

Act of 1994³ repealed the tariff filing requirement for individually (as distinguished from collectively) set rates of motor common carriers of property (other than household goods and carriers involved with water carriers in the noncontiguous domestic trade), and voided such tariffs. Because the tariffs that precipitated the proposal for indexing are no longer filed, we are terminating this proceeding.

Authority: 49 U.S.C. 10321.

Decided: February 23, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 950915231-6051-02; I.D. 120195B]

RIN 0648-A145

Privatization of In-plant Seafood Inspections and Related Services

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

ACTION: Notice of availability; public meetings.

SUMMARY: On September 22, 1995, NOAA published a notice of inquiry in the Federal Register regarding in-plant seafood inspections and related services under the Agricultural Marketing Act of 1946 (the Act). It outlined an action NOAA was considering to provide direct inspection services by a private, for-profit entity, with continued NOAA oversight, and invited written recommendations and comments. The document also noted that NOAA had contracted for a study to determine the feasibility of implementing the plan. This document provides a summary of the comments and recommendations, the results of the study, describes NOAA's future actions, and announces meetings.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates.

ADDRESSES: For copies of the feasibility study, contact the Director, Office of

Industry Services, 1315 East-West Highway, Room 12553, Silver Spring, MD 20910. See **SUPPLEMENTARY INFORMATION** for meeting locations.

FOR FURTHER INFORMATION CONTACT: Sam McKeen, Director, Office of Industry Services at (301) 713-2355.

SUPPLEMENTARY INFORMATION: On September 22, 1995, NOAA published a notice of inquiry in the Federal Register (60 FR 49242), regarding the way it delivers in-plant seafood inspections and related services under the Act. The inquiry outlined an option NOAA was considering and invited written comments and suggestions. Under that option, direct inspection services would be provided by private parties with continued NOAA oversight. The inquiry recommended that comments take into account the following criteria that would fundamentally affect the viability of a privatized inspection program: (1) fair treatment of Government inspectors currently providing the services; (2) minimum modification of relationships with customers subscribing to the current program, and assurance that the internal operations of these customers need not be changed to accommodate a privatized system; (3) continued recognition by foreign governments of official indicia as indicating safety, wholesomeness and acceptability of products to which the indicia are affixed or to which they relate; (4) acceptance of the integrity of the privatized inspection program by harvesters, processors, wholesalers, retailers and consumers; and (5) likelihood of the continued economic viability of the private entity (or entities) providing the services into the indefinite future.

The approach that NOAA described in some detail involved the establishment of a private, employee-owned Corporation (the Corporation) that would acquire the voluntary seafood inspection program (the Program) and operate it subject to the oversight of NOAA. NOAA employees could become employees of the Corporation if they so elected, and would acquire an ownership interest therein by means of an Employee Stock Ownership Plan (ESOP). The Corporation would not necessarily be the only authorized entity to provide privatized inspection services. Other entities could apply to the Secretary of Commerce for authorization, and if they met applicable requirements (e.g., number of certified inspectors, percent of income from one source), they would also be authorized to conduct the services.

The inquiry also mentioned NOAA's plan to contract for a study to determine the feasibility of establishing an ESOP. It stated that if the study, discussions with affected or interested persons, or comments resulting from the inquiry indicate that the five criteria essential for the success of a privatized system are not likely to be met by the preferred option, NOAA will pursue other options for reinventing the way it delivers the service to the public.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

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

Comments

The inquiry generated 88 responses during the formal comment period, most of which addressed the general concept of privatization. The responses included comments from seafood processors, seafood trade organizations, food marketing organizations, consumer advocacy groups, and interested agencies of the Federal Government. Responders categorized themselves as follows:

- Seafood processors/wholesalers/distributors - 32
- Employees - 29
- State and Federal Government agencies - 7
- Seafood retailers - 6
- Trade associations - 4
- Consumer groups - 2
- Members of congress - 2
- Private consultants - 2
- Private citizens - 2

A total of 86 comments opposed privatization (whether by ESOP or other, related means). Several responders who are current participants in the program stated that if the program were privatized, they would drop out of the program and hire their own inspectors. Comments that specifically addressed the ESOP proposal opposed it. Of the comments opposing transfer of the inspection function to the private sector, 59 did not discuss other options that might be preferable to the current situation. A further 13 of the negative comments recommended transferring the program to the U.S. Department of Agriculture or the U.S. Food and Drug Administration. Discussions with those agencies regarding transfer of the program were conducted prior to publication of the notice of inquiry in the Federal Register. Neither agency was interested in taking over the

³Pub. L. 103-311, 108 Stat. 1683, enacted August 26, 1994.

program. NOAA has, therefore, concluded that attempting to pursue that option further would not be useful. An additional 14 commenters who opposed transferring the program to a for-profit entity suggested formation of a "government enterprise" as a mechanism to ensure that the criteria outlined in the inquiry could be met while allowing a change in program structure to increase its efficiency.

Two comments supporting privatization were received from private inspection entities, one of which was a not-for-profit organization currently involved in standards-setting and inspection activities pursuant to government programs throughout the world. That organization expressed interest in assuming administration and operation of the entire voluntary seafood program.

Generally, each response opposing the proposal addressed concerns categorized and quantified as follows along with some of the comments:

(1) The integrity of the program would be in jeopardy—44 comments

Concerns revolve around the integrity of a private company funded by the very industry it inspects. This may be a conflict of interests. Federal inspectors are perceived to be objective.

(2) Acceptance by foreign markets either would not occur or was doubtful—38 comments

"Failure to maintain foreign confidence in our U.S. inspection program could result in serious economic problems for U.S. industry * * * this puts nearly 500 jobs and approximately \$200 million of annual business [of the commenter] unnecessarily at risk."

(3) The cost of the service would increase—34 comments

Commenters feel that Commerce fees have been based on a realistic non-profit basis and that private inspection is bound to cost more. The felt that seafood is already expensive; it would be impossible to absorb the extra costs and difficult to pass these additional costs along to the public.

(4) The proposal is contrary to the purpose of reinventing government—53 comments

One of the commenters stated that the proposal is not consistent with the clear intent of the Federal Workforce Restructure Act of 1994, H.R. 3345, that was signed into law with the clear mandate of promising "the American people that we would create a Government that works better and costs less." (Bill Clinton, March 30, 1994)

(5) A private entity conducting inspection services would not be accepted by consumers—23 comments

Commenters are concerned about losing the ability to use the Federal inspection marks. They feel that it is the best way to communicate to their customers that their products meet Federal quality standards.

(6) The proposal would result in unfair treatment of inspectors and their livelihood may be compromised—23 comments

Commenters are concerned whether employee wages and total benefits would be equal to their current wages and benefits; inspectors would receive credit for seniority; privatization would offer equal pay and benefits; and whether employees would be treated fairly. They felt that failure to provide equal pay and benefits would lead to disruption in the work place.

(7) The economic viability of the program would be lost—20 comments

One commenter stated that if privatization of the inspection services occurs, their USDC inspection programs, or equivalent would have to be discontinued.

The Feasibility Study

The feasibility study analyzed seven options based on the degree to which they satisfied several criteria which, by NOAA's instruction, were unweighted in terms of importance. These criteria were based on those identified in the Federal Register document published on September 22, 1995. The study then summarized the feasibility of implementing these options. The options were devolution (turning inspection services over to the states), government corporation, contracting out, turning the program over to a non-profit corporation or to one of three types of private for-profit corporations. The study contractor researched existing ESOPs and other corporations and reviewed the program's legislative authorities and requirements. The study contractor interviewed inspectors, industry members who participate in the voluntary inspection program, and trade associations. The final report was formally presented to NOAA on November 30, 1995.

The contractor noted in its letter transmitting the final report that if preserving program integrity and minimizing negative impact on the inspection program customers are priorities, the analysis suggests that the Government Corporation option would be preferred. If, on the other hand, Commerce/NOAA's priority is to maximize the financial access of the new organization and achieve the target employee reduction (the original impetus for the privatization analysis), the ESOP/Strategic Investor option

(described in the document published in the Federal Register on September 22, 1995) best satisfies this combination of criteria. The report recommended that NOAA further analyze these two preferred options to determine which best satisfies the outlined criteria. Copies of the report are available from this office (see **ADDRESSES**).

NOAA's Future Action

In light of the comments received on the proposal to transfer inspection responsibilities under the voluntary seafood inspection program to a private, for-profit entity, NOAA has decided that it would be more in keeping with the spirit of the National Performance Review (NPR) and the interests of seafood producers and consumers to look to a different type of enterprise to continue this important work. The range of acceptable options has shifted as a result of the comments received. A for-profit, private enterprise is no longer under consideration. Possible options now appear to range from Government enterprise to a not-for-profit, private enterprise combining recognized experience and integrity with the technical and financial ability to assume responsibility for the entire program. The Government enterprise could take the form of a Government corporation or a "performance-based, consumer-oriented" agency extracted from NMFS supervision, directly responsible to the Administrator of NOAA or his/her designee and relieved from unnecessary bureaucratic constraints.

The Government corporation would be a separate, legal entity, created by Congress pursuant to the Government Corporation Control Act of 1945. The Government Corporation Control Act is not a general incorporation statute, so that each Government corporation possesses only those powers set forth in its charter, which itself must be an Act of Congress. The feasibility study recommended some charter provisions for a Government corporation that would be useful. These included authority to retain and use revenues without fiscal year limitation, exemption from the Federal Property and Administrative Services Act, and exemption from employee limitations without changing the Federal status of the employees.

The NPR is developing a series of initiatives in the context of constrained resources where good customer service will be an imperative. Creating performance-based agencies is one of these initiatives. The NPR is assisting agencies to change their internal cultures to create these performance-based, customer-oriented organizations.

The performance-based, customer-oriented organization would no longer be a component of the National Marine Fisheries Service, but would remain a Government agency within NOAA, providing services to the public under the policy oversight of the Administrator or his/her designee. It would be headed by a chief executive officer who would be accountable for achieving results. The new agency would have statutory authority to vary the rules for procurement, employees, etc., that ordinarily apply to federal agencies. Creation of a performance-based agency, like the creation of a Government corporation, would require Congressional action.

Implementation of the not-for-profit option, would require legislation authorizing NOAA to enter into a binding, long-term arrangement with a selected, private entity. The legislation would also establish conditions relating

to the qualifications of the private sector partner, the rights of employees to transfer to the private entity, the legal acceptability of the examinations and certifications of the private entity, measures to ensure the integrity of the system, etc.

As indicated in the inquiry, the support of current customers and other interested persons is essential to the "reinvention" of the seafood inspection program in the time frame planned. NOAA desires to accomplish this "reinvention" in the simplest possible way that is acceptable to industry and consumers. Therefore, it will conduct additional meetings with interested persons and organizations at various locations in the United States according to the following schedule to provide all interested persons an opportunity to present further views on the remaining options. Prior to these meetings, a draft discussion paper detailing one of the

Government enterprise options, this document and information about the specific meeting locations will be mailed to those who attended earlier meetings or received earlier correspondence from this agency on this issue. Other interested parties may obtain this information by contacting this office (see **ADDRESSES**).

The meeting dates and locations are as follows:

March 25, 1996—St. Petersburg, FL; March 26—Miami, FL; March 27—Mobile, AL; March 28—Indianola, MS; April 1—Boston, MA; April 3—Chicago, IL; April 4—Norfolk, VA; April 5—Philadelphia, PA; April 9—Los Angeles, CA; April 10—Seattle, WA.

Dated: February 29, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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