

services with minimum regulatory and administrative burden on cable entities.

55. Summary of issues raised by the public in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order. The Commission addressed these comments in the Rate Order (MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993)). The Chief Counsel for Advocacy of the United States Small Business Administration also filed comments in response to the Further Notice of Proposed Rulemaking. Those comments are addressed herein.

56. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In this proceeding, the Commission has attempted to accommodate the concerns raised by these parties. For example, the revised rules regarding action on rate complaints within two years of a cost of service showing are designed to reduce burdens on both industry and regulators. In addition, the revised rules also reduce burdens on both industry and regulators by simplifying certain calculations involved in producing and reviewing a cost of service showing.

III. Paperwork Reduction Act

57. The Requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed in the Act.

IV. Ordering Clauses

58. Accordingly, it is ordered that the Petitions for Reconsideration are granted in part, denied in part, and to the extent that Petitions raise issues unresolved in this order, they will be disposed of in future orders.

59. It is further ordered that, pursuant to Sections 4(i), 4(j), 623 (b) and (c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 543(b) and (c) the rules, requirements and policies discussed in this Second Report and Order and First Order on Reconsideration are adopted and Sections 76.922 and 76.924 of the Commission's rules, 47 CFR 76.922 and 76.924, are amended as set forth below.

60. It is further ordered that the requirements and regulations established in this decision shall become effective upon approval by the Office of Management and Budget of the new information collection requirements adopted herein, but no sooner than thirty (30) days after publication in the Federal Register.

61. It is further ordered that the Secretary shall send a copy of this Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

List of Subjects in 47 CFR Part 76

Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary.*

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 76—CABLE TELEVISION SERVICE**

1. The authority citation for Part 76 continues to read as follows:

Authority: Sections 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; 612, 614-615, 623, 632 as amended, 106 Stat. 1460, 47 U.S.C. 532; 623, as amended, 106 Stat. 1460; 47 U.S.C. 532, 533, 535, 543, 552.

2. Section 76.922 is amended by revising paragraphs (i)(6)(i) and (i)(7), redesignating paragraphs (i)(6)(ii) through (i)(6)(vii) as paragraphs (i)(6)(iii) through (i)(6)(viii) respectively, and adding a new paragraph (i)(6)(ii) to read as follows:

**§ 76.922 Rates for the basic service tier and cable programming services tiers.**

\* \* \* \* \*

(i) \* \* \*

(6) \* \* \*

(i) Prudent investment by a cable operator in tangible plant that is used and useful in the provision of regulated cable services less accumulated depreciation. Tangible plant in service shall be valued at the actual money cost (or the money value of any consideration other than money) at the time it was first used to provide cable service, except that in the case of

systems purchased before May 15, 1994 shall be presumed to equal 66% of the total purchase price allocable to assets (including tangible and intangible assets) used to provide regulated services. The 66% allowance shall not be used to justify any rate increase taken after the effective date of this rule. The actual money cost of plant may include an allowance for funds used during construction at the prime rate or the operator's actual cost of funds during construction. Cost overruns are presumed to be imprudent investment in the absence of a showing that the overrun occurred through no fault of the operator.

(ii) An allowance for start-up losses including depreciation, amortization and interest expenses related to assets that are included in the ratebase. Capitalized start-up losses, may include cumulative net losses, plus any unrecovered interest expenses connected to funding the regulated ratebase, amortized over the unexpired life of the franchise, commencing with the end of the loss accumulation phase. However, losses attributable to accelerated depreciation methodologies are not permitted.

\* \* \* \* \*

(7) Deferred income taxes accrued after the date upon which the operator became subject to regulation shall be deducted from items included in the ratebase.

\* \* \* \* \*

3. Section 76.924 is amended by revising the section heading, removing paragraphs (e)(1)(iv), (e)(1)(v), (e)(2)(iv) and (e)(2)(v), and revising paragraphs (e)(1)(iii) and (e)(2)(iii) to read as follows:

**§ 76.924 Allocation to service cost categories.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) All other services cost category. The all other services cost category shall include the costs of providing all other services that are not included the basic service or a cable programming services cost categories as defined in paragraphs (e)(1)(i) and (ii) of this section.

(2) \* \* \*

(iii) The all other services cost category as defined by paragraph (e)(1)(iii) of this section.

\* \* \* \* \*

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 260–267**

[Docket No. 960222044–6044–01; I.D. 022096D]

**Removal and Revision of Inspection Standards and Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** In response to the President's Regulatory Reform Initiative, NMFS amends the Code of Federal Regulations (CFR) by removing the product-specific voluntary Inspection Program (Program) standards for grades for fish and fishery products. These standards will be issued as Program policies and be contained in the NMFS Fishery Products Inspection Manual. The remaining regulations on these standards in the CFR are being revised to state the minimum requirements necessary for a grade standard to be issued as a Program policy.

**EFFECTIVE DATE:** March 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard V. Cano, Inspection Services Division, (301) 713–2355.

**SUPPLEMENTARY INFORMATION:** In an effort to reduce the volume of regulations that are maintained in the CFR, the Administration instructed all Departments to review their regulations to determine what could be eliminated, reinvented or consolidated. NMFS determined that it could reduce NOAA's regulatory burden as well as be more responsive to the industry's technological advances and the demands of the marketplace by issuing its voluntary United States Standards for Grades as Program policies instead of publishing them in the CFR. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or other Federal laws and regulations.

Any notices of application to the Program for a new grade standard will continue to be published in the Federal Register for comment.

**Background**

NMFS operates a voluntary fee-for-service inspection program so that fishery products may be marketed to the best advantage, trading may be facilitated, and consumers may be able

to obtain the quality product they desire. The Program's regulations pertaining to grades of fishery products apply primarily to those who use or advertise the Program's services to demonstrate compliance with established processing requirements and nationally recognized quality criteria. Standards for grades are voluntary standards developed pursuant to delegated authorities of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Program does not require the use of these standards.

Standards for grades are mechanisms for sorting raw and processed fish and fishery products into different levels of quality. Distinctions between levels of quality, or grade categories, are made within single product groups (e.g., fish portions to fish portions) and not across product groups (e.g., fish portions to frozen shrimp). Each level of quality is based on the absence of undesirable attributes or characteristics. Since each product group has different inherent attributes and characteristics, a separate standard for grades is necessary for each product group. For example, breaded fish portions have inherently different defect characteristics, such as blood spots, bones, and scales, than frozen shrimp.

A major function of the Program's voluntary standards for grades is to provide users with a uniform measure of product quality and a common, national, commercial language for trade. Nationally recognized standards for grades facilitate efficient and orderly marketing of fish and fishery products and allow buyers to make informed decisions. Additionally, international traders of fish and fishery products frequently use the criteria in the grade standards as buyer/seller references.

Development or revision of a grade standard is performed at the request of the industry or at the suggestion of NMFS if it is believed that considerable technological changes have occurred in an industry that render the current standard outdated. In either case, there must be adequate interest by affected parties in developing or revising a standard, since it must reflect the needs and capabilities of the industry and users as a whole. The grade standards are developed cooperatively with Government, industry, and users of the standards (i.e., Department of Agriculture, Department of Defense, retailers, restaurateurs, etc.) participating in technical working groups. The draft standard is field-tested and the results collected by NMFS inspectors and industry quality assurance personnel are analyzed to

assess the draft standard's performability.

The Program intends to retain the same reasonable and reliable procedures in the development of grade standards but eliminate the inherent delays in formal rulemaking. These time constraints have prevented U.S. processors from obtaining the marketing benefits of the grade marks and also hindered the consumer's ability to identify and choose fishery products of consistent high quality. These delays are particularly aggravating and unnecessary when minimal revisions to standards are necessary to address changing processing conditions, product forms, or market demands. Therefore, NMFS concluded it could better serve Program participants and the public if the standards for grades were issued as Program policy. This action is consistent with the President's Regulatory Reform Initiative to reduce the volume of regulations.

All Program policies are contained within the NMFS Fishery Products Inspection Manual and will no longer appear in the CFR. A new paragraph at § 260.84 will reference the manual.

**Classification**

Because this rule only removes voluntary standards that have been determined need not be published as regulations, no useful purpose would be served by providing prior notice and opportunity for public comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) for good cause, finds that it is unnecessary to provide prior notice and an opportunity for public comment for this rule. Also, because this rule only removes regulations that are no longer needed and the revisions impose no new obligations, the AA, for good cause, finds that no useful purpose would be served by delaying the rule's effective date for 30 days. Therefore, this rule is made effective upon publication.

This final rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects***50 CFR Part 260*

Food grades and standards, Food labeling, Seafood.

*50 CFR 261–267*

Food grades and standards, Frozen foods, Seafood.

Dated: February 29, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter VI is amended as follows:

#### **PART 260—INSPECTION AND CERTIFICATION**

1. The authority citation for part 260 continues to read as follows:

Authority: Section 6, 70 Stat. 1122, 16 U.S.C. 742e; secs. 203, 205, 60 Stat. 1087, 1090 as amended; 7 U.S.C. 1622, 1624; Reorganization Plan No. 4 of 1970 (84 Stat. 2090).

2. Section 260.84 is added under the undersigned center heading "miscellaneous" to read as follows:

##### **§ 260.84 Policies and procedures.**

The policies and procedures pertaining to any of the inspection services are contained within the NMFS Fishery Products Inspection Manual. The policies and procedures are available from the Secretary to any interested party by writing to Document Approval and Supply Services Branch, Inspection Services Division, P.O. Drawer 1207, 3207 Frederic St., Pascagoula, MS 39568-1207.

3. Part 261 is revised to read as follows:

#### **PART 261—UNITED STATES STANDARDS FOR GRADES**

§ 261.101 Standard description.

§ 261.102 Publication and removal of U.S. Grade Standards.

§ 261.103 Basis for determination of a U.S. Standard for Grades.

Authority: 7 U.S.C. 1621-1630

##### **§ 261.101 Standard description.**

A U.S. Standard for Grades authorized under this part is a standard for a fish or fishery product that has been developed and adopted by the voluntary seafood inspection program pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) and other authorities delegated to the U.S. Department of Commerce.

##### **§ 261.102 Publication and removal of U.S. Grade Standards.**

(a) The voluntary U.S. Standards for Grades adopted pursuant to this part shall be issued as Program policies and contained within the NMFS Fishery Products Inspection Manual. Compliance with voluntary standards issued as Program policies within the manual shall satisfy the requirements of this part. Compliance with a voluntary standard issued as a Program policy does not relieve any party from the

responsibility to comply with the provisions of the Federal Food, Drug, and Cosmetic Act; or other Federal laws and regulations.

(b) Notification of an application for a new grade standard shall be published in the Federal Register. If adopted, the grade standard shall be issued as a Program policy and contained in the NMFS Fishery Products Inspection Manual.

(c) Recision and revision of a U.S. Standard for Grades will be made a Program policy amendment and contained in the NMFS Fishery Products Inspection Manual.

(d) The NMFS Fishery Products Inspection Manual is available to interested parties.

##### **§ 261.103 Basis for determination of a U.S. Standard for Grades.**

(a) To address the inherently distinct and dissimilar attributes found in the fishery product groups, each standard for grades should have a different scope and product description, product forms, sample sizes, definition of defects, etc. The Secretary will make the final determination regarding the content of a U.S. Standard for Grades.

(b) A proposal for a new or revised U.S. grade standard may include the following:

(1) *Scope and product description*, which describes the products that are eligible for grading using the standard (e.g., fish portion, fish fillet).

(2) *Product forms*, which describe the types, styles and market forms covered by the standard (e.g., skin-off, tail-on, headless).

(3) *Grade and inspection marks*, which describe the grades and inspection mark criteria for each grade category (e.g., Grade A ≤ 15 points).

(4) *Grade determination*, which describes the means by which the grade is determined (i.e., the factors rated by score points and those that are not). Standards may contain defect grouping limiting rules that contain additional provisions that must be met.

(5) *Sampling*, which describes the method of sampling and sample unit sizes (e.g., 10 portions, 8 ounces, etc.).

(6) *Procedures* that describe the process used to determine the product grade (e.g., label declarations, sensory evaluation).

(7) *Definitions of defects*, which outline the defects associated with the products covered by the standard, defines them, and describes the method of counting or measuring the defects. This section may provide associated defect points or reference a defect table (e.g., bruises, blood spots, bones, black spots, coating defects, 1-inch squares, percent by weight, ratios).

(8) *Defect point assessment*, which describes how to assess points and provides any special guidance that may be necessary to the particular standard (e.g., defect points for certain categories are added together and divided by the weight of the sample unit; the number of instances are counted to determine if it is slight, moderate, or excessive defect).

(9) *Tolerances for lot certification*, which provide the sections from Title 50 CFR that regulate lot certification.

(10) *Hygiene*, which specifies the sections of applicable Federal regulations regulating the safe, wholesome production of food for human consumption.

(11) *Methods of analysis*, which describe the methods of analysis that will be used in the evaluation of the products covered by the standard for grades (e.g., net weight, deglazing, debreading).

(12) *Defect table*, which is the table of defects and associated points to be assessed for each defect.

**PARTS 262 THROUGH 267— [REMOVED]**

#### **PARTS 262 THROUGH 267— [REMOVED]**

4. Under the authority of 16 U.S.C. 742e and 7 U.S.C. 1622, 1624, parts 262 through 267 are removed.

[FR Doc. 96-5325 Filed 3-7-96; 8:45 am]

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#### **50 CFR Part 351**

[Docket No. 960228055-6055-01; I.D. 022396B]

#### **Whaling Provisions; Elimination of Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is eliminating outdated regulations pertaining to whaling. This action will reduce Federal regulations consistent with the President's Regulatory Reinvention Initiative.

**EFFECTIVE DATE:** March 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kevin Chu (508)548-5123.

#### **SUPPLEMENTARY INFORMATION:**

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed all agencies to undertake an exhaustive review of all their regulations, with an