

sufficient to pay any expenses incurred for the conduct of the referendum, and shall immediately recover such amount if a referendum fails to result in the establishment of a council.

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

(f) Nominations

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

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

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

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

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

(g) Nature of a council

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

(Pub. L. 99-659, title II, § 210, Nov. 14, 1986, 100 Stat. 3721.)

§ 4010. Functions and powers of councils

(a) Activities of a council

(1) Each council shall—

(A) Adopt¹ a seal which shall be judicially noticed;

(B) implement all terms of its charter;

(C) prepare and submit to the Secretary, for review and approval under section 4011(a)(1) of this title, a marketing and promotion plan and amendments to such plan which contain

descriptions of the projected consumer education, research, and other marketing and promotion activities of the council;

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

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

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

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

(i) all administrative and contractual expenses;

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

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

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

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

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

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

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

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

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

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

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

(3) Marketing and promotion plans and amendments to such plans prepared by a council under subsection (a)(1)(C) of this section shall be designed to increase the general demand for fish and fish products described in accordance with

¹ So in original. Probably should not be capitalized.

section 4009(b)(3) of this title by encouraging, expanding, and improving the marketing, promotion and utilization of such fish and fish products, in domestic or foreign markets, or both, through consumer education, research, and other marketing and promotion activities.

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

(b) Authority of a council

A council may—

- (1) sue and be sued;
- (2) enter into contracts;
- (3) employ and determine the salary of an executive director who may, with the approval of the council, employ and determine the salary of such additional staff as may be necessary;
- (4) collaborate with other councils and with the National Council in establishing and implementing a national marketing and promotion plan for one or more species of fish or fish products; and
- (5) establish a reserve fund from monies collected and received under section 4012 of this title to permit an effective and sustained program of research, consumer education, and other marketing and promotion activities regarding the quality and marketing of fish and fish products in years when production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for the current fiscal year of operation.

(c) Quality standards

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

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

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

affixed to or printed on the packaging material of the fish or fish product.

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

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

- (A) publish the proposed regulations by such means as will result in wide publicity in affected regions; and
- (B) provide for public comment and the opportunity for a public hearing.

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

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

(8) The procedures applicable to the adoption and the taking effect of a quality standard developed under this subsection also apply to a subsequent amendment or the termination of such standard.

(d) Amendment of a charter

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

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

§ 4011. Functions and powers of Secretary

(a) Duties of the Secretary

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

- (1) review, for consistency with the provisions of this chapter and other applicable law, and approve or disapprove, marketing and promotion plans and budgets within sixty days after their submission by a council;
- (2) immediately notify a council in writing of the disapproval of a marketing and promotion plan or budget, together with reasons for such disapproval;
- (3) issue orders and amendments to such orders that are necessary to implement quality standards under section 4010(c) of this title;
- (4) promulgate regulations necessary to carry out the purposes of this chapter;
- (5) enforce the provisions of this chapter, as provided under section 4016 of this title; and
- (6) make all appointments to councils in accordance with section 4009(f) of this title.

(b) Assistance

The Secretary may provide, on a reimbursable or other basis, such administrative or technical assistance as a council may request for purposes