reducing the need for travel and the costs associated with it, reducing caseload backlog, and increasing scheduling flexibility for agencies and attorneys as well as increasing access for parties. Critics, however, have suggested that hearings and other adjudicatory proceedings conducted by video may hamper communication between a party and the decision-maker; may hamper communication between parties and their attorneys or representatives; and/or may hamper a decision-maker’s ability to make credibility determinations.3

Recognizing both the praise for and critique of the use of VTC in administrative hearings and other adjudicatory proceedings, the Administrative Conference issues this Recommendation regarding the use of VTC in Federal agencies with high volume caseloads. The Conference has a long standing commitment to the values inherent in the agency adjudicatory process: Efficiency, fairness and acceptability/satisfaction.4 These values should drive decisions to use VTC. The Recommendation suggests that agencies should use VTC only after conducting an analysis of the costs and benefits of VTC use and determining that such use would improve efficiency (i.e., timeliness and costs of adjudications) and would not impair the fairness of the proceedings or the participants’ satisfaction with them. In addition, this Recommendation supports the Conference’s statutory mandate of making improvements to the regulatory and adjudicatory process by improving the effectiveness and fairness of applicable laws. See generally Administrative Conference Act, 5 U.S.C. §§ 591–596.

Accordingly, this Recommendation is directed at those agencies with high volume caseloads that do not currently use VTC as a regular practice in administrative hearings and/or other adjudicatory proceedings and that may benefit from the use of it to improve efficiency and/or reduce costs. Agencies with high volume caseloads are likely to receive the most benefit and/or cost savings from the use of VTC. The Conference encourages all agencies (including those with lower volume caseloads) to consider whether the use of VTC would be beneficial as a way to improve efficiency and/or reduce costs while also preserving the fairness and participant satisfaction of proceedings. This Recommendation sets forth some non-exclusive criteria that agencies should consider. For those agencies that determine that the use of VTC would be beneficial, this Recommendation also sets forth best practices provided in part by agencies currently using VTC.

**Recommendation**

1. Federal agencies with high volume caseloads should consider using video teleconferencing technology (“VTC”) to conduct administrative hearings and other aspects of adjudicatory proceedings. Agencies with high volume caseloads may also benefit from this recommendation.

2. Federal agencies with high volume caseloads should consider the following non-exclusive criteria when determining whether to use video teleconferencing technology in administrative hearings and other adjudicatory proceedings:
   - (a) Whether an agency’s use of VTC is legally permissible under its organic legislation and other laws;
   - (b) Whether the nature and type of administrative hearings and other adjudicatory proceedings conducted by the agency are conducive to the use of VTC;
   - (c) Whether VTC can be used without affecting the outcome of cases heard by the agency;
   - (d) Whether the agency’s budget would allow for investment in appropriate and secure technology given the costs of VTC;
   - (e) Whether the use of VTC would create cost savings, such as savings associated with reductions in personnel travel and with increased productivity resulting from reductions in personnel time spent on travel;
   - (f) Whether the use of VTC would result in a reduction of the amount of wait time for an administrative hearing;
   - (g) Whether users of VTC, such as administrative law judges, hearing officers and other court staff, parties, witnesses and attorneys (or other party representatives), would find the use of such technology beneficial;
   - (h) Whether the agency’s facilities and administration, both national and regional (if applicable), can be equipped to handle the technology and administration required for use of VTC;
   - (i) Whether the use of VTC would adversely affect the representation of a party at an administrative hearing or other adjudicatory proceeding; and
   - (j) Whether the communication between the various individuals present at a hearing or proceeding (including parties, witnesses, judges, hearing officers and other agency staff, translators and attorneys (or other party representatives)) would be adversely affected.

3. Federal agencies with high volume caseloads that decide to use video teleconferencing technology to conduct administrative hearings and other adjudicatory proceedings should consider the following best practices:
   - (a) Use VTC on a voluntary basis and allow a party to have an in-person hearing or proceeding if the party chooses to do so.
   - (b) Periodically evaluate the use of VTC to make sure that the use is outcome-neutral (i.e., does not affect the decision rendered) and that the use is meeting the needs of its users.
   - (c) Solicit feedback and comments (possibly through notice-and-comment rulemaking) about VTC from those who would use it regularly (e.g., administrative law judges, hearing officers and other administrative staff, parties, witnesses and attorneys (or other party representatives)).
   - (d) Begin the use of VTC with a pilot program and then evaluate the pilot program before moving to wider use.
   - (e) Structure training at the outset of implementation of VTC use and have technical support available for troubleshooting and implementation questions.
   - (f) Consult the staff of the Administrative Conference of the United States and/or officials at other agencies that have used VTC for best practices, guidance, advice, and the possibilities for shared resources and collaboration.

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5 See Roger C. Cranton, A Comment on Trial-Type Hearings in Nuclear Power Plant Siting, 58 Va. L. Rev. 739 (1972) (Professor Cranton is a former Chairman of the Conference); see also Paul R. Verkuil, A Study of Informal Adjudication Procedures, 43 U. Chi. L. Rev. 739 (1976), (describing the values of efficiency, fairness and satisfaction) (Mr. Verkuil is the current Chairman of the Conference). The balancing of these procedural values was undertaken in Mathews v. Eldridge, 424 U.S. 319 (1976).

6 See American Bar Association’s Commission on Trial-Type Hearings in Nuclear Power Plant Siting, 58 Va. L. Rev. 739 (1972) (Professor Cranton is a former Chairman of the Conference); see also Paul R. Verkuil, A Study of Informal Adjudication Procedures, 43 U. Chi. L. Rev. 739 (1976), (describing the values of efficiency, fairness and satisfaction) (Mr. Verkuil is the current Chairman of the Conference). The balancing of these procedural values was undertaken in Mathews v. Eldridge, 424 U.S. 319 (1976).
and related products and this report assists other Government agencies in providing timely information on the quantity of meat entering the processing channels.

The information must be collected, compiled, and disseminated by an impartial third-party, in a manner which protects the confidentiality of the reporting entity. AMS is in the best position to provide this service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0333 hours per response.

Respondents: Business or other for-profit entities, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 72.

Estimated Number of Responses: 18,720.

Estimated Number of Responses per Respondent: 260.

Estimated Total Annual Burden on Respondents: 624 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 3, 2011.

David R. Shipman,
Acting Administrator, Agricultural Marketing Service.