

Code for reading third column:  
Emerg.—Emergency; Reg.—Regular;  
Susp.—Suspension.

Dated: August 24, 2009.

**Deborah Ingram,**

*Acting Deputy Assistant Administrator for  
Mitigation, Mitigation Directorate,  
Department of Homeland Security, Federal  
Emergency Management Agency.*

[FR Doc. E9–21024 Filed 8–31–09; 8:45 am]

**BILLING CODE 9110–12–P**

**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Part 73**

[DA 09–1828; MB Docket No. 09–118; RM–  
11545]

**Television Broadcasting Services; Ann  
Arbor, Michigan**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by ION Media Licensee Company, LLC, Debtor-In-Possession (“ION”), the licensee of WPXD-TV, digital channel 31, Ann Arbor, Michigan. ION requests the substitution of digital channel 50 for digital channel 31 at Ann Arbor.

**DATES:** This rule is effective September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Report and Order*, MB Docket No. 09–118, adopted August 12, 2009, and released August 18, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission’s Consumer and Governmental Affairs Bureau at (202)

418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Television, Television broadcasting.  
■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 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, 336.

**§ 73.622 [Amended]**

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 50 and removing DTV channel 31 at Ann Arbor.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media  
Bureau.*

[FR Doc. E9–21050 Filed 8–31–09; 8:45 am]

**BILLING CODE 6712–01–P**

**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Part 74**

[MB Docket No. 07–172; FCC 09–59]

**Amendment of Service and Eligibility  
Rules for FM Broadcast Translator  
Stations**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Final rule.

**SUMMARY:** The FCC amended its FM translator rules to allow AM stations to use currently authorized FM translators for “fill-in” service within their current coverage areas, to help them provide a

listenable signal to their listeners and better serve their local communities.

**DATES:** Effective October 1, 2009, except for 47 CFR 74.1284, which affects information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Tom Hutton (legal issues) or James Bradshaw (engineering issues), Media Bureau, Federal Communications Commission, (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order (Order) in MB Docket No. 07–172, FCC 09–59, adopted and released June 29, 2009, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations. Previously, FM translators were only authorized to rebroadcast FM radio stations and other FM translator stations. The rule changes in the Order allow FM translators to rebroadcast AM radio stations within those stations’ current coverage areas. In addition, AM stations with daytime-only facilities will be allowed to originate programming on such FM translators during periods when the AM stations are not operating. These changes are intended to help AM stations provide a listenable signal throughout their current coverage areas and better serve the listening public.

**Synopsis of Order**

1. The Order describes several limitations and competitive challenges that AM stations face. The emergence of higher fidelity sources of audio programming, including FM broadcasts, satellite radio, personal media players and podcasts and audio streams provided through the Internet, has eroded the audience for AM stations, particularly among younger age groups. Sources of man-made interference have multiplied, creating a higher level of interference to AM signals at all hours. Skywave interference creates even greater problems starting before sunset and continuing after sunrise. Although the Commission has undertaken AM improvement efforts in the past, those efforts have not overcome the fundamental problems of AM radio and the erosion of the AM radio audience has increased to a point not previously experienced. The Order finds that the record in this proceeding clearly indicates a strong need and desire by

AM stations to supplement their signals with fill-in service from FM translators, particularly to overcome nighttime signal limitations. This record includes the experience of AM stations that have been rebroadcasting on FM translators pursuant to special temporary authority. Those stations reported that they greatly increased their service to their local communities of service, particularly with drive-time traffic and weather information and coverage of community events taking place at night.

2. The purpose of the rule changes is to improve service by AM stations within their current service areas, not to expand their service areas. Accordingly, the Order provides that no portion of the 60 dBu contour of any FM translator station rebroadcasting an AM station may extend beyond the smaller of: (a) A 25-mile radius from the AM transmitter site; or (b) the 2 mV/m daytime contour of the AM station. The Order finds that a policy of allowing de minimis extensions beyond those limits would not serve the public interest.

3. The Order finds that Class D (daytime-only) AM stations should be allowed to originate programming over fill-in FM translators during the hours that their stations are not authorized to operate. This rule change is consistent with the fundamental purpose of fill-in FM translators, which is to provide continuity of service within licensed service areas. There is also no purpose served in applying the daytime-only limitation of AM signal propagation to FM translators.

4. The Order addresses comments by proponents of low power FM (LPFM) service that creating greater demand for future FM translator authorizations by allowing them to be used by AM as well as FM stations could adversely affect opportunities for new LPFM stations. The Order agrees that flexibility for future LPFM filing opportunities will be maximized by limiting the rule change to FM translator stations that the Commission has already authorized. Accordingly, the rule change is limited to FM translator stations with licenses or permits in effect as of May 1, 2009.

5. As with FM translators used to rebroadcast FM stations, the Order finds that ownership limits are not necessary because the FM translator will not be an independent "voice" in the local radio market. However, the Order warns that the rule change is not intended to allow these cross-service translators to be used as surrogates for FM stations or to circumvent the Commission's local ownership limits. Accordingly, the Order states that it will be considered an abuse of the Commission's rules to use two or more cross-service translators to

effectively create a de facto FM station or to circumvent the local ownership limits.

6. The full text of document FCC 09–59 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 09–59 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, <http://www.bcpweb.com>, or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to <mailto:fcc504@fcc.gov> or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY). Document FCC 09–59 can also be downloaded in Word at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-59A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-59A1.doc) or Portable Document Format (PDF) at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-59A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-59A1.pdf).

#### Congressional Review Act

The Commission will send a copy of the Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### Final Paperwork Reduction Act of 1995 Analysis

The Order contains new and modified information collection requirements subject to the PRA. The information collections<sup>1</sup> have been submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies were invited to comment on the modified information collection requirements contained in this proceeding.<sup>2</sup> In addition, the Commission notes pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–298, see 44 U.S.C. 3506(c)(4), that the Commission previously sought specific comment on how the Commission may "further reduce the information collection

burden for small business concerns with fewer than 25 employees." We find that the modified information collection requirements must apply fully to small entities (as well as to others) to ensure compliance with our FM translator rules, as described in the Order.

#### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (NPRM), 72 FR 62616, November 6, 2007, in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### Need for and Objectives of the Rules

2. The Commission's previous rules precluded an FM translator from rebroadcasting the signal of any station other than that of any FM radio broadcast station or FM translator. The NPRM proposed to amend the Commission's rules to allow AM broadcast stations to license and operate FM translator stations. Based on the support for this proposal in the record and the experience gained by dozens of AM stations operating FM translators pursuant to special temporary authority as contemplated by the NPRM, the Commission concluded that allowing AM stations to use currently authorized FM translators to provide fill-in service will benefit the listening public.

3. Specifically, allowing AM stations to use currently authorized FM translator stations to rebroadcast programming within their intended service areas will benefit the public by improving the signal quality and availability of AM programming, overcoming limitations imposed by interference, weak signal strength, channel congestion and receiver quality. This positive effect will further the goals of localism, competition and diversity in broadcasting. The use of an FM translator is at the option of the broadcast licensee, so this is a permissive rule change rather than a new requirement imposed on licensees.

4. The Order adopts rule changes based on the technical proposal submitted by the National Association of Broadcasters, which would allow AM stations to operate FM translators to retransmit their AM service as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator extends beyond the lesser of (a) the 2 mV/m daytime contour of the AM

<sup>1</sup> Information collection 3060–0029 is expected to be submitted to OMB for review and approval at the end of August 2009.

<sup>2</sup> See 74 FR 37706, July 29, 2009, and 72 FR 62616, November 6, 2007.

station, or (b) the 25-mile radius of the AM transmitter site. In order to protect opportunities for future LPFM stations in the already crowded FM spectrum, the Order limits the scope of FM translators that can be used to retransmit AM programming to those FM translators authorized by the Commission through licenses or construction permits in effect as of May 1, 2009.

5. Prior to this Order, the Commission's FM translator rules excluded AM stations from eligibility for this service. Accordingly, the Order adopts certain rule changes necessary to expand the purpose and permissible service of FM translator stations to allow their use as a fill-in service for AM radio stations, including: (a) Eligibility and ownership rules for FM translators, allowing AM licensees to acquire fill-in FM translator stations or enter into rebroadcast consent agreements with FM translator stations for fill-in service; and (b) the rule on FM translator program origination to allow Class D AM stations to originate programming on fill-in FM translators during the hours that the Class D stations are not authorized to operate. The Order notes that AM licensees will not be allowed to use reserved band FM translators or low power FM stations for fill-in service. The Order also makes clear that the Commission will not allow licensees to use combinations of FM translator stations to create de facto FM stations.

#### Legal Basis

6. The authority for the action taken in the Order is contained in sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324.

#### Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. The Commission received no comments in direct response to the IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments are discussed in the section of this FRFA discussing the steps taken to minimize significant negative impact on small entities, and the significant alternatives considered. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

9. Radio Stations. The Small Business Administration (SBA) defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on September 23, 2008, about 10,520 of 11,012 commercial radio stations (or about 95 percent) have revenues of \$7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

10. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

11. FM translator stations and LPFM stations. The same SBA definition that applies to radio broadcast licensees would apply to FM translator stations and LPFM stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts.

12. Currently, there are approximately 4131 licensed FM translator and booster stations and 771 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

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

13. The Order provides for no changes in the current application filing and processing procedures for FM translator stations, except that FCC Forms 303-S, 345, 349 and 350 (including related instructions) will be modified to reflect the revised purpose and eligibility changes in the rules applicable to FM translator stations. Unless otherwise indicated, the Order provides for no changes in the reporting, recordkeeping and other compliance requirements for FM translator stations.

#### Steps Taken To Minimize Significant Negative Impact on Small Entities, and Significant Alternatives Considered

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

15. The Report and Order adopts rule changes that will benefit some AM radio stations by giving them the opportunity to address daytime and nighttime service problems by using an FM translator to provide better signal coverage. An example of a daytime service problem is interference from a man-made source such as fluorescent lights and computers. An example of a nighttime service problem is skywave interference from other AM stations. However, the use of FM translator stations by AM radio stations is not mandatory, and therefore some stations may not seek to use an FM translator for fill-in service. Other AM stations may not be able to locate and purchase an FM translator for their service areas. For these reasons, the potential benefits of the rule changes may not be realized by all AM radio stations.

16. With respect to the issue of the possible disparate impact of the

proposed rules on smaller entities, we believe that many small business broadcasters will benefit from the opportunity to improve their local signal coverage as a result of the rule changes. The record in the proceeding also indicates that for AM radio stations using FM translators to provide fill-in service, there are benefits in signal coverage for smaller as well as larger entities. Furthermore, even if some smaller AM stations do not opt to use fill-in FM translators, the alternative benefits to the radio industry in general will offset this possible impact of the rules we adopt today. As a result of using fill-in FM translators, many AM stations will become more competitive by offering improved and more varied programming, much of which may advance service to local communities, the FM translator service will be improved, and the future of LPFM service will remain under existing protections.

17. Specifically, the record in the proceeding also indicates that licensees of FM translator stations will likely benefit from the expansion in the scope of permitted service by those stations, because this will increase the demand for, and the value of, their FM translators. The record in the proceeding includes arguments that the rule changes will harm the future development of LPFM service by limiting the availability of spectrum available for that service in future application windows. The Order acknowledges this potential for harm and addresses it by limiting the scope of the rule changes to FM translators already authorized by the Commission. The Commission has noted that the next opportunity for filing applications for new stations will be for LPFM stations, and the limitation adopted in the Order maximizes the opportunities that will be available to potential LPFM applicants in that window. The Order also specifically notes that the Commission does not intend to allow parties to circumvent this limitation through special temporary authority for new FM translator service to retransmit AM station programming.

18. One issue in the proceeding regarding small entities is whether the rule changes should be implemented immediately for all AM stations or phased in based on an AM station's class, ownership or competitive posture. The Commission determined that phased-in implementation is not necessary in light of the limitation of the rule change to already authorized FM translator stations. The Commission also found that the public interest benefits and the benefits to AM station operators

will be realized more quickly with immediate implementation than with phased-in implementation because those benefits will be available at once to all AM licensees instead of being made available over time to different types of licensees.

#### Ordering Clauses

Accordingly, it is ordered that pursuant to the authority contained in sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324, this Report and Order and the rule modifications attached hereto as Appendix A ARE ADOPTED, effective October 1, 2009. However, the information collection requirements contained in the Report and Order will become effective following Office of Management and Budget (OMB) approval. It is our intention in adopting these rule changes that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not be deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

It is further ordered that the "Petition for Rulemaking of the National Association of Broadcasters," RM-11338 (filed July 14, 2006) is granted to the extent indicated herein and is otherwise denied.

It is further ordered that the "Petition for Rulemaking of the American Community AM Broadcasters Association," RM-9419 (filed August 13, 1997) is dismissed.

It is further ordered that the Media Bureau will cancel all AM rebroadcast STAs and dismiss all pending AM rebroadcast STA requests as of the effective date of this Report and Order.

It is further ordered that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Research, Television.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Final Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 74 as follows:

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

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 2. Section 74.1201 is amended by revising paragraphs (a), (b), (c), (d), (e), and (g), and adding paragraph (j) to read as follows:

#### **§ 74.1201 Definitions.**

(a) FM translator. A station in the broadcasting service operated for the purpose of retransmitting the signals of an AM or FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide radio broadcast service to the general public.

(b) Commercial FM translator. An FM broadcast translator station which rebroadcasts the signals of a commercial AM or FM radio broadcast station.

(c) Noncommercial FM translator. An FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station.

(d) Primary station. The AM or FM radio broadcast station radiating the signals which are retransmitted by an FM broadcast translator station or an FM broadcast booster station.

(e) AM or FM radio broadcast station. When used in this Subpart L, the term AM broadcast station or AM radio broadcast station or FM broadcast station or FM radio broadcast station refers to commercial and noncommercial educational AM or FM radio broadcast stations as defined in § 2.1 of this chapter, unless the context indicates otherwise.

\* \* \* \* \*

(g) Translator coverage contour. For a fill-in FM translator rebroadcasting an FM radio broadcast station as its primary station, the FM translator's coverage contour must be contained within the primary station's coverage contour. For purposes of this rule section, the coverage contour of the FM translator has the same field strength

value as the protected contour of the primary FM station (i.e., for a commercial Class B FM station it is the predicted 0.5 mV/m field strength contour, for a commercial Class B1 FM station it is the predicted 0.7 mV/m field strength contour, and for all other classes of FM stations it is the predicted 1 mV/m field strength contour). The coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the lesser of the 2 mV/m daytime contour of the AM station and a 25-mile (40 km) radius centered at the AM transmitter site. The protected contour for an FM translator station is its predicted 1 mV/m contour.

(j) AM Fill-in area. The area within the lesser of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast and a 25-mile (40 km) radius centered at the AM transmitter site.

■ 3. Section 74.1231 is amended by redesignating paragraph (h) as paragraph (i); adding new paragraph (h); and revising paragraphs (a) and (b) to read as follows:

§ 74.1231 Purpose and permissible service.

(a) FM translators provide a means whereby the signals of AM or FM broadcast stations may be retransmitted to areas in which direct reception of such AM or FM broadcast stations is unsatisfactory due to distance or intervening terrain barriers, and a means for AM Class D stations to continue operating at night.

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified, and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station that is operating on a reserved channel (Channels 201–220) and is owned and operated by the licensee of the primary noncommercial educational station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. Provided, however, that an applicant for a noncommercial educational translator operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary

noncommercial educational AM or FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

- (1) The applicant demonstrates that:
(i) The transmitter site of the proposed FM translator station is within 80 kilometers of the predicted 1 mV/m contour of the primary station to be rebroadcast; or,
(ii) The transmitter site of the proposed FM translator station is more than 160 kilometers from the transmitter site of any authorized full service noncommercial educational FM station; or,
(iii) The application is mutually exclusive with an application containing the showing as required by paragraph 74.1231(b)(2) (i) or (ii) of this section; or,
(iv) The application is filed after October 1, 1992.

(2) If the transmitter site of the proposed FM translator station is more than 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast or is within 160 kilometers of the transmitter site of any authorized full service noncommercial educational FM station, the applicant must show that:

- (i) An alternative frequency can be used at the same site as the proposed FM translator's transmitter location and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour; or,
(ii) An alternative frequency can be used at a different site and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour.

Note: For paragraphs 74.1231(b) and 74.1231(i) of this section, auxiliary intercity relay station frequencies may be used to deliver signals to FM translator and booster stations on a secondary basis only. Such use shall not interfere with or otherwise preclude use of these frequencies for transmitting aural programming between the studio and transmitter location of a broadcast station, or between broadcast stations, as provided in paragraphs 74.531 (a) and (b) of this part. Prior to filing an application for an auxiliary intercity relay microwave frequency, the applicant shall notify the local frequency coordination committee, or, in the absence of a local frequency coordination committee, any licensees assigned the use of the proposed operating frequency in the intended location or area of operation.

- (h) An FM translator station that rebroadcasts a Class D AM radio broadcast station as its primary station may originate programming during the hours the primary station is not

operating, subject to the provisions of § 74.1263(b) of this part.

■ 4. Section 74.1232 is amended by adding the following sentences to the end of paragraph (d) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

(d) An FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM radio broadcast station being rebroadcast, or, in the case of an FM translator authorized to operate on an unreserved channel, to a party with a valid rebroadcast consent agreement with such a permittee or licensee to rebroadcast that station as the translator's primary station. In addition, any FM translator providing service to an AM fill-in area must have been authorized by a license or construction permit in effect as of May 1, 2009. A subsequent modification of any such FM translator will not affect its eligibility to rebroadcast an AM signal.

■ 5. Section 74.1263 is amended by revising paragraph (b) to read as follows:

§ 74.1263 Time of operation.

(b) An FM booster or FM translator station rebroadcasting the signal of an AM or FM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

■ 6. Section 74.1284 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.1284 Rebroadcasts.

(b) The licensee of an FM translator shall not rebroadcast the programs of any AM or FM broadcast station or other FM translator without obtaining prior consent of the primary station whose programs are proposed to be retransmitted. The Commission shall be notified of the call letters of each station rebroadcast and the licensee of the FM translator shall certify that written consent has been received from the licensee of the station whose programs are retransmitted.

(c) An FM translator is not authorized to rebroadcast the transmissions of any class of station other than an AM or FM

broadcast station or another FM translator.

[FR Doc. E9-21049 Filed 8-31-09; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0809251266-81485-02]

RIN 0648-XR11

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the 2009 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2009, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

**DATES:** Effective 0001 hours, September 1, 2009, through 2400 hours, December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sarah Bland, Fishery Management Specialist, (978) 281-9257.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2009 calendar year was set equal to 11,070,001 lb (5,021 mt) (74 FR 29, January 2, 2009). The percent allocated to vessels landing

summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 755,025 lb (342 mt). The 2009 allocation was reduced to 702,614 lb (319 mt) when research set-aside and 2008 quota overages were deducted.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2009.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 1, 2009, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2009 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 1, 2009, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2009.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9-21052 Filed 8-27-09; 4:15 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-XL60

#### Fisheries of the Exclusive Economic Zone Off Alaska; Loan Program for Crab Quota Share; Amendment 33

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

**ACTION:** Final rule; agency decision.

**SUMMARY:** NMFS announces the approval of Amendment 33 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 33 amends the FMP to allow NMFS to reduce the amount of fees collected under the Crab Rationalization Program to the amount needed to finance the Federal loan program for quota share purchase. The amendment provides NMFS with the flexibility to reserve only the amount of fees necessary to support the loan program, including no fees if none are needed. This FMP amendment does not require modifications to Federal regulations.

**DATES:** This agency decision is effective on August 24, 2009.

**ADDRESSES:** Electronic copies of Amendment 33 and the Categorical Exclusion for this action may be obtained from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fisheries management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

In April 2008, the North Pacific Fishery Management Council (Council) unanimously recommended Amendment 33, and on May 19, 2009, submitted Amendment 33 to the Fishery Management Plan for Bering Sea/