

### Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this rule under E.O. 12866.

### Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

### Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It establishes the financial criteria under which we would recommend a cost-share adjustment for permanent restorative work and for emergency work, and recommends capping the Federal cost-share for permanent restorative work at ninety percent (90%). The rule does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act, and

any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

### List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 206 is amended as follows:

### PART 206 SUBPART B—THE DECLARATION PROCESS

1. The authority citation for part 206 continues to read as follows:

**Authority:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.47 to read as follows.

#### § 206.47 Cost-share adjustments.

(a) We pay seventy-five percent (75%) of the eligible cost of permanent restorative work under section 406 of the Stafford Act and for emergency work under section 403 and section 407 of the Stafford Act, unless the Federal share is increased under this section.

(b) We recommend an increase in the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and of emergency work under section 403 and section 407 whenever a disaster is so extraordinary that actual Federal obligations under the Stafford Act, excluding FEMA administrative cost, meet or exceed a qualifying threshold of:

(1) Beginning in 1999 and effective for disasters declared on or after May 21, 1999, \$75 per capita of State population;

(2) Effective for disasters declared after January 1, 2000, and through December 31, 2000, \$85 per capita of State population;

(3) Effective for disasters declared after January 1, 2001, \$100 per capita of State population; and,

(4) Effective for disasters declared after January 1, 2002 and for later years, \$100 per capita of State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(c) When we determine whether to recommend a cost-share adjustment we consider the impact of major disaster

declarations in the State during the preceding twelve-month period.

(d) If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

Dated: April 14, 1999.

**James L. Witt,**

*Director.*

[FR Doc. 99-9934 Filed 4-20-99; 8:45 am]

BILLING CODE 6718-02-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 73 and 74

[MM Docket No. 98-93; FCC 99-55]

#### 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Report and Order, the Commission modifies its rules to extend first come/first served processing to applications for minor changes to AM, reserved frequency noncommercial educational FM ("NCE FM") and FM translator facilities. The Commission also expands the definition of "minor change" in these services to conform more closely to the commercial FM definition, which includes all changes except changes in community of license and certain changes in frequency and/or class. Finally, we amend the contingent application rule to permit the filing of up to four related and simultaneously-filed minor change FM station construction permit applications. These modifications were proposed as part of a broad-based initiative, undertaken in conjunction with the Commission's 1998 biennial regulatory review, to streamline Mass Media Bureau radio technical rules.

**EFFECTIVE DATE:** May 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418-2700 or William J. Scher, Audio Services Division, Mass Media Bureau, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order in MM Docket 98-93, adopted March 23, 1999, and released March 30, 1999. The complete text of this Report and Order is available for

inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service (ITS), (202) 857-3800 (phone), (202) 857-3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

## Synopsis of Report and Order

### I. Introduction

1. With this Report and Order, we extend first come/first served processing to AM, NCE FM and FM translator minor change applications. Furthermore, we expand the definition of "minor change" for these services to conform more closely to the commercial FM definition. Under these modified rules, non-expanded band AM, NCE FM and FM translator licensees and permittees may propose frequency changes to adjacent channels, and, in addition, FM translators may propose such changes to intermediate frequencies ("IF"), by filing minor change applications. Proposed changes in power, antenna height and/or antenna location for stations in these services also are classified as minor changes, provided that NCE FM and FM translator stations proposing antenna location changes would continue to provide 1 mV/m service to some portion of their authorized 1 mV/m service areas. In addition, AM stations may propose changes in authorized hours of operation by filing minor change applications. Proposed AM and NCE FM facility changes that would result in station class changes are classified as minor changes provided that they meet the standards. Amendments to applications also will be classified as minor in accordance with these standards. The measures that we are adopting make the commercial FM application process simpler, faster and more efficient, without undermining the administration of any Commission rule or policy. We anticipate that they will prove to be similarly beneficial in the AM, NCE FM and FM translator services, thereby encouraging potential applicants to file for improved facilities and speeding the introduction of improved services to the public.

### II. Discussion

#### A. Extending First Come/First Served Processing to AM, NCE FM and FM Translator Minor Change Applications; Revising the Definition of "Minor" Change in These Services

##### Continuity of Service Requirement

2. We believe it is necessary to impose a continuity of service requirement on

both NCE FM and FM translator stations proposing facility modifications. Unlike commercial AM and FM stations, our rules have not required NCE FM and FM translator stations to provide any level of service to their communities of license. Our approach here provides NCE FM and FM translator stations with maximum flexibility in proposing facility changes, while preventing such stations from completely abandoning their present service areas. We note that our proposal in the *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rule Making* ("Notice") to require NCE FM stations to maintain 1 mV/m contours over at least a portion of their communities of license would impose an additional restriction on NCE FM station antenna location changes. As an interim measure until the Commission acts on that proposal, we shall process proposed NCE FM antenna location changes as minor changes only if the proposed changes do not diminish the stations' present 1 mV/m service to their communities of license.

##### AM and NCE FM Community of License Changes

3. We decline to adopt the suggestion of several commenters that we treat community of license changes in the AM and NCE FM services as minor changes. Unlike the proposed technical facility changes that we are reclassifying as minor changes, proposed AM or NCE FM community of license changes are not fundamentally technical in nature; rather, they raise important statutory and policy issues under Section 307(b) of the Communications Act, issues that require substantive legal analysis.

##### "Warehousing" Concerns

4. With regard to the spectrum "warehousing" concerns expressed by some commenters, we are not persuaded that additional safeguards are necessary. Mechanisms for preventing abuse will continue to exist under the new rules, in the form of careful staff review of applications, the opportunity to file informal objections and seek reconsideration and review of staff actions, and strict time limits on authorized construction periods. In addition, the enhancements that an applicant may request are necessarily limited by the operation of stations on adjacent and co-channel frequencies in neighboring communities and the applicant's city grade coverage requirements.

#### B. Agreements Involving Applications for Coordinated FM Station Changes

5. Section 73.3517 of the Commission's rules prohibits the filing of contingent new station and modification applications in the broadcast services. The Commission first announced this policy in a 1961 Public Notice and subsequently codified the restriction. It was adopted to bring greater administrative orderliness to the broadcast licensing process. The Commission found that it was frequently holding applications in pending status that were contingent on the grant of other applications involved in lengthy hearings. An application is "contingent" when it cannot be granted unless and until a second application, also pending before the Commission, is granted. In the FM service, Section 73.208 requires an applicant to protect all outstanding construction permits and licenses. Thus, when an FM application is contingent on the effectuation of a second station's facility modification application, in most instances the first station must wait for the grant of the second station's covering license application before filing a construction permit application. This rule effectively requires stations to undertake "coordinated" facility improvements through a series of application and construction cycles, a risky, lengthy and sometimes infeasible procedure, particularly where a station downgrade or facility relocation is required to permit expanded service by a second station.

6. Based on the record developed in this proceeding, we adopt rule changes to permit applicants to file up to four related, simultaneously-filed and cross-referenced minor change FM station construction permit applications. We believe that it is prudent to limit the scope of these new procedures, both to limit the potential for significant service losses and/or disruptions and to ensure that there is sufficient staff to complete review of interrelated proposals expeditiously. Thus, we exclude major change applications. Proposals may include one-step upgrade and downgrade applications. Applicants will be required to submit a copy of the agreement to undertake the coordinated facility changes with each application. Applications will be processed together and, if grantable, will be granted simultaneously. Granted applications will contain conditions, as necessary, to prevent interference during the construction period leading to full implementation of all related facility modifications. If one or more applications is unacceptable, all related

applications will be dismissed. Thus, the staff will dismiss an otherwise grantable non-contingent "lead" application if a related contingent application is found to be unacceptable.

7. We believe a strict dismissal policy is warranted. The plain *quid pro quo* for creating this greater technical flexibility for broadcasters is that applicants bear sole responsibility for developing proposals that fully comply with the Commission's rules. However, we wish to correct a commenter's erroneous assumption that applicants would be prohibited from filing curative amendments. Our current commercial and NCE FM amendment procedures will apply to contingent applications. The one processing policy change is that the staff will dismiss *all* related applications if one application remains unacceptable after the opportunity for filing curative amendments has closed.

8. Finally, with regard to contingent NCE FM applications, we permit proposals that include station cancellations except those that would create gray or white areas, *i.e.*, areas that receive service from one or no NCE FM stations, respectively. Although we decline to establish other full-time NCE FM service floor guidelines, any proposal to cancel a community's sole NCE FM station license, *i.e.*, its sole transmission service, will be treated as *prima facie* inconsistent with the public interest and must include a public interest justification. We will consider a commenter's proposal to permit alternative signal propagation methodologies to measure NCE FM service levels in a subsequent order in this proceeding in connection with our evaluation of the supplemental point-to-point ("PTP") signal propagation model.

### C. Procedural Matters

9. In order to ensure a smooth transition to the new procedures, we wish to clarify our procedures for processing applications filed prior to the effective date that are subject to this Order. First, with regard to applications originally filed as minor changes, as of the effective date they will be accorded cut-off protection based on their actual filing dates, provided that they are not mutually exclusive with any other applications filed prior to the effective date. Mutually exclusive applications will be handled under our existing procedures. Second, with regard to major change applications subject to reclassification as minor changes, as of the effective date such applications will be reclassified automatically as minor changes, provided that: (1) They are not mutually exclusive with any other applications filed prior to the effective

date; and (2) no petition to deny was filed against them in accordance with the requirements of Section 309(d) of the Communications Act prior to the effective date. Applications that fail to satisfy these two conditions will be handled under our existing application processing procedures. AM and FM translator applicants with major change applications on file that seek waiver of the Commission's interim policy concerning processing of such applications may request dismissal of their applications and resubmit minor change applications as of the effective date of the Order. Finally, applications pending as of the adoption date of the Order and seeking waivers of section 73.3517 will be considered on a case-by-case basis. Contingent applications filed between the adoption and effective dates of the Order shall be returned.

### III. Administrative Matters

10. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, and may also be purchased from the Commission's copy contractor, International Transcription Service (ITS), (202) 857-3800 (phone), (202) 857-3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

11. Paperwork Reduction Act of 1995 Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

#### Final Regulatory Flexibility Analysis (FRFA)

12. As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C 603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking for the docket in this proceeding. The Commission sought written public comments on the proposals set forth in the Notice, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order conforms to the RFA.

#### Need For and Objectives of Action

13. Specifically, this Order (1) amends the Commission's rules to extend first come/first served processing to applications for minor changes to existing AM, NCE FM, and FM translator facilities; (2) expands the definition of minor change in these services to conform more closely to the commercial FM definition of "minor change;" and (3) amends the contingent application rule to permit the filing of up to four related and simultaneously-filed FM station construction permit applications. By this Order, the Commission eliminates the present inconsistent treatment of certain proposed facilities changes for AM, NCE FM and FM translator services, and provides greater flexibility for permittees and licensees to propose service improvements.

#### Significant Issues Raised by Public Comments in Response to the IRFAs

14. No comments were received specifically in response to the IRFA in MM Docket No. 98-93. However, four commenters expressed concern about an issue that may affect, but is not limited to, small business issues. These commenters were concerned that the new procedures could facilitate abuses by applicants resulting in the warehousing of spectrum.

#### Description and Estimate of the Number of Small Entities to Which Rules Will Apply

15. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. We received no comment in response to either IRFA on how to define radio and television broadcast "small businesses." Therefore, we will

continue to utilize SBA's definitions for the purpose of this FRFA.

16. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. As of November 30, 1998, Commission records indicate that 12,458 radio stations were operating, of which 11,960 were small businesses. The rules adopted herein are limited to AM, NCE FM and FM translator facilities. Thus, the measures adopted here will affect 9957 such entities, 9559 of which are considered small businesses.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

17. The measures adopted in the Order are anticipated to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Extending first come/first served processing to AM, NCE FM and FM translator minor change applications will eliminate the uncertainty, delay and expense associated with the indefinite exposure to competing applications that occurs under the current processing system. Expansion of the minor change definition in these services to conform more closely to the commercial FM definition will eliminate unnecessarily burdensome administrative procedures, as well as minimizing the resources expended by applicants and the Commission in resolving conflicts between minor change applications. Permitting applications for coordinated FM station changes will eliminate the need to undertake coordinated improvements through a series of application and construction cycles, a risky, lengthy and sometimes infeasible procedure. No additional professional services are required by applicants filing minor change applications under these revised processing rules. Further, the cost of compliance will not vary between large and small entities.

*Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

18. This Order sets forth the Commission's new streamlined

application processing changes that are intended to eliminate unnecessary administrative burdens and shorten processing time frames for certain applications. All significant alternatives presented in the comments were considered. As noted in the Order, we extend the application of first come/first served processing to AM, NCE FM, and FM translator stations. These processing changes will remedy the uncertainty and delay previously associated with AM, NCE FM and FM translator minor change applications. We also expand the definition of minor change for these services to conform more closely to the commercial FM "minor change" definition. This change will eliminate the inconsistent treatment of proposed facility increases for different radio services without undermining the administration of any Commission rule or policy. Finally, this Order adopts rule changes to permit applicants to file up to four related, simultaneously-filed and cross-referenced minor change construction permit applications. This change will encourage licensees and permittees to propose service improvements by making the process more efficient.

*Report to Congress*

19. The Commission will send a copy of the *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, including this FRFA, (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b). In addition, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

20. Authority for issuance of the Report and Order is contained in sections 4, 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C 154, 301, 303, 307, 308 and 309. Sections 73.3517, 73.3571, 73.3573 and 74.1233.

21. It is ordered that the proceeding in MM Docket 98-93 is terminated.

**List of Subjects in 47 CFR Parts 73 and 74**

Auxiliary broadcasting, Radio broadcasting.

**Federal Communications Commission.**

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.3517 is amended by adding paragraph (e) to read as follows:

**§ 73.3517 Contingent applications.**

\* \* \* \* \*

(e) The Commission will accept up to four contingently related applications filed by FM licensees and/or permittees for minor modification of facilities. Two applications are related if the grant of one is necessary to permit the grant of the second application. Each application must state that it is filed as part of a related group of applications to make changes in facilities, must cross-reference each of the related applications, and must include a copy of the agreement to undertake the coordinated facility modifications. All applications must be filed on the same date. Any coordinated facility modification filing that proposes the cancellation of a community's sole noncommercial educational FM station license also must include a public interest justification. Dismissal of any one of the related applications as unacceptable will result in the dismissal of all the related applications.

3. Section 73.3571 is amended by revising paragraphs (a)(1) and (f) to read as follows:

**§ 73.3571 Processing of AM broadcast station applications.**

(a) \* \* \*

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any change in community of license or in frequency, except frequency changes to non-expanded band first, second or third adjacent channels. A major change in ownership is a situation where the original party or parties to the application do not retain more than

50% ownership interest in the application as originally filed. All other changes will be considered minor.

\* \* \* \* \*

(f) Applications for minor modifications for AM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

\* \* \* \* \*

4. Section 73.3573 is amended by revising paragraphs (a)(1) and (e) to read as follows:

**§ 73.3573 Processing FM broadcast station applications.**

(a) \* \* \*

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202(b)) of this part. A licensee or permittee may seek the higher or lower class adjacent channel, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Long-form applications submitted pursuant to § 73.5005 of this part for a new FM broadcast service may propose a higher

or lower class adjacent channel, intermediate frequency or co-channel. For reserved frequency noncommercial educational and Class D FM stations, a major change is any change in community of license, any change in frequency except changes to first, second or third adjacent channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

\* \* \* \* \*

(e) Applications for new reserved frequency noncommercial educational FM stations and for major modifications in the facilities of authorized reserved frequency noncommercial educational and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed. Applications for minor modifications for reserved frequency noncommercial educational and Class D FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are

determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

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**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES**

5. The authority citation for Part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307 and 554.

6. Section 74.1233 is amended by revising paragraphs (a)(1), (b) and (d)(1) to read as follows:

**§ 74.1233 Processing FM translator and booster station applications.**

(a) \* \* \*

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

\* \* \* \* \*

(b) Processing booster and reserved band FM translator applications.

(1) Applications for minor modifications for reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead

application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(2) All other applications for booster stations and reserved band FM translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing reserved band applications that have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

\* \* \* \* \*

(d) \* \* \*

(1) Applications for minor modifications for non-reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only

upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

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[FR Doc. 99-9951 Filed 4-20-99; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### 50 CFR Part 648

#### National Oceanic and Atmospheric Administration

[I.D. 111998B]

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Atlantic Sea Scallop Fishery, and Atlantic Salmon Fishery; Fishery Management Plan (FMP) Amendments to Designate Essential Fish Habitat (EFH), Atlantic Salmon Overfishing Definition, and Aquaculture Framework Specification Process

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

**ACTION:** Approval of amendments to FMPs.

**SUMMARY:** NMFS announces that the Secretary of Commerce (Secretary) has approved Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP. These amendments were prepared by the New England Fishery Management Council (NEFMC) to implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendments describe and identify EFH for the specified fisheries, discuss measures to address the effects of fishing on EFH, and identify other actions for the conservation and enhancement of EFH. Atlantic Salmon Amendment 1 also discusses a definition for overfishing and establishes an aquaculture framework adjustment process for Atlantic salmon.

The amendments are included in an omnibus amendment that also includes Amendment 1 to the Monkfish FMP prepared jointly by NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC). Because of additional time required for coordination with MAFMC, the

monkfish FMP amendment is being considered for Secretarial approval in a separate action. Finally, the omnibus amendment includes the EFH components of the Atlantic Herring FMP that are being developed by the NEFMC. The EFH information for Atlantic Herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval.

**DATES:** The amendments were approved on March 3, 1999.

**ADDRESSES:** Copies of the amendments and the Environmental Assessment (EA) are available from the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036.

**FOR FURTHER INFORMATION CONTACT:** Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978-281-9204 or Jon.Kurland@NOAA.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The omnibus EFH amendment was prepared by NEFMC to satisfy the EFH mandates of the Magnuson-Stevens Act. The omnibus amendment includes an Environmental Assessment (EA), which describes the background, purpose and need for the action, the management action alternatives, and the environmental, social and economic impacts of the alternatives. A copy of the EA can be obtained from the NEFMC (see **ADDRESSES**).

A notice of availability (NOA) for Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP was published on December 1, 1998 (63 FR 66110). The comment period ended on February 1, 1999. An amendment to the NOA was issued on December 7, 1998 (63 FR 67450) to clarify that Atlantic Salmon Amendment 1 also discusses an overfishing definition and establishes a framework process to add or adjust Atlantic salmon aquaculture management measures, if necessary, to meet the goals and objectives of the Atlantic Salmon FMP. A second amendment to the NOA, issued January 6, 1999 (64 FR 823), clarified that there would be implementing regulations to allow for Atlantic salmon aquaculture through a framework adjustment process. The proposed rule for these regulations was published on February 5, 1999 (64 FR 5754). The comment period closed on March 22, 1999.

The omnibus EFH amendment designates EFH in waters of the United States for 14 species of groundfish, as