NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/13/2010

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Simon Szykman
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 04/16/2010

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201003-0648-010
AGENCY ICR TRACKING NUMBER:
TITLE: Fish and Seafood Promotion
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0556
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2013 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	3	320	0
New	3	320	21
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	0	0	21
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
Application to Form a Seafood Marketing Council			50 CFR 260.36

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request
DOC/NOAA/NMFS

2. OMB control number b. [ ] None
a. 0648 - 0556

3. Type of information collection (*check one*)
a. [ ] New Collection
b. [ ] Revision of a currently approved collection
c. [✔] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [ ] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [✔] Three years from approval date b. [ ] Other Specify:____/____

7. Title Fish and Seafood Promotion

8. Agency form number(s) (*if applicable*)

9. Keywords

10. Abstract

In response to renewed fishing industry support for marketing and promotion-related activities, National Marine Fisheries Service (NMFS) enacts regulations to implement the Fish and Seafood Promotion Act of 1986 for the establishment, organization, and operation of Seafood Marketing Councils (Council). The Council's marketing and promotion plans will be designed to increase the general demand for fish and fish products by encouraging, expanding, and improving the marketing and utilization of fish and fish products both in domestic or foreign markets, through consumer education, research, and other marketing and promotion activities. The intent of this rule is to increase benefits from domestic fisheries while maintaining consistency with NMFS' stewardship goals and mission statement.

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. ___ Individuals or households d. ___ Farms
b. x Business or other for-profit e. x Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [✔] Voluntary
b. [ ] Required to obtain or retain benefits
c. [ ] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents 3
b. Total annual responses 3
1. Percentage of these responses collected electronically 0 %
c. Total annual hours requested 320
d. Current OMB inventory 320
e. Difference 0
f. Explanation of difference
1. Program change
2. Adjustment

14. Annual reporting and recordkeeping cost burden (*in thousands of dollars*)
a. Total annualized capital/startup costs 0
b. Total annual costs (O&M) 0
c. Total annualized cost requested 0
d. Current OMB inventory 0
e. Difference 0
f. Explanation of difference
1. Program change
2. Adjustment

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. ___ Program planning or management
b. ___ Program evaluation f. ___ Research
c. ___ General purpose statistics g. P Regulatory or compliance
d. ___ Audit

16. Frequency of recordkeeping or reporting (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [✔] Reporting
1. [ ] On occasion 2. [ ] Weekly 3. [ ] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [ ] Annually
7. [ ] Biennially 8. [ ] Other (describe) ____

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Christopher M. Moore
Phone: (301) 713-2379

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature signed by Emily Menashes	Date 03/26/2010
Signature of NOAA Clearance Officer	
Signature signed by Sarah Brabson	Date 03/30/2010

SUPPORTING STATEMENT
FISH AND SEAFOOD PROMOTION
OMB CONTROL NO. 0648-0556

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

In 1989, National Marine Fisheries Service (NMFS) implemented a final rule enacting the Fish and Seafood Promotion Act of 1986 (Act), as it pertains to Seafood Marketing Councils, for one or more species of fish or fish products. A National Seafood Marketing Council was established under the Act. The National Council was authorized to enter into agreements with applicants to fund referenda to establish and terminate species-specific marketing councils. However, no species-specific marketing councils were established and the National Council was disbanded. Over the years, no initiatives were made by industry to reestablish the National Council or to create species specific councils. The seafood marketing regulations, along with a large number of other rules and regulations unused or little used, were stricken from the Code of Federal Regulations (CFR) as part of a government-wide Presidential regulatory reform effort to streamline and simplify regulations. Although the implementing regulations were withdrawn from the CFR, the Act remains in effect.

In response to renewed industry support for marketing and promotion-related activities, NMFS published proposed regulations implementing the Act governing the establishment and operation of Councils and their seafood marketing programs, with a Final Rule, RIN 0648–AS09, published on April 11, 2007 (69 FR 18105) and the regulations codified in 50 CFR 270. The intent of the rule is to aid industry in establishing seafood promotion councils to promote the consumption of domestically harvested seafood in the domestic and international marketplace. Niche marketing programs have been initiated by both the Pacific salmon harvesters in Alaska and by the Wild American Shrimp organization in the southern Atlantic and Gulf of Mexico states. Recently, interest in marketing programs has been expressed by United States (U.S.) lobster processors and harvesters who are now facing declining market shares and reduced demand for their products due to a global economic recession and foreign competition in substitute seafood commodities. The economic analysis conducted for the original action indicated that at least twelve fish species could benefit from the development of organized marketing programs. Several of those industry groups had approached NMFS to request implementation of the Act to allow them to create seafood promotion councils.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Marketing and promotion plans prepared by a Council would be designed to increase the general demand for fish and fish products by encouraging, expanding, and improving the marketing and utilization of fish and fish products both in domestic or foreign markets, through consumer education, research, and other marketing and promotion activities. To ensure that NMFS stewardship goal is not jeopardized while increasing benefits from domestic fisheries, the

applicant would provide as part of the application package an economic analysis and/or any other analytical documentation addressing the requirements of the Regulatory Flexibility Act, Executive Order 12866, National Environmental Policy Act, and other information NMFS considers necessary or appropriate for the review and approval of the application, which may include an analysis of the primary, secondary, and tertiary affects of increasing demand for seafood. NMFS would use this information to determine if a proposed council or its marketing program is consistent with NMFS conservation goals, national standards, and other national guidelines. Applicants would also have to demonstrate that marketing program is consistent with Federal standards and guidelines on nutrition and health.

Continued operation of a Council will be at the discretion of NMFS and subject to NMFS' annual review of the Council's market assessment and evaluation of Council performance. The Council must demonstrate that the marketing plan would not adversely impact those fisheries for which conservation and management measures are necessary to prevent overfishing and rebuild overfished stocks, e.g., the market plan could be designed to increase information about fishery products rather than increase harvest. The marketing plan must also demonstrate that conservation and management efforts in other fisheries are not adversely affected, but the Secretary may use national net benefits in evaluating whether the Council should be allowed to continue operating. Where measures have been implemented to reduce the overall harvest in a fishery, the marketing plan must clearly identify how stock conservation and harvest capacity reduction would not be adversely impacted. The Council supports the regional fishery management council's adoption of dedicated or controlled access programs, for example, but not limited to programs such as Individual Fishing Quota, and other efforts to control measures, are programs that comply with this standard. In addition, NMFS would retain the authority to determine if the continued operation of a Council would be in the public interest.

The framework developed by the NMFS under the authority of the Fish and Seafood Promotion Act would improve the accuracy and believability of claims made for seafood products. The establishment of a seafood promotion council with federal oversight would ensure that unbiased, accurate, and objective information about the safety, health characteristics, environmental and biological sustainability of seafood products were made available to seafood consumers. The Seafood Promotion Councils would be funded by industry contributions and while marketing campaigns would be subject to federal approval, would operate at no cost to the U.S. taxpayer.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The information would be submitted via email or U.S. Mail depending on respondent's capability to the Seafood Council administrative staff.

4. Describe efforts to identify duplication.

Not applicable.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Not applicable.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Not applicable.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No such special circumstances exist.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on October 28, 2009 (74 FR 55538) solicited public comments. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Not applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Not applicable.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Not applicable.

12. Provide an estimate in hours of the burden of the collection of information.

Although no plans have yet been submitted, we would like to allow for up to three submissions of 106-107 hours each, for a total of 320 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

The only reporting/recordkeeping costs would be for mailing, at an estimated $2 per item, and copying if desired, at an estimated $0.05 per page, or $5 per item. For three submissions, this would be 3 x ($2 + $5) or a total of $21.

14. Provide estimates of annualized cost to the Federal government.

Costs would be approximately $100,000 per Seafood Promotion Council in labor costs for one GS-12 FTE.

15. Explain the reasons for any program changes or adjustments.

Adjustment: the $21 in reporting/recordkeeping costs was not addressed in the previous submission.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Not applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement.

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods will be employed.

-CITE-

16 USC CHAPTER 60 - FISH AND SEAFOOD PROMOTION 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-MISC1-

Sec.

4001. Congressional findings.

4002. Congressional statement of purpose.

4003. Definitions.

4004. Establishment of National Council.

4005. Functions and duties of National Council.

4006. Duties of Secretary with regard to National Council.

4007. Voluntary payments.

4008. Establishment of Fisheries Promotional Fund.

4009. Establishment of seafood marketing councils.

4010. Functions and powers of councils.

4011. Functions and powers of Secretary.

4012. Assessments.

4013. Petitions.

4014. Refunds.

4015. Termination of a council.

4016. Enforcement.

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-End-

-CITE-

16 USC Sec. 4001 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4001. Congressional findings

-STATUTE-

The Congress finds that -

(1) the commercial fishing industry of the United States significantly contributes to the national economy, and could make a greater contribution if fish resources within the United States Exclusive Economic Zone were more fully utilized;

(2) the commercial fisheries of the United States provide significant employment in coastal areas and in processing and distribution centers;

(3) fish contribute an important nutritional component to the American diet;

(4) increased consumption of seafood in the United States could significantly lower the risk of many cardiovascular diseases;

(5) Federally supported development programs for commercial fisheries are unable to meet present and future marketing needs;

(6) many fish species are underutilized by the United States fishing industry because of underdeveloped markets; and

(7) the United States fishing industry has the potential to expand greatly its contribution to interstate and foreign commerce, favorably affecting the balance of trade.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 202, Nov. 14, 1986, 100 Stat.

3715.)

-MISC1-

SHORT TITLE

Section 201 of title II of Pub. L. 99-659 provided that: "This title [enacting this chapter and amending section 713c-3 of Title

15, Commerce and Trade] may be cited as the 'Fish and Seafood Promotion Act of 1986'."

REPORT TO CONGRESS ON FISH AND SEAFOOD PROMOTION

Section 219 of title II of Pub. L. 99-659 provided that: "The Secretary shall, not later than March 1, 1989, submit to the Congress a report on the effectiveness of the implementation of this title [enacting this chapter and amending section 713c-3 of Title 15, Commerce and Trade] in achieving the purposes of this title."

-End-

-CITE-

16 USC Sec. 4002 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4002. Congressional statement of purpose

-STATUTE-

The purpose of this chapter is to -

(1) strengthen the competitive position of the United States commercial fishing industry in the domestic and international marketplace;

(2) encourage the development and utilization of all species of fish available for harvest by the United States fishing industry;

(3) encourage the utilization of domestically-produced fish through enhancement of markets, promotion, and public relations;

(4) help the United States fishing industry develop methods to improve quality and efficiency in the marketplace;

(5) educate and inform consumers on the use of fish;

(6) develop better coordination of fisheries marketing and promotion activities with commercial fisheries research and development programs; and

(7) educate and inform the public about the nutritional value of fish in the diet.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 203, Nov. 14, 1986, 100 Stat. 3716.)

-REFTEXT-

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 99-659, Nov. 14, 1986, 100 Stat. 3715, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 4001 of this title and Tables.

-End-

-CITE-

16 USC Sec. 4003 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4003. Definitions

-STATUTE-

As used in this chapter, the term -

(1) "consumer education" means actions undertaken to inform consumers on matters related to the consumption of fish and fish products;

(2) "council" means a seafood promotional council established under section 4009 of this title;

(3) "fish" means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds;

(4) "Fund" means the Fisheries Promotional Fund established in section 4008 of this title;

(5) "harvester" means any individual who is in the business of catching or growing fish for purposes of sale;

(6) "importer" means any person in the business of importing fish or fish products into the United States from another country for commercial purposes or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or other commercial purpose in the United States;

(7) "marketer" means any person who is in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale;

(8) "marketing and promotion" means an activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products;

(9) "member" means any person serving on the National Council or on any council;

(10) "National Council" means the National Fish and Seafood Promotional Council established in section 4004 of this title;

(11) "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any private entity organized or existing under the laws of the United States or any State, commonwealth, territory or possession of the United States;

(12) "processor" means any person who is in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale;

(13) "receiver" means any person who owns fish processing vessels and any person in the business of acquiring fish directly from harvesters;

(14) "research" means any type of research designed to advance the image, desirability, usage, marketability, production or quality of fish and fish products;

(15) "sector" means -

(A) the sector consisting of harvesters;

(B) the sector consisting of importers;

(C) the sector consisting of marketers;

(D) the sector consisting of processors;

(E) the sector consisting of receivers; or

(F) the consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

(16) "Secretary" means the Secretary of Commerce, or the Secretary's designee; and

(17) "United States" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territory, possession, or commonwealth of the United States.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 204, Nov. 14, 1986, 100 Stat. 3716.)

-End-

-CITE-

16 USC Sec. 4004 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4004. Establishment of National Council

-STATUTE-

(a) Establishment

There is established the National Fish and Seafood Promotional Council.

(b) Composition

(1) The National Council shall be composed of the Secretary, who shall be a nonvoting member, and fifteen voting members appointed by the Secretary.

(2) Nominations for appointees shall be submitted in a manner prescribed by the Secretary.

(c) Regional representation

The National Council shall be comprised of regional representation from the Northeast, Southeast, Pacific, and Alaska regions. The Northeast region shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland and Virginia. The Southeast region shall consist of the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, the Commonwealth of Puerto Rico, and the territory of the Virgin Islands. The Pacific region shall consist of the States of Idaho, Washington, Oregon, California, and Hawaii, the territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands. The Alaska region shall consist of the State of Alaska.

(d) Voting members

(1) The voting members of the National Council shall be -

(A) three members who reside in or do substantial fishing industry business in the Northeast region;

(B) three members who reside in or do substantial fishing industry business in the Southeast region;

(C) three members who reside in or do substantial fishing industry business in the Pacific region;

(D) three members who reside in or do substantial fishing industry business in the Alaska region;

(E) two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries, at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions; and

(F) one member-at-large who is either a person professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products or a person who is a member of an organized labor union and has expertise in the United States fisheries.

(2) Of the members appointed pursuant to each of paragraphs

(1)(A) through (D) of this subsection, one shall be a harvester, one shall be a processor or a receiver, and one shall be a marketer.

(e) Term of office

Members of the National Council shall be appointed for a term of 4 years. A vacancy in the National Council shall not affect its ability to function. The Secretary shall appoint a new member within sixty days to fill a vacancy in an unexpired term. Any member may remain on the National Council beyond that member's term until a successor is appointed.

(f) Chairman

The National Council shall annually elect a Chairman by a majority of those voting, if a quorum is present. Ten members of the National Council shall constitute a quorum, but a lesser number may hold hearings.

(g) First meeting

The National Council shall first meet within one hundred and eighty days after November 14, 1986.

(h) Compensation of members

Members of the National Council shall serve without compensation, but shall be reimbursed in accordance with section 5703 of title 5 for reasonable travel costs and expenses incurred in performing their duties as members of the National Council.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 205, Nov. 14, 1986, 100 Stat. 3717; Pub. L. 100-350, Sec. 3, June 27, 1988, 102 Stat. 660.)

-MISC1-

AMENDMENTS

1988 - Subsec. (d)(1)(E). Pub. L. 100-350 which directed the substitution of ", at least one of whom is not a resident of the States of the Alaska, Pacific, Southeast, and Northeast regions" for "and who are not residents of the States of the Alaska, Pacific, Southeast, or Northeast regions" was executed by substituting that phrase for "and who are not residents of the states of the Alaska, Pacific, Southeast, or Northeast regions".

CONTINUITY OF NATIONAL COUNCIL MEMBERSHIP

Pub. L. 101-627, title VII, Sec. 704(a), (b), Nov. 28, 1990, 104 Stat. 4464, provided that:

"(a) Uninterrupted Service. - Individuals serving on September 30, 1990, as members of the National Fish and Seafood Promotional Council shall be deemed to continue as members in uninterrupted service since the date of their initial appointment.

"(b) Filling of Vacancies. - Notwithstanding section 206(e) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(e)), any vacancy on the National Fish and Seafood Promotion Act [Promotional Council] not filled as of September 30, 1990, shall be filled within 60 days after the date of enactment of this Act [Nov. 28, 1990]."

-End-

-CITE-

16 USC Sec. 4005 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4005. Functions and duties of National Council

-STATUTE-

(a) Functions and duties

The National Council shall -

(1) prepare and submit to the Secretary, for the Secretary's review and approval, an annual marketing and promotion plan which contains descriptions of consumer education, research, and other marketing and promotion activities of the National Council for the following year, including plans to coordinate the activities of councils established under section 4009 of this title;

(2) prepare and submit to the Secretary, for the Secretary's review and approval, an annual budget of the anticipated expenses and disbursements of the National Council, including probable costs of consumer education, research, and other marketing and promotion plans or projects, and referenda under section 4009 of this title;

(3) maintain accounting records of the receipt and disbursement of all funds entrusted to the National Council, subject to the Secretary's right to review or inspect such records;

(4) maintain such books and records as the Secretary determines appropriate; and

(5) prepare and submit to the Secretary from time to time such reports or proposals as the Secretary or the National Council determines appropriate for furthering the purposes and policies of this chapter.

(b) Annual plan

Each annual marketing and promotion plan shall be directed to -

(1) increasing the general demand for fish and fish products;

(2) encouraging, expanding, or improving the marketing and promotion and utilization of fish and fish products; and

(3) improving the dissemination of data collected by consumer education, research, and other marketing promotion activities.

(c) Prohibition on certain references

Consumer education and other marketing and promotion activities of the National Council shall contain no reference to a private brand or trade name and shall avoid use of deceptive acts or practices in behalf of fish or fish products or with respect to the quality, value, or use of any competing product or group of products. In addition, the National Council may not promote the consumption or purchase of a single or group of similar fish species (such as members of the same genera); except that the Council may use illustrations of a single or group of similar fish species in the course of promoting the generic consumption of fish and fish products.

(d) Executive director

The National Council may employ and determine the salary of an executive director, but such salary shall not exceed Senior Executive Service Level 6. The executive director shall have demonstrated expertise in the marketing and promotion of food products and may, without regard to the provisions of title 5, with the approval of the National Council, select and employ additional staff as necessary.

(e) Funding of referendum

The National Council may enter into agreements with applicants proposing to establish a council under section 4009 of this title for the purposes of funding a referendum establishing the council.

The National Council may enter into agreements with the councils established under section 4009 of this title for the purpose of funding a referendum to establish quality standards, or a referendum to terminate any such council.

(f) Agreements

The National Council may enter into agreements to develop and carry out activities authorized under this chapter.

(g) Termination of National Council

The National Council shall cease to exist on December 31, 1991.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 206, Nov. 14, 1986, 100 Stat. 3718; Pub. L. 101-627, title VII, Sec. 701, Nov. 28, 1990, 104 Stat. 4463.)

-REFTEXT-

REFERENCES IN TEXT

Senior Executive Service, referred to in subsec. (d), see section 5382 of Title 5, Government Organization and Employees.

-MISC1-

AMENDMENTS

1990 - Subsec. (g). Pub. L. 101-627 substituted "December 31, 1991" for "October 1, 1990".

CONTINUITY OF COUNCIL FUNCTIONS, CONTRACTS, AND PERSONNEL

Section 705 of Pub. L. 101-627 provided that: "All current functions, contracts in force, and existing personnel of the National Fish and Seafood Promotional Council as of September 30, 1990, are reauthorized and extended, and shall continue as if uninterrupted, notwithstanding section 206(g) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4005(g)) as in effect on September 30, 1990."

-End-

-CITE-

16 USC Sec. 4006 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4006. Duties of Secretary with regard to National Council

-STATUTE-

(a) Duties of Secretary

The Secretary shall -

(1) within sixty days after its submission by the National Council, review the annual marketing and promotion plan and budget and, if the Secretary determines that such plan and budget are in accordance with the purposes and policies of this chapter, approve such plan and budget;

(2) administer the Fund and, in accordance with subsection (b) of this section, withdraw from the Fund such sums as are necessary to carry out the National Council's approved marketing and promotion plan and budget;

(3) promulgate regulations necessary to carry out the purposes and policies of this chapter;

(4) provide such administrative assistance as the National Council may require for purposes of its initial organization and operation; and

(5) make all initial appointments to the National Council within ninety days after November 14, 1986.

(b) Withdrawal of funds

The Secretary shall make withdrawals of sums from the Fund under this section at the request of the National Council, unless the Secretary determines that the purposes for which such sums are requested are not reasonably likely to further the purposes and policies of this chapter.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 207, Nov. 14, 1986, 100 Stat. 3719; Pub. L. 101-627, title VII, Sec. 704(c), Nov. 28, 1990, 104 Stat. 4464.)

-MISC1-

AMENDMENTS

1990 - Subsec. (a)(5). Pub. L. 101-627 inserted "initial" before "appointments".

-End-

-CITE-

16 USC Sec. 4007 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4007. Voluntary payments

-STATUTE-

Any person may make voluntary payments to assist the National Council to carry out its annual marketing and promotion plan and annual budget. The Secretary shall deposit such payments into the Fund.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 208, Nov. 14, 1986, 100 Stat. 3720.)

-End-

-CITE-

16 USC Sec. 4008 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4008. Establishment of Fisheries Promotional Fund

-STATUTE-

(a) Establishment of Fund

There is established in the Treasury of the United States a Fisheries Promotional Fund. The Fund shall be available, to the extent provided for in appropriation Acts, for the purpose of making payments to carry out the annual marketing and promotion plan and annual budget of the National Council under this chapter.

(b) Deposits

There shall be deposited in the Fund -

(1) the moneys transferred to the Fund under section 713c-3(b)(2) of title 15;

(2) payments made voluntarily pursuant to section 4007 of this title; and

(3) receipts from investments made under subsection (c) of this section.

(c) Deposits and investments

Sums in the Fund that are not currently needed for the purposes of the Fund shall be kept on deposit in appropriate interest-bearing accounts that shall be established by the Secretary of the Treasury, or invested in obligations of, or guaranteed by, the United States. Any revenue accruing from such deposits and investments shall be deposited in the Fund.

(d) Authorization

There are authorized to be appropriated from the Fund, for the purposes of carrying out the annual marketing and promotion plan and annual budget of the National Council under this chapter, such sums as are deposited in the Fund under subsection (b) of this section in each fiscal year beginning in fiscal year 1987 through fiscal year 1991.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 209, Nov. 14, 1986, 100 Stat. 3720; Pub. L. 101-627, title VII, Sec. 702, Nov. 28, 1990, 104 Stat. 4463.)

-COD-

CODIFICATION

Section is comprised of section 209 of Pub. L. 99-659. Subsec. (e) of section 209 of Pub. L. 99-659 amended section 713c-3 of Title 15, Commerce and Trade.

-MISC1-

AMENDMENTS

1990 - Subsec. (d). Pub. L. 101-627 substituted "1991" for

"1990".

-End-

-CITE-

16 USC Sec. 4009 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4009. Establishment of seafood marketing councils

-STATUTE-

(a) Application

An application for a charter for a seafood marketing council for one or more species of fish and fish products of that species may be filed by persons who meet the requirements specified in accordance with subsection (b)(6) of this section.

(b) Form of application

An application for a charter for a council shall be made by filing with the Secretary the text of a proposed charter in such form as shall be prescribed by regulation by the Secretary. The text of a proposed charter must contain such information as the Secretary considers necessary or appropriate for carrying out the provisions of this chapter, including -

(1) the name of the council and a provision proclaiming its establishment;

(2) a declaration of the purposes and objectives of the council;

(3) a description of the species of fish and fish products for which the council will implement marketing and promotion plans under section 4010 of this title;

(4) the identification of each sector and the number and terms of representatives of each sector that will be represented as voting members of the council;

(5) the identification of those sectors (including the sector consisting of harvesters, the sector consisting of receivers, and, if subject to assessment, the sector consisting of importers) subject to a referendum to establish a council under subsection (e) of this section;

(6) a specification for each sector described under paragraph 5) of this subsection of the minimum requirements, as measured by income, volume, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(7)(A) a description of the procedures for determining assessment rates under section 4012 of this title;

(B) the proposed rate or rates that will be imposed by the council on receivers and, if subject to assessment, importers during its first year of operation;

(C) the maximum amount an assessment rate for any period may be raised above the rate applicable for the immediately preceding period; and

(D) the maximum rate or rates that can be imposed by a council on receivers or importers during the operation of the council;

(8) a provision setting forth the definition of a quorum for making decisions on council business and the procedures for selecting a chairman of the council;

(9) a provision setting forth the voting procedures by which votes may be cast by proxy; and

(10) such other provisions relating to administration of the council as the Secretary considers necessary.

The text of a proposed charter shall be accompanied by a document identifying, to the extent practicable by address of place of business, the persons (hereinafter referred to as "sector participants") that are considered by the applicants to meet the requirements specified in paragraph (6) of this subsection. The text of a proposed charter shall include provisions setting forth procedures for providing refunds to those sector participants subject to assessment under section 4012 of this title, and may also include provisions which establish a maximum limit on the amount that any one sector participant may be required to pay under an assessment for any period.

(c) Contents of charter

The Secretary may not approve a proposed charter filed under subsection (a) of this section unless such charter provides that -

(1) the council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors; and

(2) the members of the council shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the council.

(d) Review of charter

(1) Within 180 days of the receipt of an application to establish a council, the Secretary shall -

(A) identify, to the extent practicable, those sector participants that meet the requirements for eligibility to participate in the referendum under subsection (e) of this section;

(B) determine, to the extent practicable, if the charter is accompanied by a petition comprised of the signatures or corporate certifications, as the case may be, of no less than three sector participants in each sector identified in accordance with subsection (b)(5) of this section who collectively accounted for, in the twelve-month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products described in accordance with subsection (b)(3) of this section that were handled by each such sector during that period; and

(C) determine if the proposed charter is consistent with the provisions of this chapter and any other applicable law.

(2) If any negative determination is made under paragraph (1) of this subsection regarding a proposed charter, the Secretary shall advise in writing the sector participants who made the application of the reasons for such determination. A corrected application may be submitted thereafter to the Secretary for approval.

(e) Conduct of referendum

(1) Upon making affirmative determinations under subsection

(d)(1) of this section regarding a proposed charter, the Secretary, within 90 days after the date of the last of such determinations, shall conduct a referendum on the adoption of the proposed charter among all sector participants identified in accordance with subsection (d)(1)(A) of this section. The Secretary shall by order establish the council and approve the proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each sector and the majority collectively accounts for, in the twelve- month period immediately preceding the month in which the proposed charter was filed under subsection (a) of this section, at least sixty-six percent of the value of the fish and fish products described in accordance with subsection (b)(3) of this section that were handled by that sector during such period.

(2) Not less than thirty days prior to holding a referendum under this subsection, the Secretary shall -

(A) publish (by such means as will result in wide publicity in regions affected by the proposed charter) the text of the proposed charter and a list of those sector participants eligible to vote in the referendum; and

(B) provide for public comment, including the opportunity for a public meeting.

(3)(A) The Secretary shall pay all costs of a referendum which establishes a council under this subsection. Within two years after a council is established the council shall reimburse the Secretary for any expenses incurred for the conduct of the referendum from assessments collected by the council. Prior to the holding of a referendum under this subsection, the Secretary shall require the applicants to post a bond or other security acceptable to the Secretary, in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of the referendum, and shall immediately recover such amount if a referendum fails to result in the establishment of a council.

(B) As used in this paragraph, the term "expenses incurred for the conduct of the referendum" does not include salaries of Government employees or other administrative overhead, but is limited to those additional direct costs incurred in connection with conduct of the referendum.

(f) Nominations

(1) Within thirty days after a council is established under subsection (e) of this section, the Secretary shall solicit from the sectors represented on the council nominations for members of the council. If the harvesters and receivers represented on the council are engaged in business in two or more regions of the United States, the nominations made under this paragraph, and the appointments to the council made under paragraph (3) of this subsection, must, to the extent practicable, result in equitable representation for the constituent regions.

(2) No person is eligible for nomination or appointment as a member of a council unless such person is knowledgeable and experienced with regard to the activities of, and is or has been actively engaged in the business of, the sector which such person will represent on the council.

(3) The Secretary shall, within sixty days after the end of the thirty-day period referred to in paragraph (1) of this subsection, appoint the members of the council from among the nominees.

(4) A vacancy on a council shall be filled, within sixty days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.

(5) The Secretary shall remove any member of a council if the council concerned first recommends, by not less than two-thirds of its members, removal for cause. Such a recommendation of a council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(g) Nature of a council

A council is not an instrumentality of the United States Government.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 210, Nov. 14, 1986, 100 Stat.

3721.)

-End-

-CITE-

16 USC Sec. 4010 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4010. Functions and powers of councils

-STATUTE-

(a) Activities of a council

(1) Each council shall -

(A) Adopt (!1) a seal which shall be judicially noticed;

(B) implement all terms of its charter;

(C) prepare and submit to the Secretary, for review and approval under section 4011(a)(1) of this title, a marketing and promotion plan and amendments to such plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;

(D) implement and administer an approved marketing and promotion plan and amendments to such plan;

(E) determine the assessments to be made under section 4012 of this title and administer the collection of such assessments to finance council expenses described in paragraph (2) of this subsection;

(F) receive, investigate and report to the Secretary accounts of violations of rules or orders relating to assessments collected under section 4012 of this title, or quality standard requirements established under subsection (c) of this section;

(G) prepare and submit to the Secretary, for review and approval under section 4011(a)(1) of this title, a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the council, including -

(i) all administrative and contractual expenses;

(ii) the probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) the costs of the collection of assessments; and

(iv) the expense of repayment of the costs of each referendum conducted in regard to the council;

(H) maintain books and records, prepare and submit to the Secretary such reports from time to time as may be necessary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year;

(I) reimburse the Secretary for the expenses incurred for the conduct of the referendum to establish the council or any subsequent referendum to terminate the council that fails; and

(J) prepare and submit to the Secretary from time to time such reports or proposals as the council determines appropriate to further the purposes of this chapter.

(2) Funds collected by a council under section 4012 of this title shall be used by the council for -

(A) research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products;

(B) other expenses, as described in subsection (a)(1)(G) of this section;

(C) such other expenses for the administration, maintenance, and functioning of the council as may be authorized by the Secretary;

(D) any reserve fund established under subsection (b)(5) of this section and any administrative expenses incurred by the Secretary specified as reimbursable under this chapter.

(3) Marketing and promotion plans and amendments to such plans prepared by a council under subsection (a)(1)(C) of this section shall be designed to increase the general demand for fish and fish products described in accordance with section 4009(b)(3) of this title by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(4) Consumer education and other marketing and promotion activities carried out by a council under a marketing and promotion plan and amendments to such plan may not contain references to any private brand or trade name and shall avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(b) Authority of a council

A council may -

(1) sue and be sued;

(2) enter into contracts;

(3) employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;

(4) collaborate with other councils and with the National Council in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and

(5) establish a reserve fund from monies collected and received under section 4012 of this title to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and

assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(c) Quality standards

(1) A council may develop and submit to the Secretary for approval, or upon the request of a council the Secretary shall develop, quality standards for a fish or fish product described in accordance with section 4009(b)(3) of this title. Any quality standard developed under this paragraph shall be consistent with the purposes of this chapter.

(2) A quality standard developed under paragraph (1) of this subsection may be adopted by a council by a majority of the members of the council if first approved, in a referendum conducted by the council, by a majority of the sector participants of the sector concerned voting and the majority collectively accounted for, in the twelve-month period immediately preceding the month in which the referendum is held, not less than sixty-six percent of the value of the fish or fish products described in accordance with section 4009(b)(3) of this title that were handled by that sector during such period.

(3) With respect to a quality standard adopted under paragraph (2) of this subsection, the council shall develop and file with the Secretary an official identification in the form of a symbol, stamp, label, or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identification is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product.

(4) The Secretary shall establish by regulation procedures for the use of an official identification filed with the Secretary under paragraph (3) of this subsection. Misuse of an official identification established under this section shall constitute a violation of this chapter.

(5) Prior to issuing final regulations under paragraph (4) of this subsection, the Secretary shall -

(A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and

(B) provide for public comment and the opportunity for a public hearing.

(6) A council may receive, investigate and report to the Secretary accounts of violations of regulations issued under paragraph (4) of this subsection.

(7) Any regulation issued under paragraph (4) of this subsection shall be repealed immediately by the Secretary upon the termination under section 4015 of this title of the council that developed the official identification to which the regulations apply.

(8) The procedures applicable to the adoption and the taking

effect of a quality standard developed under this subsection also

apply to a subsequent amendment or the termination of such

standard.

(d) Amendment of a charter

A council may submit to the Secretary amendments to the text of the council's charter. Any proposed amendments to a charter shall be approved or disapproved in the same manner as the original charter was approved under section 4009(d) and (e) of this title, with the exception of section 4009(d)(1)(B) of this title.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 211, Nov. 14, 1986, 100 Stat. 3724.)

-FOOTNOTE-

(!1) So in original. Probably should not be capitalized.

-End-

-CITE-

16 USC Sec. 4011 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4011. Functions and powers of Secretary

-STATUTE-

(a) Duties of the Secretary

In addition to the duties prescribed under section 4009 of this title, the Secretary shall -

(1) review, for consistency with the provisions of this chapter and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within sixty days after their submission by a council;

(2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) issue orders and amendments to such orders that are necessary to implement quality standards under section 4010(c) of this title;

(4) promulgate regulations necessary to carry out the purposes of this chapter;

(5) enforce the provisions of this chapter, as provided under section 4016 of this title; and

(6) make all appointments to councils in accordance with section 4009(f) of this title.

(b) Assistance

The Secretary may provide, on a reimbursable or other basis, such administrative or technical assistance as a council may request for purposes of the initial organization and subsequent operation of the council.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 212, Nov. 14, 1986, 100 Stat. 3726.)

-End-

-CITE-

16 USC Sec. 4012 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4012. Assessments

-STATUTE-

(a) Authority

A council shall impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the council in carrying out its functions under this chapter.

(b) Method of imposition

(1) Assessments shall be imposed on sector participants in the receiving sector or the importing sector, or both, as specified in an approved council charter.

(2) An assessment on sector participants in the receiving sector shall be -

(A) except for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 4009(b)(3) of this title when purchased by such participants from fish harvesters; and

(B) for an owner of a fish processing vessel, in the form of a percentage of the value of the fish described in accordance with section 4009(b)(3) of this title and harvested by such a vessel that is no less than the value of such fish, if such fish had been purchased by a receiver other than an owner of such a vessel.

(3) An assessment on sector participants in the importing sector shall be in the form of a percentage of the value, as determined for the purposes of the customs laws, of the fish or fish products described in accordance with section 4009(b)(3) of this title when entered, or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(c) Prohibition on assessment

A council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the council under section 4009(e) of this title by reason of failure to meet the requirements specified under section 4009(b)(6) of this title, unless such person, after the date on which such referendum is held, meets the requirements of section 4009(b)(6) of this title.

(d) Voluntary payments

Any person may make voluntary payments or in-kind contributions to a council for purposes of assisting the council in carrying out its functions.

(e) Deposit of funds

All funds collected or received by a council under this section shall be deposited by the council in an appropriate account in the name of the council specified in its charter. Funds eligible to be collected or received by a council shall be limited to those authorized under this section.

(f) Information

(1) Sector participants shall make available to the Secretary such information and data as is necessary for the effectuation, administration or enforcement of this chapter or any order or regulation issued pursuant to this chapter. Except as provided in paragraphs (2) and (3) of this subsection, any information obtained in carrying out this subsection shall be kept confidential by all officers and employees of the Department of Commerce, independent accountants and other persons who have access to such information.

(2) If the Secretary or an employee of the United States Government is a party to a suit or administrative action involving an assessment, order, or regulation issued under this chapter, the Secretary may disclose information obtained under paragraph (1) of this subsection to the extent allowed by the judicial or administrative officer presiding over such suit or action.

(3) This subsection shall not prohibit -

(A) the issuance of general or statistical statements based upon reports of a number of persons subject to the provisions of this chapter which do not identify the information furnished by any person; or

(B) the publication by direction of the Secretary of the name of any person violating a requirement relating to an assessment imposed under subsection (a) of this section or to quality standards implemented by the Secretary under section 4010(c) of this title, and a statement of the particular provisions of the requirement violated by such person.

(4) Any individual who is required to keep information confidential under this subsection and who knowingly violates this subsection shall, upon conviction, be -

(A) subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both; and

(B) removed from office if an officer or employee of a council or the Department of Commerce.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 213, Nov. 14, 1986, 100 Stat. 3727.)

-End-

-CITE-

16 USC Sec. 4013 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4013. Petitions

-STATUTE-

(a) Filing of petition

Any person subject to assessment under section 4012 of this title may file a written petition with the Secretary alleging that -

(1) the assessment,

(2) the plan approved under section 4011(a)(1) of this title on which the assessment is based, or

(3) any obligation imposed under the plan, is not in accordance with law and requesting the Secretary to modify or take other appropriate action regarding the assessment or plan.

(b) Form of petition

Any such petition shall be in writing and filed within the period prescribed by the Secretary. A person who files a petition under this section shall be given an opportunity for a hearing regarding the petition in accordance with regulations issued by the Secretary. After such a hearing, or if no hearing is requested, after consideration of all documentation and other evidence, the Secretary shall make a ruling upon such petition.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 214, Nov. 14, 1986, 100 Stat.

3728.)

-End-

-CITE-

16 USC Sec. 4014 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4014. Refunds

-STATUTE-

Notwithstanding any other provision of this chapter, any person who pays an assessment under this chapter may demand and shall promptly receive from the council a refund of such assessment. A demand for refund must be made in accordance with the procedures, and within such time, as shall be prescribed by the council and approved by the Secretary. Procedures to provide such a refund shall be established before any such assessment may be collected. Such procedures shall allow any person to request a refund for not less than ninety days from such collection, and provide that any such refund shall be made within sixty days after demand for such refund is made.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 215, Nov. 14, 1986, 100 Stat. 3728.)

-End-

-CITE-

16 USC Sec. 4015 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4015. Termination of a council

-STATUTE-

(a) Petition for termination

(1) A petition to terminate a council may be filed with the Secretary by no less than three sector participants in any one sector. Any petition filed under this subsection shall be accompanied by a written document explaining the reasons for such petition.

(2) If the Secretary determines that a petition filed under paragraph (1) of this subsection is accompanied by the signatures, or corporate certifications, as the case may be, of no less than three sector

participants in a sector referred to in paragraph (1) of this subsection who collectively accounted for, in the twelve-month period immediately preceding the month in which such petition was filed, not less than 20 percent of the value of the fish or fish products described in accordance with section 4009(b)(3) of this title that were handled by that sector during such period, the Secretary, within 90 days after such determination, shall conduct a referendum for termination of the council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum under this subsection, the Secretary shall publish a notice of such referendum, including the document explaining the reasons for the petition filed under paragraph (1) of this subsection and any other relevant information the Secretary considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the council constitute a majority of the sector participants voting and the majority, in the period referred to in paragraph (2) of this subsection, collectively accounted for not less than sixty-six percent of the value of such fish and fish products that were handled during such period by a sector referred to in paragraph (1) of this subsection, the Secretary shall by order terminate the council effective as of a date by which the affairs of the council may be concluded on an orderly basis.

(5) The Secretary initially shall pay all costs of a referendum conducted under this subsection. Prior to conducting such a referendum, the Secretary shall require petitioners to post a bond or other security acceptable to the Secretary in an amount which the Secretary determines to be sufficient to pay any expenses incurred for the conduct of such referendum.

(6)(A) If a referendum conducted under this subsection fails to result in the termination of the council, the Secretary shall immediately recover the amount of the bond posted by petitioners under paragraph (5) of this subsection.

(B) If a referendum conducted under this subsection results in the termination of the council, the Secretary shall recover the expenses incurred for the conduct of the referendum from the account established by the council under section 4012(e) of this title. If the amount remaining in such account is insufficient for the Secretary to recover all expenses incurred for the conduct of the referendum, the Secretary shall recover the balance of such expenses from the petitioners that posted a bond under paragraph

(5) of this subsection.

(b) Payment of remaining funds

If a council is terminated under subsection (a) of this section, the Secretary, after recovering all expenses incurred for the conduct of the referendum under subsection (a) of this section, shall take such action as is necessary and practicable to ensure that moneys remaining in the account established by the council under section 4012(e) of this title are paid on a prorated basis to the sector participants from whom those moneys were collected under section 4012 of this title.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 216, Nov. 14, 1986, 100 Stat. 3728.)

-End-

-CITE-

16 USC Sec. 4016 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4016. Enforcement

-STATUTE-

(a) Authority

(1) The district courts of the United States shall have jurisdiction specifically to enforce and to prevent and restrain any person from violating any assessment, order or regulation made or issued under this chapter.

(2)(A) If a council has reason to believe that a person subject to an assessment, order or regulation made or issued under this chapter is violating such assessment, order or regulation, it may refer the matter to the Secretary.

(B) Except as provided in subparagraphs (C) or (D) of this paragraph, any civil action authorized to be brought under this subsection, when referred by a council under subparagraph (A) of this paragraph, shall be referred to the Attorney General for appropriate action.

(C) If the Secretary believes that the administration and enforcement of the provisions of this chapter would be adequately served by taking administrative action under subsection (b) of this section or by providing written notice or warning to any person committing a violation of this chapter, the Secretary is not required to refer such violation to the Attorney General.

(D) Whenever a matter has been referred by a council under subparagraph (A) of this paragraph and the Secretary or the Attorney General fails within 60 days of such referral to take appropriate action, the council may, upon filing notice with the Secretary or Attorney General, as appropriate, and other interested parties, bring an action in its own name.

(b) Recovery of costs

(1)(A) When a council brings an action under subsection (a)(2) of this section, the council may recover costs of litigation and, where the action is brought to collect an unpaid assessment, interest from the date the amount became due and payable.

(B) Any person who violates any provision of an order (including a cease and desist order previously issued under this paragraph) or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment required under this chapter, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation.

Each violation shall be a separate offense. In addition to, or in lieu of, a civil penalty under this subparagraph, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(C) No penalty shall be assessed, or cease and desist order issued, under this paragraph unless the affected person is given notice and opportunity for a hearing before the Secretary with respect to such violation.

(D) Any order of the Secretary under this paragraph assessing a penalty or imposing a cease and desist order shall be final and conclusive, unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2)(A) Any person against whom a violation is found under paragraph (1) of this subsection may obtain review of such action in the United States court of appeals for the circuit in which such person resides or has his place of business, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within thirty days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall promptly file in the court a certified copy of the record upon which such violation was found.

(C) The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence or not in accordance with law.

(3)(A) If any person fails to pay a civil penalty under this subsection after it has become final, the Secretary shall refer the matter to the Attorney General.

(B) The Attorney General shall institute appropriate action to recover the amount assessed under this subsection in a district court of the United States.

(C) If, within sixty days after such referral, the Attorney General fails to institute such appropriate action, the council to whose programs the assessment, order or regulation relates may institute an action in its own name.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 217, Nov. 14, 1986, 100 Stat. 3730.)

-End-

-CITE-

16 USC Sec. 4017 01/05/2009

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 60 - FISH AND SEAFOOD PROMOTION

-HEAD-

Sec. 4017. Investigations

-STATUTE-

(a) Authority to make investigations

The Secretary may make such investigations as the Secretary determines necessary to -

(1) carry out the Secretary's responsibilities under this chapter; and

(2) determine whether any person has engaged in any act or practice which constitutes a violation of the provisions of this

chapter.

(b) Oaths and affirmations

For the purpose of investigations under subsection (a) of this section, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States.

(c) Court orders

In case of contumacy or refusal to obey a subpoena issued under this section by any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or has his business, to require the attendance and testimony of witnesses and the production of books, papers, and documents. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony relating to the matter under investigation.

-SOURCE-

(Pub. L. 99-659, title II, Sec. 218, Nov. 14, 1986, 100 Stat.

3731.)

-End-

Title 50: Wildlife and Fisheries

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

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Authority: 16 U.S.C. 4001–4017

Source: 72 FR 18111, Apr. 11, 2007, unless otherwise noted.

§ 270.1 Scope.

This part 270 describes matters pertaining to the establishment, representation, organization, practices, procedures, and termination of Seafood Marketing Councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

Act means the Fish and Seafood Promotion Act of 1986 (Public Law 99–659) and any subsequent amendments.

Consumer education means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.

Council means a Seafood Marketing Council for one or more species of fish and fish products of that species established under section 210 of the Act (16 U.S.C. 4009).

Expenditure means monetary or material worth of fishery products. Expenditure is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier).

Fiscal year means any 12–month period as NMFS may determine for each Council.

Fish means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.

Harvester means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.

Marketer means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.

Member means any person serving on any Council.

Participant means a member of a sector or business identified in an application for a Council charter as being subject to the referendum or assessment process.

Person means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Processor means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

Receiver means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

Research means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector means

(1) The sector consisting of harvesters;

(2) The sector consisting of importers;

(3) The sector consisting of marketers;

(4) The sector consisting of processors;

(5) The sector consisting of receivers; or

(6) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

Sector participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

Value means monetary or material worth of fishery products. Value is the difference between what a receiver is willing to pay for a product provided by a harvester and its market price or an importer is willing to pay for a product from a foreign supplier and its market price. Value may be expressed in monetary units representing consumer surplus or producer surplus.

§ 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants as described in the proposed charter may file an application with NMFS for a charter for a Seafood Marketing Council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application package must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Applications should not be bound.

(b) The application consists of four parts:

(1) A document requesting NMFS to establish a Council;

(2) A proposed charter under which the proposed Council will operate;

(3) A list of eligible referendum participants; and

(4) Analytical documentation addressing requirements of applicable law.

(c) *Content of application* —(1) *Application or requesting document.* The application or requesting document submitted by the applicants to NMFS requesting that the Council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12–month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the application. The application must also include a statement that, if established, the Council will have sufficient resources (e.g., cash, donated office space, services, supplies, etc.) available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter.* A proposed charter must contain, at a minimum, the following information:

(i) The name of the Council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the Council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the Council will implement marketing and promotion plans under the Act. (The American Fisheries Society's “List of Common and Scientific Names of Fishes from the United States and Canada” (latest edition) or where available, an appropriate volume of its “List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada” (latest edition) should be used as the authority for all scientific and common names.);

(iv) A description of the geographic area (state(s)) within the United States covered by the Council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the Council. (The number of Council members should be manageable, while ensuring equitable geographic representation. The term for members will be 3 years. Initially, to ensure continuity, half of the members' terms will be 2 years and half will be 3 years. Reappointments are permissible.);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the Council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income, volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates as provided in §270.18, based on a fixed amount per unit of weight or measure, or on a percentage of value of the product handled;

(ix) The proposed rate or rates that will be imposed by the Council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a Council on receivers or importers during the operation of the Council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds to sector participants subject to assessment who request the same in accordance with the time limits specified §270.22;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the Council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on Council business and the procedures for selecting a chairperson of the Council;

(xvii) A provision that members of the Council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the Council;

(xviii) A provision containing a requirement for submission to NMFS the criteria and supporting data for evaluating the annual and/or multi-year performance of proposed marketing plans and the Council's performance;

(xix) A provision containing a requirement for submission of documentation as requested by NMFS for purposes of evaluating performance of proposed marking plans and the Council's related performance;

(xx) Where adequate funds are not available, a provision containing the minimum number of participants needed for sustained operations that cannot receive assessment refunds;

(xxi) A provision acknowledging that NMFS will have the right to participate in Council meetings;

(xxii) A provision that the Council will conduct its activities in accordance with applicable NMFS requirements and that NMFS has final approval authority over proposed marketing plans and Council actions;

(xxiii) A provision containing a requirement for the Council to arrange for a complete audit report to be conducted by an independent public accountant and submitted to NMFS at the end of each fiscal year;

(xxiv) A provision containing a requirement for the Council to conduct a market assessment based on economic, market, social and demographic, and biological information as deemed necessary by NMFS; and

(xxv) A provision containing a requirement for the Council to update the list of referendum participants on an annual basis.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter.

(i) The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the Council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the applicants in developing the list of sector participants.

(ii) [Reserved]

(4) *Analytical documentation.* The applicant must address the requirements of the Act, implementing regulations, and other applicable law, i.e., E.O. 12866, Regulatory Flexibility Act, National Environmental Policy Act, and other law as NMFS determines appropriate.

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a Council, NMFS will:

(a) Determine if the application is complete and complies with all of the requirements set out in §270.3 and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the Council. NMFS may require additional information from the applicants or proposed participants in order to verify eligibility. NMFS may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If NMFS finds minor deficiencies in an application that can be corrected within the 180–day review period, NMFS will advise the applicants in writing of what must be submitted by a specific date to correct the minor deficiencies.

(d) If NMFS makes a final negative determination, on an application, NMFS will advise the applicant in writing of the reason for the determination. The applicant may submit another application at any time thereafter. NMFS then has 180 days from receipt of the new application to render a final determination on its acceptability.

§ 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under §270.4, NMFS, within 90 days after the date of the last affirmative determination, will conduct a referendum on the adoption of the proposed charter.

(b) NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashiers check, to cover costs of the referendum.

(c) NMFS will initially pay all costs of a referendum to establish a Council. Within two years after establishment, the Council must reimburse NMFS for the total actual costs of the referendum from assessments collected by the Council. If a referendum fails to result in establishment of a Council, NMFS will immediately recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum.

(d) No less than 30 days prior to holding a referendum, NMFS will:

(1) Publish in the Federal Register the text of the proposed charter and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such “participant” and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish a Council.* NMFS will, by order of publication in the Federal Register, establish the Council and approve an acceptable proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12–month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the applicants.

(b) *Unfavorable vote to establish a Council.* If a referendum fails to pass in any sector of the proposed Council, NMFS will not establish the Council or approve the proposed charter. NMFS will immediately recover the cost of conducting the referendum according to §270.5(c).

(c) *Notification of referendum results.* NMFS will notify the applicants of the results of the referendum and publish the results of the referendum in the Federal Register.

§ 270.8 Nomination and appointment of Council members.

(a) Within 30 days after a Council is established, NMFS will solicit nominations for Council members from the sectors represented on the Council in accordance with the approved charter. If the harvesters and receivers represented on the Council are engaged in business in two or more states, but within the geographic area of the Council, the nominations made under this section must, to the extent practicable, result in equitable representation for

those states. Nominees must be knowledgeable and experienced with regard to the activities of, or have been actively engaged in the business of, the sector that such person will represent on the Council. Therefore, a resume will be required for each nominee.

(b) In accordance with 16 U.S.C. 4009(f), NMFS will, within 60 days after the end of the 30–day period, appoint the members of the Council from among the nominees.

§ 270.9 Terms, vacancies, and removal of Council members.

(a) A Council term is for 3 years, except for initial appointments to a newly established Council where:

(1) Half of the Council member terms will be 2 years; and

(2) Half of the Council member terms will be 3 years.

(b) A vacancy on a Council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(c) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the Council by NMFS if two-thirds of the members of the Council recommend action. All requests from a Council to NMFS for removal of a Council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Responsibilities of a Council.

(a) Each Council will:

(1) Implement all terms of its approved charter;

(2) Prepare and submit to NMFS, for review and approval under §270.11(a)(1), a marketing and promotion plan and amendments to the plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the Council;

(3) Implement and administer an approved marketing and promotion plan and amendments to the plan;

(4) Determine the assessment to be made under §270.18 and administer the collection of such assessments to finance Council expenses described in paragraph (b) of this section;

(5) Receive, investigate and report to NMFS accounts of violations of rules or orders relating to assessments collected under §270.20, or quality standard requirements established under §270.15;

(6) Prepare and submit to NMFS, for review and approval a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the Council, including

(i) All administrative and contractual expenses;

(ii) The probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) The costs of the collection of assessments; and

(iv) The expense of repayment of the costs of each referendum conducted in regard to the Council.

(7) Comply with NMFS requirements, and prepare and submit to NMFS for review, evaluation, and verification of results and analysis an annual market assessment and related analytical documentation that is based on economic, market, social, demographic, and biological information as deemed necessary by NMFS;

(8) Maintain books and records, prepare and submit to NMFS reports in accordance with respect to the receipt and disbursement of funds entrusted to it, and submit to NMFS a completed audit report conducted by an independent auditor at the end of each fiscal year;

(9) Reimburse NMFS for the expenses incurred for the conduct of the referendum to establish the Council or any subsequent referendum to terminate the Council that fails;

(10) Prepare and submit to NMFS report or proposals as the Council determines appropriate to further the purposes of the Act.

(b) Funds collected by a Council under §270.17 will be used by the Council for—

(1) Research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish projects;

(2) Other expenses, as described in §270.10(a)(1);

(3) Such other expenses for the administration, maintenance, and functioning of the Council as may be authorized by NMFS; and

(4) Any reserve fund established under paragraph (e)(4) of this section and any administrative expenses incurred by NMFS specified as reimbursable under this Part.

(c) Marketing and promotion plans and amendments to such plans prepared by a Council under paragraph (a)(2) of this section will be designed to increase the general demand for fish and fish products described in accordance with §270.3(c)(2)(iii) by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(d) Consumer education and other marketing and promotion activities carried out by a Council under a marketing and promotion plan and amendments to a plan may not contain references to any private brand or trade name and will avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(e) *Authority of a Council.* A Council may:

(1) Sue and be sued;

(2) Enter into contracts;

(3) Employ and determine the salary of an executive director who may, with the approval of the Council employ and determine the salary of such additional staff as may be necessary;

(4) Establish a reserve fund from monies collected and received under §270.17 to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(f) Amendment of a charter. A Council may submit to NMFS amendments to the text of the Council's charter. Any proposed amendments to a charter will be approved or disapproved in the same manner as the original charter was approved under §270.4 and §270.5 with the exception of §270.4(b).

§ 270.11 Responsibilities of NMFS.

(a) In addition to the duties prescribed under 16 U.S.C. 4009, NMFS will:

(1) Participate in Council meetings and review, for consistency with the provisions of 50 CFR part 270 and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within 60 days after their submission by a Council;

(2) Immediately notify a Council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) Issue orders and amendments to such orders that are necessary to implement quality standards under §270.15;

(4) Promulgate regulations necessary to carry out the purposes of this chapter;

(5) Enforce the provisions of the Act;

(6) Make all appointments to Councils in accordance with §270.8 and the approved Council charter;

(7) Approve the criteria and time frames under which a Council's performance will be evaluated; and

(8) Implement the provisions of 16 U.S.C. 4001 *et seq.* in accordance with the available financial and management resources NMFS determines can be utilized.

(b) NMFS may provide, on a reimbursable or other basis, such administrative or technical assistance as a Council may request for purposes of the initial organization and subsequent operation of the Council. However, a Council is responsible for the cost of preparing and submitting information (e.g., reports, evaluation data, etc.) requested by NMFS.

§ 270.12 Notice of Council meetings.

The Council will give NMFS the same notice of its meetings as it gives to its members. NMFS will have the right to participate in all Council meetings.

§ 270.13 Books, records and reports.

(a) The Council must submit to NMFS the following documents according to the schedule approved in the Council's charter:

(1) A marketing assessment and promotion plan;

(2) A financial report with respect to the receipt and disbursement of funds;

(3) An audit report conducted by an independent public accountant; and

(4) Other reports or data NMFS determines necessary to evaluate the Council's performance and verify the results of the market assessment and promotion plan..

(b) All Council records, reports, and data must be maintained by the Council for a minimum of 3 years, even if the Council is terminated.

§ 270.14 Update of sector participant data.

The Council will submit to NMFS at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.15 Quality standards.

(a) Each Council may develop and submit to NMFS for approval or, upon the request of a Council, NMFS will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a Council by a majority of its members following a referendum conducted by the Council among sector participants of the concerned sector(s). In order for a quality standard to be brought before Council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12–month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The Council must submit a plan to conduct the referendum on the quality standards to NMFS for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method (by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by NMFS will be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps NMFS deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) or other recognized Federal standards and/or specifications for fish and fish products.

(g) No quality standard adopted by a Council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the Council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade, or under other international standards deemed acceptable by NMFS.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subchapter also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the Council must develop and file with NMFS an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product. The use of such identifier is governed by §270.15.

§ 270.16 Deposit of funds.

All funds collected or received by a Council under this section must be deposited in an appropriate account in the name of the Council specified in its charter. Funds eligible to be collected or received by a Council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The Council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) *Risk-free.* All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are federally insured in full.

(2) *Short-term.* Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) *Collateralization.* Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve Bank. Otherwise, another depository must hold the collateral.

§ 270.17 Authority to impose assessments.

A Council will impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the Council in carrying out its functions under 50 CFR part 270.

§ 270.18 Method of imposing assessments.

Assessments will be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved Council charter. Assessment rates will be based on value that may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector will be in the form of a percentage of the value or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter will be in the form of a percentage of the value or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector will be in the form of a percentage of the value that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(d) A Council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the Council by reason of failure to meet the requirements specified under unless that person, after the date on which the referendum is held, meets the requirements of section.

(e) Any person may make voluntary payments or in-kind contributions to a Council for purposes of assisting the Council in carrying out its functions.

§ 270.19 Notice of assessment.

(a) The Council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The period of time covered by the assessment;

(4) The date the assessment is due and payable, which will not be earlier than 30 days from the date of the notice;

(5) The form(s) of payment; and

(6) To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with NMFS at any time during the time period to which the assessment applies, including the right to request a hearing on the petition. The notice must state that the petition of objection must be filed in accordance with the procedures in §270.21.

(c) The notice must also advise such persons of his or her right to a refund of the assessment as provided in §270.22. The notice must state that a refund may be requested for not less than 90 days from such collection, and provide that the Council will make the refund within 60 days after the request for the refund is requested.

§ 270.20 Payment of assessments.

Persons subject to an assessment would be required to pay the assessment on or before the date due, unless they have demanded a refund or filed a petition of objection with NMFS under §270.21. However, persons who have demanded a refund under §270.22 or filed a petition of objection under §270.21 may submit proof of these actions in lieu of payment. In the case of a petition of objection, NMFS will inform the Council and the petitioner of its finding at which time petitioner must pay the revised assessment if applicable.

§ 270.21 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under §270.19 may request that NMFS modify or take other appropriate action regarding the assessment or promotion plan by filing a written petition of objection with NMFS. Petitions of objection may be filed:

(1) Only if the petitioner determines one or more of the following criteria is not in accordance with the law:

(i) The assessment;

(ii) The plan upon which the assessment is based; or

(iii) Any obligation imposed on the petitioner under the plan.

(2) Only during the time period to which the assessment applies.

(b) *Contents of the petition of objection.* A petition must be addressed to Assistant Administrator for Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition of objection is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to Council.* NMFS will promptly furnish the appropriate Council with a copy of the petition of objection.

(d) *Opportunity for informal hearing.* (1) Any person filing a petition of objection may request an informal hearing on the petition. The hearing request must be submitted with the petition of objection.

(2) If a request for hearing is timely filed, or if NMFS determines that a hearing is advisable, NMFS will so notify the petitioner and the Council. NMFS will establish the applicable procedures, and designate who will be responsible for conducting a hearing. The petitioner, the Council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. NMFS may consolidate two or more hearing requests into a single proceeding.

(3) *Final decision.* Following the hearing, or if no hearing is held, as soon as practicable, NMFS will decide the matter and serve written notice of the decision on the petitioner and the Council. NMFS' decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency. NMFS will have the discretion to waive collection of a contested assessment or revise, modify, or alter the assessment amount based on a Council method of assessment.

§ 270.22 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the Council a refund of such assessment. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the Council and approved by NMFS. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the Council, that sector participant may no longer participate in a referendum or other business of the Council during the remainder of the assessment rate period. Future assessments will only be sent to such a sector participant at the request of the sector participant. If assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the Council.

§ 270.23 Dissolution of Councils.

(a) *Petition for termination.* (1) A petition to terminate a Council may be filed with NMFS by no less than three sector participants in any one sector. Any petition filed under this subsection must be accompanied by a written document explaining the reasons for such petition.

(2) If NMFS determines that a petition filed under paragraph (a)(1) of this section is accompanied by the signatures, or corporate certifications, of no less than three sector participants in the sector referred to in paragraph (a)(1) of this section who collectively accounted for, in the 12–month period immediately preceding the month in which the petition was filed, not less than 20 percent of the value of the fish or fish products described in §270.3(c)(2)(iii) that were handled by that sector during the period, NMFS within 90 days after the determination, will conduct a referendum for termination of the Council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum, NMFS will publish an announcement in the Federal Register of the referendum, including an explanation of the reasons for the petition for termination filed under paragraph (a)(1) of this section and any other relevant information NMFS considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the Council constitute a majority of the sector participants voting and the majority, in the period in paragraph (a)(2) of this section, collectively accounted for not less than 66 percent of the value of such fish and fish products that were handled during such period by the sector in paragraph (a)(1) of this section, NMFS will by order of publication terminate the Council effective as of a date by which the affairs of the Council may be concluded on an orderly basis.

(5) NMFS initially will pay all costs of a referendum conducted in §270.23. Prior to conducting such a referendum, NMFS will require petitioners to post a bond or other security acceptable to NMFS in an amount which NMFS determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

(6) If a referendum conducted under §270.23 fails to result in the termination of the Council, NMFS will immediately recover the amount of the bond posted by the petitioners under §270.23(a)(5).

(7) If a referendum conducted under this subsection results in the termination of the Council, NMFS will recover the expenses incurred for the conduct of the referendum from the account established by the Council. If the amount remaining in such account is insufficient for NMFS to recover all expenses incurred for the conduct of the referendum, NMFS will recover the balance of the expenses from the petitioners that posted a bond under paragraph (a)(5) of this section.

(b) *Payment of remaining funds.* If a Council is terminated under section §270.23(a)(4), NMFS, after recovering all expenses incurred for the conduct of the referendum under paragraph (a) of this section, will take such action as is necessary and practicable to ensure that moneys remaining in the account established by the Council under §270.17 are paid on a prorated basis to the sector participants from whom those moneys were collected under §270.20.

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;

2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Regulatory Flexibility Act

as amended by

Small Business Regulatory Enforcement Fairness Act

SECTIONS

601. Definitions
602. Regulatory agenda
603. Initial regulatory flexibility analysis
604. Final regulatory flexibility analysis
605. Avoidance of duplicative or unnecessary analyses
606. Effect on other law
607. Preparation of analyses
608. Procedure for waiver or delay of completion
609. Procedures for gathering comments
610. Periodic review of rules
611. Judicial review
612. Reports and intervention rights

SEC. 601. DEFINITIONS [CITE: 5 USC 601]

For purposes of this chapter–

(1) the term "agency" means an agency as defined in section 551(1) of this title;

(2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term “small organization” means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term “small governmental jurisdiction” means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term “small entity” shall have the same meaning as the terms “small business”, “small organization” and “small governmental jurisdiction” defined in paragraphs (3), (4) and (5) of this section; and

(7) the term “collection of information”--

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either--

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) recordkeeping requirement.--The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1165; amended Pub. L. 104-121, title II, Sec. 241(a)(2), Mar. 29, 1996, 110 Stat. 864.)

SEC. 602. REGULATORY AGENDA [CITE: 5 USC 602]

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain--

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1166.)

SEC. 603. INITIAL REGULATORY FLEXIBILITY ANALYSIS [CITE: 5 USC 603]

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain--

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as–

(a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(c) the use of performance rather than design standards; and

(d) an exemption from coverage of the rule, or any part thereof, for such small entities.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1166; amended Pub. L. 104-121, title II, Sec. 241(a)(1), Mar. 29, 1996, 110 Stat. 864.)

SEC. 604. FINAL REGULATORY FLEXIBILITY ANALYSIS [CITE: 5 USC 604]

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--

(1) a succinct statement of the need for, and objectives of, the rule;

(2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, Sec. 241(b), Mar. 29, 1996, 110 Stat. 864.)

SEC. 605. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES [CITE: 5 USC 605]

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1167; amended Pub. L. 104-121, title II, Sec. 243(a), Mar. 29, 1996, 110 Stat. 866.)

SEC. 606. EFFECT ON OTHER LAW [CITE: 5 USC 606]

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168.)

SEC. 607. PREPARATION OF ANALYSES [CITE: 5 USC 607]

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168.)

SEC. 608. PROCEDURE FOR WAIVER OR DELAY OF COMPLETION [CITE: 5 USC 608]

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168.)

SEC. 609. PROCEDURES FOR GATHERING COMMENTS [CITE: 5 USC 609]

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as–

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter–

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term “covered agency" means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefor, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1168; amended Pub. L. 104-121, title II, Sec. 244(a), Mar. 29, 1996, 110 Stat. 867.)

SEC. 610. PERIODIC REVIEW OF RULES [CITE: 5 USC 610]

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors--

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1169.)

SEC. 611. JUDICIAL REVIEW [CITE: 5 USC 611]

(a) (1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3) (A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than--

(i) one year after the date the analysis is made available to the public, or

(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to--

(1) remanding the rule to the agency, and

(2) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1169; amended Pub. L. 104-121, title II, Sec. 242, Mar. 29, 1996, 110 Stat. 865.)

SEC. 612. REPORTS AND INTERVENTION RIGHTS [CITE: 5 USC 612]

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

(Added Pub. L. 96-354, Sec. 3(a), Sept. 19, 1980, 94 Stat. 1170; amended Pub. L. 104-121, title II, Sec. 243(b), Mar. 29, 1996, 110 Stat. 866.)

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Title 3—

The President

Executive Order 12866 of September 30, 1993

Regulatory Planning and Review

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statement of Regulatory Philosophy and Principles.*

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is

intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the 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) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. *Definitions.* For purposes of this Executive order: (a) ''Advisors'' refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) ''Agency,'' unless otherwise indicated, means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) ''Director'' means the Director of OMB.

(d) ''Regulation'' or ''rule'' means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) ''Regulatory action'' means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices

of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) ''Significant regulatory action'' means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. *Planning Mechanism*. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda*. For purposes of this subsection, the term ''agency'' or ''agencies'' shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan*. For purposes of this subsection, the term ''agency'' or ''agencies'' shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group*. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group (''Working Group''), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences*. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. *Existing Regulations*. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not

duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. *Centralized Review of Regulations.* The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt

of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and (iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. *Resolution of Conflicts.* To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

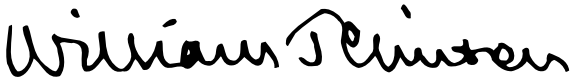
Sec. 8. *Publication.* Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a

regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. *Agency Authority.* Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. *Judicial Review.* Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. *Revocations.* Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.



THE WHITE HOUSE,
September 30, 1993.

[FR citation 58 FR 51735]

Rules and Regulations

Federal Register
Vol. 72, No. 69
Wednesday, April 11, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 270

[Docket No. 040720212–6238–02; I.D. 040204A]

RIN 0648–AS09

Fish and Seafood Promotion Act Provisions; Seafood Marketing Councils

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to renewed fishing industry support for marketing and promotion-related activities, NMFS enacts regulations to implement the Fish and Seafood Promotion Act (FSPA) of 1986 for the establishment, organization, and operation of Seafood Marketing Councils (Councils). Council marketing and promotion plans will be designed to increase the general demand for fish and fish products by encouraging, expanding, and improving the marketing and utilization of fish and fish products both in domestic or foreign markets, through consumer education, research, and other marketing and promotion activities. The intent of this rule is to increase benefits from domestic fisheries while maintaining consistency with NMFS' stewardship goals and mission statement.

DATES: Effective May 11, 2007.

ADDRESSES: Copies of this rule, its Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) are available from Christopher M. Moore, Chief, Federal-State Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Silver Spring, MD 20910. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be submitted to Christopher M. Moore at the address above or fax to (301) 713–0596 and to David Rostker by e-mail at *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gordon J. Helm, NMFS, telephone: (301) 713–2379 or E-mail: *Gordon.J.Helm@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This final rule enacts regulations that implement the Fish and Seafood Promotion Act (FSPA) of 1986 (16 U.S.C. 4001 *et seq.*) to establish and operate Seafood Marketing Councils (Councils) in order to promote the consumption of domestically harvested seafood. A proposed rule requesting public comment on this action published in the **Federal Register** on January 24, 2006 (71 FR 3797). Public comments were accepted through February 23, 2006. A full discussion of the background of this rule was presented in the preamble to the proposed rule for this action and is not repeated here.

In summary, NMFS issued a final rule in 1989 enacting the FSPA, as it pertains to Councils, for one or more species of fish or fish products. The FSPA permitted the creation of Councils under a set of guidelines established by the Secretary of Commerce (Secretary), who delegated authority to NMFS, to establish a National Seafood Marketing Council (National Council). This National Council was authorized to fund applicants' referenda to establish and terminate species-specific marketing councils. However, no species-specific marketing councils were established and the National Council was disbanded. In 1996, the regulations implementing the FSPA were removed from the Code of Federal Regulations (CFR) as part of the government-wide Presidential regulatory reform effort. Although the implementing regulations were withdrawn from the CFR, the FSPA remains in effect.

The seafood promotion council rule addresses a market failure that reduces consumer demand for seafood as a result of the dissemination of partial, misleading or faulty information to consumers. In reality, no consumer can have perfect information about a seafood product. However, the dissemination of significantly incorrect information about a product can substantially lower consumer demand. In the case of seafood, this could reduce consumption of an important health-beneficial food. While the role of the federal government is not to promote seafood, it does have a responsibility to the consumer to ensure that the information presented to them is accurate and scientifically valid. The Secretary of Commerce or designee on the Seafood Promotion Council has the responsibility of approving or rejecting proposed marketing plans based on the accuracy and scientific validity of the information presented to the public.

An example of a case where partial information leads to a substantial reduction in the consumer demand for a seafood product includes recent marketplace confusion over contaminants such as mercury in seafood. The Food and Drug Administration and industry have promoted the health benefits of omega–3 fatty acids, but consumers also hear that many of the fish highest in omega–3 fatty acids also generally contain the higher levels of contaminants. This leads to consumer confusion over the degree to which the relative health benefits exceed the risk from contaminants and may result in consumers diverting their demand for protein to other products that may provide fewer health benefits or carry different health risks. While the seafood industry could tackle this imperfect information market failure on its own through promotional campaigns and consumer education, opponents could counter that the industry action is ''self serving.'' To counter this perceived conflict of interest, the Federal government can offer, through the Seafood Promotion Act, a seal of approval to assure consumers that the

information being offered is accurate and reliable.

Industry has expressed to NMFS interest and support for seafood marketing and promotion-related activities. Niche marketing programs have been initiated by both the Pacific salmon harvesters in Alaska and by the Wild American Shrimp organization in the southern Atlantic and Gulf of Mexico states. Additional interest has been expressed by U.S. tuna processors who are also facing declining market shares due to foreign competition. In response to industry requests, NMFS promulgates regulations providing the foundation for the establishment, organization, and administrative practices of the Councils.

Application to Establish A Council

An application package submitted to NMFS to establish a Council must consist of the following information: (1) an application requesting NMFS to establish a Council; (2) a list of sector participants who are eligible to vote in the referendum; (3) a proposed charter under which the proposed Council would operate; and (4) an IRFA and/or other analytical documentation addressing the requirements of the Regulatory Flexibility Act, Executive Order 12866, National Environmental Policy Act, and other information which may include, but is not limited to, an analysis of the primary, secondary, and tertiary affects of increasing demand for seafood. This information will be used by NMFS to determine if the proposed council or its marketing program is consistent with NMFS conservation goals, national standards, and other guidelines. The applicant will also have to demonstrate to NMFS that the council or its marketing program is consistent with Federal standards and guidelines on nutrition and health. For detailed information regarding application requirements, see the preamble to the proposed rule published January 24, 2006.

NMFS will determine if the application package is complete and complies with all of the requirements set forth in the implementing regulations, the FSPA of 1986, and other applicable law and make an initial decision on the application within 180 days of receipt.

Referendum on Adoption of Proposed Charter and Council Appointments

NMFS will conduct a referendum on the adoption of the proposed charter within 90 days of its initial affirmative decision. The referendum will be conducted among all sector participants that meet the requirements for eligibility to participate in the referendum, as identified in the proposed charter. The vote may be made by any responsible officer, owner, or employee representing a sector participant. The referendum to establish a Council would pass if votes cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, the majority must collectively account for, in the preceding 12–month period, at least 66 percent of the value of the fish and fish products described in the proposed charter that were handled during this period, in that sector, and by those who met the eligibility requirements to vote in the referendum. If the referendum passes, NMFS will establish a Council and approve the proposed charter.

NMFS will initially pay all costs related to the conduct of the referendum to establish a Council. Once an application has been approved, NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that they post a bond or provide other applicable security, such as a cashier's check, to cover costs of the referendum. After the referendum has been conducted, NMFS will inform the applicants of the exact cost. If the referendum is approved and the proposed charter is adopted, the Council will be required to reimburse NMFS for the total actual costs of the referendum within 2 years after establishment of the Council. This amount would be paid for from assessments collected by the Council. If a referendum fails to result in establishment of a Council, NMFS would immediately recover all expenses incurred from the bond or security posted by applicants.

Within 30 days after a Council is established, NMFS will solicit nominations for Council members from the sector participants represented on the Council in accordance with the approved charter. The members of each Council should be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable with regard to the activities of the sector which the individual would represent on the Council. NMFS will appoint the members of the Council from among the nominees within 60 days. The term for members would be 3 years. Council members will serve without compensation but would be reimbursed for their reasonable expenses incurred in performing their duties as members of the Council.

Continued Operation of a Council

Continued operation of a Council is at the discretion of NMFS and subject to NMFS' annual review of a market assessment prepared by the Council and evaluation of Council performance. Increases in product prices will not be the sole criteria for determining the effectiveness of a marketing program. The Council must demonstrate that the marketing plan will not adversely impact those fisheries for which conservation and management measures are necessary to prevent overfishing and rebuild overfished stocks, i.e., the market plan should be designed to increase profits rather than increase harvest. The marketing plan should also demonstrate that conservation and management efforts in other fisheries are not adversely affected, but NMFS may use the primary, secondary, or tertiary impacts in evaluating whether the Council should be allowed to continue operating. Where measures have been implemented to reduce the overall harvest in a fishery, the marketing plan should clearly identify how stock conservation harvest capacity reduction would not be adversely impacted. Council support of the regional fishery management council's adoption of dedicated or controlled access programs, for example but not limited to programs such as Individual Fishing Quota, moratorium on new entrants into a fishery, and other effort control measures, are programs that comply with this standard. NMFS retains the authority to determine if the continued operation of a Council would be in the public interest.

Councils will be required to: (1) meet performance standards approved by NMFS that demonstrate that marketing and promotion programs are effective in increasing consumer demand for species-specific seafood products; (2) conduct market assessments based on economic, market, social and demographic, and biological information as deemed necessary by NMFS; (3) submit annual plans and budgets for species-specific marketing and promotion plans; (4) submit progress reports on implementation of the marketing and promotion plans; and (5) submit financial reports with respect to the receipt and disbursement of funds entrusted to it. NMFS will require a complete audit report to be conducted by an independent public accountant and submitted to NMFS at the end of each fiscal year.

Assessments

Councils will be funded through voluntary assessment of the industry

represented on the Councils. Assessments will be imposed on sector participants in the receiving sector or the importing sector or both as specified in the approved Council charter. Assessment rates will be based on value that may be expressed in monetary units or units of weight or volume. Once a participant declines to pay an assessment, or elects not to participate in a Council, no future assessments will be imposed. With NMFS' concurrence, a Council will establish the applicable assessment for those seeking to rejoin or participate in a Council at a future time.

The Council will notify a sector participant subject to assessment that the assessment is due. The notification informs the participant of the right to seek review of the assessment by filing a written petition of objection with NMFS at any time during the time period to which the assessment applies in accordance with the procedures in § 270.19. The notification also informs the participant of the right to request a refund of the assessment and provides deadlines for submission of the request.

Persons subject to an assessment will be required to pay the assessment on or before the date due, unless they have demanded a refund or filed a petition of objection with NMFS under § 270.21. However, a person who has demanded a refund under § 270.22 or filed a petition of objection under § 270.21 may submit proof of these actions in lieu of payment. In the case of a petition of objection, NMFS will inform the Council and the petitioner of its finding at which time petitioner must pay the revised assessment if applicable.

Pursuant to 16 U.S.C. 4014, any sector participant who pays an assessment under the FSPA may demand and must promptly receive from the Council a refund of the assessment. A demand for refund must be made in accordance with procedures in the approved charter and within the time limits prescribed by the Council and approved by NMFS. Procedures to provide such a refund will be established before any such assessment will be collected. Once a refund has been requested by a sector participant and paid by the Council, that sector participant will no longer participate in a referendum or other business of the Council during the remainder of the assessment rate period. However, if assessments are paid during a future assessment rate period and no refund is requested, that sector participant will be able to again participate in a referendum or other business of the Council.

Quality Standards

Each Council may develop and submit to NMFS for approval, or upon the request of a Council, NMFS will develop, quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed should be consistent with the purposes of the FSPA. A quality standard should be adopted by a Council by a majority of its members following a referendum conducted by the Council among sector participants of the concerned sector(s). In order for a quality standard to be brought before Council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Furthermore, according to the best available data, the majority must collectively account for, in the preceding 12–month period, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum. Councils may develop quality standards establishing the criteria for the fish or fish products being promoted. The Council will submit a plan to conduct the referendum on the quality standards to NMFS for approval at least 60 days in advance of such referendum date.

An official observer appointed by NMFS will be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps NMFS deems appropriate to verify the validity of the process and results of the referendum.

Quality standards developed must meet or exceed the U.S. Food and Drug Administration§ s minimum requirements for fish and fish products for human consumption and must be consistent with applicable standards of the U.S. Department of Commerce (NOAA) or other recognized Federal standards and/or specifications for fish and fish products.

Dissolution of a Council

In order to terminate a Council, at least three sector participants in any one sector must file a petition with NMFS. The petition should be accompanied by a written document explaining the reasons for the petition. If NMFS initially determines that the petition is accompanied by the signatures, or corporate certifications, of no less than three sector participants in the sector who collectively accounted for, in the preceding 12–month period, not less than 20 percent of the value of the fish or fish products that were handled by that sector during the period, NMFS within 90 days after the initial determination, will conduct a referendum for termination of the Council among all sector participants in that sector.

If the referendum votes which are cast in favor of terminating the Council constitute a majority of the sector participants voting and the majority, in the preceding 12–month period, collectively accounted for not less than 66 percent of the value of such fish and fish products the that were handled during that period by the sector who filed the petition, NMFS will by order terminate the Council effective as of a date by which the affairs of the Council should be concluded.

Cost of Referendum

NMFS will initially pay all costs of this referendum. However, prior to conducting the referendum, NMFS will require petitioners to post a bond or other security acceptable to NMFS in an amount which NMFS determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

If a Council is terminated, NMFS, after recovering all expenses incurred for the conduct of the referendum, will take action as is necessary and practicable to ensure that moneys remaining in the account established by the Council are paid on a prorated basis to the sector participants from whom those moneys were collected. If a referendum fails to result in the termination of the Council, NMFS will immediately recover the amount of the bond posted by the petitioners.

If the amount remaining in the Council account is insufficient for NMFS to recover all expenses incurred for the conduct of the referendum, NMFS will recover the balance of the expenses from the petitioners that posted a bond.

Comments and Responses

Sixteen commenters provided 15 comments during the comment period for the proposed rule for this action. Commenters included commercial and recreational fishermen, processors, importers, distributors, marketers, senior scientists, environmental non-governmental organizations, and concerned citizens.

Comment 1: Several commenters were concerned that the establishment of Seafood Marketing Councils would promote over-fishing or favor the commercial industry at the expense of recreational fishing opportunities. Some of the species listed as candidates for a marketing program (e.g., some groupers,

snappers, cod, and flatfish) are already overexploited.

Response: Seafood Marketing Councils and their marketing plans are required to comply with NMFS' conservation and stewardship goals and objectives. Marketing Councils will not play any role in the management of fisheries through the setting of annual quotas, limitations on fishing effort or the allocation of fishery resources. Rebuilding plans for overexploited stocks will not be affected by this rule.

Comment 2: A number of commenters emphasized the importance of educating the public about the nutritional benefits of seafood and the risks associated with mercury and other contaminants.

Response: NMFS agrees that educating the public on the benefits and risks of eating seafood is important. The establishment of Seafood Marketing Councils is an opportunity to provide the public with accurate information about contaminant risks for vulnerable sub-populations and to document the health benefits associated with consuming seafood.

Comment 3: Several commenters were concerned that NMFS would intrude in the industry§ s marketing decisions. Commenters suggested that NMFS should not review or be expected to approve marketing plans developed by private sector experts. Additionally, they were concerned that Federal intervention in marketing efforts would strip away free market abilities.

Response: This rule is intended to create a voluntary program that operates under the control of its participants. NMFS' role is to ensure that scientifically accurate information is provided to consumers of seafood products and to ensure the smooth functioning of the Marketing Councils. Marketing Councils will improve the transmission of clear and accurate information about seafood products to consumers and thereby enhance free market capabilities to allocate and price seafood products.

Comment 4: Several non-governmental organizations emphasized the need for an Environmental Impact Statement (EIS).

Response: Based on preliminary analyses under the National Environmental Policy Act (NEPA), NMFS has concluded that preparation of an EIS is not necessary at this time because the effort is primarily educational and informational in nature. The promotional nature of the effort is such that it will not affect individually or cumulatively the quality of the human environment, or impact managed species, essential fish habitat, or species or their habitat protected under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). Further analysis under NEPA will be required before any Seafood Marketing Council is considered for approval by the Secretary. There is nothing in this action that would establish a precedent about future proposals.

Comment 5: Two non-governmental organizations were concerned that the Seafood Marketing Councils may raise seafood prices for U.S. consumers. Middle- to low-income families would be less likely to purchase seafood and receive its nutritional benefits.

Response: The market for fish products is diverse and complex. An increase in price for one commodity does not translate into an increase across all commodities. One commodity's price increase could result in a price decline for other seafood products. Many lower cost fish product alternatives will still exist for consumers even with a price increase in one product.

Comment 6: One commenter questioned why the regulations to create Seafood Marketing Councils were previously removed.

Response: The Fish and Seafood Promotion Act (FSPA) initially established a National Seafood Council funded by Congress. When the Congressional funds were exhausted, the seafood industry did not choose to continue the funding for the National Seafood Council, and it was deactivated. During that time, seafood product prices remained at premium levels and industry did not feel the need to fund generic marketing programs. Since the 1990s, the advance of aquaculture production worldwide has contributed to a decline in general prices for seafood products. Today, domestic commercial seafood harvesters are facing a financial crisis. Therefore, there is some renewed industry interest and support for seafood marketing and promotion-related activities.

Comment 7: Several commenters were concerned that the amount of required analytical documentation to apply is too burdensome for the industry, and that there would be little incentive for industry to participate in this program.

Response: The amount of analysis will vary according to the design and composition of each potential Seafood Marketing Council. NMFS staff will coordinate with applicants in the development of specific analysis requirements, subject to NMFS review and approval.

Comment 8: Some commenters were concerned about the associated costs to NMFS during a time when the agency struggles with meeting costs of established programs. They requested that NMFS funds be allocated for issues like conservation and education, rather than seafood promotion.

Response: Expenses of operating the Marketing Councils are to be borne entirely by Council participants. These are voluntary, self-financed, industry-based, marketing programs that will not interfere with NMFS' ability to meet its mission goals.

Comment 9: One association suggested that the criteria for a referendum should be the participation of companies representing greater than fifty percent of the industry's revenue rather than the participation of more than half of the industry's participants.

Response: According to the FSPA, the majority of sector participants that vote in favor of establishing the Marketing Council must represent 66 percent of the value of the fish and fish products produced in the last six months by the sector petitioning to create a Marketing Council.

Comment 10: One commenter suggested that foreign seafood market development should not be among the responsibilities of the Marketing Councils, since this function is already filled by the U.S. Department of Agriculture.

Response: The focus of the Marketing Councils is on the domestic marketing of seafood. They are not intended to compete with other federal or state programs that have jurisdiction for international marketing of seafood products.

Comment 11: One commenter suggested that the rule include a provision that allows small, regional marketing organizations to organize under a Seafood Marketing Council if they so choose.

Response: Existing regional marketing organizations have a voice in the formation of any new Councils through the referendum process.

Comment 12: One commenting organization was concerned that the rule promotes a singular species message that may conflict with their broader multi-species message. Another commenter was concerned that the Marketing Councils would exclude some participants or finance the promotion of one type of seafood at the expense of another.

Response: Existing regional marketing councils can petition to form multi-species Councils. The merits of each potential Marketing Council will be considered on a case-by-case basis.

Comment 13: One commenting group was opposed to voluntary participation. If someone decides not to vote in the referendum, that person will not be

assessed even if the majority of other sector participants agree to the formation of a Seafood Marketing Council. In their view, if a Marketing Council is formed for a particular fish or fish product, assessments should be required of all sector participants.

Response: Recent decisions by the U.S. Supreme Court (*Johanns* v. *Livestock Marketing Association*; 544 U.S. 550; 2005 U.S. LEXIS 4343), while not specifically addressing voluntary participation in Seafood Marketing Councils, strongly indicated that a voluntary Marketing Council program would be preferable to mandatory participation in future councils.

Comment 14: One commenter suggested that the quality seal should not be used as an eco-label; this perception could be confusing to the public.

Response: The criteria supporting a quality seal will be subject to approval by the Secretary, and made known to the public. A quality seal will not be taken to mean environmentally friendly.

Comment 15: Several organizations believe the rule is inconsistent with NOAA§ s goal of decreasing the seafood trade deficit. They suggested that by allowing importers to participate in the Marketing Councils, NMFS would be providing an indirect subsidy for imported seafood, thus undermining a program such as offshore aquaculture that was intended to reduce U.S. dependence on seafood imports.

Response: The establishment of Seafood Marketing Councils will not be a Government subsidy to the commercial fishing industry, either foreign or domestic, since all costs will be funded by the Marketing Council's participants. It is not expected to contribute to the seafood trade deficit.

Changes From the Proposed Rule

Pursuant to the Paperwork Reduction Act (PRA), part 902 of title 15 CFR displays control numbers assigned to NMFS information collection requirements by the Office of Management and Budget (OMB). This part fulfills the requirements of section 3506(c)(1)(B)(I) of the PRA, which requires that agencies display a current control number assigned by the Director of OMB, for each agency information collection requirement. This final rule codifies OMB control numbers for 0648–0556 for § 270.

Under NOAA Administrative Order 205–11, 07/01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0556. The information collection requirements contained in this final rule can be broadly categorized into two categories: (1) Information required of an individual or organization applying for consideration to form a Council, and (2) information required of a formed and operating Council. Information required of an individual or organization applying for consideration to form a Council, consists of an ''application for charter'' that is composed of three sections: petition, proposed charter, and a list of eligible referendum participants. Public reporting burden for this portion of the collection requirement in 50 CFR part 270 is 320 hours in total, with an average of 80 hours to develop a petition, 200 hours to develop a proposed charter, and 40 hours to develop a list of eligible referendum participants. All other information requirements in the final rule are imposed on the Councils, once they are established. The estimated reporting time for these information requirements varies from 1 to 120 hours per response. Council submission of an annual plan, an annual budget, and an annual financial report are estimated at 120 hours each for a total of 360 hours. Council submissions of semi-annual progress reports are estimated at 40 hours twice a year, notice of assessments at 20 hours once a year, list of Council nominations following a favorable referendum at 20 hours once a year, and meeting notices at 1–2 hours once a year. Other submissions are optional and are dependent upon the operation of a particular Council and its participants. For instance, Council submission of a plan to conduct a referendum on development of quality standards is estimated at 40 hours with no more than annual frequency. Additionally, assessed participants of a Council submission of a petition of objection and/or request for refund is estimated at 2 hours each no more than 6 times a year. These estimated reporting times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total time estimate is 1,127 hours. The total annual cost burden to respondents is expected to be $4,700 based on the need for outside auditing of Seafood Marketing Council financial records. Start up costs are $3,200 and annual operating costs are $1,500. Send comments regarding these burden estimates or any other aspects of the data collection to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

Final Regulatory Flexibility Analysis

NMFS prepared this FRFA which incorporates the Initial Regulatory Flexibility Analysis (IRFA) published in the **Federal Register** on January 24, 2006 (71 FR 3797). The IRFA is not repeated here in its entirety. The need for and the objectives of the rule are explained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the proposed rule and this final rule.

Description of and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The potential universe of entities affected by this action includes all harvesters, importers, marketers, and processors of seafood. With the exception of a small number of catcher-processor vessels, most harvesters are identified as small entities under the Regulatory Flexibility Act meeting a size standard of less than $4.0 million in gross receipts. Importers and marketers are characterized as small if the number of employees working in a typical pay period number are 100 or fewer, while seafood processors employing 500 people or less are considered small. A Council could be made up of any combination of small or large firms depending upon the sector or sectors of a particular fishery the Council is representing. NMFS statistics indicate that there are approximately 17,679 harvesters, 935 processing plants, and 2,446 wholesale and marketing establishments that could be affected by this proposed rule.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The information collection requirements contained in this final rule can be broadly categorized into two categories: (1) Information required of an individual or organization applying for consideration to form a Council, and

(2) information required of a formed and operating Council. Information required of an individual or organization applying for consideration to form a Council, consists of an ''application for charter'' that is composed of three sections: petition, proposed charter, and a list of eligible referendum participants. The estimated reporting time for this portion of the collection requirement in 50 CFR part 270 is 320 hours in total, with an average of 80 hours to develop a petition, 200 hours to develop a proposed charter, and 40 hours to develop a list of eligible referendum participants. All other information requirements are imposed on the Councils, once they are established. The estimated reporting time for these information requirements varies from 1 to 120 hours per response. Council submission of an annual plan, an annual budget, and an annual financial report are estimated at 120 hours each for a total of 360 hours. Council submissions of semi-annual progress reports is estimated at 40 hours twice a year, notice of assessments at 20 hours once a year, list of Council nominations following a favorable referendum at 20 hours once a year, and meeting notices at 1–2 hours once a year. Other submissions are optional and are dependent upon the operation of a particular Council and its participants. For instance, Council submission of a plan to conduct a referendum on development of quality standards is estimated at 40 hours with no more than annual frequency. Additionally, assessed participants of a Council's submission of an objection petition and/or request for refund is estimated at 2 hours each no more than 6 times a year. These estimated reporting times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In addition to recordkeeping and reporting requirements required to create a Council, small entities could also be required to complete forms required to administer assessment fees, petition for a refund of assessment fees, or participate in any referendum under a specific Council's charter. NMFS believes the number of burden hours to small entities to meet Council obligations could range between 5 and 20 hours annually. This final rule does not implement a seafood marketing program, therefore, the Paperwork Reduction Act requirements are not triggered. However, there may be a need for additional burden hours once a Council's charter is accepted.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS received 15 comments from 16 commenters on the proposed rule. Of these, seven comments were submitted either directly on the conclusions reached in the IRFA or on the economic viability of the rulemaking vis-a-vis small businesses.

Comment A: Several commenters believed that the promotion of fishery exports is already supported by the Foreign Agricultural Service (FAS), United States Department of Agriculture (USDA), and the proposed seafood marketing councils may overlap with rulemaking specific to the FAS.

Response: NMFS recognizes that there may be a slight overlap with rulemaking that may be specific to the functions of the FAS. However, NMFS believes that the overlaps are not significant and seafood marketing councils may provide additional benefits to constituents by providing unique services. Discussions between FAS and NMFS are ongoing to address any overlaps that could result from this rulemaking.

Comment B: One commenter believes that too much Federal involvement strips away free market abilities from any individual.

Response: The IRFA notes that the implementation of this final rule does not guarantee that all firms will benefit equally from a seafood promotion program. However, NMFS believes that increasing the demand for seafood products would only serve to enhance the markets for seafood via increased demand and increased pricing power.

Comment C: One commenter believes the Council should not give money to one seafood at the expense of a different type.

Response: NMFS is requiring seafood councils, as part of their planning process, to submit an economic analysis that would support Regulatory Flexibility Act (RFA) and Executive Order 12866 (E.O. 12866) analysis used for rulemaking to determine impacts to other seafood products. NMFS will not support marketing plans for one product that would significantly affect the profitability of firms operating in another seafood sector of the economy. If the analysis indicates potential impacts to small entities, the Agency will attempt to mitigate to the extent practicable adverse impacts to other sectors that may accrue.

Comment D: One commenter disagreed with the Agency's assertion that the free rider problem would be less significant for fisheries than agricultural products.

Response: As noted in the IRFA, NMFS believes that relative price changes would be less severe in situations where increased supplies from the aggregate of firms respond to higher demand (also known as an elastic demand for most fishery products). However, NMFS did not state that a free rider problem would not exist and pointed out that product differentiation could alleviate much of the perceived problem.

Comment E: One commenter believed that requiring analyses that would support RFA or E.O. 12866 analyses would be burdensome.

Response: NMFS agrees that this would be time consuming but the benefits of performing these analyses would far outweigh the costs in regard to the ability to estimate the effects of marketing plans on small entities, producers of other seafood and agricultural products, and the general economy as well.

Comment F: One commenter representing a regional fisheries marketing council noted that direct competition from species-specific Federally-guided councils would directly compete against their products and dilute their position in the marketplace.

Response: See Response to Comment C.

Comment G: One commenter representing a fishing industry sector believes that all firms identified as part of a sector should pay a mandatory fee regardless of whether they desire to participate in a council or not and further asserts that voluntary or ''de facto voluntary'' formation of seafood promotion councils is not what the Fish and Seafood Promotion Act (FSPA) intended.

Response: NMFS specifically requested comments on whether the amount of funds collected through ''de facto'' voluntary assessments after considering administrative costs, program costs, the effect of free riders, and other economic considerations would enable Councils to develop and maintain marketing, assessment, and research programs sufficient to benefit both the industry and those firms choosing to pay ''de facto'' voluntary assessments. There were no comments received on this specific solicitation.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

There are two major provisions of this final rule that will minimize economic impacts to small entities. Firstly, the Agency has provided a means for a small entity to forego a mandatory assessment fee even though they may be listed as a participant for a proposed Council. By making Council participation voluntary, small businesses that believe it will not be cost effective to participate in a Council would not be required to do so. Consequently, these businesses could avoid additional cost of sales that could reduce or squeeze their overall profit margin. Secondly, the provision that will require Councils to submit, to NMFS, economic analysis of the impacts to small entities of proposed marketing and promotion plans will allow the Agency to mitigate to the extent practicable any adverse impacts that may accrue to participants in a Council, other fishery sectors, or non-fishery sectors.

Small Entity Compliance Guide

Section 212 of the Small Business Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. There are no compliance issues directly associated with the implementation of this rule. However, when a petition to form a Council is received by the Agency, a copy of this published final rule with a cover letter informing the petitioners of administrative requirements for initiating the Council process including requirements for conducting a referendum will be provided to the petitioners. The cover letter will also list Agency contacts responsible the Seafood Marketing Council program. Copies of this final rule and cover letter are available from the Office of Sustainable Fisheries, NMFS (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 270

Administrative practice and procedure, Fish, Marketing, Seafood.

Dated: April 4, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter II are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under ''50 CFR'' is amended by adding new entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number(all numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
270.3	–0556
270.6	–0556
270.8	–0556
270.10	–0556
270.12	–0556
270.13	–0556
270.14	–0556
270.15	–0556
270.19	–0556
270.20	–0556
270.23	–0556
* * * *	*

■ 3. A new subchapter H consisting of part 270 is added to Chapter II to read as follows:

50 CFR Chapter II

SUBCHAPTER H—FISH AND SEAFOOD PROMOTION

PART 270—SPECIES-SPECIFIC SEAFOOD MARKETING COUNCILS

Sec.

270.1 Scope.
270.2 Definitions.
270.3 Submission of application.
270.4 Review of application.
270.5 Conduct of referendum.
270.6 Sector participants eligible to vote.
270.7 Results of referendum.
270.8 Nomination and appointment of Council members.
270.9 Terms, vacancies, and removal of Council members.
270.10 Responsibilities of a Council.
270.11 Responsibilities of NMFS.
270.12 Notice of Council meetings.
270.13 Books, records and reports.
270.14 Update of sector participant data.
270.15 Quality standards.
270.16 Deposit of funds.
270.17 Authority to impose assessments.
270.18 Method of imposing assessments.
270.19 Notice of assessment.
270.20 Payment of assessments.
270.21 Petition of objection.
270.22 Refunds.
270.23 Dissolution of Councils.

Authority: 16 U.S.C. 4001–4017

§ 270.1 Scope.

This part 270 describes matters pertaining to the establishment, representation, organization, practices, procedures, and termination of Seafood Marketing Councils.

§ 270.2 Definitions.

The following terms and definitions are in addition to or amplify those contained in the Fish and Seafood Promotion Act of 1986:

Act means the Fish and Seafood Promotion Act of 1986 (Public Law 99–659) and any subsequent amendments.

Consumer education means actions undertaken to inform consumers of matters related to the consumption of fish and fish products.

Council means a Seafood Marketing Council for one or more species of fish and fish products of that species established under section 210 of the Act (16 U.S.C. 4009).

Expenditure means monetary or material worth of fishery products. Expenditure is determined at the point a receiver obtains product from a harvester or an importer obtains product from a foreign supplier. Value may be expressed in monetary units (the price a receiver pays to a harvester or an importer pays to a foreign supplier).

Fiscal year means any 12–month period as NMFS may determine for each Council.

Fish means finfish, mollusks, crustaceans, and all other forms of aquatic animal life used for human consumption; the term does not include marine mammals and seabirds.

Harvester means any person in the business of catching or growing fish for purposes of sale in domestic or foreign markets.

Importer means any person in the business of importing fish or fish products from another country into the United States and its territories, as defined by the Act, for commercial purposes, or who acts as an agent, broker, or consignee for any person or nation that produces, processes or markets fish or fish products outside of the United States for sale or for other commercial purposes in the United States.

Marketer means any person in the business of selling fish or fish products in the wholesale, export, retail, or restaurant trade, but whose primary business function is not the processing or packaging of fish or fish products in preparation for sale.

Marketing and promotion means any activity aimed at encouraging the consumption of fish or fish products or expanding or maintaining commercial markets for fish or fish products.

Member means any person serving on any Council.

Participant means a member of a sector or business identified in an application for a Council charter as being subject to the referendum or assessment process.

Person means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Processor means any person in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale in domestic or foreign markets.

Receiver means any person who owns fish processing vessels and any person in the business of acquiring (taking title to) fish directly from harvesters.

Research means any type of research designed to advance the image, desirability, usage, marketability, production, quality and safety of fish and fish products.

Secretary means the Secretary of Commerce, or the Secretary's designee.

Sector means

(1) The sector consisting of harvesters;

(2) The sector consisting of importers;

(3) The sector consisting of marketers;

(4) The sector consisting of processors;

(5) The sector consisting of receivers; or

(6) The consumer sector consisting of persons professionally engaged in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products;

Sector participant means any individual, group of individuals, association, proprietorship, partnership, corporation, cooperative, or any private entity of the U.S. fishing industry organized or existing under the laws of the United States or any state, commonwealth, territory or possession of the United States who meets the eligibility requirements as defined in a proposed charter to vote in a referendum.

Species means a fundamental category of taxonomic classification, ranking after genus, and consisting of animals that possess common characteristic(s) distinguishing them from other similar groups.

Value means monetary or material worth of fishery products. Value is the difference between what a receiver is willing to pay for a product provided by a harvester and its market price or an importer is willing to pay for a product from a foreign supplier and its market price. Value may be expressed in monetary units representing consumer surplus or producer surplus.

§ 270.3 Submission of application.

(a) Persons who meet the minimum requirements for sector participants as described in the proposed charter may file an application with NMFS for a charter for a Seafood Marketing Council for one or more species of fish and fish products of that species. One signed original and two copies of the completed application package must be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Applications should not be bound.

(b) The application consists of four parts:

(1) A document requesting NMFS to establish a Council;

(2) A proposed charter under which the proposed Council will operate;

(3) A list of eligible referendum participants; and

(4) Analytical documentation addressing requirements of applicable law.

(c) *Content of application*—(1) *Application or requesting document.* The application or requesting document submitted by the applicants to NMFS requesting that the Council be established, to the extent practicable, must include the signatures or corporate certifications, of no less than three sector participants representing each sector identified in accordance with paragraph (c)(2)(v) of this section and who, according to the available data, collectively accounted for, in the 12–month period immediately preceding the month in which the application was filed, not less than 10 percent of the value of the fish or fish products specified in the charter that were handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the application. The application must also include a statement that, if established, the Council will have sufficient resources (e.g., cash, donated office space, services, supplies, etc.) available for initial administrative expenditures pending collection of assessments.

(2) *Proposed charter.* A proposed charter must contain, at a minimum, the following information:

(i) The name of the Council and a provision proclaiming its establishment;

(ii) A declaration of the purposes and objectives of the Council;

(iii) A description of the species of fish and fish products, including the scientific and common name(s), for which the Council will implement marketing and promotion plans under the Act. (The American Fisheries Society's ''List of Common and Scientific Names of Fishes from the United States and Canada'' (latest edition) or where available, an appropriate volume of its ''List of Common and Scientific Names of Aquatic Invertebrates of the United States and Canada'' (latest edition) should be used as the authority for all scientific and common names.);

(iv) A description of the geographic area (state(s)) within the United States covered by the Council;

(v) The identification of each sector and the number and terms of representatives for each sector that will be voting members on the Council. (The number of Council members should be manageable, while ensuring equitable geographic representation. The term for members will be 3 years. Initially, to ensure continuity, half of the members' terms will be 2 years and half will be 3 years. Reappointments are permissible.);

(vi) The identification of those sectors (which must include a sector consisting of harvesters, a sector consisting of receivers, and, if subject to assessment, a sector consisting of importers), eligible to vote in the referendum to establish the Council;

(vii) For each sector described under paragraph (c)(2)(v) of this section, a threshold level specifying the minimum requirements, as measured by income,

volume of sales, or other relevant factors, that a person engaging in business in the sector must meet in order to participate in a referendum;

(viii) A description of the rationale and procedures for determining assessment rates as provided in § 270.18, based on a fixed amount per unit of weight or measure, or on a percentage of value of the product handled;

(ix) The proposed rate or rates that will be imposed by the Council on receivers and, if subject to assessment, importers during its first year of operation;

(x) The maximum amount by which an assessment rate for any period may be raised above the rate applicable for the immediately preceding period;

(xi) The maximum rate or rates that can be imposed by a Council on receivers or importers during the operation of the Council;

(xii) The maximum limit on the amount any one sector participant may be required to pay under an assessment for any period;

(xiii) The procedures for providing refunds to sector participants subject to assessment who request the same in accordance with the time limits specified § 270.22;

(xiv) A provision setting forth the voting procedures by which votes may be cast by proxy;

(xv) A provision that the Council will have voting members representing the harvesting, receiving and, if subject to assessment, importing sectors;

(xvi) A provision setting forth the definition of a quorum for making decisions on Council business and the procedures for selecting a chairperson of the Council;

(xvii) A provision that members of the Council will serve without compensation, but will be reimbursed for reasonable expenses incurred in performing their duties as members of the Council;

(xviii) A provision containing a requirement for submission to NMFS the criteria and supporting data for evaluating the annual and/or multi-year performance of proposed marketing plans and the Council's performance;

(xix) A provision containing a requirement for submission of documentation as requested by NMFS for purposes of evaluating performance of proposed marking plans and the Council's related performance;

(xx) Where adequate funds are not available, a provision containing the minimum number of participants needed for sustained operations that cannot receive assessment refunds;

(xxi) A provision acknowledging that NMFS will have the right to participate in Council meetings;

(xxii) A provision that the Council will conduct its activities in accordance with applicable NMFS requirements and that NMFS has final approval authority over proposed marketing plans and Council actions;

(xxiii) A provision containing a requirement for the Council to arrange for a complete audit report to be conducted by an independent public accountant and submitted to NMFS at the end of each fiscal year;

(xxiv) A provision containing a requirement for the Council to conduct a market assessment based on economic, market, social and demographic, and biological information as deemed necessary by NMFS; and

(xxv) A provision containing a requirement for the Council to update the list of referendum participants on an annual basis.

(3) *List of referendum participants.* The list of referendum participants, to the extent practicable, must identify the business name and address of all sector participants that the applicants believe meet the requirements for eligibility to vote in the referendum on the adoption of the proposed charter.

(i) The list should include all sectors in which a sector participant meets the eligibility requirements to vote in a referendum. If a sector participant has more than one place of business located within the geographic area of the Council, all such places should be listed and the primary place of business should be designated. The agency will provide appropriate information in its possession of a non-proprietary nature to assist the applicants in developing the list of sector participants.

(ii) [Reserved]

(4) *Analytical documentation.* The applicant must address the requirements of the Act, implementing regulations, and other applicable law, i.e., E.O. 12866, Regulatory Flexibility Act, National Environmental Policy Act, and other law as NMFS determines appropriate.

§ 270.4 Review of application.

Within 180 days of receipt of the application to establish a Council, NMFS will:

(a) Determine if the application is complete and complies with all of the requirements set out in § 270.3 and complies with all provisions of the Act and other applicable laws.

(b) Identify, to the extent practicable, those sector participants who meet the requirements for eligibility to participate in the referendum to establish the Council. NMFS may require additional information from the applicants or proposed participants in order to verify eligibility. NMFS may add names to or delete names from the list of sector participants believed eligible by the applicants until the time of the referendum based on additional information received.

(c) If NMFS finds minor deficiencies in an application that can be corrected within the 180–day review period, NMFS will advise the applicants in writing of what must be submitted by a specific date to correct the minor deficiencies.

(d) If NMFS makes a final negative determination, on an application, NMFS will advise the applicant in writing of the reason for the determination. The applicant may submit another application at any time thereafter. NMFS then has 180 days from receipt of the new application to render a final determination on its acceptability.

§ 270.5 Conduct of referendum.

(a) Upon making affirmative determinations under § 270.4, NMFS, within 90 days after the date of the last affirmative determination, will conduct a referendum on the adoption of the proposed charter.

(b) NMFS will estimate the cost of conducting the referendum, notify the applicants, and request that applicants post a bond or provide other applicable security, such as a cashier§ s check, to cover costs of the referendum.

(c) NMFS will initially pay all costs of a referendum to establish a Council. Within two years after establishment, the Council must reimburse NMFS for the total actual costs of the referendum from assessments collected by the Council. If a referendum fails to result in establishment of a Council, NMFS will immediately recover all expenses incurred for conducting the referendum from the bond or security posted by applicants. In either case, such expenses will not include salaries of government employees or other administrative overhead, but will be limited to those additional direct costs incurred in connection with conducting the referendum.

(d) No less than 30 days prior to holding a referendum, NMFS will:

(1) Publish in the **Federal Register** the text of the proposed charter and the most complete list available of sector participants eligible to vote in the referendum; and

(2) Provide for public comment, including the opportunity for a public meeting.

§ 270.6 Sector participants eligible to vote.

(a) Any participant who meets the minimum requirements as measured by income, volume of sales or other relevant factors specified in the approved charter may vote in a referendum.

(b) Only one vote may be cast by each participant who is eligible to vote, regardless of the number of individuals that make up such ''participant'' and how many sectors the participant is engaged in. The vote may be made by any responsible officer, owner, or employee representing a participant.

§ 270.7 Results of referendum.

(a) *Favorable vote to establish a Council.* NMFS will, by order of publication in the **Federal Register**, establish the Council and approve an acceptable proposed charter, if the referendum votes which are cast in favor of the proposed charter constitute a majority of the sector participants voting in each and every sector. Further, according to the best available data, the majority must collectively account for, in the 12–month period immediately preceding the month in which the proposed charter was filed, at least 66 percent of the value of the fish and fish products described in the proposed charter handled during such period in each sector by those who meet the eligibility requirements to vote in the referendum as defined by the applicants.

(b) *Unfavorable vote to establish a Council.* If a referendum fails to pass in any sector of the proposed Council, NMFS will not establish the Council or approve the proposed charter. NMFS will immediately recover the cost of conducting the referendum according to § 270.5(c).

(c) *Notification of referendum results.* NMFS will notify the applicants of the results of the referendum and publish the results of the referendum in the **Federal Register**.

§ 270.8 Nomination and appointment of Council members.

(a) Within 30 days after a Council is established, NMFS will solicit nominations for Council members from the sectors represented on the Council in accordance with the approved charter. If the harvesters and receivers represented on the Council are engaged in business in two or more states, but within the geographic area of the Council, the nominations made under this section must, to the extent practicable, result in equitable representation for those states. Nominees must be knowledgeable and experienced with regard to the activities of, or have been actively engaged in the business of, the sector that such person will represent on the Council. Therefore, a resume will be required for each nominee.

(b) In accordance with 16 U.S.C. 4009(f), NMFS will, within 60 days after the end of the 30–day period, appoint the members of the Council from among the nominees.

§ 270.9 Terms, vacancies and removal of Council members.

(a) A Council term is for 3 years, except for initial appointments to a newly established Council where:

(1) Half of the Council member terms will be 2 years; and

(2) Half of the Council member terms will be 3 years.

(b) A vacancy on a Council will be filled, within 60 days after the vacancy occurs, in the same manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed will be appointed only for the remainder of such term.

(c) Any person appointed under the Act who consistently fails or refuses to perform his or her duties properly and/or participates in acts of dishonesty or willful misconduct with respect to responsibilities under the Act will be removed from the Council by NMFS if two-thirds of the members of the Council recommend action. All requests from a Council to NMFS for removal of a Council member must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

§ 270.10 Responsibilities of a Council.

(a) Each Council will:

(1) Implement all terms of its approved charter;

(2) Prepare and submit to NMFS, for review and approval under § 270.11(a)(1), a marketing and promotion plan and amendments to the plan which contain descriptions of the projected consumer education, research, and other marketing and promotion activities of the Council;

(3) Implement and administer an approved marketing and promotion plan and amendments to the plan;

(4) Determine the assessment to be made under § 270.18 and administer the collection of such assessments to finance Council expenses described in paragraph (b) of this section;

(5) Receive, investigate and report to NMFS accounts of violations of rules or orders relating to assessments collected under § 270.20, or quality standard requirements established under § 270.15;

(6) Prepare and submit to NMFS, for review and approval a budget (on a fiscal year basis) of the anticipated expenses and disbursements of the Council, including

(i) All administrative and contractual expenses;

(ii) The probable costs of consumer education, research, and other marketing and promotion plans or projects;

(iii) The costs of the collection of assessments; and

(iv) The expense of repayment of the costs of each referendum conducted in regard to the Council.

(7) Comply with NMFS requirements, and prepare and submit to NMFS for review, evaluation, and verification of results and analysis an annual market assessment and related analytical documentation that is based on economic, market, social, demographic, and biological information as deemed necessary by NMFS;

(8) Maintain books and records, prepare and submit to NMFS reports in accordance with respect to the receipt and disbursement of funds entrusted to it, and submit to NMFS a completed audit report conducted by an independent auditor at the end of each fiscal year;

(9) Reimburse NMFS for the expenses incurred for the conduct of the referendum to establish the Council or any subsequent referendum to terminate the Council that fails;

(10) Prepare and submit to NMFS report or proposals as the Council determines appropriate to further the purposes of the Act.

(b) Funds collected by a Council under § 270.17 will be used by the Council for—

(1) Research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish projects;

(2) Other expenses, as described in § 270.10(a)(1);

(3) Such other expenses for the administration, maintenance, and functioning of the Council as may be authorized by NMFS; and

(4) Any reserve fund established under paragraph (e)(4) of this section and any administrative expenses incurred by NMFS specified as reimbursable under this Part.

(c) Marketing and promotion plans and amendments to such plans prepared by a Council under paragraph(a)(2) of this section will be designed to increase the general demand for fish and fish products described in accordance with § 270.3(c)(2)(iii) by encouraging,

expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

(d) Consumer education and other marketing and promotion activities carried out by a Council under a marketing and promotion plan and amendments to a plan may not contain references to any private brand or trade name and will avoid the use of deceptive acts or practices in promoting fish or fish products or with respect to the quality, value, or use of any competing product or group of products.

(e) *Authority of a Council.* A Council may:

(1) Sue and be sued;

(2) Enter into contracts;

(3) Employ and determine the salary of an executive director who may, with the approval of the Council employ and determine the salary of such additional staff as may be necessary;

(4) Establish a reserve fund from monies collected and received under § 270.17 to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(f) Amendment of a charter. A Council may submit to NMFS amendments to the text of the Council's charter. Any proposed amendments to a charter will be approved or disapproved in the same manner as the original charter was approved under § 270.4 and § 270.5 with the exception of § 270.4(b).

§ 270.11 Responsibilities of NMFS.

(a) In addition to the duties prescribed under 16 U.S.C. 4009, NMFS will:

(1) Participate in Council meetings and review, for consistency with the provisions of 50 CFR part 270 and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within 60 days after their submission by a Council;

(2) Immediately notify a Council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;

(3) Issue orders and amendments to such orders that are necessary to implement quality standards under § 270.15;

(4) Promulgate regulations necessary to carry out the purposes of this chapter;

(5) Enforce the provisions of the Act;

(6) Make all appointments to Councils in accordance with § 270.8 and the approved Council charter;

(7) Approve the criteria and time frames under which a Council's performance will be evaluated; and

(8) Implement the provisions of 16 U.S.C. 4001 *et seq.* in accordance with the available financial and management resources NMFS determines can be utilized.

(b) NMFS may provide, on a reimbursable or other basis, such administrative or technical assistance as a Council may request for purposes of the initial organization and subsequent operation of the Council. However, a Council is responsible for the cost of preparing and submitting information (e.g., reports, evaluation data, etc.) requested by NMFS.

§ 270.12 Notice of Council meetings.

The Council will give NMFS the same notice of its meetings as it gives to its members. NMFS will have the right to participate in all Council meetings.

§ 270.13 Books, records and reports.

(a) The Council must submit to NMFS the following documents according to the schedule approved in the Council's charter:

(1) A marketing assessment and promotion plan;

(2) A financial report with respect to the receipt and disbursement of funds;

(3) An audit report conducted by an independent public accountant; and

(4) Other reports or data NMFS determines necessary to evaluate the Council's performance and verify the results of the market assessment and promotion plan..

(b) All Council records, reports, and data must be maintained by the Council for a minimum of 3 years, even if the Council is terminated.

§ 270.14 Update of sector participant data.

The Council will submit to NMFS at the end of each fiscal year an updated list of sector participants who meet the minimum requirements for eligibility to participate in a referendum as stated in the approved charter.

§ 270.15 Quality standards.

(a) Each Council may develop and submit to NMFS for approval or, upon the request of a Council, NMFS will develop quality standards for the species of fish or fish products described in the approved charter. Any quality standard developed under this paragraph must be consistent with the purposes of the Act.

(b) A quality standard developed under paragraph (a) of this section may be adopted by a Council by a majority of its members following a referendum conducted by the Council among sector participants of the concerned sector(s). In order for a quality standard to be brought before Council members for adoption, the majority of the sector participants of the concerned sector(s) must vote in favor of the standard. Further, according to the best available data, the majority must collectively account for, in the 12–month period immediately preceding the month in which the referendum is held, not less than 66 percent of the value of the fish or fish products described in the charter that were handled during such period in that sector by those who meet the eligibility requirements to vote in the referendum as defined by the petitioners.

(c) The Council must submit a plan to conduct the referendum on the quality standards to NMFS for approval at least 60 days in advance of such referendum date. The plan must consist of the following:

(1) Date(s) for conducting the referendum;

(2) Method (by mail or in person);

(3) Copy of the proposed notification to sector participants informing them of the referendum;

(4) List of sector participants eligible to vote;

(5) Name of individuals responsible for conducting the referendum;

(6) Copy of proposed ballot package to be used in the referendum; and

(7) Date(s) and location of ballot counting.

(d) An official observer appointed by NMFS will be allowed to be present at the ballot counting and any other phase of the referendum process, and may take whatever steps NMFS deems appropriate to verify the validity of the process and results of the referendum.

(e) Quality standards developed under this section of the regulations must, at a minimum, meet Food and Drug Administration (FDA) minimum requirements for fish and fish products for human consumption.

(f) Quality standards must be consistent with applicable standards of the U.S. Department of Commerce (National Oceanic and Atmospheric Administration) or other recognized Federal standards and/or specifications for fish and fish products.

(g) No quality standard adopted by a Council may be used in the advertising or promotion of fish or fish products as being inspected by the United States Government unless the standard requires sector participants to be in the U.S. Department of Commerce voluntary seafood inspection program.

(h) The intent of quality standards must not be to discriminate against importers who are not members of the Council.

(i) Quality standards must not be developed for the purpose of creating non-tariff barriers. Such standards must be compatible with U.S. obligations under the General Agreement on Tariffs and Trade, or under other international standards deemed acceptable by NMFS.

(j) The procedures applicable to the adoption and the operation of quality standards developed under this subchapter also apply to subsequent amendments or the termination of such standards.

(k) With respect to a quality standard adopted under this section, the Council must develop and file with NMFS an official identifier in the form of a symbol, stamp, label or seal that will be used to indicate that a fish or fish product meets the quality standard at the time the official identifier is affixed to the fish or fish product, or is affixed to or printed on the packaging material of the fish or fish product. The use of such identifier is governed by § 270.15.

§ 270.16 Deposit of funds.

All funds collected or received by a Council under this section must be deposited in an appropriate account in the name of the Council specified in its charter. Funds eligible to be collected or received by a Council must be limited to those authorized under the Act.

(a) Pending disbursement, under an approved marketing plan and budget, funds collected through assessments authorized by the Act must be deposited in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government.

(b) The Council may, however, pending disbursement of these funds, invest in risk-free, short-term, interest-bearing instruments.

(1) *Risk-free.* All investments must be insured or fully collateralized with Federal Government securities. In the absence of collateral, accounts established at financial institutions should, in aggregate, total less than $100,000 to assure both principal and interest are federally insured in full.

(2) *Short-term.* Generally, all investments should be for a relatively short time period (one year or less) to assure that the principal is maintained and readily convertible to cash.

(3) *Collateralization.* Investments exceeding the $100,000 insurance coverage level must be fully collateralized by the financial institution.

(i) Collateral must be pledged at face value and must be pledged prior to sending funds to the institution.

(ii) Government securities are acceptable collateral. Declining balance, mortgage backed securities such as Government National Mortgage Association (GNMA) and Federal National Mortgage Association (FNMA) are not acceptable collateral.

(iii) If an account has been established, collateral may be held at the local Federal Reserve Bank. Otherwise, another depository must hold the collateral.

§ 270.17 Authority to impose assessments.

A Council will impose and administer the collection of the assessments that are necessary to pay for all expenses incurred by the Council in carrying out its functions under 50 CFR part 270.

§ 270.18 Method of imposing assessments.

Assessments will be imposed on sector participants in the receiving sector or the importing sector or both as specified in an approved Council charter. Assessment rates will be based on value that may be expressed in monetary units or units of weight or volume.

(a) An assessment on sector participants in the receiving sector will be in the form of a percentage of the value or a fixed amount per unit of weight or volume of the fish described in the charter when purchased by such receivers from fish harvesters.

(b) An assessment on sector participants who own fish processing vessels and harvest the fish described in the charter will be in the form of a percentage of the value or on a fixed amount per unit of weight or volume of the fish described in the charter that is no less than the value if such fish had been purchased by a receiver other than the owner of the harvesting vessel.

(c) An assessment on sector participants in the importing sector will be in the form of a percentage of the value that an importer pays to a foreign supplier, as determined for the purposes of the customs laws, or a fixed amount per unit of weight or volume, of the fish or fish products described in the charter when entered or withdrawn from warehouse for consumption, in the customs territory of the United States by such sector participants.

(d) A Council may not impose an assessment on any person that was not eligible to vote in the referendum establishing the Council by reason of failure to meet the requirements specified under unless that person, after the date on which the referendum is held, meets the requirements of section.

(e) Any person may make voluntary payments or in-kind contributions to a Council for purposes of assisting the Council in carrying out its functions.

§ 270.19 Notice of assessment.

(a) The Council must serve each person subject to assessment with notice that the assessment is due. The notice of assessment must contain:

(1) A specific reference to the provisions of the Act, regulations, charter and referendum that authorize the assessment;

(2) The amount of the assessment;

(3) The period of time covered by the assessment;

(4) The date the assessment is due and payable, which will not be earlier than 30 days from the date of the notice;

(5) The form(s) of payment; and

(6) To whom and where the payment must be made.

(b) The notice must advise such person of his or her right to seek review of the assessment by filing a written petition of objection with NMFS at any time during the time period to which the assessment applies, including the right to request a hearing on the petition. The notice must state that the petition of objection must be filed in accordance with the procedures in § 270.21.

(c) The notice must also advise such persons of his or her right to a refund of the assessment as provided in § 270.22. The notice must state that a refund may be requested for not less than 90 days from such collection, and provide that the Council will make the refund within 60 days after the request for the refund is requested.

§ 270.20 Payment of assessments.

Persons subject to an assessment would be required to pay the assessment on or before the date due, unless they have demanded a refund or filed a petition of objection with NMFS under § 270.21. However, persons who have demanded a refund under § 270.22 or filed a petition of objection under § 270.21 may submit proof of these actions in leu of payment. In the case of a petition of objection, NMFs will inform the Council and the petitioner of its finding at which time petitioner must pay the revised assessment if applicable.

§ 270.21 Petition of objection.

(a) *Filing a petition.* Any person issued a notice of assessment under

§ 270.19 may request that NMFS modify or take other appropriate action regarding the assessment or promotion plan by filing a written petition of objection with NMFS. Petitions of objection may be filed:

(1) Only if the petitioner determines one or more of the following criteria is not in accordance with the law:

(i) The assessment;

(ii) The plan upon which the assessment is based; or

(iii) Any obligation imposed on the petitioner under the plan.

(2) Only during the time period to which the assessment applies.

(b) *Contents of the petition of objection.* A petition must be addressed to Assistant Administrator for Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, and must contain the following:

(1) The petitioner's correct name, address, and principal place of business. If the petitioner is a corporation, this must be stated, together with the date and state of incorporation, and the names, addresses, and respective positions of its officers; if a partnership, the date and place of formation and the name and address of each partner;

(2) The grounds upon which the petition of objection is based, including the specific terms or provisions of the assessment, the marketing and promotion plan, or obligation imposed by the plan, to which the petitioner objects;

(3) A full statement of the facts upon which the petition is based, set forth clearly and concisely, accompanied by any supporting documentation;

(4) The specific relief requested; and

(5) A statement as to whether or not the petitioner requests a hearing.

(c) *Notice to Council.* NMFS will promptly furnish the appropriate Council with a copy of the petition of objection.

(d) *Opportunity for informal hearing.* (1) Any person filing a petition of objection may request an informal hearing on the petition. The hearing request must be submitted with the petition of objection.

(2) If a request for hearing is timely filed, or if NMFS determines that a hearing is advisable, NMFS will so notify the petitioner and the Council. NMFS will establish the applicable procedures, and designate who will be responsible for conducting a hearing. The petitioner, the Council, and any other interested party, may appear at the hearing in person or through a representative, and may submit any relevant materials, data, comments, arguments, or exhibits. NMFS may consolidate two or more hearing requests into a single proceeding.

(3) *Final decision.* Following the hearing, or if no hearing is held, as soon as practicable, NMFS will decide the matter and serve written notice of the decision on the petitioner and the Council. NMFS's decision will be based on a consideration of all relevant documentation and other evidence submitted, and will constitute the final administrative decision and order of the agency. NMFS will have the discretion to waive collection of a contested assessment or revise, modify, or alter the assessment amount based on a Council method of assessment.

§ 270.22 Refunds.

(a) Notwithstanding any other provision of the Act, any person who pays an assessment under the Act may demand and must promptly receive from the Council a refund of such assessment. A demand for refund must be made in accordance with procedures in the approved charter and within such time as will be prescribed by the Council and approved by NMFS. Procedures to provide such a refund must be established before any such assessment may be collected. Such procedures must allow any person to request a refund 90 days or more from such collection, and provide that such refund must be made within 60 days after demand for such refund is made.

(b) Once a refund has been requested by a sector participant and paid by the Council, that sector participant may no longer participate in a referendum or other business of the Council during the remainder of the assessment rate period. Future assessments will only be sent to such a sector participant at the request of the sector participant. If assessments are paid during a future assessment rate period and no refund is requested, that sector participant may again participate in a referendum or other business of the Council.

§ 270.23 Dissolution of Councils.

(a) *Petition for termination.* (1) A petition to terminate a Council may be filed with NMFS by no less than three sector participants in any one sector. Any petition filed under this subsection must be accompanied by a written document explaining the reasons for such petition.

(2) If NMFS determines that a petition filed under paragraph (a)(1) of this section is accompanied by the signatures, or corporate certifications, of no less than three sector participants in the sector referred to in paragraph (a)(1) of this section who collectively accounted for, in the 12–month period immediately preceding the month in which the petition was filed, not less than 20 percent of the value of the fish or fish products described in § 270.3(c)(2)(iii) that were handled by that sector during the period, NMFS within 90 days after the determination, will conduct a referendum for termination of the Council among all sector participants in that sector.

(3) Not less than 30 days prior to holding a referendum, NMFS will publish an announcement in the **Federal Register** of the referendum, including an explanation of the reasons for the petition for termination filed under paragraph (a)(1) of this section and any other relevant information NMFS considers appropriate.

(4) If the referendum votes which are cast in favor of terminating the Council constitute a majority of the sector participants voting and the majority, in the period in paragraph (a)(2) of this section, collectively accounted for not less than 66 percent of the value of such fish and fish products that were handled during such period by the sector in paragraph (a)(1) of this section, NMFS will by order of publication terminate the Council effective as of a date by which the affairs of the Council may be concluded on an orderly basis.

(5) NMFS initially will pay all costs of a referendum conducted in § 270.23. Prior to conducting such a referendum, NMFS will require petitioners to post a bond or other security acceptable to NMFS in an amount which NMFS determines to be sufficient to pay any expenses incurred for the conduct of the referendum.

(6) If a referendum conducted under § 270.23 fails to result in the termination of the Council, NMFS will immediately recover the amount of the bond posted by the petitioners under § 270.23(a)(5).

(7) If a referendum conducted under this subsection results in the termination of the Council, NMFS will recover the expenses incurred for the conduct of the referendum from the account established by the Council. If the amount remaining in such account is insufficient for NMFS to recover all expenses incurred for the conduct of the referendum, NMFS will recover the balance of the expenses from the petitioners that posted a bond under paragraph (a)(5) of this section.

(b) *Payment of remaining funds.* If a Council is terminated under section § 270.23(a)(4), NMFS, after recovering all expenses incurred for the conduct of the referendum under paragraph (a) of this section, will take such action as is necessary and practicable to ensure that moneys remaining in the account established by the Council under

§ 270.17 are paid on a prorated basis to the sector participants from whom those moneys were collected under § 270.20.

[FR Doc. E7–6751 Filed 4–10–07; 8:45 am]

BILLING CODE 3510–22–S

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1310

Administrative Cost Recovery

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: TVA is amending its administrative cost recovery regulations by eliminating cost recovery exemptions for the following: Conveyances of land pursuant to Section 4(k)(d) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831c(k)(d)); TVA phosphate land transactions; and permits and licenses for use of TVA land by distributors of TVA power.

The implementation of this rule amendment will allow TVA to recover more of its administrative costs incurred in processing certain actions from those who directly benefit from the actions.

EFFECTIVE DATE: April 11, 2007.

FOR FURTHER INFORMATION CONTACT: Nancy Greer, Senior Manager, Process and Performance Management, (865) 632–3339.

SUPPLEMENTARY INFORMATION: In order to help ensure that TVA land management and permitting activities are self-sustaining to the full extent possible, the agency is amending its administrative cost recovery regulations by eliminating certain mandatory cost recovery exemptions. This determination is consistent with the objectives of increasing efficiency and recovering the cost of government services from those who most directly benefit from the services.

TVA is amending its administrative cost recovery regulation by eliminating the following exemptions: Conveyances of land pursuant to Section 4(k)(d) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831c(k)(d)); TVA phosphate land transactions; and permits and licenses for use of TVA land by distributors of TVA power.

TVA is also amending the rule to reflect new organizational changes within the agency. The terms ''Vice President of Land Management'' or ''Manager of Power Properties'' are to be amended to read ''Senior Manager of the TVA organization that manages the land.''

TVA published a proposed rule on April 14, 2006. TVA considers this final rule to be a nonsubstantive rule relating to agency management and public property pursuant to 5 U.S.C. 553(a)(2). However, TVA provided a thirty day public comment period to hear from any interested parties. No comments were received. Since this rule relates to services provided by the agency, a regulatory flexibility analysis is not required.

List of Subjects in 18 CFR Part 1310

Government property, Hunting.

For the reasons set out in the preamble, TVA amends 18 CFR part 1310 as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 16 U.S.C. 831–831dd; 31 U.S.C. 9701.

■ 2. Revise paragraphs (a) introductory text and (b) of § 1310.2 to read as follows:

§ 1310.2 Application.

(a) *General.* TVA will undertake the following actions only upon the condition that the applicant pay to TVA such administrative charges as the Senior Manager of the TVA organization that administers the land or permit being considered (hereinafter ''responsible land manager''), as appropriate, shall assess in accordance with § 1310.3; provided, however, that the responsible land manager may waive payment where he/she determines that there is a corresponding benefit to TVA or that such waiver is otherwise in the public interest.

* * * * *

(b) *Exemption.* An administrative charge shall not be made for the following actions:

(1) Releases of unneeded mineral right options.

(2) TVA mineral transactions.

* * * * *

Authority: 16 U.S.C. 831–831dd (2000 & Supp. III 2003).

Dated: March 2, 2007.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment and Environmental Executive, Tennessee Valley Authority.

[FR Doc. 07–1702 Filed 4–10–07; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Mupirocin Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Altana, Inc. The ANADA provides for veterinary prescription use of mupirocin ointment for the treatment of bacterial skin infections in dogs.

DATES: This rule is effective April 11, 2007.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Altana, Inc., 60 Baylis Rd., Melville, NY 11747, filed ANADA 200–418 that provides for veterinary prescription use of MURICIN (mupirocin) Ointment 2% for the treatment of bacterial skin infections in dogs. Altana, Inc.'s MURICIN Ointment 2% is approved as a generic copy of Pfizer, Inc.'s BACTODERM Ointment approved under new animal drug application (NADA) 140–839. The ANADA is approved as of March 8, 2007, and the regulations are amended in 21 CFR 524.1465 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because

Done at Washington, DC, this 22nd day of October, 2009.

Ralph Otto,

Associate Administrator, National Institute of Food and Agriculture.

[FR Doc. E9–25854 Filed 10–27–09; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Fish and Seafood Promotion

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 28, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John M. Ward, (301) 713–9504 or *John.M.Ward@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the authority of the Fish and Seafood Promotion Act of 1986 information collected under this program is used to promote domestically-produced fishery products. The information collection requirements can be broadly divided into two categories: (1) Information required of an individual or organization applying for consideration to form a seafood promotion council, and (2) information required of a formed and operating council, or permitted for its participants. Information required of an individual or organization applying for consideration to form a council, consists of an 'application for charter', composed of three subparts: Petition, proposed charter, and a list of eligible referendum participants. The information collection required of a formed and operating council, or permitted for its participants, is as follows: Council submission of an annual plan, an annual budget, and an annual financial report; council submissions of semiannual progress reports; notice of assessments once a year; list of council nominations following a favorable referendum once a year; and meeting notices once a year.

II. Method of Collection

Information can be submitted via e-mail.

III. Data

OMB Control Number: 0648–0556.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 3.

Estimated Time per Response: 320 hours.

Estimated Total Annual Burden Hours: 960 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 23, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–25950 Filed 10–27–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR73

Endangered Species; File No. 14249

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ronald Smolowitz, Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536, has been issued a permit to take loggerhead (Caretta caretta), leatherback (*Dermochelys coriacea*), Kemp's ridley (*Lepidochelys kempii*), and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On February 24, 2009, notice was published in the **Federal Register** (74 FR 8230) that a request for a scientific research permit to take loggerhead, leatherback, Kemp's ridley, and green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will evaluate modifications to scallop dredge gear that may reduce the probability of turtle injuries due to interactions with gear. They will also study sea turtle behavior so that behavior can be factored into bycatch reduction strategies and collect biological and animal health information to improve NMFS' ability to assess stocks and the impact of anthropogenic activities. Up to 23 loggerheads, 1 leatherback, 1 green, and 1 Kemp's ridley would be taken during