise than broad categories designed to assure randomness (e.g., allowances within a given date range). By contrast, selective sampling is specifically designed to identify cases exhibiting problematics issues or fact patterns that increase the likelihood of error.” 20 CFR 404.969(b)(1), 416.1429(b)(1) (2012) (detailing the Appeals Council’s “own motion” and “database” procedures); see also Soc. Sec. Admin., Identification and Referral of Cases Under Appeals Council’s Own Motion Review Authority, 63 FR 36565 (July 7, 1998). These procedures are established pursuant to the Social Security Act’s broad grant of authority to the Commissioner to establish hearing procedures and, on his or her own motion, hold hearings or conduct other proceedings as necessary for the proper administration of the program. See, e.g., 42 U.S.C. 405(b)(1), 1333(c)(1)(A) (2011).

14 This recommendation suggests that, to enhance decisional accuracy and consistency, SSA expand the Appeals Council’s use of “own motion” review of unappealed ALJ decisions through selective sampling with an objective criteria that identify problematic issues, fact patterns, or case characteristics. Under this recommendation, focused review might be warranted when SSA determines that the subject matter of a claim, the manner in which a hearing was held, or statistical analyses showing a high likelihood of error or significantly anomalous outcomes.

15 Exec. Dir. Broadcast, supra note 12, at 3. The Appeals Council’s interpretation of ALIs is 82.5% of the time, and either remanded or issued corrective decisions approximately 16% of the time. At the end of the FY 2012, there were 741 “own motion” review cases still pending final action. Id.

16 On average, for FY 2009–FY 2011, ALJs issued 538.9 dispositions per year. See Statistical Appendix, supra note 8, at A–2.

17 In recent years, while the distribution of yearly allowance dispositions rates has been approximately normal (i.e., a mean of 56%), the distribution covers a wide range of allowances with 95% of the rates falling between 26% and 85%. See id. at 13, 14 fig. A–8 (analyzing allowance rates for FY 2009–FY 2011). The lowest allowance rate was 4% and the highest allowance rate was 98%. See id.


19 See 20 CFR 404.1527(c), 416.327(c) (2012).
remand by the Appeals Council at a 10% frequency rate, and the frequency rate with which it is cited by federal courts is even higher at 35%. Dramatic changes in the American health care system over the past twenty years also call into question the ongoing efficacy of the special deference afforded to the opinions of treating sources. Individuals typically visit multiple medical professionals in a variety of settings for their health care needs and less frequently develop a sustained relationship with one physician. Moreover, difficulty in determining who among a wide range of medical professionals should be considered a treating source has bedeviled ALJs and reviewing courts, contributing to high remand rates.

This recommendation finds its genesis in SSA’s request that the Conference study the role of the Appeals Council in reviewing cases to reduce any observed variances among adjudicative decisions at the hearing level, as well as the efficacy of SSA’s treating source rule. These studies also revealed other areas that appear ripe for recommendation. While SSA has enacted various initiatives to increase confidence and has issued rulings to clarify its regulations, the size and complexity of the system leave more work to be done. The following recommendations reaffirm certain portions of past recommendations that remain valid and relevant and also identify new approaches to ensure consistency, accuracy, and fairness across this massive decision system.

Recommendation

ALJ Hearing Stage

1. Improving Adjudication Effectiveness and Consistency. In order to promote greater decisional consistency and streamline the adjudication process at the ALJ hearing stage, SSA should:

   (a) Require claimant representatives (while also permitting claimants without representation) to submit pre-hearing briefs in a standardized format that, among other things, summarizes the medical evidence and justification for the claimant’s eligibility for benefits; and
   
   (b) expand the use of video hearings in a manner consistent with sound technological practices, because such hearings promote efficiency and do not lead to a significant difference in allowance rates from in-person hearings. SSA should continue to advise claimants that opting for video hearings often results in faster scheduling of hearings (as compared to in-person hearings) and more convenient hearing locations; and
   
   (c) assign decisionwriters and case technicians to specific ALJs in a hearing office (with Hearing Office Directors continuing to supervise such support staff), while maintaining flexibility to meet operational needs.

2. Balancing Error-Correction and Systemic Review Functions. SSA should continue to promote the consistent application of policy to the adjudication of disability benefits claims across a nationwide program. SSA should ensure that the Appeals Council strikes an appropriate balance between its error-correction function when exercising discretionary review of individual claimants’ requests for review, and its mandate to improve organizational effectiveness, decisional consistency, and communication across the agency policy use of “own motion” review (as to both allowances and unappealed denials) and other types of systemic quality assurance measures.

3. Enhancing Communication. SSA should make clear that an essential function of the Appeals Council is both to focus on consistent application of Social Security regulations and policies on a systemic basis, and to disseminate advice and guidance to SSA policymakers, ALJs, and other lower-level decisionmakers. The Appeals Council should advise and assist policymakers and decisionmakers by:

   (a) Issuing Appeals Council Interpretations (ACIs), with greater frequency, in order to: Address policy gaps; promote greater consistency and uniformity throughout the adjudicatory process; and establish precedents upon which claimants and their representatives may rely. Such ACIs should be circulated within the agency and made publicly available through posting on SSA’s Web site or other similar means of public dissemination;
   
   (b) publishing selected ALJ or Appeals Council decisions to serve as model decisions (e.g., they are well-reasoned and clear), or to provide needed policy clarifications. Consistent with statutory obligations to maintain the privacy of sensitive information, such publications should not include personally identifiable information;
   
   (c) continuing, to the greatest extent feasible, to send cases that have been remanded from the Appeals Council or federal courts back to the same ALJs who initially adjudicated such claims for additional processing. If an ALJ who initially decided a claim will not be presiding over a case post-remand, SSA should nonetheless ensure that he or she still receives notification of the remand decision. Decisionwriters who were involved in drafting a remanded decision should also receive notification of remand decisions; and
   
   (d) developing a program for ALJs to serve extended voluntary details on the Appeals Council in order to introduce a measure of peer review, enrich ALJ understanding of the appeals process, and benefit the Appeals Council by introducing the perspectives and insights of ALJs. In support of that effort, SSA should seek a waiver from the Office of Personnel Management (OPM) of its durational (120-day) limit on details, which, if granted, would enable detailed ALJs to gain a deeper knowledge of the Appeals Council than is possible under a shorter detail period. OPM should give favorable consideration to such a request.

4. Expanding Focused “Own Motion” Review. In order to focus attention on the unappealed decisions that most warrant review, thereby enhancing both accuracy and consistency, SSA should expand the Appeals Council’s use of its “own motion” review by using selective review in a manner consistent with ALJ decisional independence. The Appeals Council should identify neutral, and objective criteria, including statistical assessments, to identify problematic issues or fact patterns that increase the likelihood of error and, thereby, warrant focused review. In addition, SSA should review unappealed decisions that raise issues whose resolution likely would provide guidance to ALJs and adjudicators. In expanding its “own motion” review, SSA must ensure that (i) selection-of-review criteria are developed in a neutral fashion without targeting particular ALJs or other decisionmakers, and that (ii) inclusion of cases in such review does not serve as the basis for evaluation or discipline. Thus, if necessary, SSA should revise its regulations through notice-and-comment rulemaking to clarify and expand the Appeals Council’s use of selective sampling to identify for review decisions that:

   (a) Raise issues for which resolution by the Appeals Council would provide policy clarifications to agency adjudicators or the public;
   
   (b) appear, based on statistical or predictive analysis of case characteristics, to have a likelihood of error or lack of policy compliance; or
   
   (c) otherwise raise challenging issues of fact or law, or have case characteristics, that increase the likelihood of error.

Use of Opinion Evidence From Medical Professionals (Treating Source Rule)

5. Evaluating Medical Source Opinions. SSA should revise its regulations through notice-and-comment rulemaking to eliminate the controlling weight weight aspect of the treating source rule in favor of a more flexible approach based on specific regulatory factors. SSA should give ALJs greater discretion and flexibility when determining the appropriate weight to afford opinions from treating sources which may or may not be determinative, consistent with the factors enumerated in the current regulatory scheme for evaluation of opinions of acceptable medical sources who are not deemed “treating” sources. Such factors should include: (i) Length of the treatment relationship and frequency of examination; (ii) nature and extent of the treatment relationship; (iii) supportability of the medical source’s opinion; (iv) consistency of the medical source’s opinion; (v) specialization of the medical source; and (vi) any other factors that may support or contradict a medical source’s opinion. In all cases, ALJs should articulate the bases for the weight given to opinions from medical sources.

6. Recognizing the Value of Other Medical Sources. SSA’s existing regulatory scheme, which assigns second-tier evidentiary value to the opinions of nurse practitioners (NPs), physician assistants (PAs), and licensed clinical social workers (LCSWs) because they are not considered “acceptable medical sources,” should be reconsidered to reflect...
the realities of the current health care system. For many Social Security disability claimants, these medical professionals are the de facto “treating source” of medical care for physical and mental illnesses. SSA should:
(a) revise its regulations through notice-and-comment rulemaking to add NPs, PAs, and LCSWs as “acceptable medical sources,” consistent with their respective state law-based licensure and scopes of practice; or
(b) issue a new Social Security ruling or other policy directive through a statement that makes clear, for agency adjudicators, federal courts, and the public, the value of, as well as the weight to be afforded, the opinions of these three types of medical professionals.

Statistical Quality Assurance Measures

7. Enhancing Data Reporting Systems. SSA should enhance its current data reporting systems in order to develop a more robust statistical quality assurance program. To enhance its current data reporting systems, such as the Case Processing Management System (CPMS) and the Appeals Council Review Processing System (ARPS), or any respective follow-on systems, SSA should determine how to associate types of cases and issues, regions, hearing offices, adjudicators, procedural elements and benchmarks, and decisional outcomes together. The goal of such systems should not only be objective evaluation of the agency’s case processing operation, but also the effective utilization of data to inform policy formation and operational consistency.

8. Capturing Additional Data. SSA should specifically address the limitations of CPMS, ARPS, and any respective follow-on systems by ensuring that these data reporting systems capture (as appropriate):
(a) Information related to any prior hearings;
(b) whether a decision involved a hearing or other record-on-file decision;
(c) whether new evidence was submitted by a claimant after his or her hearing to the ALJ or to the Appeals Council; and
(d) data or other tracking mechanisms enabling ARPS and CPMS data to be related to a single claim through all case processing stages, including hearings, Appeals Council review, and remand by the Appeals Council or federal courts.

9. Encouraging Employee Feedback. SSA should encourage feedback from SSA employees to identify other types of case-related data that should be captured and to suggest ways to facilitate the linking of SSA’s multi data reporting systems in order to improve overall data quality and quality assurance capabilities.

Administrative Conference Recommendation 2013–2
Benefit-Cost Analysis at Independent Regulatory Agencies

Adopted June 13, 2013

Benefit-cost analysis (also known as cost-benefit analysis) is one of the primary tools used in regulatory analysis to anticipate and evaluate the likely consequences of rules. Although some regulatory benefits and costs are difficult to quantify or monetize, preparing such analyses generally attempt to estimate the overall benefits that a proposed or final rule would create as well as the aggregate costs that it would impose on society, and then determine whether the former justifies the latter. Some observers have disputed its utility in rulemaking, but benefit-cost analysis (and other forms of regulatory analysis) can help ensure that decisionmakers fully contemplate the risks and rewards of any proposed regulatory strategy. Benefit-cost analysis can also improve transparency, helping to ensure that the public and Congress understand why regulatory decisions are made.

For more than 30 years, Cabinet departments and other executive agencies like the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) have been required by executive orders to conduct benefit-cost or other types of regulatory analyses for their “major” or “economically significant” rules. 5 In 1981, President Ronald Reagan issued Executive Order (EO) 12,291, 6 which instructed covered executive agencies to prepare regulatory impact analyses of their draft proposed and final major rules (including a description of benefits and costs) and to submit all of their draft rules to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) before publication in the Federal Register. Subsequent administrations have reaffirmed the importance of benefit-cost analysis and OIRA review. Currently, EO 12,866, issued by President William Jefferson Clinton in 1993, requires Cabinet departments and other covered executive agencies to “assess both the costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.” 7 It also requires them to assess the costs and benefits of “significant” draft proposed and final rules submitted to OIRA for review, and to conduct more thorough analysis of economically significant draft proposed and final rules. 8

As noted previously, independent regulatory agencies traditionally have not been subject to the formal benefit-cost analysis requirements imposed by executive order, although several recent Presidents have encouraged those agencies to voluntarily apply the principles contained in the relevant executive orders. 9 Virtually all independent regulatory agencies traditionally have not been subject to the formal benefit-cost analysis requirements imposed by executive order, although several recent Presidents have encouraged those agencies to voluntarily apply the principles contained in the relevant executive orders.

5 “Major” and “economically significant” rules include (but are not limited to) rules likely to result in annual costs, benefits, or transfer payments of $100 million or more. See Congressional Review Act, 5 U.S.C. 804(2); Exec. Order No. 12,866, supra note 4, § 3(b)(1). Transfer payments are monetary payments from one group to another that do not affect total resources available to society. See OMB Circular A-4, supra note 1. The most common form is the transfer of federal funds to the recipients of those funds (e.g., grants, food stamps, Medicare, Medicaid, and veterans’ benefits). See 44 U.S.C. 3506, more than one-third of all major rules were so categorized because of the amount of transfer payments. See U.S. Cong. Research Service, REINS Act: Number and Types of “Major Rules” in Recent Years, R41651, Feb. 21, 2011, by Curtis W. Copeland and Maeve Carey.

7 Exec. Order No. 12,866, supra note 4, § 1(b)(6).
8 Id. § 6(a)(3); see also Exec. Order No. 13,563, 76 FR 3821 (Jan. 21, 2011) (President Obama) (stating that the benefits of proposed and final rules must “justify” the costs). Administrative Conference of the United States, Recommendation 88-9, Presidential Review of Agency Rulemaking, 54 FR 5207 (Feb. 2, 1989) (suggesting guidelines for the enhanced openness of executive agency regulatory review and recommending the reconsideration of existing rules looking toward the repeal of unnecessary regulations).

9 See, e.g., Exec. Order No. 13,579, 76 FR 41,587 (July 14, 2011) (stating that independent regulatory agencies “should promote” the goal, articulated in EO 13,563, of producing a “regulatory system that protects public health, welfare, and the environment while promoting economic growth, innovation, competitiveness, and job creation” and “should comply” with the provisions in EO 13,563...
This recommendation encourages agencies to voluntarily adopt certain practices that some independent regulatory agencies (and other agencies) have developed when conducting regulatory analyses for major rules. The Conference recognizes that increasing the economic impact of proposed and final rules might well require substantial use of limited agency resources. This might require independent agencies to make significant tradeoffs among competing priorities and may delay the rulemaking process. In such cases, some independent regulatory agencies are already subject to benefit-cost and other types of regulatory analysis requirements, and others have voluntarily conducted such analyses, and the Conference therefore wishes to highlight innovative practices undertaken by these agencies.  

The recommendation, first, identifies various policies and practices used in several of the independent regulatory agencies and offers a rationale to encourage their use in other agencies. For example, it recommends that each independent regulatory agency develop written guidance on the preparation of benefit-cost and other types of regulatory analyses. That guidance should be designed to help ensure that any regulatory analysis the agency undertakes is soundly developed, transparent, consistently conducted, and contributes to agency compliance with applicable statutes and other rulemaking requirements. Second, the recommendation highlights a series of analytical practices that OMB Circular A-4 recommends to Cabinet departments and other executive agencies for their major rules, and the recommendation encourages independent regulatory agencies to consider whether those practices may be useful in the development of their major rules. For example, it recommends that agencies’ analyses be as transparent and reproducible as practicable subject to the limitations of law and applicable policies (including preventing the disclosure of proprietary information or trade secrets, or other confidential information). The recommendation does not seek to establish a one-size-fits-all regulatory analysis, and recognizes that each agency must tailor the analyses it conducts to accord with relevant statutory requirements, its own regulatory priorities, and the potential impact of the analysis on regulatory decisionmaking to ensure proper use of limited agency resources. Finally, the recommendation proposes that, to the extent Congress decides to impose or endorse new regulatory analysis requirements on independent regulatory agencies, Congress should consider giving those agencies the discretion to scale the analyses to the significance of the rules, and should consider the agency resources needed to satisfy such requirements.  


Between January 2007 and December 2012, federal agencies published 19,246 final rules, of which 485 were considered “major” rules. See Copeland, supra note 14, at Table 1. Expanding the rules on which regulatory analysis is required from “economically significant” or “major” rules to rules considered “significant” under EO 12,866 would likely quintuple the number of analyses required. See http://www.reginfo.gov/public/do/eoCountsSearch for data on this issue.

**Recommendation**

**Encouraging the Diffusion of Certain Policies and Practices**

1. Each independent regulatory agency should develop and keep up to date written guidance regarding the use of benefit-cost and other types of regulatory analyses. That guidance should be tailored to the agency’s particular statutory and regulatory environment. To accomplish this goal, independent regulatory agencies may choose whether or not to adopt or adapt the regulatory analysis practices described in OMB Circular A-4 or any successor government-wide guidance.

2. If an independent regulatory agency prepares a regulatory analysis for a proposed or final rule, the analysis should be developed as early in the rulemaking process as reasonably practical. Once prepared, the analysis may need to be updated as the agency becomes aware of new information that may affect the rulemaking, or if changes are made to the substance of the rule.

3. If an independent regulatory agency determines that additional analytical expertise or experience may be helpful to prepare a regulatory analysis (e.g., determining how certain benefits could be quantified or monetized), it should, to the extent appropriate, consult with other governmental entities with expertise in this area.

4. Consistent with applicable laws and the procedures and flexibilities permitted in the Paperwork Reduction Act, independent regulatory agencies and OIRA should facilitate the timely collection of information necessary to develop the agencies’ regulatory analyses.

**Recommended Practices for Major Rules**

5. Independent regulatory agencies should consider the appropriateness of the analytical guidance provided in OMB Circular A-4 when developing regulatory analyses for major rules. They should consider structuring their analyses of those rules in terms of three general principles: (a) Identify the need for the regulation; (b) examine plausible alternative regulatory approaches; and (c) estimate, to the extent possible, the benefits and costs of the proposed rule and the primary alternatives.

6. Consistent with applicable laws and agency resources, independent regulatory agencies should consider including in their regulatory analyses assessments of the impact of not only those actions that are within the agency’s statutory discretion but also of those actions that are statutorily mandated. Agencies should consider showing the effects of both types of actions in order to improve regulatory transparency.

7. Subject to the limitations of law and applicable policies, independent regulatory agencies’ regulatory analyses should be as...
have appropriate rules and procedures to ensure the integrity of the scientific process within the agency.” 4 The Office of Science and Technology Policy (OSTP) elaborated upon this memorandum in 2010, instructing agencies to “communicate scientific and technological findings by including a clear explication of underlying assumptions; accurate contextualization of uncertainties; and a description of the probabilities associated with both optimistic and pessimistic projections.”

Administrative Conference Recommendation 2013–3
Science in the Administrative Process
Adopted June 14, 2013
Over the last three decades, several authorities made recommendations for improved transparency in the use of science in the administrative process. 5 Partially in response to these recommendations, the executive branch and Congress have made a number of reforms to the scientific process underlying agency decisionmaking. In 2009, President Obama issued a memorandum directing that, “[t]o the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.” 6 “Each agency should [also]

1 The scope of this recommendation is limited to the “natural sciences” (e.g., chemistry, physics, medical science, geology, etc.), mathematics, statistics, computer science, and other allied fields. It is based upon a report that deals with agency research and decisionmaking related to the natural sciences. Wendy Wagner, Science in Regulation: A Study of Agency Decisionmaking Approaches (Feb. 18, 2013), available at http://www.acus.gov/sites/default/files/documents/Science%20in%20Regulation_Final%20Report_2_18_13_0.pdf.


4 Id.

5 Memorandum from John P. Holdren, Director of the Office of Science and Technology Policy, to the Heads of Executive Departments and Agencies Increasing Access to the Results of Federally Funded Research (Feb. 22, 2013) (calling for agency plans to permit public access to research papers funded in whole or in part with federal monies). As a general matter, the agency should make publicly available any scientific literature it considered, including literature it reviewed but upon which it ultimately did not rely. For purposes of this recommendation, literature that an agency “considered” includes not only any study an agency official relied upon but also any study an agency official reviewed but ultimately determined not to rely upon (because it was deemed to be outside the scope of the scientific process at hand, was not considered sufficiently reliable, or was otherwise rejected by the agency official). Cf. Administrative Conference of the United States, Recommendation 2013–3, The Administrative Record in Informal Rulemaking, _ FR _ (providing a similar definition of “consider” in the context of the administrative record in informal rulemaking). If an agency official merely had access to a study but did not specifically analyze it to determine its relevance, that study has not been “considered” in the meaning of the recommendation for purposes of making such literature publicly available.

promoting transparency in decisions in which science is an important element.11

Second, the recommendation offers a series of proposals to bring greater congruity to the treatment of publicly and privately funded scientific research. Specifically, it encourages the disclosure of underlying scientific research, including both privately funded and federally funded research, that an agency is considering (to the extent practicable and permitted by law).12 Similarly, it recommends extending conflict of interest disclosure norms to private parties who submit studies used by an agency.

Recommendation

Suggested Agency Practices Regarding the Use of Science in the Administrative Process

1. Explaining Agency Scientific Decisionmaking. Agencies should explain in proposed and final decision documents how they ensured rigorous review of the scientific information underlying each science-intensive regulatory project. This includes a statement of how each agency evaluated the scientific information used in its analysis; how the agency made the information available to reviewers and the public; how the analysis was reviewed by experts and interested parties; and how the agency ensured that the final decision was supported by the scientific record.

2. Assuring Transparent Assessments. At an early stage in their decisionmaking processes, agencies should identify the specific policy questions that may be informed by science; describe the design of the assessments needed to characterize risks and inform policy decisions; and describe the criteria to be used in reviewing and weighing existing studies. When completed, assessments should: Identify other appropriate analytical choices and explain why they were not chosen; Document the synthesis of the available evidence and relevant literature guided by the assessment design or criteria; identify significant assumptions and choices of analytical techniques; provide a statement of remaining uncertainties; and describe ways in which different plausible choices might change the results of the assessment. Where possible, agencies should also explain the relationship between their scientific findings and the final policy choice. Agencies should strive to communicate this information in a manner that is clear to the general public.

3. Disclosing Underlying Studies and Data. To the extent practicable and permitted by law and applicable policies, each agency should identify and make publicly available on its Web site (or some other widely available forum) references to the scientific literature, underlying data, models, and research results that it considered. In so doing, the agency should list all information upon which it relied in reaching its conclusions, as well as any information material to the scientific analysis that it considered but upon which it ultimately did not rely. Consistent with the limitations in the Information Quality Act (IQA) guidelines issued by the Office of Management and Budget and its own IQA guidelines, each agency should ensure that members of the public have access to the information necessary to reproduce or assess the agency’s technical or scientific conclusions.

4. Checkpoints and Explanations. Agencies should consider establishing explicit checkpoints for regulatory projects, defining both the conditions under which they intend to close their consideration of research or debate in order to reach a decision and when they might reopen that consideration, particularly in cases when they are not bound by judicially enforceable deadlines. In any case, agencies should explain their decisions to initiate, stop, or reopen consideration of a dataset. Such explanations should reference significant ongoing research or other relevant factors.

5. Identifying Future Projects. For science-intensive projects, agencies should identify specific types of future research that may be needed to reduce significant uncertainties in order to advance understanding of the issues.

6. Attribution for Agency Personnel. Agency personnel play an important role in producing their respective agencies’ scientific analyses. Agencies should consider providing all their personnel with some form of consensual attribution for reports or analyses to which they contribute in a significant way. If appropriate, such attributions should be made for personnel who contributed in a significant way to a technical or scientific report, including not only scientists but also economists, lawyers, and other contributors. Reviewers and other contributors could be identified by name and general contribution.

7. Encouraging Debate. Agencies should encourage vigorous debate among agency scientists and should explore ways of incorporating the diversity of that debate in any resulting work product. Agency employees should be encouraged to publish their scientific work in the peer reviewed literature, provided that they follow applicable agency procedures and that confidential government deliberations are not compromised. Dissenting staff members should be protected from reprisals.

8. Sharing of Agency Best Practices. Agencies should identify and publicize the innovations they have developed for transparently incorporating science into their regulatory decisions. OSTP, an interagency group headed by OSTP, or another body should consider occasionally convening agency representatives to discuss and share best practices.

9. Addressing Legal Obstacles to Transparent Decisionmaking. Agencies should identify legal obstacles that may impede otherwise appropriate public access to the scientific information underlying agency analyses or that may prevent the agencies’ development of scientifically robust decisionmaking processes. Agencies should recommend appropriate actions to eliminate such impediments, including revisions in existing law, to the Executive Office of the President.

Agency Disclosures To Enhance the Transparency of Research

10. Data Disclosure. To the extent practicable and in compliance with applicable legal restrictions, privileges, protections, and authorities, agencies should seek to provide disclosure of data underlying scientific research, including both privately and federally funded research being considered by the agencies. Where practicable, such information should be disclosed in machine-readable format. Where such data are not subject to legal or other protections, and the data’s owners nonetheless will not provide such access, agencies should note that fact and explain why they used the results if they chose to do so. Agencies should review their confidential business information policies to ensure that they include appropriate mechanisms to prevent over-claiming.

11. Conflict of Interest Disclosure. Agencies should require conflict of interest disclosures on all scientific research submitted to inform an agency’s licensing, regulated agency decisionmaking processes. This disclosure should be similar to the conflict of interest disclosure required by some scientific journals, such as that used by the International Committee of Medical Journal Editors. The regulatory conflict of interest disclosure should also, where permitted by law, identify whether the experimenter or author had the legal right without approval of the sponsor of the research to: design the research; collect the data; interpret the data; and author, publish or otherwise disseminate the resulting report or full dataset. To the extent that a party other than the principal investigator (e.g., the study sponsor or funder) had control over the design or publication of the study, agencies should disclose this fact and specify the nature of the control such an entity exercised.

Administrative Conference Recommendation 2013-4

The Administrative Record in Informal Rulemaking

Adopted June 14, 2013

The administrative record in informal rulemaking plays an essential role in informing the public of potential agency action and in improving the public’s ability to understand and participate in agency decisionmaking. As well, the administrative record can be essential to judicial review of agency decisionmaking under the Administrative Procedure Act (APA), which directs courts to “review the whole record or those parts of it cited by a party” to determine whether challenged agency action is lawful.1 This statutory language was originally understood as referring to formal proceedings. However, the Supreme Court has long interpreted this APA provision as also encompassing the “administrative record” in informal agency proceedings.

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1 See Wagner, supra note 1, at 135–38 (identifying internal legal impediments to promoting transparency, including short statutory deadlines, limits on dissemination of scientific studies, resource limitations, and caps on the number of discretionary advisory committees agencies can constitute).

2 Legal restrictions that may limit agencies’ ability to provide such disclosures include, among other things, protections for personal privacy, trade secrets, and confidential business information.
records. Most recently, the Conference examined legal considerations associated with the use of digital technologies in the development and implementation of informal rulemakings. This recommendation synthesizes and updates the Conference’s prior recommendations in this area. It is grounded in empirical research, supported by a survey questionnaire on present agency recordkeeping practices, as well as by a review of existing agency guidance. The Conference has identified and recommends best practices for agency recordkeeping in the areas of record compilation, preservation, and certification. The recommendation also advises agencies to develop guidance to aid agency personnel as they compile rulemaking and administrative records and public rulemaking dockets and to increase public understanding of agency recordkeeping. Agencies engage in informal rulemaking with differing frequencies, resources, and technological capabilities. Many agencies are in a period of transition, as they move from paper to electronic recordkeeping.

Attention to the design of information technology resources that is mindful of the principles and best practices set forth below can aid agencies in recordkeeping, as well as facilitate greater public understanding of agency decisionmaking and more effective judicial reviews. For the purposes of this recommendation, the rulemaking record, public rulemaking docket, and the administrative record for judicial review are defined as follows:

"Rulemaking record" means the full record of materials before the agency in an informal rulemaking. The Conference contemplates that, in addition to materials required by law to be included in the rulemaking record, as well as all comments and materials submitted to the agency during comment periods, any material that the agency considers should be included as part of that record.

"Considered" entails review by an individual with substantive responsibilities in connection with the rulemaking. To say that material was considered also entails some minimum degree of attention to the contents of a document. Thus, the rulemaking record need not encompass every document that rulemaking personnel encountered while rummaging through a file drawer, but it generally should include a document that an individual with substantive responsibilities reviewed in order to evaluate its possible significance for the rulemaking, unless the review disclosed that the document was not relevant to the subject matter of the rulemaking. A document should not be excluded from the rulemaking record on the basis that the reviewer disagreed with the factual or other analysis in the document, or because the agency did not or will not rely on it. Although the concept resists precise definition, the term considered as used in this recommendation should be interpreted so as to fulfill its purpose of generating a body of materials by which the rule can be evaluated and to which the agency and others may refer in the future.

"Public rulemaking docket" means the public version of the rulemaking record managed by the agency, regardless of location, such as online at Regulations.gov or an agency Web site or available for physical review in a docket room. The public rulemaking docket includes all information that the agency has made available for public viewing. The Conference also urges agencies to manage their public rulemaking dockets to achieve maximum disclosure to the public. However, the Conference recognizes that prudential concerns may limit agencies from displaying some information, such as certain copyrighted or indented materials, online. It is a best practice for agencies to describe and note online those materials that are not displayed but are available for physical inspection. Another agency best practice is to include in the public rulemaking docket materials generated and considered by the agency after the close of the comment period but prior to issuance of the final rule.

"Administrative record for judicial review" means the materials tendered by the agency and certified to a court as the record on which the agency acted as evidenced by the rulemaking record. Administrative record for judicial review includes all materials treated as "considered" by the agency in the rulemaking record. To avoid confusion with the informal rulemaking record, the phrase "administrative record for judicial review" is used here instead of the informal term "rulemaking record."
review of the agency’s regulatory action. The administrative record provided to the court will include an affidavit, made by a certifying official, attesting to the contents and accuracy of the record being certified.13 It should also include an index itemizing the contents of the record. Parties often rely on this index in designing portions of the administrative record for judicial review, such as for inclusion in a joint appendix that will be presented to the court. The designated portions of the administrative record then typically serve as the basis for the court’s review, as provided in the Administrative Procedure Act and as appropriate under the rules of the reviewing court.15

Some materials in an agency’s rulemaking record may be protected from public disclosure by law or withheld from the public on the basis of agency privilege. For example, protected materials might include classified information, confidential supervisory or business information, or trade secrets. Other materials might be withheld on the basis of privilege, including attorney-client privilege, attorney work product privilege, and the pre-decisional deliberative process privilege. Agency practices regarding the identification or inclusion of protected or privileged materials in administrative records and their accompanying indices vary.16 Some agencies do not include or identify deliberative or privileged materials in administrative records for judicial review.17 Other agencies identify non-disclosed materials specifically in a privilege log provided with the index of the administrative record for judicial review. Agencies have also noted redactions of protected materials in the administrative record for judicial review and moved the court to permit filing of protected materials, or a summary thereof, under seal. Many agencies do not have a policy on inclusion of protected or privileged materials in an administrative record for judicial review and manage such materials on a case-by-case basis. Case-by-case consideration may occasionally be necessary, such as when privileged materials are referenced as the basis of the agency’s decision. Nonetheless, the Conference recommends that agencies develop a written policy for treatment of privileged materials in the administrative record for judicial review and move the court to permit filing of protected materials, or a summary thereof, under seal.18

Many agencies do not have a policy on inclusion of protected or privileged materials in an administrative record for judicial review and manage such materials on a case-by-case basis. Case-by-case consideration may occasionally be necessary, such as when privileged materials are referenced as the basis of the agency’s decision. Nonetheless, the Conference recommends that agencies develop a written policy for treatment of privileged materials in the administrative record for judicial review and move the court to permit filing of protected materials, or a summary thereof, under seal. Many agencies do not have a policy on inclusion of protected or privileged materials in an administrative record for judicial review and manage such materials on a case-by-case basis. Case-by-case consideration may occasionally be necessary, such as when privileged materials are referenced as the basis of the agency’s decision. Nonetheless, the Conference recommends that agencies develop a written policy for treatment of privileged materials in the administrative record for judicial review and move the court to permit filing of protected materials, or a summary thereof, under seal.18

The administrative record provided to the court on judicial review should contain all of the materials in the rulemaking record as set forth in paragraph 1, except that agencies need not include materials protected from disclosure by law or materials that the agency has determined do not fall under withholding based on appropriate legal standards, including privilege.

**Recommendation**

**Record Contents**

1. The Rulemaking Record. In the absence of a specific statutory requirement to the contrary, the agency rulemaking record in an informal rulemaking proceeding should include:
   (a) Notices pertaining to the rulemaking;
   (b) comments and other materials submitted to the agency related to the rulemaking;
   (c) transcripts or recordings, if any, of oral presentations made in the course of a rulemaking;
   (d) reports or recommendations of any relevant advisory committees;
   (e) other materials required by statute, executive order, or agency rule to be considered or to be made public in connection with the rulemaking; and
   (f) any other materials considered by the agency during the course of the rulemaking.

2. The Public Rulemaking Docket. Agencies should manage their public rulemaking dockets to achieve maximum public disclosure. Insofar as feasible, the public rulemaking dockets should include all materials in the rulemaking record, subject to legal limitations on disclosure, any claims of privilege, or any exclusions allowed by law that the agency chooses to invoke. In addition, it may be prudent not to include confidential or sensitive information online and to note instead that this material is available for physical review in a reading room.

3. The Administrative Record for Judicial Review. The administrative record provided to the court on judicial review of informal rulemaking should contain all of the materials in the rulemaking record as set forth in paragraph 1, except that agencies need not include materials protected from disclosure by law or materials that the agency has determined do not fall under withholding based on appropriate legal standards, including privilege.

**Rulemaking Recordkeeping**

4. Agencies should begin compiling rulemaking records no later than the date on which an agency publishes the notice of proposed rulemaking. Agencies should include materials considered in preparation of the notice of proposed rulemaking. For example, agencies should include materials received in response to an advance notice of proposed rulemaking or a notice of inquiry, if there is one, and considered in development of the proposed rule. The agency should continue compiling the rulemaking record as long as the rule is pending before the agency.

5. Agencies should designate one or more custodians for rulemaking recordkeeping, either on a rulemaking-by-rulemaking basis or generally. Agencies should inform agency personnel of the custodian(s) and direct them to deposit rulemaking record content with the custodian(s), excepting if necessary confidential information to which access is restricted. The custodian(s) should document the record compilation process.

**Public Rulemaking Dockets**

6. To the extent practicable, agencies should index public rulemaking dockets for informal rulemaking, at an appropriate level of detail.

**Record Preservation**

7. The National Archives and Records Administration (NARA) should amend its agency guidance to address the official status and legal value of records relating to informal rulemaking, particular administrative records for judicial review.

8. Agencies using electronic records management systems to manage rulemaking records, such as the Federal Document Management System of the Department of Transportation, should work with NARA to ensure the adequacy of such systems for recordkeeping purposes and the transfer to the National Archives of permanent records. Agencies should review their records schedules in light of developments in electronic records management.
Certification of Administrative Records for Judicial Review

9. Agencies should develop procedures for designating appropriate individuals, who may or may not be record custodians, to certify administrative records to the court in any case of judicial review of agency action. Agency certifications should include an index of contents of the administrative record for judicial review.

Agency Record Policies and Guidance

10. Agencies should develop a general policy regarding treatment of protected or privileged materials, including indexing, in public rulemaking dockets and in certification of the administrative record for judicial review. Agencies should make this policy available to the public and should provide it to the Department of Justice, if the Department represents the agency in litigation.

11. Agencies that engage in informal rulemaking should issue guidance to aid personnel in implementing the above best practices. Agencies should make their guidance on informal rulemaking and administrative recordkeeping available to the public and should provide it to the Department of Justice, if the Department represents the agency in litigation. The level of detail and contents of such guidance will vary based on factors such as: The size of typical agency rulemaking records; institutional experience, or the lack thereof, with record compilation and informal rulemaking litigation; the need for consistency across agency components in the development and maintenance of rulemaking records; and agency resources. However, agencies should ensure that guidance addresses at least the following:

(a) Essential components of the rulemaking record, public rulemaking docket, and the administrative record for judicial review;
(b) Appropriate exclusions from the rulemaking record, including guidance on whether and when to exclude materials such as personal notes or draft documents;
(c) Timing of compilation and indexing practices;
(d) Management and segregation of privileged materials, e.g., attorney work product or pre-decisional deliberative materials;
(e) Management and segregation of sensitive or protected materials, e.g., copyrighted, classified, protected personal, or confidential supervisory or business information;
(f) Policies and procedures, if any, for the protection of sensitive information submitted by the public during the process of rulemaking or otherwise contained in the rulemaking record;
(g) Preservation of rulemaking and administrative records and public rulemaking dockets;
(h) Certification of the administrative record for judicial review, including the process for identifying the appropriate certifying official; and
(i) Relevant capabilities and limitations of recordkeeping tools and technologies.

Judicial Review

12. A reviewing court should afford the administrative record for judicial review a presumption of regularity.

13. In appropriate circumstances, a reviewing court should permit or require supplementation or completion of the record on review. Supplementation or completion may be appropriate when the presumption of regularity has been rebutted, such as in cases where there is a strong showing that an agency has acted improperly or in bad faith or there are credible allegations that the administrative record for judicial review is incomplete.

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BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
[Docket No. APHIS–2013–0054]

Notice of Request for Extension of Approval of an Information Collection; Interstate Movement of Fruit From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service’s intention to request an extension of approval of an information collection associated with the regulations for the interstate movement of fruit from Hawaii.

DATES: We will consider all comments that we receive on or before September 9, 2013.

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


• Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0054, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0054 or in our reading room, which is located in room 1141 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: For information on the regulations for the interstate movement of fruit from Hawaii, contact Mr. David Lamb, Regulatory Coordination Specialist, RPM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 851–2103. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS’ Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTAL INFORMATION:
Title: Interstate Movement of Fruit From Hawaii.
OMB Number: 0579–0331.
Type of Request: Extension of approval of an information collection.
Abstract: The Plant Protection Act (7 U.S.C. 7701 et seq.) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The regulations in 7 CFR part 318, State of Hawaii and Territories Quarantine Notices, prohibit or restrict the interstate movement of fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to the continental United States to prevent the spread of plant pests or noxious weeds.

In accordance with the regulations in §318.13–26, breadfruit, jackfruit, fresh pods of cowpea and its relatives, dragon fruit, mangosteen, moringa pods, and melon must meet certain conditions for interstate movement from Hawaii into the continental United States. These conditions involve information collection activities, including certificates and limited permits.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;