Discussion of Regulations

The Tacoma Airshow is being held as part of the celebration for the Fourth of July Independence Day in Tacoma, Washington. This event is sponsored by the Fourth of July Extravaganza Commission. The airshow is conducted over the waters of Commencement Bay, Tacoma, Washington. This one day event attracts a large number of spectators gathered on the waters below the airshow. To promote the safety of both the spectators and participants, this safety zone is required to keep spectators away from the waters below the airshow.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism Assessment

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environmental Assessment

This temporary rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.C. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13–009 is added to read as follows:

§ 165.T13–009 Safety Zone: Commencement Bay, Tacoma, WA

(a) *Location.* The following area is a safety zone: The waters of Commencement Bay, Tacoma, Washington. The safety zone will be comprised of a portion of water bounded by the following coordinates: Latitude 47°17′48″ N, Longitude 122°28′40″ W, Latitude 47°17′02″ N, Longitude 122°26′47″ W, Latitude 47°16′26″ N, Longitude 122°27′20″ W, Latitude 47°16′12.5″ W, Longitude 122°29′13″ W.

(b) *Definitions.*

Designated representative of the District Commander is any Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander, Thirteenth Coast Guard District, to act on his behalf.

Official patrol consists of any Coast Guard vessel, state or local law enforcement, and/or sponsor-provided vessels assigned and/or approved by Commander, Thirteenth Coast Guard District to patrol each event. All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the District Commander or his designated representative. When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(2) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander or his designated representative may terminate the event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(d) *Effective date* This section becomes effective on July 4, 1994 at 3 p.m. (PDT) and terminates on July 4, 1994 at 6 p.m. (PDT) unless sooner terminated by the District Commander.

Dated: June 3, 1994.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 94–15056 Filed 6–20–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 13–94–010]

Safety Zone Regulations; Fireworks Display, Bellingham Bay, Bellingham, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Independence Day Fireworks display to be held on July 4, from 9:30 p.m. (PDT) until 11 p.m. (PDT). The fireworks display barge will be positioned in Bellingham Bay, Bellingham, Washington. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on July 4, 1994 at 9:30 p.m. (PDT) and terminate on July 4, 1994 at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LT S. Workman, Assistant Operations Officer, Coast Guard Group Seattle, Washington, (206) 217–6009.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was just recently received leaving insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this temporary final rule are LT Andrew W. Connor, project officer, and LT Laticia J. Argenti, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Regulations

The Bellingham Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Bellingham, Washington. This event is sponsored by Whatcom County Chamber of Commerce. The fireworks display is conducted from a barge located on the waters of Bellingham Bay, Bellingham, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. To promote the safety of both the spectators and participants, this safety zone is required to keep spectators away from the explosive fireworks barge during the fireworks display. The exclusionary area is designed to keep all spectators away from the fireworks barge.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism Assessment

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environmental Assessment

This temporary rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.C. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T13–007 is added to read as follows:

§ 165.T13–007 Safety Zone: Bellingham, Bay, Bellingham, WA

(a) *Location.* The following area is a safety zone: The waters of Bellingham Bay, Bellingham, Washington. The safety zone will be comprised of a portion of water around the fireworks barge bounded by the following coordinates: Latitude 48° 44′09″ N, Longitude 122° 30′07″ W, Latitude 48° 44′09″ N, Longitude 122° 29′57″ W, Latitude 48° 44′02″ N, Longitude 122° 30′07″ W, Latitude 48° 44′02″ N, Longitude 122° 29′57″ W.

(b) *Definitions.*

Designated representative of the District Commander is any Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander, Thirteenth Coast Guard District, to act on his behalf.

Official patrol—consists of any Coast Guard vessel, state or local law enforcement, and/or sponsor-provided vessels assigned and/or approved by Commander, Thirteenth Coast Guard District to patrol each event.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the District Commander or his designated representative. When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(2) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander or his designated representative may terminate the event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(d) *Effective date.* This section becomes effective on July 4, 1994 at 9:30 p.m. (PDT) and terminates on July 4, 1994 at 11 p.m. (PDT) unless sooner terminated by the District Commander.

Dated: June 3, 1994.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 94–15060 Filed 6–20–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD 13–94–011]

Safety Zone Regulations; Fireworks Display, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Independence Day Fireworks display to be held on July 4, 1994 from 9:30 p.m. (PDT) until 11 p.m. (PDT). The fireworks display barge will be positioned in Commencement Bay, Tacoma, Washington. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on and in the vicinity of navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on July 4, 1994 at 9:30 p.m. (PDT) and terminate on July 4, 1994 at 11 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: LT S. Workman, Assistant Operations Officer, Coast Guard Group Seattle, Washington, (206) 217–6009.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was just recently received leaving insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this temporary final rule are LT Andrew W. Conner, project officer, and LT Laticia J. Argenti, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Regulations

The Tacoma Fireworks Display is being held as part of the celebration for the Fourth of July Independence Day in Tacoma, Washington. This event is sponsored by the Fourth of July

Extravaganza Commission. The fireworks display is conducted from a barge located on the waters of Commencement Bay, Tacoma, Washington, near old town dock. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. To promote the safety of both the spectators and participants, this safety zone is required to keep spectators away from the explosive fireworks barge during the fireworks display. The exclusionary area is designed to keep all spectators away from the fireworks barge.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Federalism Assessment

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environmental Assessment

This temporary rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.C. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—AMENDED

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 C.F.R. 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 C.F.R. 1.46.

2. A temporary section 165.T13–008 is added to read as follows:

§ 165.T13–008 Safety Zone: Commencement Bay, Tacoma, WA

(a) *Location.* The following area is a safety zone: The waters of Commencement Bay, Tacoma, Washington. The safety zone will be comprised of a portion of water bounded by the following coordinates: Latitude 47° 17′48″ N, Longitude 122° 28′40″ W, Latitude 47°17′02″ N, longitude 122° 26′47″ W, Latitude 47° 16′26″ N, Longitude 122° 27′20″ W, Latitude 47° 16′12.5″ W, Longitude 122° 29′13″ W.

(b) *Definitions.*

Designated representative of the District Commander is any Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander, Thirteenth Coast Guard District, to act on his behalf.

Official patrol consists of any Coast Guard vessel, state or local law enforcement, and/or sponsor-provided vessels assigned and/or approved by Commander, Thirteenth Coast Guard District to patrol each event. All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the District Commander or his designated representative. When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(2) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander or his designated representative may terminate the event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(d) *Effective date.* This Section becomes effective on July 4, 1994 at 9:30 p.m. (PDT) and terminates on July 4, 1994 at 11 p.m. (PDT) unless sooner terminated by the District Commander.

Dated: June 3, 1994.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, Acting.

[FR Doc. 94–15061 Filed 6–20–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 940366–4165; I.D. 021494E]

RIN 0648–AF39

American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures in Amendment 5 to the Fishery Management Plan for the American Lobster Fishery (FMP). Amendment 5 is intended to eliminate overfishing of American lobsters in the exclusive economic zone (EEZ), with anticipated complementary management action in state waters. A final rule published on May 20, 1994 (59 FR 26454), implemented one of the measures approved under Amendment 5—maintenance of the current 3¼-inch (8.26–cm) minimum carapace length. This rule implements the remaining measures approved under Amendment 5: Limits on the issuance of new Federal vessel permits for a 5-year period, change in escape vent width, dealer permits, operator permits, a framework process to develop a stock rebuilding program, and a revised definition of overfishing.

EFFECTIVE DATE: July 20, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097. Copies of the Finance Handbook may be obtained from Mr. Joseph Giza, Chief, Fiscal Policy and Quality Assurance Branch, NOAA Financial Management Division, Caller Service No. 8025, 20020 Century Boulevard, Germantown, Maryland 20874, telephone: 301–443–8795.

Comments regarding the burden-hour estimates, or any other aspect of the collection-of-information requirements contained in this final rule, should be sent to the Regional Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, and the Office of Management and Budget (OMB) (Attention NOAA Desk Officer), Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, NMFS, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 5, with some exceptions, was approved by NMFS on May 11, 1994. Background to the amendment was discussed in the proposed rule (59 FR 11029, March 9, 1994), and is not repeated here.

Approved Management Measures

NMFS is implementing the approved measures of Amendment 5 through two separate final rules. The first was published on May 20, 1994 (59 FR 26454). That final rule maintained the minimum carapace length for lobsters at 3¼ inches (8.26 cm), thereby rescinding the scheduled increases in the minimum size. This rule implements the remaining approved provisions of Amendment 5: (1) A 5-year moratorium on the issuance of new Federal vessel permits, (2) dealer and vessel operator permit requirements, (3) a decrease in the minimum width of the lobster trap escape vent from 6 inches (152.4 mm) to 5–3/4 inches (146.1 mm), and (4) a framework process that requires the development of a stock rebuilding program in four management areas in the EEZ (Gulf of Maine Near-shore, Southern New England Near-shore, Middle Atlantic Near-shore, and Offshore) by the end of the first year of implementation of Amendment 5. The framework process calls for the establishment of Effort Management Teams (EMTs) for each management area to develop area-specific management measures.

Amendment 5 also revises the overfishing definition for American lobster to read:

> The resource is recruitment overfished when, throughout its range, the fishing mortality rate (F), given the regulations in place at that time under the suite of regional management measures, results in a reduction in estimated egg production per recruit to 10 percent or less of a non-fished population ($F_{10\%}$)

With respect to the definition, the Amendment also specifies that the development of the status of the stock report and the evaluation of fishery-induced effects will consider information based upon one or more indices, including but not limited to: (1) Larval abundance index in surface waters, (2) larval settlement index, (3) pre-recruit indices by year class, (4) landings, (5) size composition of the landings, (6) spawning stock biomass, (7) numbers of egg-bearing females, (8) effort levels and catch per unit of effort, and (9) possible relationships of biological parameters to water temperatures or other environmental parameters. Although much of this information is currently unavailable, it is NMFS' intent to incorporate this information, as appropriate, into the determination of whether the fishery is being overfished when such information can be developed into valid, quantifiable indices of overfishing.

Based on the definition, the lobster resource is overfished. To achieve reductions in fishing mortality, Amendment 5 includes a framework process requiring the New England Fishery Management Council (Council) to develop a stock rebuilding program during the first year of implementation. The management measures may include any of the framework measures specified under § 649.44(d). These measures may be applied to all segments of the harvesting sector within each management area.

To determine which of these measures will be implemented in each of the management areas, Amendment 5 establishes an EMT for each management area. Each EMT is charged with recommending to the Council a stock rebuilding program for its area no later than January 20, 1995. Based on the EMT recommendations, the Council is required to submit framework management measures to the Director, Northeast Region NMFS (Regional Director). This development timeframe is designed to provide industry members within each area with the opportunity to reach a consensus by July 20, 1995 as to which options listed in § 649.44(d) should apply in their respective management area. NMFS has informed the Council, in a letter from the Regional Director dated May 11, 1994, that if the EMTs are unable to make their deadline, then NMFS will begin the process of withdrawing the FMP.

The Council recommended to NMFS that the initial specification of a seaward boundary line of the Southern New England Near-shore area, which is contiguous with part of the Offshore area, be as set forth in § 649.42 (see Figure 3 of part 649). The Council will determine the final location of a boundary line after the EMTs for these areas jointly consider the issue and make a recommendation to the Council. Long Island Sound, under the jurisdiction of the coastal states and not part of the EEZ, is not specifically part of the Southern New England Near-shore area.

Amendment 5 includes new permitting requirements for vessel operators and dealers, and limits the requirements for limited access vessel permits for a period of 5 years. During the third year of the new permit requirements, the Council will conduct a formal review to determine whether the limitation on permits is necessary to the stock rebuilding program. The Council may choose to extend the limitation on new permits for a specified period or terminate it if it determines that such action is consistent with the stock rebuilding program.

Amendment 5 specifies the lobster fishery control date as March 25, 1991, rather than January 9, 1991, as published in the **Federal Register** on March 25, 1991 (56 FR 12366). Shortly after publication of the control date of January 9, 1991, the Council agreed to adjust that date to the date of publication of the control date notice—March 25, 1991. The EMTs will consider the following control date guidelines during development of the stock rebuilding program: (1) In the event that a system of assigning fishing rights is developed as part of the FMP, such assignments shall be based on historical levels of participation in the fishery prior to March 25, 1991, with consideration for recent investments that have not yet been reflected in measures of participation; (2) new or re-rigged vessels will be given consideration in the assignment of fishing rights if (a) the vessel was under construction or re-rigging for directed lobster fishing as of March 25, 1991, as evidenced by written construction contracts, work orders, equipment purchases, or other evidence of substantial investment and intent to participate in the lobster fishery; and (b) the vessel possessed an American lobster permit and landed lobster prior to March 25, 1992; (3) historical participation will transfer with a vessel for a transfer made after March 25, 1991, unless such transfer is accompanied by a written document indicating the agreement of both the buyer and the seller that any future fishing rights applicable to that vessel are not being transferred with the vessel; and (4) any system of assigning fishing rights will take into consideration the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights: (a) The degree of economic dependence upon the lobster fishery, including, but not limited to the percentage of income derived from the lobster fishery; (b) the extent of past participation in the lobster fishery; and (c) the demonstration of intent prior to March 25, 1991, to re-enter the lobster fishery with another vessel.

Delayed and Disapproved Measures and the Reasons for Disapproval

The limited access permit requirements and the vessel operator permit requirements will be implemented in 1995, so that they can be included as part of the 1995 permitting process. The annual permit renewal begins in August-September of each year, and limited access lobster vessel permits and vessel operator permits will be required on January 1, 1995. This implementation schedule will ensure that NMFS can administer the requirement with the minimum burden upon applicants.

Three measures proposed in Amendment 5 were disapproved. Two measures were disapproved because they were inconsistent with national standard 4 of the Magnuson Fishery Conservation and Management Act (Magnuson Act), which requires that any allocation of fishing privileges be fair and equitable. These measures would have established three vessel permit categories and would have set a quota for vessels issued a permit and using gear other than lobster pots. The proposed permit categories and quota would have unfairly impacted, without adequate justification, one segment of the fishery while allowing unrestrained increases in other sectors of the fishery.

Also disapproved were the Council's proposed mandatory reporting requirements for dealers and vessels. The Council has not demonstrated that the benefits of the mandatory reporting requirements justify the costs, as required by E.O. 12866, particularly in light of the fact that the majority of lobsters are harvested from state waters. NMFS will pursue a cooperative approach with the states to share the costs of such a data collection.

Comments and Responses

NMFS received comments on the proposed rule from one U.S. Senator, the U.S. Coast Guard, the Council, four Maine state representatives, five fishing industry associations, and nine individuals. All of the comments were carefully considered during the formulation of this final rule. Specific comments are discussed and responded to below.

The Council submitted comments requesting several clarifications and changes to the regulatory text. Most of these changes are noted in the Changes from the Proposed Rule section of this preamble. In addition to these changes, the Council requested that a provision restricting party, charter, and dive boats to six or fewer lobsters per person on board be expanded to include any fishing vessel. NMFS is not implementing this provision because it was not included as part of Amendment 5 and, as such, has not received adequate public notice and comment. The Council also requested that vessel owners not be in violation of the prohibition against selling or transferring fish to unpermitted dealers unless the sale or transfer were done knowingly. NMFS has not adopted this change because it would make enforcement of this prohibition almost impossible and because it would be inconsistent with similar prohibitions in other fishery management plans. In any event, NMFS will exercise discretion in enforcing this prohibition in cases where vessel owners could not reasonably be expected to know whether a dealer was validly permitted.

Comment: A U.S. Senator, the Coast Guard, four industry associations, and six individuals stated that the amendment should be approved.

Response: The comments have been noted and the amendment was partially approved, as explained above.

Comment: One individual objected to the specific eligibility criteria for a limited access vessel permit that require a vessel or vessel owner to have been issued a Federal American lobster permit, or a federally endorsed state American lobster permit, and to have landed American lobsters prior to March 25, 1991.

Response: This provision complies with the Magnuson Act requirements for establishing a system for limited access to a fishery. If a system for limiting access to a fishery is included in a fishery management plan, the Magnuson Act requires the Council and NMFS to take into account such factors as present participation in the fishery, historical fishing practices and dependence on the fishery, and capability of vessels to be used in other fisheries. The Council and NMFS considered all of these factors in establishing criteria required to qualify for full participation in the American lobster fishery. A control date was announced on March 25, 1991 (56 FR 12366), which gave notice to participants and potential participants that future participation in the fishery may be limited for vessels that entered the fishery after the control date. The purpose of the control date was to discourage increases in fishing effort and speculative entry into the fishery while development of Amendment 5 progressed.

Amendment 5 also establishes an exemption to the limited access fishery for party, charter and dive boats in possession of six or fewer lobsters per person, or for recreational vessels and vessels that fish exclusively in state waters for lobsters. Therefore, Amendment 5 provides the opportunity for recreational operators and other types of operators who fish exclusively in state waters to participate in the fishery while discouraging further increases in fishing mortality by limiting the number of participants in the fishery.

Comment: Two individuals requested that the boundary line between Management Areas 2 and 3 be omitted. Another requested that Management Area 4 be split into two zones.

Response: The Council decided, and NMFS agrees, that a boundary line between the Southern New England Near-shore area and the Offshore area is needed to define the areas in the final rule so that appropriate area specific management measures can be developed. The Council has stated that future boundary lines for the areas will be considered jointly by the EMTs for these areas and that the EMTs will make recommendation on changes to the Council.

Comment: Two individuals requested that the boundary line for the Management Areas be specified by Loran C coordinates, rather than by latitude and longitude.

Response: All boundary lines listed in Federal fishery regulations are specified by latitude and longitude, because such coordinates are more precise and accurate for enforcement purposes.

Comment: Three individuals stated that the amendment should be disapproved because it violates national standards. One industry association stated specifically that Amendment 5 violates: (1) National standard 1, because it does nothing to prevent overfishing; (2) national standard 2, because it does not use the best scientific information available; (3) national standard 3, because the Amendment establishes management zones that do not manage the lobster stock throughout the range of the stock; (4) national standard 4, because the Amendment discriminates against the mobile gear sector; (5) national standard 5, because there are severe restrictions placed on the mobile gear sector and absolutely none on the trap sector; (6) national standard 6, because the

Amendment ignores the fact that mobile gear is a variation within the lobster fishery; (7) national standard 7, because, by establishing EMTs, the Amendment does not minimize costs.

Response: With the exception of the disapproved portions of Amendment 5 noted above, NMFS has determined that the measures included in Amendment 5 are consistent with all of the national standards. Specific responses to the comments follows.

Amendment 5 is consistent with national standard 1 because it mandates a timetable to implement measures to address overfishing based on a specific definition of overfishing, and creates a framework system to change management measures proposed by the Council. The process is designed to develop an industry consensus, through the EMTs and the Council, concerning the most effective management measures to achieve the objectives of the FMP to reduce fishing mortality in each of the four management areas. Thus, Amendment 5, as implemented, specifies the process, the timetable, and the specific biological objectives that will achieve the objectives of the FMP in addressing overfishing. If the Council fails to submit management measures sufficient to meet the FMP objectives, the regulations require the Secretary to determine whether preparation of an amendment to the FMP is necessary. In addition, NMFS stated in a letter notifying the Council of partial disapproval Amendment 5 that it will begin the process to withdraw the American lobster FMP if the EMTs have not submitted recommendations to the Council concerning management measures within 6 months after the effective date of the regulations implementing Amendment 5.

Amendment 5 is consistent with national standard 2 because the Council determined, and NMFS agrees, that the NMFS weighout database is the best scientific information available in determining the conservation and management measures. Further, any new available data will be considered in reviewing specific management measures submitted to NMFS under the first-year framework process.

National standard 3 states that "to the extent practicable," an individual stock of fish shall be managed as a unit throughout the range. The overall objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified, regional management program for lobster. The American lobster FMP and Amendment 5, as implemented by this rule, establishes a system to manage the lobster stock as a unit throughout the range. The provision for management areas recognizes that individual measures to achieve the overall FMP objectives may need to vary because of regional and state differences in how the lobster fishery is conducted. This is consistent with national standard 3, which provides that FMPs need not be identical for each geographic area within the management unit, if the FMP justifies the differences. Since more than 80 percent of the lobster fishery occurs in state waters, this approach is needed to insure consistent, comparable management measures among the various states engaged in the fishery.

The measures that create different categories based on gear were disapproved because national standard 4 requires that any allocation of fishing privileges be fair and equitable. The permit categories and quota, although intended only to cap effort and prevent re-direction of effort from other fisheries, impact, without adequate justification, only one segment of the fishery and continue to allow unrestrained increases in other sectors (with the exception of the permit moratorium which affects all sectors equally).

Pertaining to national standard 5, the measures that place restrictions on the mobile gear sector have been disapproved for the reasons stated above.

Pertaining to national standard 6, for the reasons stated above, gear categories were disapproved.

National standard 7 states that, "where practicable," management measures shall minimize costs. This amendment creates EMTs for each of the four management areas to address concerns of geographic differences in the lobster fishery as permitted under national standard 3, as discussed above. Since more than 80 percent of the lobster fishery occurs in state waters, NMFS has determined that this approach is a practicable, cost-efficient way to insure consistent, comparable management measures among the various states bordering the four management areas established by Amendment 5. In particular, this approach is necessary to be consistent with the agency's guidelines on national standard 7, which state that a factor in deciding whether a fishery needs management through regulations implementing an FMP is the need to resolve competing interests and conflicts among user groups and whether a measure can further that resolution.

Comment: One individual opposed the requirement for mandatory vessel logbooks.

Response: This requirement was disapproved.

Comment: Two individuals requested that representation on the EMTs include draggers and divers.

Response: Members of each EMT will be appointed by the Council, in consultation with appropriate states and NMFS. This final rule does not restrict or require participation on the EMTs by any specific group or groups.

Comment: One individual requested that the definition of recreational fishing vessel be changed to include dive vessels.

Response: The definition for recreational fishing vessels includes dive vessels, provided that lobster harvested by dive vessels are not intended to be, nor are they, bartered, traded, or sold.

Comment: A U.S. Senator and two industry associations expressed concern with the 100 lobster possession restrictions and the target quota for non-lobster pot vessels.

Response: These provisions have been disapproved.

Comment: One industry association asked if the wording of the overfishing definition as defined in Amendment 5 will mandate a change in the way future overfishing will be determined.

Response: The overfishing definition in the Amendment will be the objective measurement of the status of the lobster stock and complies with the 50 CFR part 602 guidelines.

Comment: Four Maine state legislators expressed concern over conflicting state and Federal American lobster regulations.

Response: The overall objective of the FMP is to support and promote the development and implementation, on a continuing basis, of a unified, regional management program for lobster. The final rule published on May 20, 1994 (59 FR 26454) is consistent with this objective by maintaining the minimum size at 3¼ inches (8.26 cm).

Comment: Four Maine state representatives expressed concern that the Maine Legislature's Joint Standing Committee on Maine Resources was not contacted to discuss any perceived or actual concerns about the lobster resource.

Response: The Coastal Zone Management Act requires that the coastal zone agency of each state affected by Amendment 5 be contacted and asked whether they agree that the amendment is consistent, to the maximum extent practicable, with their federally approved coastal zone management program. On February 7, 1994, the Council sent a letter to the Coastal Program Manager for the State of Maine, and on February 11, 1994, the Council received a reply from the State of Maine that determined the amendment was consistent with the enforceable policies of the Maine Coastal Program. In addition, the Commissioner of the Maine Department of Marine Resources serves on the Council.

Comment: One industry association expressed concern that the wording under § 649.9(d)(1) does not exempt recreational vessels.

Response: NMFS has modified § 649.4(a) and § 649.9(d)(1) to clarify that recreational vessels are exempt from the permit requirements.

Comment: One industry association pointed out that recreational fishing vessels, as defined in the proposed rule, were not limited to six or fewer American lobsters per person aboard the vessel at any time.

Response: It was not the intent of Amendment 5 to restrict the recreational fishery for American lobsters. However, by definition, recreational vessels are prohibited from bartering, trading, or selling lobster.

Comment: One individual objected to the requirement for an operator permit and stated that it should be the responsibility of the vessel owner to make sure that the vessel operator is fully aware of, and follows, all regulations.

Response: The intent of this measure is to improve regulatory compliance by those who are most directly able to control the actions of the vessel and crew. The number of operators having their permit suspended or revoked is expected to be relatively small. Penalties would be assessed against a vessel operator only if the vessel operator is determined to have been involved in a major violation or is a significant repeat offender of Federal fishing regulations. The language gives notice to the vessel operator that his/her right and privilege to operate and serve on a federally permitted fishing vessel is subject to the condition that right may be suspended or revoked in certain circumstances. Without the possibility of suspending or revoking an operator's right to serve in any capacity on a federally permitted vessel, the purpose of requiring operator's permits would be meaningless. The language also puts the operator on notice that he/she will be responsible for his/her actions and will not be able to move to another vessel should a suspension occur. It is consistent with a vessel permit suspension, which takes the vessel out of the fishery during the time of suspension.

Changes from the Proposed Rule

Changes were made to several sections of the proposed rule to clarify the measures and to ensure consistency with other fishery regulations. In addition, substantive changes are made to the following sections:

In § 649.1, the narrative within the first paragraph is modified to add the phrase "This part implements the Fishery Management Plan for the American Lobster Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (ASMFC), and approved by the Assistant Administrator for Fisheries" to clarify further the purpose and scope of the FMP.

In § 649.2, the definition of an "Effort Monitoring Team" is modified to add the phrase "a group of American lobster industry representatives (appointed by the Council)" to clarify who the appointing authority is for the EMT.

In § 649.2, the definition of a "ghost panel" is modified to add the phrase "after a period of time if the" to clarify the meaning of a ghost panel.

In § 649.2, the definition of "Lobster Plan Development Team" is not used in these regulations and is deleted from this final rule.

In § 649.2, the definition of a "lobster pot trawl" is added.

In § 649.2, the definitions of "reporting month and reporting week" are deleted from this final rule. The vessel and dealer reporting requirement measures were disapproved by NMFS; therefore, these definitions are no longer necessary.

In § 649.2, the definition of "sixth tail segment" is not used in these regulations and is deleted from this final rule.

In § 649.2, the definition of a "whole American lobster" is modified to add the phrase "A cull whole American lobster is an American lobster with one or both claws missing," to clarify the meaning of a whole American lobster.

In § 649.4 paragraphs (a)(1), (2), and (3) are added to clarify NMFS' intent to allow 1994 permits to remain effective until December 31, 1994, and the remaining paragraphs of the section are redesignated accordingly.

In § 649.4(b), the narrative in the introductory text is modified to add the phrase "From January 1, 1995, through December 31, 1999," to clarify NMFS' intent to start issuing limited access American lobster permits in 1995 and that this permit requirement will expire at the end of 1999. In the same paragraph, the phrase "not intended for or resulting in trade, barter or sale" is added to clarify which vessels do not require a limited access American lobster permit.

In § 649.4(b)(1)(B), the phrase "or federally endorsed state American lobster permit," is added to clarify that a vessel issued a federally endorsed state American lobster permit can also qualify for a limited access permit.

In § 649.4(b)(2), the phrase "for the years after 1996 - 1999" is added to clarify the intent of Amendment 5 to limit the issuance of limited access vessel permits for a period of 5 years.

In § 649.4, paragraph (b)(2)(ii) is added to clarify the intent of Amendment 5 to limit the issuance of limited access vessel permits for a period of 5 years.

In § 649.4(e), the word "overall" is added to clarify what vessel length information is needed.

In § 649.4(h), the phrase "A Federal American lobster permit will expire upon the renewal date specified in the permit" is added to correct a statement in the proposed rule.

In § 649.5(a), the phrase "Beginning on January 1, 1995," is added to clarify NMFS' intent to require operator permits beginning in 1995, the phrase "not intended for or resulting in trade, barter or sale" is added to clarify further who does not require a vessel operator permit, and text is added to clarify further the requirement for an operator permit.

In § 649.5, paragraph (g) was revised to correct an error in the proposed rule.

In § 649.6(b), the sentence, "For 1994, a copy of an applicant's completed application will serve as a temporary permit until the applicant has received a permanent permit." is added. Since dealers are required to have Federal permits upon the effective date of this final rule, there is not sufficient time for applicants to comply with the requirement to have their permit application submitted 30 days prior to the date they desire the permit to be effective. This will alleviate that problem.

In § 649.6(e), the phrase "and the applicant has submitted all applicable reports specified in § 649.7(a)" is deleted. The vessel and dealer reporting requirement measures were disapproved by NMFS; therefore, this phrase is no longer necessary.

In § 649.6, paragraph (f) is revised to correct a statement in the proposed rule.

In § 649.8(a)(6), the phrase "unless such gear has been rendered unfishable" is added to allow for the retrieval of lost gear or the unintentional catching of lost lobster pots by trawl vessels and subsequent repairing or destroying of the gear on shore.

In § 649.8(b), the phrase "or unless the vessel is a recreational vessels or vessel fishing for American lobsters exclusively in state waters" is added to clarify exemptions to this prohibition.

In § 649.8(c)(5), the phrase "Beginning on January 1, 1995," is added to clarify that the operator permit requirement is not effective until 1995.

In § 649.8, paragraph (c)(10) is added to codify the statutory requirements under section 307(1)(J) of the Magnuson Act.

In § 649.8(c)(1)(iii) is modified to add the phrase "per person on board the vessel and the" was added to clarify further the intent of the prohibition.

In § 649.20, the section heading is revised to clarify the meaning of the section, and paragraphs (b)(3), (d)(3), and (e)(3) were added to codify the statutory requirements under section 307(1)(J) of the Magnuson Act.

In § 649.23, the prohibition on transferring fish from one vessel to another while at sea is deleted because the landing and quota requirements proposed by the Council have been disapproved and this measure is no longer necessary.

In § 649.42, point I is added to the table in paragraph (b)(2) because it was inadvertently omitted in the proposed rule, and the heading of paragraph (b)(4) is modified to add the word "EEZ" to clarify that the near-shore waters referred to in the table are in Federal waters.

In § 649.43, paragraph (b)(11) is redesignated paragraph (b)(12), a new paragraph (b)(11) is added to clarify the Council's intent that the control date guidelines be retained for consideration by the EMTs, and paragraph (b)(12) is revised to clarify the Council's intent on recommending adjustments or additions to management measures.

In § 649.43, paragraph (e) is redesignated paragraph (f), and a new paragraph (e) is added to clarify that the Council is not precluded from taking necessary management actions in year 1 by the other requirements of § 649.43.

In § 649.44(c), the references to Plan Development Teams (PDTs) are deleted to clarify that frameworks, as described in Amendment 5 are tied to EMTs, specifically. PDTs may, at the discretion of the Council, develop independent findings and recommendations. Also, the phrase "shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery" is removed from paragraph (c) of this section, and placed in § 649.44(d) to clarify further the Council's intent on who should prepare the required analysis.

In § 649.44, paragraph (d)(11) is redesignated to (d)(12), and a new paragraph (b)(11) is added to clarify the Council's intent that the control date guidelines be retained. Redesignated paragraph (d)(12) is revised to clarify the Council's intent on recommending adjustments or additions to management measures.

Since all recordkeeping and reporting requirements contained in § 649.7 were disapproved, sections 649.8 (Vessel identification), 649.9 (prohibitions), 649.10 (Facilitation and enforcement), and 649.11 (penalties) in the proposed rule are redesignated as §§ 649.7, 649.8, 649.9, and 649.10, respectively, in this final rule.

Since the contents of § 649.22 (possession restrictions and target quota), 649.23 (transfer at sea), and 649.24 (restrictions on trawl gear while in the trap fishery) in the proposed rule were disapproved, § 649.25 (experimental fishing exemption) of the proposed rule is redesignated as § 649.22 in this final rule.

Republication of Part of 50 CFR Part 649

A revised version of § 649.20(b)(1) and (2) was published in the first final rule (59 FR 26454, May 20, 1994) for Amendment 5, effective May 17, 1994. Those paragraphs are republished here for the convenience of the reader so as to have the entire 50 CFR part 649 published together.

Classification

The General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed that if adopted, it would not have a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis was not prepared.

This rule contains two new collection-of-information requirements and two revisions to existing requirements previously approved by OMB. These collection-of-information requirements have been approved by OMB. Nevertheless, public comments are invited on the burden-hour estimates for the collection of information requirements as listed below.

The new reporting requirements are:

1. Dealer permits, OMB Control No. 0648–0202, (5 min./response);
2. Operator permits, OMB Control No. 0648–0202, (1 hour/response).

Revisions to the existing requirements are:

1. Vessel permits, OMB Control No. 0648–0202, (1 hour/response);
2. Vessel permits, appeal of denied vessel permit, OMB Control No. 0648–0202, (3 hours/response);

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

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: June 14, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is revised to read as follows:

PART 649—AMERICAN LOBSTER FISHERY

Subpart A—General Provisions

Sec.
649.1 Purpose and scope.
649.2 Definitions.
649.3 Relation to other laws.
649.4 Vessel permits.
649.5 Operator permits.
649.6 Dealer permits.
649.7 Vessel identification.
649.8 Prohibitions.
649.9 Facilitation of enforcement.
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Subpart B—Management Measures

649.20 Harvesting and landing requirements.
649.21 Gear identification and marking, escape vent, and ghost panel requirements.
649.22 Experimental fishing exemption.

Subpart C—Stock Rebuilding Program and Framework Adjustments to Management Measures

649.41 Purpose and scope.
649.42 Stock rebuilding program requirements and time frame.
649.43 First-year framework specifications.
649.44 Framework specifications after the first year of implementation.

Figures—Part 649

Figure 1—Standard Tetrahedral Corner Radar Reflector
Figure 2—American Lobster Management Areas Established for the Purposes of Regional Lobster Management
Figure 3—Seaward Boundary Lines of the Southern New England Nearshore Areas (Area 2) and the Offshore Area (Area 3)

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 649.1 Purpose and scope.

This part implements the Fishery Management Plan for the American Lobster Fishery (FMP), as amended by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission (ASMFC), and approved by the Assistant Administrator for Fisheries, NOAA. Red crab fishing gear, which is fished deeper than 200 fathoms (365.8 m), is gear not capable of taking lobsters, and is not subject to the provisions of this part.

§ 649.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

American lobster or *lobster* means the species *Homarus americanus*.

Berried female means a female American lobster bearing eggs attached to the abdominal appendages.

Carapace length is the straight line measurement from the rear of the eye socket parallel to the center line of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the American lobster.

Council means the New England Fishery Management Council.

Dealer means any person who receives American lobsters for a commercial purpose from the owner or operator of a vessel issued a valid Federal vessel permit under this part, other than exclusively for transport on land.

Dive vessel means any vessel carrying divers for a per capita fee or a charter fee.

Effort Monitoring Team (EMT) means a group of technical experts made up of representatives from the Council, NMFS, the appropriate states, and a group of American lobster industry representatives (appointed by the Council), per management area, to each EMT.

Escape vent means an opening in a lobster trap designed to allow lobster smaller than the legal minimum size to escape from the trap.

Fishery Management Plan (FMP) means the Fishery Management Plan for American Lobsters, as amended.

Ghost panel means a panel, or other mechanism, designed to allow for the escapement of lobster after a period of time if the trap has been abandoned or lost.

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation for a vessel.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Lobster pot trawl means a number of lobster traps, all attached to a single groundline.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation for a vessel.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master or captain of the vessel, or other individual on board the vessel, who is in charge of that vessel's operations.

Party/charter boat means any vessel carrying fishing persons or parties for a per capita fee or for a charter fee.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats and dive boats are not considered recreational fishing vessels.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Re-rig or *re-rigged* means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for American lobsters.

Scrubbing is the forcible removal of eggs from a berried female American lobster.

Under agreement for construction means that the keel has been laid and that there is a written agreement to construct a fishing vessel.

V-notched American lobster means any female American lobster bearing a V-shaped notch in the flipper next to and to the right of the center flipper as viewed from the rear of the lobster (underside of the lobster down and tail toward the viewer).

V-shaped notch means a straight-sided triangular cut, without setal hairs, as least 1/4 inch (0.64 cm) in depth and tapering to a point.

Whole American lobster means a lobster with an intact and measurable body (tail and carapace). A cull whole American lobster is an American lobster with one or both claws missing.

§ 649.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter.

(b) Nothing in these regulations shall supersede more restrictive state management measures for American lobsters.

§ 649.4 Vessel permits.

(a) *1994 vessel permits.* (1) Through December 31, 1994, any vessel of the United States fishing for American lobster in the EEZ must have been issued and carry on board a valid permit required by or issued under this part. The Regional Director may, by agreement with State agencies, recognize permits or licenses issued by those agencies endorsed for fishing for lobster in the EEZ, providing that such permitting programs accurately identify persons who fish in the EEZ, and that the Regional Director can either individually, or in concert with the state agency, act to suspend the permit or license for EEZ fishing for any violation under this part.

(2) Alternate State EEZ permitting programs will be established through a letter of agreement between the Regional Director and the director of the State marine fisheries agency concerned. The letter of agreement will specify the information to be collected by the alternate EEZ permitting program and the mode and frequency of provision of that information to the Regional Director. The Regional Director will, in cooperation with the State director, arrange for notification of the existence and terms of any such agreements to the affected persons. Persons intending to fish in the EEZ should determine whether an alternate EEZ permitting program is in force for their state before applying for a Federal permit under paragraph (d) of this section.

(3) Vessel owners or operators who apply for a fishing vessel permit under this section, or for a State permit endorsed for EEZ fishing under paragraph (a)(2) of this section, must agree, as a condition of the permit, that all the vessel's lobster fishing, catch, and gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such lobster, lobster meats, or parts, or gear are possessed, taken or landed) will be subject to all the requirements of this part. All such fishing, catch, and gear will remain subject to any applicable state or local requirements. If a requirement of this part and a conservation measure required by state or local law differ, any vessel owner or operator permitted to

fish in the EEZ must comply with the more restrictive requirement.

(b) *Limited access American lobster permits.* From January 1, 1995, through December 31, 1999, any vessel of the United States that fishes for, possesses, or lands American lobster, in or harvested from the EEZ, must have been issued and carry on board a valid Federal limited access American lobster permit. This requirement does not apply to party, charter and dive boats that possess six or fewer American lobsters, not intended for or resulting in trade, barter or sale, per person aboard the vessel at any time, or to recreational vessels, and vessels that fish exclusively in state waters for American lobsters.

(1) *Eligibility in 1995.* (i) To be eligible to obtain a limited access American lobster permit for 1995, a vessel must meet one of the following criteria:

(A) The vessel or vessel owner had been issued a Federal American lobster permit, or a federally endorsed state American lobster permit, and landed American lobsters prior to March 25, 1991; or

(B) The vessel was under written agreement for construction or for re-rigging for directed American lobster fishing as of March 25, 1991, and the vessel was issued a Federal American lobster permit, or federally endorsed state American lobster permit, and landed American lobster prior to March 25, 1992; or

(C) The vessel is replacing a vessel that meets any of the criteria set forth in paragraphs (b)(1)(i)(A) or (B) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access American lobster permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access American lobster permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access American lobster permit.

(iii) A limited access American lobster permit for 1995 will not be issued unless an application for such permit is received by the Regional Director on or before December 31, 1995.

(2) *Eligibility in 1996 and thereafter.* (i) To be eligible to renew or apply for a limited access American lobster permit for the years 1996–1999, a vessel must have been issued a limited access American lobster permit for the preceding year, or the vessel must be replacing a vessel that had been issued a limited access American lobster permit for the preceding year. If more than one vessel owner claims eligibility to apply for a limited access American lobster permit based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access American lobster permit.

(ii) Beginning January 1, 2000, any vessel of the United States that fishes for, possesses, or lands American lobster, in or harvested from the EEZ, must have been issued and carry on board a valid Federal American lobster permit. This requirement does not apply to party, charter and dive boats that possess six or fewer American lobsters, not intended for or resulting in trade, barter, or sale, per person aboard the vessel at any time, or to recreational vessels and vessels that fish exclusively in state waters for American lobsters. The eligibility requirements for limited access permits for the years 1996 - 1999 are not applicable for obtaining an American lobster permit for the year 2000 and thereafter.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(4) *Notification of eligibility for a limited access permit.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria in paragraph (b)(1) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access American lobster permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access American lobster permit by submitting the information described in paragraphs (d) through (e) of this section. In the event the application is denied, the applicant may appeal as specified in paragraph (b)(5) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access American lobster permit will be issued to the vessel.

(5) *Appeal of denial of limited access American lobster permit or of permit category assignment.* (i) Any applicant denied a limited access American lobster permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting, in writing, within 30 days of the notice of initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) *Recommendations to the Regional Director by a hearing officer.* A hearing officer shall be appointed by the Regional Director to review the initial decision. The hearing officer shall make findings and a recommendation to the Regional Director, which shall be advisory only.

(v) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(c) *Condition.* Vessel owners who apply for a permit under this section must agree, as a condition of the permit, that the vessel and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part. The vessel and all such fishing, catch, and gear shall remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for 1995 limited access American lobster permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (b)(1) of this section. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, and settlement sheets.

(e) *Information requirements.* In addition to applicable information required to be provided by paragraph (d) of this section, an application for a Federal American lobster permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation; and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having more than a 25 percent interest; and name and signature of the owner or the owner's authorized representative.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee shall be calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (g)(1) of this section.

(g) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under paragraph (b)(5) of this section, the Regional Director shall issue a Federal American lobster vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received; or

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (b)(1)(iii) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (b)(1) and (2) of this section; or

(iv) The applicant has failed to meet any other application requirements stated in this part.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(h) *Expiration.* A Federal American lobster permit will expire upon the renewal date specified in the permit.

(i) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (l) of this section.

(j) *Replacement.* Replacement permits, for an otherwise valid permit, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal Fisheries Permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(k) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written notice of the change must be submitted to the Regional Director. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(m) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(n) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(o) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(p) *Limited access American lobster permit renewal.* To renew or apply for a limited access American lobster permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. Failure to renew a limited access American lobster permit in any year bars the renewal of the permit in subsequent years.

(q) *Abandonment or voluntary relinquishment of limited access American lobster permits.* If a vessel's limited access American lobster permit is voluntarily relinquished to the Regional Director, or abandoned through failure to renew or otherwise, no limited access American lobster permit may be re-issued or renewed based on that vessel's history, or to any vessel relying on that vessel's history.

§ 649.5 Operator permits.

(a) *General.* Beginning on January 1, 1995, any operator of a vessel issued a Federal limited access American lobster permit under § 649.4(b), or any operator of a vessel of the United States that fishes for, possesses, or lands American lobsters, in or harvested from the EEZ must have been issued and carry on board a valid operator's permit issued under this section. This requirement does not apply to party, charter, and dive boats that possess six or fewer American lobsters, not intended for or resulting in trade, barter or sale, per person aboard the vessel at any time, or to recreational vessels, and vessels that fish exclusively in state waters for American lobsters.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree, as a condition of this permit, that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or on board a vessel permitted under §649.4(b). The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be on board any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements*. An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two color passport-size photographs.

(e) *Fees*. The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified in this section are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration*. A Federal operator permit will expire upon the renewal date specified in the permit.

(h) *Duration*. A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement*. Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer*. Permits issued under this section are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information*. Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration*. Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display*. Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions*. Vessel operators with suspended or revoked permits may not be on board a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility*. Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§649.6 Dealer permits.

(a) All dealers must have been issued, and have in their possession, a valid permit issued under this section.

(b) *Dealer application*. Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. For 1994, a copy of an applicant's completed application will serve as a temporary permit until the applicant has received a permanent permit. The Regional Director will notify the applicant of any deficiency in the application, pursuant to this section.

(c) *Information requirements*. Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees*. The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance*. Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant, unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration*. A Federal dealer permit will expire upon the renewal date specified in the permit.

(g) *Duration*. A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this section are not transferable or assignable. A permit is valid only for the person, or other business entity, to which it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this section must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 649.7 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its name on the port and starboard sides of its bow and, if possible, on its stern.

(b) *Official number.* Each fishing vessel subject to this part that is over 25 ft (7.6 m) in length must display its official number on the port and starboard sides of its deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under chapter 123 of title 46 U.S.C.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part must:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 649.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal American lobster permit under § 649.4 to do any of the following:

(1) Retain on board, land, or possess at or after landing, American lobsters that fail to meet the carapace length standard specified in § 649.20(b). All American lobsters will be subject to inspection and enforcement, up to and including the time when a dealer receives or possesses American lobsters for a commercial purpose.

(2) Retain on board, land, or possess any American lobster or parts thereof in violation of the mutilation standards specified in § 649.20(c).

(3) Retain on board, possess, or land any berried female American lobster specified in § 649.20(d).

(4) Remove eggs from any berried female American lobster, land, or possess any such lobster from which eggs have been removed.

(5) Retain on board, land, or possess any V-notched female American lobsters throughout the range of the stock.

(6) Possess, deploy, haul, harvest lobster from, or carry aboard a vessel any gear not identified, marked, vented, and panelled in accordance with the requirements specified in § 649.21, unless such gear has been rendered unfishable.

(7) Fish for, land, or possess American lobsters after December 31, 1994, unless the operator of the vessel has been issued an operator's permit under § 649.5, and the permit is on board the vessel and is valid.

(8) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 649.4(l) or § 649.5(k).

(9) Make any false statement in connection with an application under § 649.4 or § 649.5.

(10) Fail to affix and maintain permanent markings, as required by § 649.7.

(11) Sell, transfer, or barter or attempt to sell, transfer, or barter to a dealer any American lobsters, unless the dealer has a valid Federal Dealer's Permit issued under § 649.6.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that has not been issued a limited access American lobster permit as described under § 649.4(b), to possess on board a vessel or land American lobsters unless the vessel is a party, charter, or dive boat and there are six or fewer American lobsters per person on such boats, and the lobsters are not sold, traded or bartered, or unless the vessel is a recreational vessel or a vessel fishing for American lobsters exclusively in state waters.

(c) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) and (b) of this section, it is unlawful for any person to do any of the following:

(1) Possess on board a vessel or land American lobsters unless:

(i) The American lobsters were harvested by a vessel that has been issued and carries on board a valid Federal American lobster permit under § 649.4(a); or a valid limited access American lobster permit under § 649.4(b); or

(ii) The American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters; or

(iii) The American lobsters were harvested by a party, charter, or dive vessel that possesses six or fewer American lobsters per person on board the vessel and the lobsters are not intended to be or are not traded, bartered, or sold; or

(iv) The American lobsters were harvested by a recreational fishing vessel.

(2) Sell, barter, or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer, for a commercial purpose, any American lobsters from a vessel, unless the vessel has been issued a valid Federal American lobster permit under § 649.4, or the American lobsters were harvested by a vessel without a Federal American lobster permit that fishes for American lobsters exclusively in state waters;

(3) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, as, or in the capacity of, a dealer, American lobsters taken from or harvested by a fishing vessel issued a Federal American lobster

permit, unless in possession of a valid dealer's permit issued under § 649.6;

(4) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a valid Federal American lobster permit under § 649.4, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters;

(5) Beginning January 1, 1995, to be, or act as, an operator of a vessel fishing for or possessing American lobsters in or from the EEZ, or issued a Federal American lobster permit under § 649.4 (b), without having been issued and possessing a valid operator's permit issued under § 649.5.

(6) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part;

(7) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any American lobsters;

(8) Violate any provision of this part, the Magnuson Act, or any regulation, permit, or notification issued under the Magnuson Act or these regulations;

(9) Possess or land any American lobsters harvested in or from the EEZ in violation of § 649.20; or

(10) Ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster in violation of § 649.20.

(d) Any person possessing, or landing American lobsters at or prior to the time when those American lobsters are landed, or are received or possessed by a dealer, is subject to all of the prohibitions specified in paragraphs (a), (b) and (c) of this section, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobsters exclusively in state waters; or are from a party, charter, or dive vessel that possesses or possessed six or fewer American lobsters per person aboard the vessel at any time and the lobsters are not intended for sale, trade, or barter; or are from a recreational vessel.

(e) *Presumption.* American lobsters that are possessed, or landed at or prior to the time when the American lobsters are received by a dealer, or American lobsters that are possessed by a dealer, are presumed to be harvested from the EEZ or by a vessel with a Federal lobster permit. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel without a Federal American lobster permit and fishing exclusively for American lobsters in state waters will be sufficient to rebut the presumption.

(f) The possession of egg-bearing female American lobsters, V-notched female American lobsters, or American lobsters that are smaller than the minimum size set forth in § 649.20(b), will be *prima facie* evidence that such American lobsters were taken or imported in violation of these regulations. Evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

§ 649.9 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 649.10 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 649.20 Harvesting and landing requirements.

(a) *Condition.* By being issued a Federal limited access American lobster permit, the vessel owner is subject to all measures in this subpart, regardless of where American lobsters were harvested.

(b) *Carapace length.* (1) The minimum carapace length for all American lobsters harvested in or from the EEZ is 3¼ inches (8.26 cm).

(2) The minimum carapace length for all American lobsters landed, harvested, or possessed at or after landing by vessels issued a Federal American lobster permit, is 3¼ inches (8.26 cm).

(3) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in this paragraph (b).

(c) *Mutilation.* (1) No person may remove meat or any body appendage from any American lobster harvested in or from the EEZ before landing, or to have in possession on board any American lobster part other than whole lobsters.

(2) No owner, operator or person aboard a vessel issued a Federal American lobster permit may remove meat or any body appendage from any American lobster before landing, or to have in possession on board any American lobster part other than whole lobsters.

(d) *Berried females.* (1) Any berried female American lobster harvested in or from the EEZ must be returned to the sea immediately.

(2) Any berried female American lobster harvested or possessed by a vessel issued a Federal American lobster permit must be returned to the sea immediately.

(3) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any berried female American lobster as specified in this paragraph (d).

(e) *Scrubbing.* (1) No person may remove extruded eggs attached to the abdominal appendages from any female American lobster harvested on or from the EEZ.

(2) No owner, operator or person aboard a vessel issued a Federal American lobster permit may remove extruded eggs attached to the abdominal appendages from any female American lobster.

(3) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that bears evidence of the forcible removal of extruded eggs from its abdominal appendages as specified in this paragraph (e).

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

(a) *Identification.* All lobster gear deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, and not permanently attached to the vessel, must be legibly and indelibly marked with one of the following codes of identification:

(1) A number assigned by the Regional Director; and/or

(2) Whatever positive identification marking is required by the vessel's home-port state.

(b) *Marking.* In the areas of the EEZ described in paragraph (b)(4) of this section, lobster pot trawls are to be marked as follows:

(1) Lobster pot trawls of three or fewer pots must be marked with a single buoy.

(2) Lobster pot trawls consisting of more than three pots must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle from magnetic north through east, to and including south) of an American lobster pot trawl must be marked with a radar reflector only. Standard tetrahedral corner radar reflectors (see Figure 1 of this part) of at least 8 inches (20.32 cm)(both in height

and width, and made from metal) must be employed.

(3) No American lobster pot trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from buoy to buoy.

(4) Gear marking requirements apply in the following areas:

(i) *Gulf of Maine gear area.* All waters of the EEZ north of 42°20′ N. lat. seaward of a line drawn 12 nautical miles (22.2 km) from the baseline of the territorial sea;

(ii) *Georges Bank gear Area.* All waters of the EEZ south of 42°20′ N. lat. and east of 70°00′ W. long. or the outer boundary of the territorial sea, whichever lies farther east;

(iii) *Southern New England gear Area.* All waters of the EEZ west of 70°00′ W. long., east of 71°30′ W. long. at a depth greater than 25 fathoms (45.72 m); and

(iv) *Mid-Atlantic gear Area.* All waters of the EEZ, west of 71°30′ W. long. and north of 36°33′ N. lat. at a depth greater than 40 fathoms (73.15 m).

(c) *Escape vents.* All American lobster traps deployed in the EEZ or possessed by a person whose vessel is permitted for fishing in the EEZ, as specified under § 649.4, must be constructed to include one of the following escape vents in the parlor section of the trap. The vent must be located in such a manner that it would not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use.

(1) The specifications for escape vents are as follows:

(i) A rectangular portal with an unobstructed opening not less than 1⅞ inches (4.76 cm) by 5¾ inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2⅜ inches (6.03 cm) in diameter.

(2) The Regional Director may, at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve, and publish in the Federal Register any other type of acceptable escape vent that the Regional Director finds to be consistent with paragraphs (c)(1)(i) and (ii) of this section.

(d) *Ghost panel.* Lobster traps not constructed entirely of wood must contain a ghost panel.

(1) The specifications of this requirement are as follows:

(i) The opening to be covered by the ghost panel must be rectangular and shall not be less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm).

(ii) The panel must be constructed of, or fastened to the trap with, one of the following untreated materials: Wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter.

(iii) The door of the trap may serve as the ghost panel, if fastened with a material specified in paragraph (d)(1)(ii) of this section.

(iv) The ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

(2) The Regional Director may, at the request of, or after consultation with, the Lobster Oversight Committee of the Council, approve, and publish in the Federal Register, any other design, mechanism, material, or specification not described in the regulations in this part that serves to create an escape portal not less than 3¾ inches (9.53 cm) by 3¾ inches (9.53 cm).

(e) *Enforcement action.* Unidentified, unmarked, unvented, or improperly vented American lobster traps will be seized and disposed of in accordance with the provisions of part 219 of this title.

§ 649.22 Experimental fishing exemption.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the American lobster resource or fishery.

(b) The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the American lobster resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

Subpart C—Stock Rebuilding Program and Framework Adjustments to Management Measures

§ 649.41 Purpose and scope.

The purpose of this subpart is to specify the requirements and framework procedures for implementing the Stock Rebuilding Program, intended to eliminate overfishing in any resource areas.

§ 649.42 Stock rebuilding program requirements and time frame.

(a) *General.* (1) The Council has until July 20, 1995 to submit to NMFS management measures to achieve the objectives of the FMP. The measures must be designed to achieve the FMP objectives for reducing fishing mortality within 5 years for the stock in the Gulf of Maine segment of the fishery and 10 years for the Southern New England segment of the stock. Such measures may be submitted through the Magnuson Act amendment process or through the first-year area management framework specifications in § 649.43.

(2) In developing such management measures, the Council shall submit management measures to reduce fishing mortality in each of four management areas specified in paragraph (b) of this section. These management measures shall be implemented according to the first-year area management framework specifications in § 649.43.

(3) If the Council has not submitted management measures sufficient to achieve the objectives of the FMP on or before July 20, 1995, the Secretary shall determine, according to provisions of 16 U.S.C. 1854(c), whether to prepare an amendment to the FMP.

(b) *Management areas.* The Stock Rebuilding Program to be submitted by the Council shall be developed based on the status of stock of American lobsters and management considerations for each of the areas described and defined in this paragraph (b) (see Figure 2 of this part).

(1) *Area 1. Near-shore EEZ Waters of the Gulf of Maine.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and the territorial sea:

Point	Latitude	Longitude
A	44°04′ N.	67°19′ W. and northward along the irregular U.S. - Canada Maritime Boundary to the territorial sea.
B	43°03′ N.	70°00′ W.
C	42°14′ N.	70°00′ W.
D	42°08′ N.	69°55′ W.
E	42°06′ N.	70°04′ W.

(2) *Area 2. Near-shore EEZ Waters of Southern New England.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points in the order stated and the territorial sea:

Point	Latitude	Longitude
E	42°06′ N.	70°04′ W.
D	42°08′ N.	69°55′ W.
F	41°10′ N.	69°06′ W.
G	40°46′ N.	71°34′ W.
H	41°06′ N.	71°43′ W.
I	41°05′ N.	71°49′ W.

(3) *Area 3. EEZ Offshore Waters.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and westerly of the U.S. - Canada Maritime Boundary:

Point		Longitude
A	44°04′ N.	67°19′ W. and northward along the irregular U.S. - Canada Maritime Boundary to the territorial sea.
B	43°03′ N.	70°00′ W.
C	42°14′ N.	70°00′ W.
D	42°08′ N.	69°55′ W.
F	41°10′ N.	69°06′ W.
G	40°46′ N.	71°34′ W.
J	40°13′ N.	72°44′ W.
K	38°39′ N.	73°24′ W.
L	38°12′ N.	73°55′ W.
M	37°12′ N.	74°44′ W.
N	35°41′ N.	75°10′ W.
O	35°15′ N.	75°28′ W.

(4) *Area 4. Near-shore EEZ Waters of the Middle Atlantic.* This area is defined by the area bounded by straight lines (rhumb lines) connecting the following points, in the order stated, and the territorial sea:

Point	Latitude	Longitude
I	41°05′ N.	71°49′ W.
H	41°06′ N.	71°43′ W.
G	40°46′ N.	71°34′ W.
J	40°13′ N.	72°44′ W.
K	38°39′ N.	73°24′ W.
L	38°12′ N.	73°55′ W.
M	37°12′ N.	74°44′ W.
N	35°41′ N.	75°10′ W.
O	35°15′ N.	75°28′ W.

(c) *Effort Management Teams (EMT).* (1) The Council shall establish EMTs for each area specified in paragraph (b) of this section, for the purpose of making recommendations to the Council on management measures to achieve the objectives of the FMP.

(2) Members of each EMT shall be appointed by the Council, in consultation with appropriate states and NMFS. Members of the EMT shall consist of a group of technical representatives that serve on each EMT and a group of representatives from the lobster industry, based on their geographical affiliation with an EMT. The Council may decide the number of representatives and operating procedures of the EMTs.

(3) No later than January 20, 1995, each EMT shall report its recommendations for management measures for the stock rebuilding program for the area it represents to the Council.

§ 649.43 First year framework specifications.

(a) On or before January 20, 1995, each EMT shall submit its recommendations for management measures for the area it represents to the Council. In developing these recommendations, the EMTs may consider and recommend additional restrictions or limitations on vessels participating in the lobster fishery according to the categories and guidelines contained in paragraph (b) of this section.

(b) After receiving the recommendations of the EMTs, the Council shall determine what management measures are necessary for each management area, in order to achieve the objectives of stock rebuilding specified in the FMP. For the management measures the Council determines are necessary to meet FMP objectives, the Council shall provide appropriate rationale and economic and biological analysis of the determinations. The Council shall make these determinations over the span of at least two Council meetings and provide the public with advance notice of, and opportunity to comment on, the determinations and the analyses before making final recommendations to be submitted to NMFS. The Council's recommendation on necessary management measures may come from one or more of the following categories:

(1) Minimum-size changes;

(2) A maximum-size limit;

(3) Trap limits;

(4) Seasonal closures of one or more management areas;

(5) Closed areas or zones within a management area;

(6) Restrictions on allowable fishing time;

(7) Restrictions on allowable catches;

(8) Permitting restrictions;

(9) Additional restrictions on gear;

(10) Overfishing definition;

(11) Limitations on participation in the fishery in accordance with the control date guidelines listed below. These guidelines will apply until a stock rebuilding program is established.

(i) It is the intent of the Council that in the event that a system of assigning fishing rights is developed as part of the FMP, such assignments shall be based upon historical levels of participation in the fishery prior to March 25, 1991, with consideration for recent investments that have not yet been reflected in measures of participation.

(ii) New or re-rigged vessels will be given consideration in the assignment of fishing rights if:

(A) They were under construction or re-rigging for directed lobster fishing as of March 25, 1991, as evidenced by written construction contracts, work orders, equipment purchases, or other evidence of substantial investment and intent to participate in the lobster fishery; and

(B) They possessed an American lobster permit and landed lobster prior to March 25, 1992.

(iii) The public is further notified that it is the intent of the Council that historical participation will transfer with a vessel, for transfers made after March 25, 1991, unless such transfer is accompanied by a written document indication the agreement of both buyer and seller that any future fishing rights applicable to that vessel are not being transferred with the vessel.

(iv) The Council further intends that any system of assigning fishing rights will take into consideration the following concerns relative to individuals or corporations that have sold a vessel within the time that may be chosen to determine historical fishing rights:

(A) The degree of economic dependence upon the lobster fishery including, but not limited to, the percentage of income derived from the lobster fishery;

(B) Extent of past participation in the lobster fishery; and

(C) Demonstration of intent prior to March 25, 1991, to re-enter the lobster fishery with a different vessel.

(12) Any other restrictions that the Council may designate for the purpose of reducing or controlling fishing mortality rates, except that an Individual Transferable Quota (ITQ) system would require a full FMP amendment.

(c) After developing necessary management measures and receiving public testimony, the Council shall make a recommendation to the Regional Director on or before July 20, 1995. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted, following their promulgation as a final rule.

(d) If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(1) If the Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule, based on the factors specified in paragraph (c) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) If the Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) If the Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(e) At any time, the Council may make other adjustments to management measures implemented under this part pursuant to the provisions in § 649.44.

(f) Nothing in this section is meant to diminish the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

§ 649.44 Framework specifications after the first year of implementation.

(a) Annually, upon request from the Council, the Regional Director will provide the Council with information of the status of the American lobster resource, based on the most recent stock assessment report.

(b) The Council and Atlantic States Fisheries Commission, through consultation with the ASMFC Lobster Scientific Committee within the stock assessment process and with the EMTs, shall continue to monitor the effectiveness of the Stock Rebuilding Program and to ensure, to the extent possible, that regional measures (within a Management Area) do not shift costs from one Management Area to another.

(c) In addition, the EMTs, on at least an annual basis, shall determine the extent to which the objectives of the FMP are being achieved and shall make recommendations to the Council for further management actions, if required.

(d) After receiving the EMT recommendations, the Council shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the FMP. After considering the EMT's recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to, and at, the second Council meeting. The Council's recommendation on adjustments or additions to management measures may come from one or more of the following categories:

(1) Minimum-size changes;

(2) A maximum-size limit;

(3) Trap limits;

(4) Seasonal closures of one or more management areas;

(5) Closed areas or zones within a management area;

(6) Restrictions on allowable fishing time;

(7) Restrictions on allowable catches;

(8) Permitting restrictions;

(9) Additional restrictions on gear;

(10) Overfishing definition;

(11) Limitations on participation in the fishery in accordance with the control date guidelines contained in § 649.44(b)(11). These guidelines will apply until a stock rebuilding program is established.

(12) Any other restrictions which the Council may designate for the purpose of reducing or controlling fishing mortality rates, except that an Individual Transferable Quota (ITQ) system would require a full FMP amendment.

(e) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to protect the resource; and

(4) Whether there will be a continuing evaluation of management measures adopted, following their promulgation as a final rule.

(f) If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(1) If the Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule, based on the factors specified in paragraph (d) of this section, the action will be published in the **Federal Register** as a final rule; or

(2) If the Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) If the Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(g) Nothing in this section shall impair the authority of the Secretary to take emergency action under section 305(c) of the Magnuson Act.

BILLING CODE 3510-22-F-P

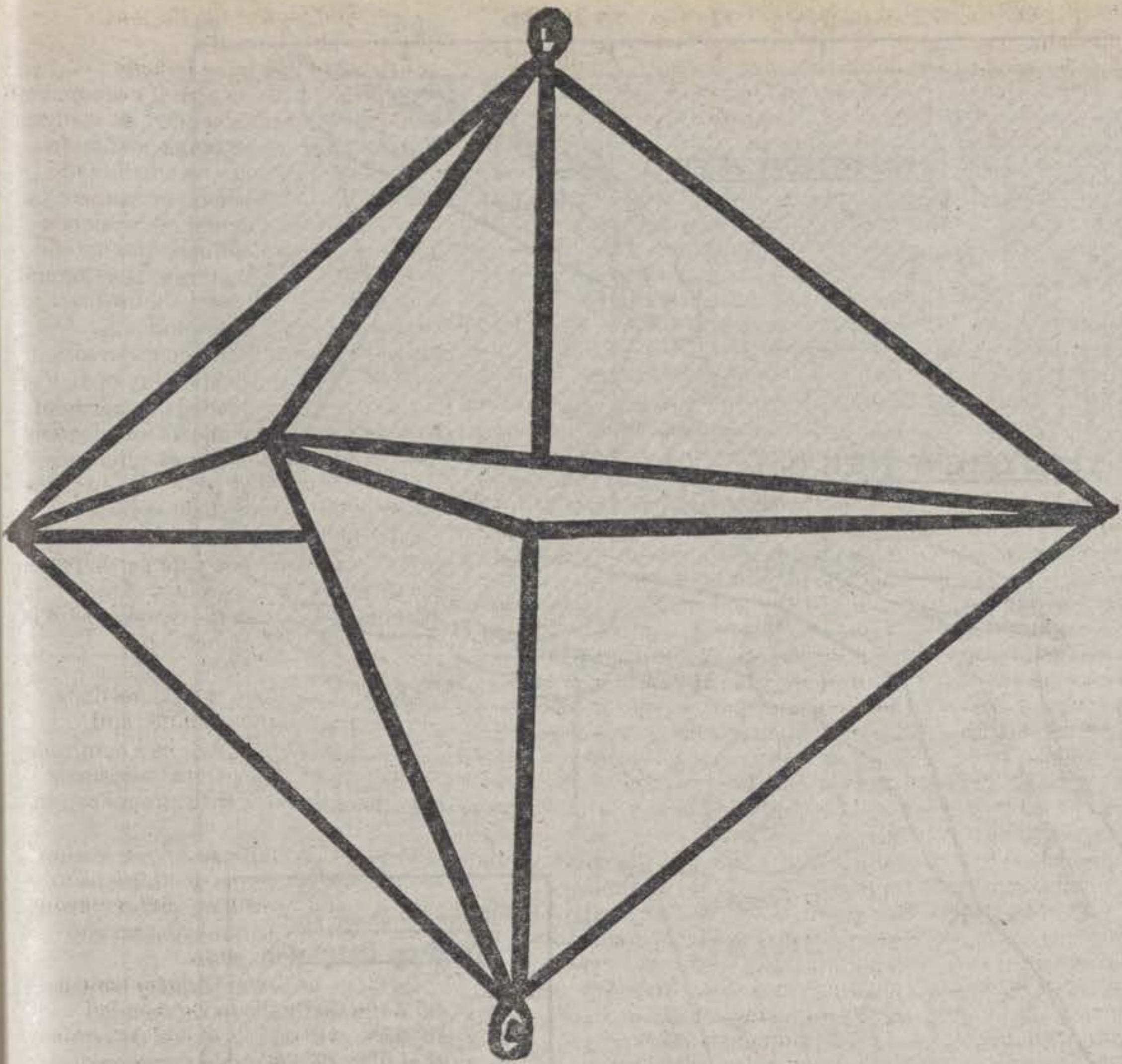

Figure 1 to Part 649. - Standard Tetrahedral Corner Radar Reflector

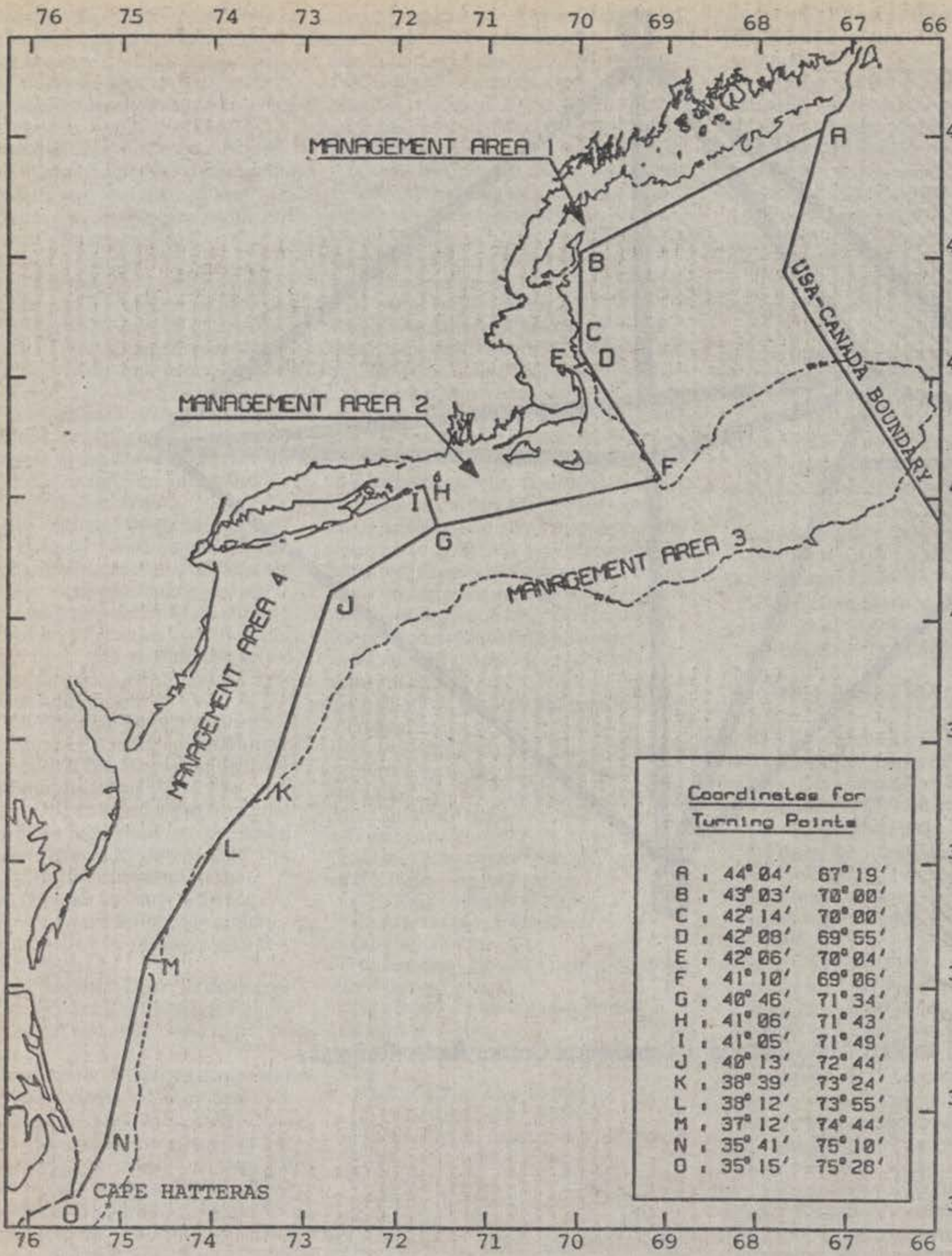

Figure 2 . American lobster Management Areas established for the purposes of regional lobster management.

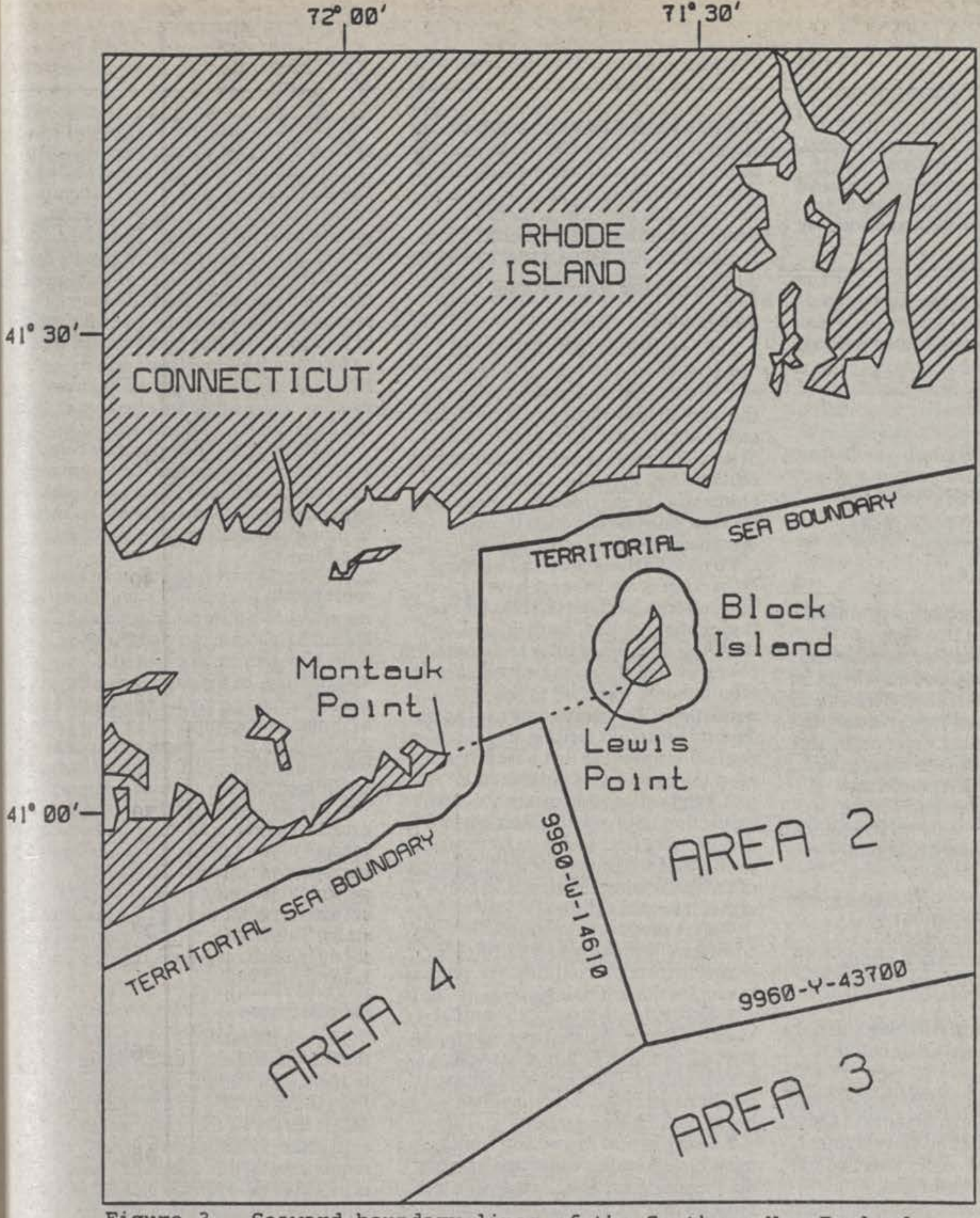

Figure 3. Seaward boundary lines of the Southern New England Nearshore Area (Area 2) and the Offshore Area (Area 3).

[FR Doc. 94-14989 Filed 6-20-94; 8:45 am]

BILLING CODE 3510-22-F-C

Proposed Rules

Federal Register
Vol. 59, No. 118
Tuesday, June 21, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 93–122–1]

Animal Export Inspection Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations by establishing additional standards for export inspection facilities. This action would ensure that all export inspection facilities have running water and water drainage systems, storage areas, and telephone. This action would also require facilities where horses are inspected to have walkways in front of stalls and ceiling height adequate for horses.

We are also proposing to require that animals intended for export be inspected within 24 hours of embarkation and to make a minor language change to the regulations for the sake of clarity.

DATES: Consideration will be given only to comments received on or before August 22, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–122–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Faizi, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 762, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported to Canada or Mexico, must be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet the specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

We are proposing to establish additional standards in § 91.14(c) for export inspection facilities. We propose to require the following:

1. Export inspection facilities that examine horses must have ceilings at least 12 feet high in any areas where horses will be. This is the minimum height necessary to accommodate horses, which may rear up.

2. Every export inspection facility must have running water and a water drainage system. The drainage system must be able to control surface drainage into or from the facility in a manner that prevents any significant risk of livestock diseases being spread into or from the facility. While current regulations in § 91.14(c)(5) require that facilities have only "an ample supply of potable water," we believe that running water and a drainage system are necessary to adequately water the animals, to clean and disinfect the facility, and to prevent the spread of disease.

We have determined that not all currently approved export inspection facilities have water drainage systems and that these proposed requirements could thus compel these facilities to make structural changes. Therefore, we would allow these facilities 2 years from the effective date of the final version of this rule to install a water drainage system that prevents any significant risk of livestock diseases being spread into or from the facility. However, all facilities would be required to have running water upon the effective date of the final version of this rule.

3. Every export inspection facility must have a storage area for equipment that may accompany horses and other export animals. The area must be able to protect equipment from weather conditions.

4. Every export inspection facility must have a telephone. A telephone is necessary to notify an Animal and Plant Health Inspection Service (APHIS) representative, an accredited veterinarian, or the exporter in the event of an emergency, such as sudden onset of illness among animals to be exported. A telephone is also necessary to make reservations, cancellations, or changes regarding the arrival time of animals.

5. Export inspection facilities for examining horses must have walkways in front of the animal stalls. Walkways must be wide enough that APHIS personnel can monitor and inspect animals without having to enter animal stalls. This requirement is essential for safety reasons, as horses may kick while being inspected.

Miscellaneous

The regulations in § 91.3(a) require that certain animals intended for export to Mexico or Canada be accompanied from the State of origin to the United States border by an origin health certificate. In addition to other requirements, this certificate must certify that the animals were inspected within the 30 days prior to their movement for export and that they "were found to be sound, healthy, and free from evidence of communicable disease and exposure thereto." We are proposing to remove the word "sound" from this section, as it is too vague to be enforceable.

We are also proposing to amend the regulations in § 91.15(a). The regulations in 91.15(a) require that animals be inspected by an APHIS veterinarian prior to export, but do not specify a time frame prior to export during which animals must be inspected. We are proposing to require that all animals intended for export be inspected by an APHIS veterinarian within 24 hours of embarkation. Because animals may become ill shortly before embarkation, and because we do not want sick or diseased animals to be exported from the United States, we believe it is imperative that animals be inspected by an APHIS veterinarian within 24 hours of embarkation.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule, if adopted, would establish additional standards for animal export inspection facilities by requiring all facilities to have adequate running water and water drainage systems, storage areas, and a telephone. This action would also require facilities where horses are inspected to have walkways in front of stalls and ceiling height adequate for horses.

Though a small number of facilities do not have water drainage systems, all of the facilities currently approved for export inspection already meet all of the other additional standards proposed here. We are proposing, therefore, only to codify existing industry practices. We anticipate that this proposal will have an economic impact on the few existing export inspection facilities without drainage systems.

Information was not available to us for determining the economic impact of requiring that water drainage systems be installed in facilities not already so equipped. However, we have tried to minimize any economic impact by proposing to allow these facilities 2 years from the effective date of the final version of this rule to install water drainage systems. Allowing these facilities 2 years to install the water drainage systems would ease the economic impact of this new standard, as affected facilities would have additional time to shop for different drainage system options and would be able to spread out the costs of installation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 would be amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 would be revised to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.3 [Amended]

2. In § 91.3, paragraph (a), the third sentence would be amended by removing the phrase "sound, healthy," and adding the word "healthy" in its place.

3. Section 91.14 would be amended as follows:

a. Paragraph (c)(2) would be amended by adding a new sentence at the end of the paragraph to read as set forth below.

b. Paragraph (c)(4) would be amended by adding two new sentences at the end of the paragraph to read as set forth below.

c. Paragraph (c)(5) would be amended by adding the word "running," immediately following the phrase "An ample supply of" in the first sentence.

d. Paragraph (c)(11) would be amended by adding a new sentence at the end of the paragraph to read as set forth below.

e. New paragraphs (c)(12) and (c)(13) would be added to read as set forth below.

§ 91.14 [Amended]

* * * * *

(c) * * *

(2) * * * Facilities that inspect horses must have ceilings at least 12 feet high in any areas where horses will be kept.

* * * * *

(4) * * * All facilities must have running water available to wash and disinfect the facilities. On and after [Insert effective date of final rule], facilities to be approved must have a drainage system; and, on and after [Insert date 2 years after effective date of final rule], every facility approved before [Insert effective date of final rule] must have a drainage system. The drainage system must control surface drainage into or from the facility in a manner that prevents any significant risk of livestock diseases being spread into or from the facility.

* * * * *

(11) * * * The facility must have a working telephone.

(12) *Storage areas.* Facilities must have storage areas adequate to store any equipment accompanying the animals and to protect equipment from weather conditions.

(13) *Walkways.* Facilities where horses are inspected must have walkways in front of horse stalls wide enough to allow APHIS personnel to monitor and inspect horses without entering individual stalls.

§ 91.15 [Amended]

8. In § 91.15, paragraph (a), the phrase "within 24 hours of embarkation" would be added immediately following the phrase "shall be inspected".

Done in Washington, DC, this 15th day of June 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-15037 Filed 6-20-94; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 94

[Docket No. 93-061-1]

Certificate for Importation of Milk and Milk Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of milk and milk products

to require that any milk or milk product imported into the United States from countries declared free of rinderpest and foot-and-mouth disease be accompanied by a certificate stating that the milk was produced and processed in a country declared free of rinderpest and foot-and-mouth disease, or that the milk product was processed in a country declared free of rinderpest and foot-and-mouth disease from milk produced in a country declared free of rinderpest and foot-and-mouth disease. The certificate would have to name the country in which the milk was produced and the country in which the milk or milk product was processed. Also, the certificate would state that, except for certain movements under seal, the milk or milk product has never been in any country in which rinderpest or foot-and-mouth disease exists. Requiring a certificate would help ensure that milk or milk products imported into the United States do not introduce rinderpest or foot-and-mouth disease into the United States.

DATES: Consideration will be given only to comments received on or before August 22, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–061–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine.

The regulations in § 94.1(a)(2) list countries that are declared free of rinderpest and FMD. Milk and milk products have the potential to spread rinderpest and FMD if they are produced or processed in or have transited a country where these diseases exist. Therefore, under § 94.16, milk and milk products are restricted entry into the United States unless they are imported from countries listed in § 94.1(a)(2). As trade barriers are being lifted between many countries (such as among members of the European Union), it has become increasingly difficult to ensure that milk or milk products imported from countries listed in § 94.1(a)(2) were produced and processed in a country free of rinderpest and FMD and were never in a country where rinderpest or FMD exists.

For example, some milk produced in France was recently imported into the United States from Great Britain. At that time, France was designated in the regulations as a country where rinderpest or FMD exists. If APHIS had known that the milk imported from Great Britain had been produced in France, we would not have permitted its importation into the United States.

To help prevent similar incidents, we are proposing to amend § 94.16 to require that milk or milk products imported into the United States from a country listed in § 94.1(a)(2) as free of rinderpest and FMD must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the country of export. The certificate would have to state that the milk was produced and processed in a country listed in § 94.1(a)(2), or that the milk product was processed in a country listed in § 94.1(a)(2) from milk produced in a country listed in § 94.1(a)(2). The certificate would have to name the country in which the milk was produced and the country in which the milk or milk product was processed. Further, the certificate would state that, except for movement under seal as described in § 94.16(c), the milk or milk product has never been in any country in which rinderpest or FMD exists. (Section 94.16(c) allows milk or milk products imported into the United States from countries listed in § 94.1(a)(2) as free of rinderpest and FMD to transit a country infected with rinderpest or FMD en route to the United States, provided the milk or milk products are, among other things, transported under serially numbered official seals to ensure that the milk or milk product is not removed from its container during transit.)

This certification would help ensure that milk or milk products imported into the United States do not introduce rinderpest or FMD into the United States.

However, we do not propose to require that milk or milk products imported from Canada be accompanied by the proposed certificate, even though Canada is listed in § 94.1(a)(2) as free of rinderpest and FMD. Canada has a common land border with only the United States, and Canada imports milk and milk products from other countries under conditions as restrictive as would be acceptable for importation into the United States. Therefore, we do not believe the certificate would be necessary.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would require that, except for milk and milk products imported from Canada, milk and milk products imported into the United States from countries declared free of rinderpest and FMD be accompanied by a certificate stating that the milk was produced and processed in a country declared free of rinderpest and FMD, or that the milk product was processed in a country declared free of rinderpest and FMD from milk produced in a country declared free of rinderpest and FMD. The certificate would have to name the country in which the milk was produced and the country in which the milk or milk product was processed. The certificate would also have to state that the milk or milk product has never been in any country in which rinderpest or FMD exists.

We do not expect that requiring a certificate would have any significant economic impact for U.S. importers of milk or milk products. The exporter of the milk or milk products would have to obtain the required certification through the national government of the country of export prior to shipping the milk or milk products to the United States. We do not know how many of those governments would charge a fee for providing the certificate, but it is unlikely that any fee would be high enough to significantly raise the cost of the milk or milk product should the exporter choose to pass the cost of the certificate on to the importer in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.16, a new paragraph (d) would be added to read as follows:

§ 94.16 Milk and milk products.

* * * * *

(d) Except for milk and milk products imported from Canada, milk or milk products imported from a country listed in § 94.1(a)(2) as free of rinderpest and foot-and-mouth disease must be accompanied by a certificate endorsed by a full-time, salaried veterinarian employed by the country of export. The certificate must state that the milk was produced and processed in a country listed in § 94.1(a)(2), or that the milk product was processed in a country listed in § 94.1(a)(2) from milk produced in a country listed in § 94.1(a)(2). The certificate must name the country in which the milk was produced and the country in which the milk or milk product was processed. Further, the certificate must state that, except for movement under seal as described in § 94.16(c), the milk or milk product has never been in any country in which rinderpest or foot-and-mouth disease exists.

Done in Washington, DC, this 15th day of June 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–15034 Filed 6–20–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 94–003]

RIN 2115–AE76

Ballast Water Management for Vessels Entering the Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations to implement an amendment to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (the Act). The proposed regulations, if adopted, would require Ballast Water Management practices for each vessel entering the Hudson River, north of the George Washington Bridge, after operating on waters beyond the Exclusive Economic Zone.

These rules would help to prevent the additional introduction of nonindigenous aquatic nuisance species into the Great Lakes through the ballast water of vessels operating on the Hudson River.

DATES: Comments must be received on or before August 22, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 94–003), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division (G–MEP–1), (202) 267–6714.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94–003) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Historical records suggest that over 100 non-native species have been introduced into the Great Lakes and its tributaries. The primary medium for their introduction is believed to be ballast water from vessels. Many vessels take on water in foreign harbors or in the near shore waters which are often rich in living organisms. When these vessels arrive to take on cargo, they discharge ballast water and any organisms contained in the water enter the local ecosystem. While many of these species do not survive in this new environment, those that do quickly adapt, and in some instances thrive, particularly where there are no natural predators.

The Zebra Mussel provides a good example of the harmful effects of a newly introduced species. In 1988, this small bivalve mollusk native to the Black, Azov, and Caspian Seas in the Ukraine and southern Russia, was discovered in the Western Basin of Lake Erie. Scientists believe that it was introduced in 1986 by the discharge of freshwater ballast of a vessel from Northern Europe. Hundreds of millions of Zebra Mussels can now be found on and in pipes, screens, conduits, boat bottoms, floats, buoys, rocks, submerged objects, and native animals and plants. As a filter feeding organism, it removes vast quantities of microscopic organisms from the water, the same organisms that fish larvae and young fish rely upon for their food supply. It also completely covers rocks and other substances normally used by native fish for laying eggs. Since its introduction into the Great lakes the Zebra Mussel has reproduced and spread throughout the Great Lakes and its tributaries and has been found as far south as New Orleans.

The Coast Guard issued ballast water control regulations on April 8, 1993, for vessels entering the Great Lakes after operating beyond the exclusive economic zone (EEZ). Such vessels are required to exchange their ballast water beyond the EEZ. While the regulations are viewed as an excellent start toward addressing the nonindigenous aquatic nuisance species introduction problem, Congress now realizes that it is necessary to implement ballast water controls for vessels entering the Hudson River after operating beyond the EEZ. The Hudson River is connected to the Great Lakes through the New York State Barge Canal System which allows for the movement of commercial and recreational vessels throughout waterways of New York State and provides direct access to the Great Lakes. As a result of this connection, species released from vessel's ballast water into the Hudson River can migrate, or can be transferred by vessels navigating the canal system into the Great Lakes.

Solutions

Congress has noted that high seas ballast exchange is "not a panacea" for prevention of unintentional introductions of nonindigenous aquatic species. Other means of infestation such as attachment to anchor chains and vessel hulls contribute to infiltration. Moreover, the effects of ballast water exchange on high seas and coastal ecosystems are not yet completely known. Nevertheless, ballast water exchange currently appears to be the most cost and labor effective means of reducing the probability of new infestations. Alternative approaches may be warranted in some situations, or may replace ballast exchange entirely, depending upon knowledge obtained through a Task Force set up by the Act.

International Recognition

The need for control of the introduction of nonindigenous species has also been recognized by the international maritime community. The ballast water control regulations for vessels entering the Great Lakes that were issued by the Coast Guard on April 8, 1993, in large part, were based on ballast water control guidelines adopted by The Marine Environment Protection Committee of the International Maritime Organization at its 31st session in July 1991. The resolution (MEPC 50(31)) which accompanied the issuance of the guidelines recommends that member countries issue guidelines for the control of nonindigenous species into their ports.

United States Legislation

On November 4, 1993, Congress amended (Pub. L. 102–587) the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (the Act) (16 U.S.C. 4711(b)). This amendment extends the Act's applicability to vessels entering the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ. The Act, as amended, attempts to prevent the spread of injurious nonindigenous species into the Great Lakes through the ballast water of these vessels. The Act mandates that the Coast Guard, in consultation with the Task Force created by the Act, issue regulations to prevent the introduction and spread of aquatic nuisance species in the Great Lakes through the ballast water of vessels entering a U.S. port, north of the George Washington Bridge, on the Hudson River, after operating beyond the EEZ.

The current regulations contained in 33 CFR part 151, subpart C, issued under the Act, cover vessels entering the Great Lakes after operating beyond the EEZ and require the retention of ballast water or the exchange of ballast water beyond the EEZ, by vessels subject to the Act. Further, as authorized under the Act, those regulations permit the use of environmentally sound alternative ballast water management methods that the Coast Guard determines are as effective as ballast water exchange in preventing and controlling infestations of aquatic nuisance species, thereby providing the needed flexibility to approve additional ballast water management methods that, in the future, may prove to be even more effective than ballast water exchange. These requirements, as well as the other requirements contained in subpart C of part 151, would satisfy the requirements of the amendments to the Act if applied to vessels navigating on the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ. Therefore, few changes to the regulations issued by the Coast Guard on April 8, 1993, covering vessels entering a U.S. port on the Great Lakes after operating beyond the EEZ, are required to implement the requirements of the amendments to the Act.

The Act provides for civil and criminal penalties (16 U.S.C. 4711(c) and (d)). Any person who violates the regulations shall be liable for a civil penalty not to exceed $25,000. Each day of a continuing violation would constitute a separate violation. A vessel operated in violation of the regulations would be liable in rem for any civil penatly assessed for that violation. Any person who knowingly violates the regulations would be guilty of a class C felony. A class C felony is punishable by imprisonment of not more than 12 years (18 U.S.C. 3581(b)(3)) and a fine of not more than $250,000 for an individual or not more than $500,000 for an organization (18 U.S.C. 3571(c)(3)).

In accordance with the Act, the Coast Guard proposes the regulations discussed below.

Discussion of Proposed Rules

This proposal, if adopted, would propose changes to subpart C of 33 CFR part 151 to extend the applicability of the ballast water management requirements to vessels operating on the Hudson River, north of the George Washington Bridge, after operating on the waters beyond the EEZ.

Proposed changes to § 151.1504 would add "the Captain of the Port, New York," to the definition of "Captain of the Port (COTP)" and add the "Hudson River, north of the George Washington Bridge," to the definition of "Voyage".

A proposed change to § 151.1510(a)(1) would require that an exchange of ballast water be carried out on the waters beyond the EEZ, in a depth exceeding 2000 meters, prior to a vessel traveling on the Hudson River, north of the George Washington Bridge.

A proposed change to § 151.1510(a)(2) would authorize the COTP to seal the tanks of vessels subject to the Act, in which ballast water is retained, for the duration of the voyage within the Hudson River, north of the George Washington Bridge.

By proposing to apply subpart C of part 151 to the vessels subject to the amendments to the Act, the Coast Guard is proposing that each of the requirements of subpart C, including collection-of-information requirements which will be discussed below, apply to vessels navigating on the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under "ADDRESSES." The Evaluation is summarized as follows.

In 1992, 112 visits were made by vessels to the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ. The most recent data available from the U.S. Army Corps of Engineers concerning Hudson River vessel traffic reveals that vessels operating on the Hudson River after operating beyond the EEZ are primarily foreign importer vessels. Vessels carrying cargo, such as vessels engaged in importing, are generally not carrying ballast water. Accordingly, the Coast Guard has identified no vessels that have actually discharged ballast into the Hudson River. Vessels that do not discharge ballast, do not have to exchange ballast water and would incur no costs due to the proposed regulations. Therefore, the only aspect of the proposed regulations that these vessels would be subject to is the recordkeeping requirements of 33 CFR 151.1516. It is estimated that it takes one half hour to complete. At the cost of $35.00 per half hour and assuming 120 visits by vessels subject to these regulations, the annual cost will be $4,200.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Owners of vessels that would be engaging in ballast water management in the affected area are large corporations. No small entities have been identified as being affected. The economic affect on all entities will be minimal. No U.S. vessels have been identified as being subject to the proposed regulations. The total cost per vessel has been determined to be $35 per visit for each vessel with a total annual cost in 1995 to $4,200 for all vessels. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following sections: § 151.1516. The following particulars apply:

DOT No: 2115.
OMB Control No.: 2115–0598.
Administration: U.S. Coast Guard.
Title: Ballast Water Management for Vessels Entering the Hudson River
Need for Information: No other method exists for the Coast Guard to determine compliance with the regulations. Recording of ballast water management will allow for review of this compliance and aid in establishing the sources of species introduced through ballast water.
Proposed Use of Information: This information will be used to determine compliance with the regulations and for development of a statistical base for determining the possible sources of nonindigenous aquatic nuisance invasions.
Frequency of Response: Upon each entry into the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ, certain information must be available to provide to the COTP.
Burden Estimate: 60 hours annually.
Respondents: Approximately 120 visits by foreign vessels will be subject to this requirement.
Form(s): No specific form is required by the proposed regulations.
Average Burden Hours per Respondent: .5 hour.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The authority to issue regulations requiring ballast water management practices for vessels navigating the Hudson River, north of the George Washington Bridge, after operating beyond the EEZ, has been committed to the Coast Guard by the Act. Standardizing the minimum requirements for these vessels is necessary to effectively prevent further introductions of nonindigenous species. Therefore, if the rule becomes final, the Coast Guard intends it to preempt state and local regulations that are inconsistent with the requirements of this proposed rule. These regulations were developed in consultation with the Task Force which is charged with coordinating among, and providing technical assistance to, regional, State, and local entities regarding environmentally sound approaches to prevention and control of aquatic nuisance species.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under ADDRESSES. The exchange of ballast water in open ocean would benefit the Hudson River environment and the Great Lakes environment by helping to prevent potential infestations of nonindigenous species through ballast water emptied into the Hudson River north of the George Washington Bridge and transferred through the Hudson River and into the Great Lakes. Introduction of nonindigenous nuisance species through the ballast water of vessels has caused millions of dollars of damage to date in the Great Lakes area.

Initial study has concluded that the amount of vessels' seawater-ballast to be discharged into the Hudson River would constitute such a small volume that no change in the salinity or temperature levels would occur. Species contained in water collected from the open ocean are unlikely to survive a fresh water environment. Any nuisance species contained in the ballast water would not therefore, create a new infestation.

While these regulations will help to prevent potential infestation of species introduced through the ballast water of vessels, data from the Army Corps of Engineers shows that no vessel traveled north of the George Washington Bridge in a light cargo load condition after operating beyond the EEZ. This indicates that these vessels carried no ballast water. Therefore, it is anticipated that few vessels will actually be discharging water into the Hudson River. Therefore, the Coast Guard has concluded that the proposed regulations would have no negative impact on the environment. The Coast Guard solicits comments on the potential environmental impact of the proposed regulations.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 151, subpart C as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

* * * * *

Subpart C—Ballast Water Management for Control of Nonindigenous Species

1. The authority citation for subpart C is revised to read as follows:

Authority: 16 U.S.C. 4711, as amended; 49 CFR 1.46.

2. Section 151.1502 is revised to read as follows:

§ 151.1502 Applicability.

This subpart applies to each vessel that carries ballast water and that after operating on the waters beyond the Exclusive Economic Zone during any part of its voyage enters the Snell Lock at Massena, New York, or navigates north of the George Washington Bridge on the Hudson River, regardless of other port calls in the United States or Canada during that voyage.

3. In § 151.1504, the definitions of *Captain of the Port (COTP)* and *Voyage* are revised to read as follows:

§ 151.1504 Definitions.

* * * * *

Captain of the Port (COTP) means the Coast Guard officer designated as COTP of either the Buffalo, NY, Marine Inspection Zone and Captain of the Port Zone or the New York, NY, Captain of the Port Zone described in part 3 of this chapter or an official designated by the COTP.

* * * * *

Voyage means any transit by a vessel destined for the Great Lakes or the Hudson River, north of the George Washington Bridge, from a port or place outside of the EEZ, including intermediate stops at a port or place within the EEZ.

4. Section 151.1506 is revised to read as follows:

§ 151.1506 Restriction of operation.

No vessel subject to the requirements of this subpart may be operated in the Great Lakes or the Hudson River, north of the George Washington Bridge, unless the master of the vessel has certified, in accordance with § 151.1516, that the requirements of this subpart have been met.

5. In § 151.1510, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 151.1510 Ballast water management.

(a) * * *

(1) Carry out an exchange of ballast water on waters beyond the EEZ, in a depth exceeding 2000 meters, prior to entry into the Snell Lock, at Massena, New York, or prior to navigating on the Hudson River, north of the George Washington Bridge, such that, at the conclusion of the exchange, any tank from which ballast water will be discharged into the Great Lakes contains water with a minimum salinity level of 30 parts per thousand.

(2) Retain the vessel's ballast water on board the vessel. If this method of ballast water management is employed, the COTP may seal any tank or hold containing ballast water on board the vessel for the duration of the voyage within the waters of the Great Lakes or the Hudson River, north of the George Washington Bridge.

* * * * *

Dated: June 13, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc 94–15062 Filed 6–20–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD18–1–5993; FRL–4999–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland–Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NOx) at or above specified actual emission threshold levels. This program applies throughout the State of Maryland. The SIP revision was submitted by the State to satisfy the Clean Air Act's requirements for an emission statement program as part of the ozone SIP for the State of Maryland.

DATES: Comments on this proposed action must be received in writing by July 21, 1994.

ADDRESSES: Comments must be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S.

Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; Air and Radiation Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena, Environmental Protection Agency, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-8239.

SUPPLEMENTARY INFORMATION: On November 13, 1992, the State of Maryland's Department of the Environment (MDE) submitted a revision to Maryland's SIP which requires owners of stationary sources that emit VOCs and/or NOx, above specified actual emission applicability thresholds, to submit annual statements certifying emissions.

I. Background

The air quality planning and State Implementation Plan (SIP) requirements for ozone nonattainment and transport areas are set out in subparts I and II of part D of title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, (CAAor "the Act"). EPA published a "General Preamble" describing its preliminary views on how it intends to review SIP's and SIP revisions submitted under title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) ("SIP: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990"), 57 FR 18070 (April 28, 1992) ("Appendices to the General Preamble"), and 57 FR 55620 (November 25, 1992) ("SIP: NOx Supplement to the General Preamble")).

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this document, entitled "Guidance on the Implementation of an Emission Statement Program" (July, 1992). The Agency is also conducting a rulemaking process to modify 40 CFR part 51 to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOCs and NOx. This section of the Act provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOC or NOx at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

The States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NOx or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP-42) or other methods acceptable to EPA.

At minimum the emission statement data should include:

- Certification of data accuracy;
- Source identification information;
- Operating schedule;
- Emissions information (to include annual and typical ozone season day emissions);
- Control equipment information; and
- Process data.

EPA developed emission statements data elements to be consistent with other source and State reporting requirements. This consistency is essential to assist States with quality assurance for emission estimates and to facilitate consolidation of all EPA reporting requirements.

II. Description of the State Submittal

A. Procedural Background

The State of Maryland held public hearings on September 21 (Frederick), September 22 (Columbia), and September 23, 1992 (Centreville) for the purpose of soliciting public comment on proposed regulatory revisions concerning emission statements for stationary sources. Following the public hearings, the regulatory revisions were adopted by the Secretary of the Environment on November 13, 1992, submitted to EPA on November 13, 1992 as a revision to the SIP, and became effective in the State of Maryland on December 7, 1992.

B. Components of Maryland's Emission Statement Program

There are several key and specific components of an acceptable emission statement program. Specifically, the State must submit a revision to its SIP which consists of an emission statement program which meets the minimum requirements for reporting by the sources and the State. For the emission statement program to be approvable, the state's SIP must include, at a minimum, definitions and provisions for applicability, compliance, and specific source reporting requirements and reporting forms.

Maryland's revision consists of amendments to COMAR 26.11.01 General Administrative Procedures. These amendments, revise COMAR 26.11.01.01, Definitions, and add 26.11.01.05-1, Emission Statements.

Section .01, Definitions, has been revised by amending or adding the definitions of the following terms: Actual emissions; Capture efficiency; Certifying individual; Control efficiency; Oxides of nitrogen; Percent seasonal throughput; Standard Industrial Classification; and Typical ozone season day.

Section .05-1, Emission Statements, requires that a person who owns or operates any installation, source, or premises located in areas designated by the CAA as marginal, moderate, serious, severe or extreme ozone nonattainment area to report the levels of emissions from the sources emitting 25 tons per year (TPY) or more of VOCs and NOx, in order to track emission reductions and attain the ozone National Ambient Air Quality Standards (NAAQS). Because the entire State of Maryland is in the Northeast Ozone Transport Region, emission statement reporting provisions also apply to sources in all remaining areas of the State which emit 100 TPY of NOx or 50 TPY of VOC. Section .05-1, Emission Statements, requires that a certifying official for each facility provide the State with a statement reporting emissions by April 1 of each year, beginning with April 1, 1993, for the emissions discharged during the previous calendar year. Section .05-1, Emission Statements, delineates specific requirements for the content of these annual emission statements, including the use of the reporting form developed by the MDE.

C. Enforceability

The State of Maryland has provisions in its SIP (MD. Env. Code Ann. Section 2-609, 2-609.1, 2-610, 2-610.1) which ensure that the emission statement requirements of section 182(a)(3)(B) and sections 184(b)(2) and 182(f) of the CAA as required by COMAR 26.11.01, sections .01 and .05–1 are adequately enforced. Once EPA completes the rulemaking process approving the Maryland's Emission Statement program as part of the SIP, it will be federally enforceable.

EPA has determined that the submittal made by the State of Maryland satisfies the relevant requirements of the CAA and EPA's guidance document, "Guidance on the Implementation of an Emission Statement Program" (July 1992). EPA's detailed review of Maryland's Emission Statement Program is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the Addresses section of this document.

III. Proposed Action

EPA is proposing to approve revisions to the Maryland SIP to include an Emission Statement Program consisting of revisions to regulation COMAR 26.11.01., General Administrative Provisions, to amend section .01, Definitions, and add section .05–1, Emission Statements. This revision was submitted to EPA by the State of Maryland on November 13, 1992. The EPA is requesting public comments on all aspects of the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the Addresses section of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision of any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action to propose approval of Maryland's SIP Emission Statements Program has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

The Administrator's decision to approve or disapprove Maryland's SIP Emission Statements revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 52.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q

Dated: April 15, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–14537 Filed 6–20–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 266

[FRL–5002–3]

Proposed Technical Clarification Pertaining to Regulations for Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Technical Amendment.

SUMMARY: EPA is proposing a minor amendment to the rules for Boilers and Industrial Furnaces (BIFs). EPA believes that this amounts only to a technical amendment (because it reflects the Agency's intent as expressed either in the BIF rule or preamble), but is soliciting comment to assure opportunity for public participation. The amendment would add certain mercury-bearing wastes to the list of wastes that can be burned in metal-recovery furnaces pursuant to 40 CFR 266.100(c) without triggering the substantive BIF requirements.

Because the proposed amendment is minor, the comment period is limited to three weeks. After considering any public comments it receives and revising the amendment accordingly, the EPA may finalize it in the Land Disposal Restrictions Phase II Rule, scheduled for promulgation in July 1994. The Phase II LDR rule was proposed September 14, 1993 (see 58 FR 48092).

DATES: Comments must be submitted by July 12, 1994.

ADDRESSES: The public must send an original and two copies of their written comments to EPA RCRA Docket (5305), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Place the Docket Number F–94–BFTA–FFFFF on your comments. The RCRA Docket is open from 9:00 am to 4:00 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page. The mailing address is EPA RCRA Docket (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION: Contact Robert Holloway (5302W), Chief, Combustion Section, Waste Treatment Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 803–8461.