

## V. Deletion Action

One of the criteria for site deletions, set forth in Section 300.425(e)(1)(i) of the NCP, specifies that EPA may delete a site from the NPL if “[r]esponsible parties or other persons have implemented all appropriate response actions required.” EPA, with the concurrence of the State of Delaware, believes that this criterion has been met. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective March 29, 2004 unless EPA receives adverse comments by February 27, 2004 on this notice or the parallel notice of intent to delete published in the “Proposed Rules” section of today’s **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and EPA will also prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: November 18, 2003.

**Donald S. Welsh,**

*Regional Administrator, U.S. EPA Region III.*

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

### Appendix B—[Amended]

■ 2. Table 1 of appendix B to part 300 is amended under Delaware (“DE”) by removing the site name “Tyler Refrigeration Pit, Smyrna.”

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 03–329]

### Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission revised the definition of unencrypted broadcast television adopted in its earlier *Second Report and Order* and *Second Further Notice of Proposed Rulemaking* in this proceeding. This revision clarifies a potential conflict between our stated intent and the scope of the rules. This action is taken to further the digital television transition and the commercial availability of navigation devices pursuant to section 629 of the Communications Act.

**DATES:** Effective February 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Susan Mort, [susan.mort@fcc.gov](mailto:susan.mort@fcc.gov), (202) 418–1043.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission’s *Order on Reconsideration*, FCC 03–329, adopted on December 19, 2003, and released on December 23, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission’s copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

### Summary of the Order on Reconsideration

1. In our recent *Second Report and Order* and *Second Further Notice of Proposed Rulemaking* in this proceeding, we adopted encoding rules that included, inter alia, a prohibition on the down resolution of unencrypted broadcast programming and caps on the level of copy protection that may apply to various categories of MVPD programming. The copy protection caps

included a prohibition on the imposition of copy restrictions on unencrypted broadcast television. Our stated goal in adopting these encoding rules was to strike a measured balance between the rights of content owners and the home viewing expectations of consumers, while ensuring competitive parity among MVPDs.

2. Following release of the *Second Report and Order* and *Second Further Notice of Proposed Rulemaking*, a potential conflict between our stated intent and the scope of the rules became apparent. The limitation of the encoding rules for broadcast television programming to “Unencrypted Broadcast Television” could inadvertently be interpreted to create a competitive disparity in so far as certain MVPDs encrypt their broadcast signals while others do not. The resulting imbalance could also negatively impact consumers who would otherwise expect to have the same viewing and recording capabilities for broadcast television programming regardless of distribution platform. To prevent this unintended consequence, by our own motion we revise the definition of Unencrypted Broadcast Television in our encoding rules as set forth herein.

3. *Paperwork Reduction Act of 1995 Analysis.* This *Order on Reconsideration* does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

4. *Regulatory Flexibility Act:* As required by the Regulatory Flexibility Act, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (“Supplemental FRFA”) relating to this *Order on Reconsideration*. The Supplemental FRFA is set forth within.

5. *Ordering Clauses:* Pursuant to the authority contained in sections 1, 4(i) and (j), 303, 403, 405, 601, 624A and 629 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 303, 403, 405, 521, 544a and 549, the Commission’s rules are hereby amended as set forth herein, and shall become effective February 27, 2004.

### Supplemental Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”) an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Further Notice of Proposed Rulemaking* (“FNPRM”) in this proceeding. The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. Based upon the comments in response to the FNPRM

and the IRFA, the Commission included a Final Regulatory Flexibility Analysis ("FRFA") in the *Second Report and Order* and *Second Further Notice of Proposed Rulemaking* ("Digital Cable Compatibility Order and FNPRM") in this proceeding. In this *Order on Reconsideration*, the Commission is, on its own motion, amending the rules in a manner that may affect small entities. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those amendments and conforms to the RFA.

7. *Need for, and Objectives of, the Order on Reconsideration.* In the Digital Cable Compatibility Order and FNPRM, the Commission adopted regulations setting a cable compatibility standard for an integrated, unidirectional digital cable television receiver, as well as for other unidirectional digital cable products. These regulations include, inter alia, technical standards, a labeling regime and encoding rules for audiovisual content delivered by multichannel video programming distributors ("MVPD"). The objective of the final rules is to facilitate the DTV transition and ensure parity among MVPDs. However, the encoding rule adopted in the Digital Cable Compatibility Order and FNPRM prohibiting MVPDs from encoding unencrypted broadcast television with copy restrictions or to trigger down resolution may be susceptible to different interpretations and could create an imbalance between different MVPDs in so far as certain providers typically encrypt the broadcast television signals that they retransmit whereas others do not or cannot. This *Order on Reconsideration* amends the encoding rules to cover all broadcast television programming that is unencrypted when originally broadcast, regardless of whether or not they are carried in encrypted form by an MVPD.

8. *Summary of Significant Issues Raised in Response to the FRFA.* No parties have addressed the FRFA in any subsequent filings.

9. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

10. As noted, a FRFA was incorporated into the Digital Cable Compatibility Order and FNPRM. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules. Those entities consist of: television broadcasting stations, cable and other program distribution (which includes, among others, cable operators, direct broadcast satellite services, home satellite dish services, multipoint distribution services, multichannel multipoint distribution service, Instructional Television Fixed Service, local multipoint distribution service, satellite master antenna television systems, and open video systems), electronics equipment manufacturers, and computer manufacturers. In this present *Order on Reconsideration*, the Commission is amending the final rules adopted in the Digital Cable Compatibility Order and FNPRM on its own motion. In this Supplemental FRFA, we incorporate by reference the description and estimate of the number of small entities from the FRFA in this proceeding.

11. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* Among the final rules adopted in the Digital Cable Compatibility Order and FNPRM, is a prohibition on all MVPDs from encoding unencrypted broadcast television programming to activate copy restrictions or down-resolution. This *Order on Reconsideration* revises this prohibition to encompass all broadcast television programming that is unencrypted when broadcast, regardless of the form in which it is carried by an MVPD.

12. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

13. In the Digital Cable Compatibility Order and FNPRM, we concluded that the encoding prohibitions on selectable output controls and the down-resolution of unencrypted broadcast programming would largely impact upon the DBS industry, which is primarily composed of large entities. Similarly, while we concluded that the caps on copy protection would affect all MVPDs, we believed they would not have a negative impact on small entities. We do not believe that our revision of the encoding rules in this *Order on Reconsideration* changes our earlier conclusions.

14. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

15. *Report to Congress:* The Commission will send a copy of the *Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order on Reconsideration*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### List of Subjects in 47 CFR Part 76

Cable television, Incorporation by reference, Recordings, Television.

Federal Communications Commission.  
**Marlene H. Dortch,**  
*Secretary.*

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 2. Revise paragraph (s) of § 76.1902 to read as follows:

#### § 76.1902 Definitions.

\* \* \* \* \*

(s) *Unencrypted broadcast television* means the retransmission by a covered entity of any service, program, or schedule or group of programs originally broadcast in the clear without use of a commercially-adopted access control method by a terrestrial television broadcast station regardless of whether such covered entity employs an

access control method as a part of its retransmission.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[I.D. 011604C]

#### Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

**ACTION:** Notification of U.S. fish quotas and an effort allocation.

**SUMMARY:** NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the NAFO Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

**DATES:** All fish quotas and the effort allocation are effective January 1, 2004, through December 31, 2004. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2004. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through February 12, 2004.

**ADDRESSES:** Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301-713-2276, fax: 301-713-2313, e-mail: pat.moran@noaa.gov).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFC) Permit is available from Sarah McLaughlin, at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978-281-9279, fax: 978-281-9135, e-mail:

Sarah.McLaughlin@noaa.gov) and from NAFO on the World Wide Web at <http://www.nafo.ca>.

**FOR FURTHER INFORMATION CONTACT:** Patrick E. Moran, 301-713-2276.

**SUPPLEMENTARY INFORMATION:**

#### Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2003 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2004. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities are as follows:

- (1) RedfishNAFO Division 3M 69 mt
- (2) SquidNAFO Subareas 3 & 4 453 mt
- (3) ShrimpNAFO Division 3L 144 mt
- (4) ShrimpNAFO Division 3M 1

vessel/100 days

Additionally, U.S. vessels may be authorized to fish any portion of the 7,500 mt TAC of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K. Fishing opportunities may also be authorized for U.S. fishermen in the "Others" category for: Division 3LNO yellowtail flounder (73 mt) and Division 3LMNO Greenland halibut (985 mt). Procedures for obtaining NMFS authorization are specified below.

#### U.S. Fish Quota Allocations

Expressions of interest to fish for any or all of the U.S. fish quota allocations and "Others" category allocations in NAFO will be considered from U.S. vessels in possession of a valid High Seas Fishing Compliance (HSFC) permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

If it appears that interest by U.S. fishermen to use the 2004 3L shrimp allocation is not sufficient, NMFS may consider transferring the 3L shrimp allocation to another NAFO Contracting Party for the purpose of promoting new opportunities for U.S. fishermen in NAFO or other fisheries. NMFS is currently exploring such an opportunity

with Canada to fish for yellowtail flounder. U.S. fishermen interested in learning about opportunities to pursue a limited yellowtail flounder fishery in Canada during 2004 should contact the agency officials designated in this notice for more information.

Note that vessels issued valid HSFC permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the HSFC permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

#### U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2004 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFC permit. All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

#### NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum