Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Mary Rael to Elizabeth Drye re: Seafood Inspection Program [partial] (1 page)	03/24/1997	b(6)
002. email	To Elizabeth Drye re: Seafood Inspection Program mtg [partial] (1 page)	04/09/1997	b(6)
003. email	To Elizabeth Drye re: Seafood Inspection Program mtg [partial] (1 page)	04/09/1997	b(6)
004. email	To Elizabeth Drye re: White House seafood mtg [partial] (1 page)	04/10/1997	b(6)
005. note	Mary Rael to Elizabeth Drye re: DOBs and SSNs [partial] (1 page)	04/03/1997	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 10451

FOLDER TITLE:

Seafood Inspectors

2014-0046-S
rc1409

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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March 24, 1997

Note To: Elizabeth Drye

From: Mary Rael

Subject: Seafood Inspection Program Meeting

Below for your information is the attendee list for the Seafood Inspection Program Meeting proposed for 3/27/97 in the PM with National Oceanic and Atmospheric Administration (NOAA) and Food and Drug Administration (FDA).

James W. Brennan
Deputy General Counsel, NOAA
[redacted] (b)(6) 1001

Eamnor Lafkin 5-3914
BC Louisa Koch 5-4723
Ken Schwartz
Michael Deich —
Dan 2:00
3:45

Brandon S. Blum
Senior Counselor for Legislation and Policy, NOAA
[redacted] (b)(6)

William K. Hubbard
Associate Commissioner for Policy, FDA
[redacted] (b)(6)

Jerold R. Mande
Senior Advisor to the Commissioner, FDA
[redacted] (b)(6)

Janice F. Oliver
Deputy Director for Systems and Support, CSFAN, FDA
[redacted] (b)(6)

Philip C. Spiller
Director, Office of Seafood, FDA
[redacted] (b)(6)

Please let me know if you need any further information.

Suzette Kern [redacted]
[redacted] (b)(6)

A proposal to transfer those NOAA programs & inspectors to FDA was floated early. —

Elizabeth Drye
03/31/97 04:37:29 PM

Record Type: Record

To: Sally Katzen/OMB/EOP, Nancy A. Min/OMB/EOP, T J. Glauthier/OMB/EOP, Michael Deich/OMB/EOP

cc: See the distribution list at the bottom of this message
Subject: NOAA and FDA Seafood Inspectors

As part of the President's food safety initative, FDA and NOAA are interested in discussing with OMB and DPC how to best modify NOAA's seafood inspection program. Options range from working with the inspectors through a Commerce-based PBO to bringing the inspectors to FDA while maintaining elements of the fee-based grading program for a period of time. I've set up a **Wednesday, April 2, 2:30 pm NOAA/FDA briefing** for White House to review options. Briefing will be in **Room 211, OEOB. Please RSVP by e-mail.** Thanks.

Also, FYI, today, tomorrow and Wed. a.m., the Agencies are hosting a working meeting with all outside groups on the initiative

Message Copied To:

Michael A. Fitzpatrick/OMB/EOP
K. Lisa Grove/OMB/EOP
Adrienne C. Erbach/OMB/EOP
Richard J. Turman/OMB/EOP
Jim R. Esquea/OMB/EOP
Sarah A. Laskin/OMB/EOP

AMERICAN MEAT INSTITUTE

"Celebrating 90 Years of Service to the Industry"

Sara J. Lilygren
Senior Vice President, Legislative and Public Affairs

February 25, 1997

Ms. Elizabeth Drye
Senior Policy Analyst
The White House
1600 Pennsylvania Ave., NW
Old Executive Office Building, Room 213
Washington, DC 20502
By fax: 202/456-7028

Dear Ms. Drye:

Thank you for inviting AMI to attend a briefing, now set for Monday, March 3, on the President's Food Safety Initiative. We are very enthused about the initiative, particularly the concept of a public/private partnership to educate consumers about safe food handling. As you may know, AMI and several other food industry organizations have met recently with Secretary Shalala and representatives of Secretary Glickman to form a "Partnership for Food Safety Education." We anticipate working together with the food industry, USDA and USDHHS on this project in the years ahead.

I am writing to seek your help in arranging a special briefing for a group of meat and poultry industry senior executives on Tuesday, May 13, at the White House. Approximately 100 industry leaders will be in Washington, DC, May 12-13 for AMI's annual Government Affairs Conference, and we would very much like to bring them to the White House for a briefing on domestic policy -- perhaps even focusing on the President's Food Safety Initiative.

As you may know, the meat and poultry industry represents about $100 billion annually in sales and employs 500,000 workers. We are one of the few remaining rural, labor-intensive industries -- and we still retain a remarkable proportion of small to mid-size family-owned businesses. In addition to the Food Safety Initiative, our executives would also be very interested in immigration policy, environmental policy and worker safety and health policy.

Please let me know if a White House briefing May 13 is a possibility, and if so, how we should proceed. If you have any questions, I can be reached at 703/841-2400. I will attend the briefing you have scheduled for March 3; perhaps we will have a chance to meet there. Otherwise, I look forward to hearing from you soon.

Sincerely,

Sara Lilygren

Sara Lilygren

March 24, 1997

Note To: Elizabeth Drye

From: Mary Rael

Subject: Seafood Inspection Program Meeting

Below for your information is the attendee list for the Seafood Inspection Program Meeting proposed for 3/27/97 in the PM with National Oceanic and Atmospheric Administration (NOAA) and Food and Drug Administration (FDA).

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Deputy General Counsel, NOAA

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William K. Hubbard
Associate Commissioner for Policy, FDA

Jerold R. Mande
Senior Advisor to the Commissioner, FDA

Janice F. Oliver
Deputy Director for Systems and Support, CSFAN, FDA

Philip C. Spiller
Director, Office of Seafood, FDA

Please let me know if you need any further information.

FDA

OFFICE OF THE COMMISSIONER
OFFICE OF POLICY
5600 FISHERS LANE Rm. 14-101
ROCKVILLE, MD 20857

PHONE - (301)827-3360
FAX - (301)594-6777

Date: 3/24/97

To: Elizabeth Drye

From: Mary Rael

202-456-5581

Of Pages Not Including Cover: 2

Comments: attached are two lists of attendees one w/ DOB's & SS#'s and one without.

Eliz —
Please cover.
Elena

Elizabeth M. Toohey
03/14/97 01:54:51 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Marjorie Tarmey/WHO/EOP, Kevin S. Moran/WHO/EOP
Subject: Tuskegee Follow-Up Meeting

There will be a follow-up meeting on the Tuskegee Syphilis Experiments memo sent to the President (3/6) on **March 20, Thursday, at 10:00 am in Maria's Office**.

Attendees:
Maria Echaveste
Kitty Higgins
Ann Lewis
Ben Johnson
Tracey Thornton
Phil Caplan
Elena Kagan
Anne McGuire
HHS--Bill Corr and Mary Beth Donahue

Please let me know if you can atttend. Thanks, Liz 6-7072

Message Sent To:

Ann F. Lewis/WHO/EOP
Robert B. Johnson/WHO/EOP
Tracey E. Thornton/WHO/EOP
Phillip Caplan/WHO/EOP
Elena Kagan/OPD/EOP
Anne E. McGuire/WHO/EOP

Deye 222

Total Pages: ___

LRM ID: JAW49

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Wednesday, April 2, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Jeffrey A. Weinberg
PHONE: (202)395-3457 FAX: (202)395-3109

SUBJECT: COMMERCE Draft Bill on Seafood Quality and Safety Improvement Act

DEADLINE: Noon Wednesday, April 9, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: This draft bill carries out a proposal in the President's FY 1998 Budget. Expedited review is needed.

DISTRIBUTION LIST

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61-JUSTICE - Andrew Fois - (202) 514-2141
76-National Economic Council - Sonyia Matthews - (202) 45/6-2174
92-Office of Personnel Management - James N. Woodruff - (202) 606-1424
107-Small Business Administration - Mary Kristine Swedin - (202) 205-6700
114-STATE - Julia C. Norton - (202) 647-4463
117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687
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EOP:
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Pam Simms
Roz Rettman
James C. Murr
Jim Esquea
Elizabeth Duye
Wendy Zenker

LRM ID: JAW49 **SUBJECT:** COMMERCE Draft Bill on Seafood Quality and Safety Improvement Act

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: **Jeffrey A. Weinberg Phone: 395-3457 Fax: 395-3109**
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3457

FROM: ______________________ **(Date)**

______________________ **(Name)**

______________________ **(Agency)**

______________________ **(Telephone)**

The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ **Concur**

_____ **No Objection**

_____ **No Comment**

_____ **See proposed edits on pages** _________

_____ **Other:** ______________________

_____ **FAX RETURN of** _____ **pages, attached to this reponse sheet**

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C 20230

APR 1 1997

The Honorable Franklin D. Raines
Director, Office of Management
and Budget
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Raines:

Enclosed are six copies of a draft bill

To establish the United States Seafood Quality and Safety Service and improve its operation as a performance-based organization within the Department of Commerce.

Also enclosed are six copies of a section-by-section analysis for the draft bill.

Please advise us whether there would be any objections to the submission of this draft proposal to the Congress. If you have any questions about this matter, please contact Pete Dalmut of the Office of the General Counsel at 482-3084.

Sincerely,

Paul L. Joffe
Acting General Counsel

Enclosures

DRAFT BILL FOR A CUSTOMER-ORIENTED PERFORMANCE-BASED FEDERAL ENTITY

A BILL

To establish the United States Seafood Quality and Safety Service and improve its operation as a performance-based organization within the Department of Commerce, and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled that,

Sec. 1 Short Title

This Act may be cited as the Seafood Quality and Safety Improvement Act of 1997.

Sec. 2 Findings

The Congress of the United States finds that:

(a) The requirements of safety and wholesomeness established by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, are the minimum legally acceptable level of quality for seafood in commerce of the United States.

(b) The for-fee voluntary seafood inspection and certification program of the National Oceanic and Atmospheric Administration under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. § 1621 et. seq.) benefits the American seafood industry.

(c) The official marks of the voluntary seafood program also benefit the public by providing a reliable and visible federal confirmation that the seafood was processed under conditions designed to provide for the safety, wholesomeness, proper labeling, and quality of seafood bearing official marks.

(d) Seafood industry participants in the voluntary seafood program should pay the costs of the benefits they receive from the program.

(e) Increased participation in the program by the seafood industry and increased consumer understanding of the information conveyed by the official marks of the program will increase the benefits of the program to the public.

(f) Recent requirements of the Food and Drug Administration and foreign governmental agencies mandating the use of HACCP procedures for safe seafood, particularly imported seafood, are likely to affect demand for services under the Agricultural Marketing Act.

(g) Greater administrative flexibility would enable the program to administer its services more efficiently and to provide benefits to the seafood industry and the public in the most cost-effective manner possible.

Sec. 3 Definitions

As used in this Act, the following terms have the meanings indicated.

(a) The term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere, or designee.

(b) The term "Board" means the Board of Consultation and Review of the United States Seafood Quality and Safety Service established as provided in section 402 of this Act.

(c) The term "Chief Operating Officer" means the Chief Operating Officer of the Service or the person authorized by the Chief Operating Officer to act in his or her stead.

(d) The term "Service" means the United States Seafood Quality and Safety Service established as a Performance Based Organization by this Act.

(e) The term "National Oceanic and Atmospheric Administration, or "NOAA" means the National Oceanic and Atmospheric Administration created by Reorganization Plan No. 4 of 1970.

(f) The term "seafood" means any food for use by man or animal that is derived in whole or in part from aquatic (including fresh water) molluscs, crustaceans, amphibians, reptiles, fin fish, or other forms of aquatic plant or animal life (including, but not limited to, jellyfish, sea cucumbers, sea urchins), and the reproductive products and the roe of such animals. “Seafood” may be derived from cultured or wild harvested organisms, but does not include food derived from aquatic birds or marine mammals.

(g) "Approved Mark" means a mark, logo, or other indicia adopted by the Service and published in the Federal Register to be affixed to, or associated with seafood packaging, containers or labels as the case may be, indicating that the seafood to which it relates: (i) has been inspected by an inspector employed or authorized by the Service, (ii) conforms to recognized grade, quality or classification standards; (iii) complies with requirements of the Food and Drug Administration for safety, wholesomeness, and labeling; (iv) has been processed in compliance with applicable criteria; (v) has been accepted per specifications based upon a lot inspection; or (vi) meets other criteria designed to facilitate the trading of seafood, the marketing of seafood, and to enable consumers to obtain the quality product which they desire.

(h) The term "Seafood Inspection and Services Trust Account" or "Fund" means the trust fund referred to in the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. § 1622(h).

(i) The term "Secretary" means the Secretary of Commerce or the Secretary of the Department in which the Service is located, or designee.

(j) The term "HACCP" refers to a science-based system for seafood which involves: identifying the hazards to producing and maintaining an acceptable product "Hazards Analysis" (HA); identifying the critical points in the production, storage or transportation of the product that must be under control in order to result in an acceptable product; controlling these critical control points, and maintaining records demonstrating that all identified "Critical Control Points" (CCP) are under control. HACCP programs must be tailored to the specific products and processes involved. Responsibility for implementation and maintenance of a HACCP plan approved by the Service resides in the concerned private sector entity, subject to audit and verification by the Service.

(k) The term "Food and Drug Administration" (or FDA) refers to the Federal Food and Drug Administration in the Department of Health and Human Services.

Sec. 4 Establishment of the Performance-Based Organization

(a) There is hereby created within the Department of Commerce, a performance-based organization which shall be known as the "United States Seafood Quality and Safety Service" (the Service) under the policy direction of the Secretary. The Service shall be the successor to the Seafood Inspection Service, an existing component of the National Marine Fisheries Service, an agency of the National Oceanic and Atmospheric Administration of the Department of Commerce.

(b) The Inspector General of the U. S. Department of Commerce shall carry out all responsibilities and duties required of him or her, and shall have all powers and duties vested in him or her by the Inspector General Act of 1978 (5 U.S.C.), as amended, with respect to the programs, operations, and activities of the Service.

(c) The Service may sue and be sued and shall maintain an office for service of process in the District of Columbia or the metropolitan area thereof, and may establish offices in such other places as may be necessary for the conduct of its business.

Title I

Management and Chief Operating Officer

Sec. 101 Appointment, Renewal and Removal of Chief Operating Officer

(a) The management of the Service is vested in a Chief Operating Officer who shall be appointed by the Secretary to a 5-year term and compensated without regard to chapters 33, 51, and 53 of title 5, United States Code. The Chief Operating Officer shall be a person who, by reason of business experience, is especially qualified to manage the Service. The appointment shall be made on the basis of demonstrated ability in management and without regard to political affiliation or activity. The Secretary may reappoint the Chief Operating Officer to a subsequent term so long as performance, as set forth in the annual performance agreement, is satisfactory or better. The Chief Operating Officer shall be removable –

(1) by the President; or

(2) by the Secretary for misconduct, delinquency, or failure to meet performance goals set forth in the agreement described in subsection (b). A decision of the Secretary to dismiss the Chief Operating Officer, or not to renew his or her contract of employment, shall be a final administrative action, not subject to further administrative review.

(b) The Secretary and the Chief Operating Officer shall enter into a performance agreement which shall set measurable organization and individual goals for the Chief Operating Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

(c) The Chief Operating Officer is authorized to be paid at an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304 (h) (2) (c) of such title 5. In addition, the Chief Operating

Officer may receive a bonus in an amount up to, but not in excess of, 50 percent of such annual rate of basic pay, based upon the Secretary's evaluation of the Chief Executive Officer's performance in relation to the performance goals set forth in the agreement described in subsection (b). Payment of a bonus may be made to the Chief Operating Officer only to the extent that such payment does not cause the Chief Operating Officer's total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the President under section 102 of title 3, United States Code.

(d) The Chief Operating Officer shall prepare and submit to the Secretary and the Congress an annual management report containing such information as the Director of the Office of Management and Budget shall prescribe.

Title II--Personnel Flexibilities

Sec. 201 General

The Service shall not be subject to any ceiling related to the number or grade of its employees.

Title III: Procurement Flexibilities

Sec. 301 Exercise of Procurement Flexibilities

(a) In General. -- Except as provided in this section, the United States Seafood Quality and Safety Service shall abide by all applicable federal procurement laws and regulations when procuring property and services.

(b) Additional Authorities. -- The Service may use any of the following authorities when procuring property or services:

(1) Two-phase selection procedures. -- The Service may conduct a competition, which shall be considered to be a competitive procedure for purposes of this or any other Act, in which:

(A) sources submit basic information and such additional information requested by the contracting officer in the first phase; and

(B) a limited number of sources are selected to participate in a competition in the second phase in accordance with sections 303 A and 303 B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. §§ 253a and 253b).

Prior to the first-phase competition, a notice shall be published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. § 416) and sections 8(e), (f), and (g) of the Small Business Act (15 U.S.C. § 637(e), (f), and (g)), except that, in lieu of section 18(b) of the Office of Federal Procurement Policy Act, and section 8(f) of the Small Business Act, the notice need only include a general description of the scope or purpose of the procurement and any additional information the contracting officer determines is appropriate. Only those sources selected in the first-phase competition shall be eligible to compete in the second phase, which may include a single procurement or repetitive procurements within the general scope for the purpose stated in the notice. The number of sources selected to compete in the second phase may be limited to two or more sources as the contracting officer determines is appropriate and in the best interests of the government.

(2) Application of Simplified Procedures to Commercial Items. -- Notwithstanding any law, whenever the United States Seafood Quality and Safety Service anticipates that commercial

products will be offered, the Service may, consistent with guidance issued by the Administrator for Federal Procurement Policy, acquire commercial items by:

(A) using the special simplified procedures for purchases of commercial items set forth in the Federal Acquisition Regulation without regard to any dollar limitations or expiration; or

(B) developing alternative procedures to address particular mission needs, provided that such alternative procedures shall not waive civil rights or labor standards laws applicable to Federal contracts.

(3) Exemption from Wait Period When Using Detailed Synopsis. -- Consistent with international agreements, the Service may issue a solicitation earlier than 15 days after the date on which a notice is published by the Secretary pursuant to section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. § 416) and sections 8(e), (f), and (g)) of the Small Business Act (15 U.S.C. § 637(d), (f), and (g)) if the notice includes a description of the item(s) to be acquired along with information necessary for the offeror to prepare an offer.

(4) Recompetitions for Continuing Requirements. -- The Chief Operating Officer may use other than competitive procedures that achieve adequate competition when conducting an acquisition that is a recompetition for a continuing requirement, where the original contract establishes cost, schedule, and performance goals, and the Chief Operating Officer determines that the incumbent contractor has met or exceeded these goals. Nothing in this subparagraph shall be construed as authorizing the sole source acquisition of a continuing requirement, except that the Service may conduct a sole source acquisition of a continuing requirement if the need to do so is

justified in writing by the contracting officer and approved by the Chief Operating Officer.

(5) Acquisition of Services from Small Businesses. -- Whenever the Service is acquiring services that do not meet the definition of commercial item set forth in section 4(12) of the Office of Federal Procurement Policy Act, 41 U.S.C. § 403 (12), the Service may use the special simplified procedures applicable to procurements below the simplified acquisition threshold as set forth in the Federal Acquisition Regulation if --

(i) the procurement is in an amount not greater than $1,000,000;

(ii) the procurement is conducted as a small business set-aside pursuant to section 15(a) of the Small Business Act (15 U.S.C. § 644(a)); and

(iii) supply items are expected to constitute less than 20 percent of the total value of the contract.

(B) The authority set forth in this paragraph:

(i) may not be used to make an award on a sole source basis, and

(ii) does not apply to the procurement of construction.".

(c) Provisions Not Affected. -- Nothing in this section shall be construed to waive civil rights or labor standards laws applicable to federal contracts.

Title IV: Powers and Duties of the Service

Sec. 401 General Powers

(a) The Service is authorized to:

(1) conduct all functions relating to seafood under the Agricultural Marketing Act of 1946, as amended, including, without limitation:

(A) assist, advise and consult with other Federal agencies with respect to international agreements relating to the quality, safety, wholesomeness or proper labeling of seafood in international trade,

(B) provide expert advice and consultation relating to seafood, its production, or processing; including advice regarding the applicable requirements of United States law and regulation. The advice of the Service provided under this clause (B) shall not be binding upon the Food and Drug Administration, but may be recognized by the Food and Drug Administration pursuant to an agreement as provided in section 405 (b) of this Act,

(C) maintain and/or adopt regulations governing its HACCP program, establishing by regulation requirements for validation and approval of individual HACCP plans and for the audit and verification of the implementation of approved plans;

(2) provide such additional services for the benefit of the seafood or fishing industry pursuant to any law administered by the Under Secretary and as the Secretary may delegate. Provided, however; that the Service shall recover the full costs of providing such additional services; and

(3) perform all other functions necessary for the efficient administration of the Service

pursuant to any authority delegated by the Under Secretary.

(b) The Service:

(1) shall adopt and use a seal (which shall indicate that the Service is a performance based organization of the Department of Commerce) with which documents issued by the Service may be authenticated; which seal shall be judicially noticed;

(2) shall issue regulations, and guidance in accordance with 5 U.S.C. 553 to implement this Act and the Agricultural Marketing Act of 1946, and other applicable law;

(3) may adopt, amend and repeal internal rules consistent with the requirements of this Act and other applicable law to govern the manner in which the business of the Service shall be conducted and the powers granted to it shall be exercised;

(4) shall inform the public about its programs and services without regard to any other provision of law; may conduct surveys to inform itself of the views of persons in the private sector regarding its programs and services; and may inquire of its customers their views regarding the nature and quality of the programs and services it provides without regard to the requirements of the Paperwork Reduction Act (44 U.S.C. § 3501 et seq.). Provided; however, no person shall be required to participate in surveys or respond to inquiries conducted by or on behalf of the Service;

(5) may adopt approved marks for seafood, register trademarks and service marks, and secure and renew copyright in works of its employees. Provided, however: that the Service shall not affix or allow to be affixed in any foreign country an approved mark to the packaging or container of seafood;

(6) may employ persons in accordance with title 5 of the United States Code as needed to carry out the functions of the Service under this Act;

(7) may use, with the consent of the entity concerned, the services, records, facilities, equipment or personnel of any Federal, state or local government agency or instrumentality, or foreign government or international organization to perform functions on the Service's behalf with or without reimbursement as agreed between the parties;

(8) may enter into and perform such contracts, cooperative agreements, studies consultations or other transactions with international and foreign agencies; with Federal, state, and local agencies; with academic institutions, and private organizations and persons on such terms as it deems appropriate and without fiscal year limitation. To assure that the activities of the Service are based upon scientifically sound principles; the Service shall take full advantage of the scientific expertise that exists in other Federal, state, and local agencies, academic institutions, industry and consumer organizations;

(9) shall deposit into the Seafood Inspection and Services Trust Account funds appropriated for deposit in that Account, and all other revenues and receipts including recovered damages, revenues from contracts, cooperative agreements, studies, licenses, authorizations, fees and revenues from the sale, lease, or disposal of any property, real, personal or mixed, or any interest therein, of the Service, including any capital investment, and may use such funds revenues and receipts as authorized by law; and,

(10) may provide for insurance against any loss in connection with its property, other assets or operations, either by contract or by self-insurance.

Sec. 402 Board of Consultation and Review

(a)(1) There is hereby established a Board of Consultation and Review whose members shall include:

(A) The Under Secretary, ex officio, or his or her designee, who shall preside at meetings of the Board to facilitate the transmission of information to the members of the Board and the transmission of the views of each member to the Secretary;

(B) The Commissioner, Food and Drug Administration, Department of Health and Human Services, ex officio, or his or her designee;

(C) A representative from each of the labor organizations which have been accorded exclusive recognition under title 5 United States Code with the Service;

(D) An inspector employed by the Service and appointed by the Chief Operating Officer.

(E) Up to 13 members appointed by the Secretary who shall be United States citizens of integrity and demonstrated accomplishment or knowledge in one or more fields relating to seafood including, inter alia, seafood production, seafood processing, seafood wholesaling, retail, restaurants, consumer advocacy, and state or local public health. Members of the Board appointed pursuant to this paragraph shall serve without compensation, except for reimbursement of expenses reasonably incurred in carrying out their duties.

(2) No person may substitute for a member of the Board appointed pursuant to paragraph (a) (1) (E).

(3) Of those members of the Board appointed in the first instance pursuant to paragraph (a)(1)(E), the Secretary shall designate four who shall serve for a term of one year, four who shall serve for a term of two years, and five who shall serve for a term of three years.

The term of members of the Board appointed after the expiration of the terms of the first appointed members of the Advisory Board shall be three years.

(4) The Secretary may appoint an individual to serve the unexpired term of a member who withdraws or otherwise is unable to serve for the full term.

(b) The Board is not authorized to provide advice to the Chief Operating Officer or the Under Secretary by vote of the members or consensus. However, each member of the Board shall provide individual oral or written views to the Chief Operating Officer or the Secretary regarding the Service's programs and performance, the level of fees charged by the Service, and on any other subject on which the Chief Operating Officer or the Secretary requests their views. The views of each member of the Board shall be considered by the Chief Operating Officer in making decisions or policy recommendations to the Secretary. The minutes of each meeting of the Board shall include a summary of the views expressed by each member during the meeting on each matter under consideration or likely to come under consideration by the Secretary.

(c) The Board shall meet at least semi-annually or more frequently at the request of the Secretary or the Chief Operating Officer.

(d) The Service may provide to the Board such assistance as necessary for the members to perform their functions.

Sec. 403 Fees

(a) The Chief Operating Officer shall establish, and revise as necessary, a schedule of fees for the services and products provided by the Service.

(b) In establishing or modifying a fee schedule, the Chief Operating Officer shall consult with the Board and shall be guided by the following principles:

(1) Fees shall be fair and equitable and shall give due consideration to the benefits provided to participants in the program and the benefits provided to the public generally; and,

(2) Fees shall take into account depreciation, and the need to establish and maintain a contingency fund at an appropriate level so that the Service will be able to perform its activities into the foreseeable future.

(c) The fee schedule in effect immediately prior to the effective date of this Act, shall remain in effect until such time as the Chief Operating Officer modifies the fee schedule as provided in this section.

Sec. 404 Violations

(a) It is a violation of this Act for any person:

(1) to affix to seafood, seafood packaging, any container of seafood, any invoice, or other document (including advertisements) relating to seafood, an approved mark or a colorable imitation thereof contrary to regulations of the Service; or

(2) without approval of the Service, to use the words "United States Seafood Quality and Safety Service" or a colorable imitation thereof in commerce.

(b) The Chief Operating Officer may withdraw services being provided under this Act from any person if he has evidence that such person has committed a violation of this Act.

(c) A person seeking reinstatement of services withdrawn pursuant to paragraph (b) shall be required to prove by a preponderance of evidence either that he or she did not commit a violation of this Act, or that the violation has been cured and is not likely to recur.

(d) If it appears that a significant violation of the Federal Food, Drug, and Cosmetic Act, or the criminal provisions of the Lacey Act, or the Agricultural Marketing Act may have occurred or may be occurring, the Chief Operating Officer shall also refer the matter to the Food and Drug Administration, or to the appropriate United States Attorney for such action as may be appropriate under those acts.

Sec. 405 Strategic Partnership with the Food and Drug Administration (FDA)

(a) The Service and the Food and Drug Administration are authorized and encouraged to enter a strategic partnership to promote effective management and enhance the benefits of the programs of each agency.

(b) Nothing in this Act shall affect the authorities or functions of the Food and Drug Administration except that, in furtherance of their strategic partnership:

(1) The Secretary of Health and Human Services, or designee, with the agreement of the Chief Operating Officer may designate employees of the Service to conduct examinations and investigations under the authority of the Federal Food, Drug, and Cosmetic Act at an agreed rate

of reimbursement to the extent that such activities do not interfere with other activities of the Service. However, employees of the Service shall not be authorized to enforce the provisions of the Federal Food Drug and Cosmetic Act against any private entity, but shall be required to report violations of that Act to the Food and Drug Administration;

(2) The Commissioner of the Food and Drug Administration may recognize the public benefits resulting from programs of the Service that certify compliance with the requirements of the Food, Drug and Cosmetic Act and regulations of the Food and Drug Administration by confirming that seafood is processed under conditions designed to provide for the safety, wholesomeness, and proper labeling of seafood products of participants in the programs of the Service;

(3) The Commissioner of the Food and Drug Administration, may designate employees of the Service to examine and inspect seafood and the production, packaging, and labeling thereof pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 376 and to collect appropriate fees as determined by the Chief Operating Officer. Fees collected by the Service for services under this paragraph shall be deposited in the Seafood Inspection and Services Trust Account.

(c) The Service shall provide FDA with reports that satisfy each commitment of the Service made under subsection (b) of this section and demonstrate compliance with the requirements of the Food and Drug Administration.

(d) The Food and Drug Administration and the Service are authorized and encouraged to cooperate in training, sensory evaluation, and analytical assessment, and other areas of mutual interest, to facilitate and harmonize the inspection/certification activities of the agencies, and provide consistent, cost-effective, and efficient services and benefits to the industry and consumers.

Sec. 406 . Authorization of Appropriations

There is authorized to be appropriated, without fiscal year limitation, not to exceed a total of $6.5 million for deposit in the Seafood Services Trust Account to facilitate the conversion to a performance-based organization by providing educational information regarding the functions of the Service, training employees of the Service to support the FDA, and for seafood inspection and examination.

Title V: Conforming Amendments and Effective Date

Sec. 501 Transfers and Continued Effectiveness of Actions

(a) On the effective date of this Act and without a break in service, all officers and employees of the National Oceanic and Atmospheric Administration whose salary had been funded in whole or in part by fees collected pursuant to the Agricultural Marketing Act of 1946 on the day before the effective date of this Act shall become officers and employees of the Service.

(b) Except as otherwise provided in this Act, on the effective date of this Act, there are hereby transferred to, and vested in, the Service and its Chief Operating Officer all functions under the Agricultural Marketing Act of 1946 vested in the Secretary, the Department of Commerce, or in officers or components of the Department of Commerce, or NOAA.

(c) Upon agreement of the Secretary and the Chief Operating Officer, there shall be transferred to the Service and the Chief Operating Officer so much of the functions of the Department of Commerce as are incidental to or necessary for the performance by or under the Chief Operating Officer of the functions referred to in or affected by subsections (a) and (b) of this section or which relate primarily to the functions transferred.

(d) Functions delegated by this Act to the Service or the Chief Operating Officer shall be performed by or at the direction of the Chief Operating Officer subject to the policy oversight of the Secretary.

(e) Except as expressly provided in this Act, and subject to the policy direction of the Secretary, neither the Service nor the Chief Operating Officer shall be required to seek or obtain authorization of any officer or employee of the Department of Commerce to perform any function which the Service or the Chief Operating Officer is authorized to perform by this Act.

(f) The Secretary is authorized and directed, without need of further appropriation, to transfer to the Service, on the effective date of this Act, those assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations and other funds employed, held, used, arising from, available or to be made available to the Department of Commerce or NOAA including funds set aside for accounts receivable which are related to functions, powers and duties vested in the Service by this Act.

(g) A regulation, rule, order, policy, determination, inspection, analysis, certification, directive, authorization, permit, contract, agreement, privilege, requirement, designation, or other action by the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration or the Department of Commerce made, prescribed, granted, issued, executed or performed pursuant to the authorities of the Agricultural Marketing Act of 1946 and in effect on the day before the effective date of this Act shall continue unabated except to the extent rescinded, modified or superseded by this Act or rescinded modified or superseded by the Chief Operating Officer or the Service acting pursuant to the authorities of this Act.

Sec. 502 Effective Date

This Act shall take effect ninety days after enactment, except that the authority of the Secretary to appoint the Chief Operating Officer shall take effect on the date of enactment.

Title VI: Assessment and Sunset Provisions

Sec. 601 Report of Operations

(a) Not later than two years after the effective date of this Act, the Secretaries of Commerce and of Health and Human Services shall provide to the President and the Congress a report on the strategic partnership between FDA and the Service, and the benefits it provides to participants in the programs of the Service and to the public together with such recommendations to enhance the benefits of the strategic partnership.

(b) Upon receipt of a joint recommendation of the Secretary and the Secretary of Health and Human Services, recommending transfer of the Service or any of its functions and employees from the Department of Commerce to the Department of Health and Human Services, the President may effect such transfer by Executive Order. The President shall notify the appropriate Committees of the House of Representatives and the Senate of the transfer and the reasons for the transfer at least six months before the effective date of the transfer.

(c) Not later than five years after the effective date of this Act, the Secretary of the department in which the Service is then located shall provide to the President and the Congress a report on the operation of the Service as a Performance Based Organization, and the costs and benefits associated with the programs of the Service.

SECTION BY SECTION ANALYSIS
SEAFOOD QUALITY and SAFETY IMPROVEMENT ACT OF 1997

Section 1 Short Title

The Act may be cited as the "Seafood Quality and Safety Improvement Act of 1997." The concept of safety is included because the activities of the United States Seafood Quality and Safety Service (Service) established as a Performance Based-Organization (PBO) by the Act will not only improve the management of the Service, but will enhance the quality of seafood, and improve public confidence in the safety of seafood in commerce of the United States. A PBO is a discrete unit of a department that commits to clear management objectives, measurable goals, customer service standards, and specific targets for improved performance. This unit remains within a department under the policy guidance and direction of the Secretary. It is still subject to government wide regulations, rules, policies, and procedures, unless specific waivers are granted. A PBO focuses on programmatic operations, not policy-making functions.

A PBO will have a Chief Operating Officer (COO) and greater managerial flexibilities in personnel, procurement and other specified areas which will enable the PBO to improve organizational performance. The COO will be selected for business managerial experience, for a fixed term, and will sign an annual performance agreement with the Secretary and be accountable for meeting the organization's performance improvement goals.

Section 2 Findings

The Congress recognizes that the requirements of safety and wholesomeness established by the Food and Drug Administration (FDA) are the minimum levels of quality to which all seafood must conform thereby establishing the legal context in which the Service will operate as a PBO. The PBO will provide governmental confirmation of seafood quality to benefit its customers in the seafood industry in much the same manner as the Agricultural Marketing Service provides assurances of quality for other food products.

The Service also provides significant assurances of safety, wholesomeness, and proper labeling to the public that bolster and expand public confidence generated by the activities of the FDA. Greater flexibility would enable the newly created PBO to provide better services to both the seafood industry and the public.

The Congress finds that participants in the programs of the Service should pay for the benefits received. Finally, the increased regulatory use of HACCP (hazards analysis, critical control points) for the safety and wholesomeness of seafood will affect the demand for services of the PBO under the Agricultural Marketing Act.

Section 3 Definitions

This section defines several terms employed in the Act. One key definition is the definition of HACCP as it applies to seafood.

Section 4 Establishment of the United States Quality Assurance Service

This section specifically creates a statutory entity with the name "United States Quality and Safety Service" (Service) as a PBO within the Department of Commerce. The PBO is the successor to the Seafood Inspection Service an existing component of the National Oceanic and Atmospheric Administration within the Department. This section requires the Service to maintain an office within the Washington, D.C. area, but allows it to establish offices elsewhere as necessary to conduct its business.

Title I
Management and Chief Operating Officer

Section 101 Appointment, Renewal and Removal of Chief Operating Officer

This section contains provisions governing the COO of the Service. The COO is a non-career, non-political person appointed for a five-year term by the Secretary of Commerce. (The COO will be selected from a pool of highly qualified and experienced managers with business experience especially qualified to manage the Service. The COO will bring the necessary managerial competence to the table; technical competence already resides in the Service. Current employees of the Service are technically competent. Some are nationally and internationally recognized experts in the field of food safety and quality. It is extremely important that the COO have the requisite experience and outlook because the COO must change the culture of the Service if it is to succeed as a PBO. That is less likely to be the result if a person who lacks the requisite managerial experience in the private sector or as a manager of a PBO is appointed to the position. The Secretary may reappoint the COO to subsequent terms, if he or she has met or exceeds organizational and individual performance goals. The COO may be removed by the President at will, or by the Secretary for misconduct or failure to meet the goals set forth in the COO's performance agreement, described in subsection (b)).

Subsection (b) requires the development and implementation of a performance agreement. The Secretary and the COO will enter into an annual performance agreement which will set forth measurable organization and individual goals for the COO in key operational areas. The agreement will be subject to review by the Director of the Office of Management and Budget prior to execution. Once the performance agreement is signed, it will be available to the public from the Department.

Subsection (c) provides for the COO's compensation. The Secretary would be authorized to pay the COO a base salary up to the maximum rate of the basic pay of the Senior Executive Service, Level ES-6 with any applicable locality-based comparability payment. The incentive bonus of the COO could be up to 50 percent of the agreed-upon base salary. The COO's aggregate salary (base pay plus an incentive bonus) for a calendar year cannot equal or exceed the amount of the President's salary.

Subsection (d) of section 101 requires the COO to prepare an annual management report. The COO will prepare an annual management report for the Secretary and Congress containing information prescribed by the Director of the Office of Management and Budget. This accountability report will include, at a minimum, the results of an independent financial audit; the financial and performance requirements of the Chief Financial Officers Act and the Government Performance and Results Act of 1993; and information on the Service's compensation systems, salary levels, bonuses and awards, as well as information regarding the comparability of compensation paid to employees of the Service relative to other organizations in the Federal Government or the private sector that perform similar work. The Department of Commerce will make the report available to the public.

Title II: Personnel Flexibilities

Section 201 General

This section would authorize personnel flexibility needed to enable the Service to operate in a businesslike manner. It provides that there will be no ceiling on the number or grade of employees of the PBO. Since an increase in the number of participants in the program will require the PBO to hire additional inspectors, an artificial constraint on the number of employees that the PBO may hire, would seriously affect its ability to provide its services. All employees, except the Chief Operating Officer, will remain subject to the provisions of title 5, U.S.C. (see section 401(b)(6))

Title III: Procurement Flexibilities

Section 301 Exercise of Procurement Flexibilities.

This section addresses the procurement authorities of the PBO. As a general matter, the PBO would be required to abide by all applicable federal procurement laws and regulations when procuring property and services, many of which have been significantly streamlined by the Federal Acquisition Streamlining Act and the Clinger-Cohen Act of 1996 (the latter previously referred to as the Federal Acquisition Reform Act and the Information Technology Management Reform Act). The PBO does not require highly sophisticated and expensive technical equipment to perform its activities. Therefore, this bill does not contain the contracting flexibilities that one might expect for a PBO engaged in activities involving cutting edge technology. However, the PBO could take full advantage of the additional authorities specified in subsection (b) in order to procure property and services in an even more efficient and effective manner.

Two-phase selection procedures.

While the Competition in Contracting Act did much to instill the concept of openness in the procurement process, it has proven too rigid in certain respects to provide contracting officers with the tools to take advantage of this openness in an efficient manner. For instance, contracting officers are effectively precluded from seeking information short of a "proposal" once an open competition begins and may not exclude offerors without fully evaluating their offers in terms of the significant factors and subfactors identified in the solicitation in accordance with 41 U.S.C. 253a and 253b and 10 U.S.C. 2305.

Subsection (b)(1) would provide broad authority for contracting officers to conduct a "two-phase" selection where competition is initiated with a streamlined process that avoids the submission of formal proposals detailing an offered solution ("phase I") and from which a limited number of sources would be selected to submit formal offers as part of a further competition ("phase II").

General authorization to conduct two-phase selection would be a central tool for combining competition and efficiency for larger procurements. It would allow the PBO to initiate competitions without the submission of formal proposals and to efficiently make "down select" decisions based on less detailed vendor submissions. This would save firms the cost of unnecessarily preparing detailed proposals and save the government the time spent evaluating them, when a simpler submission could effectively permit the government to select those sources that are likely to submit the most competitive offers. It would also allow firms to understand their weaknesses earlier in the process, thus giving them more time to strengthen their position as they prepare to compete for future procurement opportunities.

The process would begin with the contracting officer publishing widespread notice giving a general description of the scope or purpose of the acquisition and any additional information determined to be appropriate. Any interested source would be given a full opportunity to compete in the first phase of competition, but would not necessarily be asked to submit a "proposal." Rather than going through the time and expense of conceiving a detailed solution to meet the government's needs, they would be asked to focus on how their capabilities might fit with what the government is generally looking for. Past performance information, including past performance on pricing or cost control, would generally also be sought at this phase. Proposals with formal offers would be sought only in the second phase from those sources (which could be as few as two)that were selected based on information provided in the first phase.

Before submitting proposals, the offerors selected in the first phase could be invited to participate in an open communications process in which vendors examine the problem to be solved in depth and develop specific competing solutions. The second phase of competition would be conducted in accordance with the procedural requirements set forth in 303A and 303B of the Federal Property and Administrative Services Act or, alternatively, 2305 of title 10, if applicable.

The section would also authorize the PBO to establish, from a phase-one selection, a verified list of vendors who would compete for multiple procurements within the general scope of the initial competition based on business practices, product or service quality, and past performance (including past performance on price or cost). Provided lists were opened periodically to add or substitute sources, this authority would enable a PBO to utilize the competitive process much more effectively.

Application of Simplified Procedures to Commercial Items.

The Clinger-Cohen Act authorizes the establishment of special simplified procedures in the Federal Acquisition Regulation on a three-year test period for the acquisition of commercial items between $100,000 and $5,000,000 where the contracting officer expects commercial items to be offered. Subsection (b)(2) would permit the PBO to use this authority as implemented in the Federal Acquisition Regulation without regard to any dollar limitations or expiration date consistent with guidance established by the Administrator for Federal Procurement Policy. The PBO could also develop, consistent with guidance established by the Administrator, alternative procedures for the acquisition of commercial items to address particular mission needs. The broadest use of these flexibilities would give the PBO a further incentive to take advantage of the economies and innovations offered by the commercial marketplace. Vested with this additional procedural discretion, contracting officers would be able to reduce proposal costs for offerors and administrative costs for the government.

While development of detailed specifications and formal evaluations may be needed under certain circumstances, they are largely unnecessary in commercial item buys in any amount. The rigors of the commercial market already help to ensure that vendors offer proven products. The use of streamlined procedures would enable contracting officers to avoid many of the burdensome formalities of the current process. Examples of flexibilities include issuing a solicitation without subfactors or identifying the relative weights of factors; foregoing a competitive range determination; having discussions on an "as needed" basis only with those offerors where communication would be beneficial to the government; conducting functional product testing without a formal test plan; evaluating offerors informally without establishing specific schemes for specific factors; and conducting comparative evaluation of offers. Use of these simplified procedures can save agencies the time and expense of designing detailed evaluation schemes to analyze lengthy proposals, and can save vendors the cost of describing in a detailed proposal what can be effectively communicated through customary commercial marketing tools (e.g., existing product literature and samples).

Exemption from Wait Period When Using Detailed Synopsis.

Subsection b(3) would provide an exception to the current requirement of a 15-day waiting period between the date a synopsis is published by the Secretary of Commerce and the date the solicitation is issued. The 15-day wait period serves no purpose when the synopsis provides the information required to be in a solicitation. In those instances, potential offerors already have all the information they need to decide whether to submit offers. The detailed synopsis would be available to all potential offerors, with complete information required for submission of offers. All potential offerors would have equal time to evaluate the government requirement and to prepare and submit offers.

The Clinger-Cohen Act provides some relief from this inflexible deadline, but only with respect to the acquisition of commercial items. Elimination of the mandatory 15-day wait period would streamline the procurement process when mission needs could not be met with commercial items and allow the PBO to be more cost effective in the conduct of its procurement programs. The PBO would be expected to establish response times that are consistent with international agreements.

Recompetitions for Continuing Requirements.

Where the COO certifies that the incumbent contractor has met or exceeded the cost, schedule, and performance goals established in the contract, and the incumbent wishes to compete for additional work where there is a continuing requirement, it may be more efficient and effective to rely upon adequate competition. Subsection (b)(4) would permit the conduct of adequate competition under these circumstances. Inclusion of a successfully performing incumbent in a recompetition, along with a limited number of highly qualified contractors, would help ensure that the recompetition is vigorous.

Streamlined Acquisition of Services from Small Businesses.

Subsection (b)(5) would provide the PBO with additional flexibility in the acquisition of services up to $1 million that do not meet the definition of a commercial item set forth in section 4(12) of the Office of Federal Procurement Policy Act, when such procurements are conducted as small business set-asides and if supply items are expected to constitute less than 20 percent of the total value of the contract. It would authorize the PBO to use the special simplified procedures applicable to procurements below the simplified acquisition threshold as set forth in the Federal Acquisition Regulation. A large pool of highly qualified small business service contractors exists that can compete for service requirements in this dollar range. The combination of simplified procedures (where, among other things, the conduct of discussions, formal evaluation plans and scoring are not required) and spirited competition among small businesses (whose low overhead and favorable wage structures can enable them to offer competitive bids) can result in lower costs to the government and reduce acquisition lead times. This authority would also provide the PBO with a viable alternative to aggregating services into large single award task order contracts simply to avoid the burdensome procedures for competing individual requirements. This authority does not apply to the acquisition of construction.

Title IV: Powers and Duties of the Service

Section 401 General Powers

Subsection (b) (4) authorizes the Service to inform the public about its programs. Benefits to participants in the program and to the public are increased when members of the public understand the program and the meaning of the official marks authorized for use by participants in the program. In addition, this subsection authorizes the Service to conduct public surveys to determine the services most desired by participants in the program and the public without securing prior administrative approval. The Paperwork Reduction Act applies to a question posted by the agency on its Internet home page. Thus, before asking visitors to its home page to rank the services it provides, the PBO would be required to obtain an authorization from OMB. Since the business of the PBO mandates prompt response to customer needs, it must always be aware of their current needs. Delays inherent in securing OMB approval would be an unnecessary drag on the effectiveness of the PBO and degrade the service provided to its customers. However, this section makes clear that the Service may not require any person to respond to any survey.

Subsection (b) (5) provides specific authority for the Service to secure and use trademarks, service marks and copyright in approved marks and other certifications etc. associated with its activities. Currently the program does have authority to register its marks and logos.
The subsection specifically prohibits the Service to affix its approved marks in foreign countries. This limitation converts the current policy of the Seafood Inspection Program into a statutory limitation on the powers of the PBO. However, activities currently carried out in foreign countries provide significant benefits to domestic importers, processors and consumers. These activities would continue.

Subsection (b)(6) confirms that the hiring of additional employees shall also be subject to the provisions of the federal personnel laws found in title 5 of the United States Code. Because it is anticipated that the number of employees will never exceed 400 employees, it would not be efficient to attempt to create a modified personnel system for new hires. Furthermore, it will likely prove advantageous for the PBO to continue its inspectors in a system that meshes with the personnel system applicable to FDA inspectors.

Subsections (b)(7) and (8) provide independent authority to use the services, equipment, facilities and personnel of other governmental or international agencies The Service must often take advantage of the expertise that exists in private and public organizations in order to assure that its activities are scientifically sound. Therefore, it is authorized to enter arrangements with a variety of entities through contracts, studies, cooperative agreements etc. This authority is similar to the authority of all agencies of the Department of Commerce found in 15 U.S.C. 1525.

Subsection (b)(9) provides that all revenues received by the Service from any source shall be deposited in the trust account established pursuant to the provisions of the Agricultural Marketing Act and shall be available for use by the Service. This existing authority has not been fully utilized by the National Marine Fisheries Service, the Agency within NOAA currently responsible for the administration of the Agricultural Marketing Act. The provision clarifies the authority of the Service to use that fund under the conditions noted in the Agricultural Marketing Act.

Subsection (b)(10) provides authority to contract to insure the property and other assets of the Service. Since much of the assets of the Service will have been acquired with fees and other non-tax revenues collected by the Service, it will be prudent for the Service in some circumstances to seek commercial insurance rather than be a self-insurer as is the usual case for Government agencies fully funded by appropriations.

Section 402 Board of Consultation and Review

Section 402 establishes a Board of Consultation and Review composed of the Deputy Under Secretary of Commerce for Oceans and Atmosphere who presides at meetings of the Board, the Commissioner of the Food and Drug Administration or his designee, an inspector employed by the Service, a union representative and 13 additional members selected from seafood production, processing, wholesaling retailing and restaurants, from consumer groups, from federal inspectors, and from state and local public health officials.

Because the interests and perspective of persons and organizations interested in or affected by the work of the Service are so varied, Board membership is large to capture the rich diversity of those interests. The Board is not an advisory board, and does not provide advice by consensus or by vote of the members. Again, because of the diversity of interests represented, consensus or majority advice of such a group would likely be too long in coming and, on controversial issues, would be compromised to the point where its utility to the Service would be marginal at best. However, exchanges in the course of meetings among members of the Board would serve to sharpen the views of individual members. Each member of the Board is encouraged to provide individual views on the programs and services of the PBO, fees charged by the PBO and other subjects put to the members of the Board by the COO or the Under Secretary. The uncompromised albeit conflicting views of each of the members would serve as the whetstone against which alternate strategies could be tested and the policies of the Service sharpened. Frank, full exchange between members representing the full spectrum of entities interested in seafood should, in itself, enlighten the COO and the Secretary.

Section 403 Fees

This section provides that in establishing fees, the COO will weigh the private and public benefits of the program and take into account the need to maintain an appropriate contingency fund. The analysis of relative benefits inuring to participants and to the public would be similar to the analysis suggested to the FCC by the Supreme Court in National CableTelevision Assn., Inc. v. United States et al., 415 U.S. 336 (1973).

Section 404 Violations

Section 404(a) provides that it is a violation of the Act to mark seafood packages in a deceptive manner. If the COO has evidence that a violation has occurred he or she may withdraw services provided under the Act. Challenges to the action of the COO are based upon the preponderance of the evidence standard of review, not the more deferential "arbitrary and capricious" standard.

Subsection(d) provides that the COO may refer significant violations of the Food Drug and Cosmetic Act , the Lacey Act and the Agricultural Marketing Act to cognizant authorities for such action as may be appropriate. This accords with current practice.

Section 405 Strategic Partnership with Food and Drug Administration

Subsection 405(a) explicitly provides that the Act does not affect the authorities or functions of the Food and Drug Administration except as these authorities are expanded by this section. It is a matter of wide concern that the staffing of the FDA has decreased to levels where confidence in the ability of FDA to assure the safety, wholesomeness and proper labeling of seafood in commerce has eroded. FDA is participating in a major FY 1998 budget initiative to improve the safety of the nation's food supply. FDA recognizes that it must improve its inspection capabilities by developing new partnerships to focus on coordination of inspection coverage and avoiding duplication of effort. Because the activities of the PBO are so closely related to the functions of the FDA, it makes sense to coordinate the work of the agencies as closely as possible to maximize the public benefits provided by the PBO and increasing the benefits to participants in the program. Forging a strategic partnership between the Service and FDA will benefit the Service, will benefit participants in the for-fee programs of the Service, will benefit consumers, will benefit the PBO by increasing its income potential and will benefit FDA. Inasmuch as the FDA and the Commerce seafood program have a history of coordination and cooperation in areas of mutual interest, that partnership will be built on a solid foundation.

In order to review, approve and audit a HACCP program for seafood quality, the inspectors of the PBO must assure that the HACCP programs of the participating seafood processor (for example) result in a product of the minimum legally acceptable level of safety and wholesomeness established by the FDA. Thus, closer cooperation between the PBO and the FDA will effectively expand the Federal resources directed to assuring a safe and wholesome seafood supply.

Subsections (a) (1), (2) and (3) authorize the Secretary of Health and Human Services: to commission employees of the PBO to conduct examinations and investigations under the authority of the Federal Food, Drug and Cosmetic Act; to recognize and accept the activities of the PBO as satisfying the requirements of that Act so that the FDA need not conduct redundant inspections and audits, and to utilize the services of the PBO to carry out the for-fee program for seafood that FDA is authorized to carry out under the FD&C Act. FDA has not sought to exercise that authority fully. Although it does provide services to exporters, it does not charge fees sufficient for full cost recovery for those services. While not mandated by the Act, the public would benefit if the FDA refrained from providing these low cost trade promotion services to industry, and devoted its resources to inspections and examinations of seafood consumed domestically.

Subsection (d) authorizes and encourages cooperation between the FDA and the PBO in areas of mutual interest to harmonize the inspection/ certification programs of each agency. This would further food safety initiative proposed by the Administration. Cooperation in those areas could also lead to much closer future operational cooperation between the agencies, and could in fact lead to assumption of the PBO and its functions by FDA.

Section 406 Authorization of Appropriations

This section authorizes, without fiscal year limitation, the appropriation of not to exceed $6.5 million for the purpose of building the Seafood Services Trust Account to an appropriate level, to facilitate the conversion of the inspection service to a PBO and for seafood inspection and examination.

Title V: Conforming Amendments and Effective Date

Section 501 Transfers and Continued Effectiveness

This section serves a housekeeping function to assure an orderly transition to a PBO. Current employees of the Seafood Inspection Program, its supplies, equipment etc. and its functions are transferred to the PBO. Current contracts and agreements of the program are not affected by the conversion of the Program to a PBO.

Subsection (d) makes clear that except as provided in the Act and subject to the policy oversight of the Secretary, the Chief Operating Officer, and the Service may perform their functions without seeking or obtaining the authorization of any officer or employee of the Department of Commerce.

Section 502 Effective Date

Section 502 provides for a ninety-day delay in the effective date of the act except that the Secretary may appoint the Chief operating Officer immediately upon enactment.

Title VI: Assessment and Sunset Provisions

Section 601 Report of Operations

Subsection 601(a) provides that the Secretaries of Commerce and of Health and Human Services shall report to the President and the Congress on the extent of the public benefits of the program within two years of the effective date of the Act.

Subsection 601(b) authorizes the President to transfer the PBO from the Department of Commerce to the Department of Health and human Services upon a joint recommendation of the Secretaries concerned. The President would be required to provide Congress six months advance notice so that the Congress would have sufficient time to act to facilitate or prohibit the transfer. The strategic partnership between FDA and the PBO contemplated in this Act may well evolve to a stage where migration of the program to FDA may promote the food safety initiative of the President. Conversion of the existing seafood inspection program into a PBO will facitilate the eventual transfer, because the PBO could be transferred as a "plug and play" module from Commerce to HHS without disrupting the functions of either department or the operations of the PBO.

Subsection 601 (c) requires a five year report to the President and the Congress on the operation and effectiveness of the provisions of the Act and its associated costs.

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. email	To Elizabeth Drye re: Seafood Inspection Program mtg [partial] (1 page)	04/09/1997	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 10451

FOLDER TITLE:

Seafood Inspectors

2014-0046-S
rc1409

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

mrael @ Bangate.fda.gov
04/09/97 03:42:00 PM

Record Type: Record

To: Elizabeth Drye

cc:

Subject: Seafood Inspection Program mtg. 4/10

April 9, 1997

Note To: Elizabeth Drye

Below is the list of attendees for the White House Meeting for April 10th at 4pm being held in (rm. to be announced) of the OEOB re: Seafood Inspection Program.
NOAA may be adding a couple of people to this list. I will let you know just as soon as I get the information.

Janice F. Oliver
Deputy Director for Systems and Support, CFSAN, FDA
(b)(6) C0021

Philip C. Spiller
Director, Office of Seafood, FDA
(b)(6)

William K. Hubbard
Associate Commissioner for Policy, FDA
(b)(6)

Jerold R. Mande
Senior Advisor to the Commissioner, FDA
(b)(6)

Brandon S. Blum
Senior Counselor for Legislation and Policy, NOAA
(b)(6)

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. email	To Elizabeth Drye re: Seafood Inspection Program mtg [partial] (1 page)	04/09/1997	b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 10451

FOLDER TITLE:
Seafood Inspectors

2014-0046-S
rc1409

RESTRICTION CODES

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mrael @ Bangate.fda.gov
04/09/97 03:42:00 PM

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cc:

Subject: Seafood Inspection Program mtg. 4/10

April 9, 1997

Note To: Elizabeth Drye

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Janice F. Oliver
Deputy Director for Systems and Support, CFSAN, FDA
(b)(6) [003]

Philip C. Spiller
Director, Office of Seafood, FDA
(b)(6)

William K. Hubbard
Associate Commissioner for Policy, FDA
(b)(6)

Jerold R. Mande
Senior Advisor to the Commissioner, FDA
(b)(6)

Brandon S. Blum
Senior Counselor for Legislation and Policy, NOAA
(b)(6)

Mark A. Weatherly
04/09/97 06:18:37 PM

Record Type: Record

To: Elizabeth Drye/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: Item for Food Safety report

TJ and Nancy-Anne, and I believe all of OMB, support including in the report the recommendation that creating one food safety inspection agency be studied further and public comment on the notion be gathered. Call if any questions.

Message Copied To:

Ronald M. Cogswell/OMB/EOP
Adrienne C. Erbach/OMB/EOP
Jim R. Esquea/OMB/EOP
Sarah A. Laskin/OMB/EOP
K. Lisa Grove/OMB/EOP

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	To Elizabeth Drye re: White House seafood mtg [partial] (1 page)	04/10/1997	b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 10451

FOLDER TITLE:
Seafood Inspectors

2014-0046-S
rc1409

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mrael @ Bangate.fda.gov
04/10/97 08:30:00 AM

Record Type: Record

To: Elizabeth Drye
cc:
Subject: White House seafood mtg. today

April 10, 1997

Note To: Elizabeth Drye

Below are the additional people to clear for todays meeting at OEOB re: Seafood Inspection Program at 4pm.

Richard V. Cano
Chief of Inspection Services Division, NOAA
(b)(6) [004]

Samuel W. McKeen
B.O. Coordinator, NMFS
(b)(6)

John Gallivan
Policy Coordinator, HHS
(b)(6)

Brandon S. Blum
Senior Counselor for Legislation and Policy, NOAA

Richard V. Cano
Chief of Inpection Services Division, NOAA

Susan B. Fruchter
Director Policy & Strategic Planning, NOAA

Samuel W. McKeen
PBO Coordinator, NMFS

William K. Hubbard
Associate Commissioner for Policy, FDA

Jerold R. Mande
Senior Advisor to the Commissioner, FDA

Janice F. Oliver
Deputy Director for Systems and Support, CSFAN, FDA

Philip C. Spiller
Director, Office of Seafood, FDA

John F. Gallivan
Policy Coordinator, HHS/OS/ES

April 3, 1997

Note to: Elizabeth Drye

From: Mary Rael

Below is the attendee list for the Seafood Inspection Program meeting at the White House on April 3rd at 1:00 PM.

Brandon S. Blum
Senior Counselor for Legislation and Policy, NOAA

Richard V. Cano
Chief of Inpection Services Division, NOAA

Susan B. Fruchter
Director Policy & Strategic Planning, NOAA

Samuel W. McKeen
PBO Coordinator, NMFS

William K. Hubbard
Associate Commissioner for Policy, FDA

Jerold R. Mande
Senior Advisor to the Commissioner, FDA

Janice F. Oliver
Deputy Director for Systems and Support, CSFAN, FDA

Philip C. Spiller
Director, Office of Seafood, FDA

John F. Gallivan
Policy Coordinator, HHS/OS/ES

Sugeate Keen

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. note	Mary Rael to Elizabeth Drye re: DOBs and SSNs [partial] (1 page)	04/03/1997	b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Elizabeth Drye
OA/Box Number: 10451

FOLDER TITLE:
Seafood Inspectors

2014-0046-S
rc1409

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April 3, 1997

Note to: Elizabeth Drye

From: Mary Rael

Below is the attendee list for the Seafood Inspection Program meeting at the White House on April 3rd at 1:00 PM. Room is to be announced. The italicized and underlined names have not been cleared for entrance into the White House.

Brandon S. Blum
Senior Counselor for Legislation and Policy, NOAA
(b)(6) [005]

Richard V. Cano
Chief of Inpection Services Division, NOAA
(b)(6)

Susan B. Fruchter
Director Policy & Strategic Planning, NOAA
(b)(6)

Samuel W. McKeen
PBO Coordinator, NMFS
(b)(6)

William K. Hubbard
Associate Commissioner for Policy, FDA
(b)(6)

Jerold R. Mande
Senior Advisor to the Commissioner, FDA
(b)(6)

Janice F. Oliver
Deputy Director for Systems and Support, CSFAN, FDA
(b)(6)

Philip C. Spiller
Director, Office of Seafood, FDA
(b)(6)

John F. Gallivan
Policy Coordinator, HHS/OS/ES
(b)(6)

The

BLAIR HOUSE PAPERS

JANUARY 1997

PRESIDENT BILL CLINTON

VICE PRESIDENT AL GORE

NATIONAL PERFORMANCE REVIEW

* * *