

<b><i>NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-102-01 JUNE 7, 1994</i></b>	
<b><i>Administration and Operations Regulatory Guidance</i></b>	
<b><i>E.O. 12866 LISTING PROCEDURE</i></b>	
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June 7, 1994

MEMORANDUM FOR: NMFS Office Directors, Regional Directors  
FROM: GCF - Margaret Frailey Hayes *mfh*  
SUBJECT: E.O. 12866 Listing Procedure

Executive Order 12866, entitled Regulatory Planning and Review, has as its objective, inter alia, to enhance planning and coordination with respect to both new and existing regulations. To that end, section 6(a)(3)(A) of the Order establishes a system whereby agencies are periodically to submit a list of all their planned regulatory actions to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). This list is to indicate which of those regulations the Agency believes are "significant" within the meaning of E.O. 12866. Those regulations designated as "not significant" are not subject to OMB review unless, within 10 working days of receipt of the list, OIRA notifies the agency of its determination that the regulatory action is significant. The Office of the Assistant General Counsel for Legislation and Regulation, Department of Commerce (AGC-LR/DoC), has responsibility for coordinating the E.O. 12866 listing process for all rules issued by the Department of Commerce.

This memorandum proposes a procedure for processing NMFS' regulations to fulfill the listing requirement of E.O. 12866. The procedures described below are intended to simplify the current process for preparing and submitting information required by section 6(a)(3)(A) of the Executive Order.

NMFS will list on a monthly basis all upcoming regulations not exempt from the review procedures of E.O. 12866. This monthly list will contain all regulations not previously listed that NMFS reasonably expects to publish in the succeeding 3 months. DoC/AGC-LR will be responsible for listing all rules with OMB and advising the GCF central coordinator as to the date the list was submitted to OMB and any feedback from OMB about the list. DoC/AGC-LR will maintain a table indicating the status of the upcoming rules that have been listed and provide updated copies of the table to George Darcy and GCF. Additionally, DoC/AGC-LR



will obtain from OMB a Regulatory Identification Number (RIN) for each rule. DoC/AGC-LR will provide the RINs to George Darcy.

The preparation and review of the listing document for any emergency or time-sensitive rulemakings should be accomplished pursuant to the procedures set forth above. However, the GCF central coordinator should provide such listing documents to DoC/AGC-LR immediately upon availability, rather than waiting to include them on the monthly list.

Each listing document need contain only the following information:

- 1) Title of the regulation
- 2) Significance for purposes of E.O. 12866
- 3) Agency
- 4) RIN number [if none, indicate whether applied for]
- 5) Planned publication date
- 6) Statutory/Judicial deadline, if any
- 7) Description of the regulation

With respect to the regulation's description, only a basic outline is necessary. This can normally be done in one paragraph, which should include the essential elements of the rule, i.e., what the rule does, why NMFS is doing it, who it affects (the public, other agencies, etc.), and when it is effective. A good starting point for the description is the SUMMARY paragraph of the rule itself. This paragraph, fleshed out with slightly more detail, should be sufficient. An example of a listing document is attached; there is no boilerplate, do not cut-and-paste.

Listing documents will be prepared and cleared through the following procedure:

1. NMFS regional staff, or, where appropriate, NMFS Silver Spring staff with responsibility for the particular regulatory action, will undertake the initial draft of the listing document. This draft will be completed by the responsible program staff immediately upon receiving the rule for review or at the time drafting of the rule actually begins. Each region should decide with regional general counsel to what extent such submissions should be reviewed by regional counsel.
2. The document will be sent by E-mail to the GCF attorney with responsibility for review. Concurrently, a copy of the document will be cc'd by E-mail to the appropriate NMFS Silver Spring staff person and to George Darcy in F/CM2. For those rules that originate in Silver Spring, the NMFS staff person will forward the listing document by E-mail to the appropriate GCF attorney, with a cc to George Darcy.

3. After review, the GCF attorney will provide the document to a GCF central coordinator. This individual will officially present all listing documents to DoC/AGC-LR on the first Wednesday of each month, with a cc to George Darcy.

This listing system applies only to rules that have not previously been listed with OMB. OMB has requested that, concerning final rules for which a proposed rule had been listed, DoC/AGC-LR inform OMB, by telephone, of the rule and any changes in the final rule resulting from public comment. Should this informal process prove unworkable, the system outlined above would be extended.

cc: GCF attorneys  
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