calculation procedures, tolerances for almond hulls were increased.

V. Conclusion

Therefore, tolerances are established for residues of dodine, *N*-dodecylguanidine acetate, including its metabolites and degradates, in or on almond, hulls at 30 ppm; fruit, stone, crop group 12 at 5.0 ppm; and nuts, tree, crop group 14 at 0.3 ppm. This final rule removes established tolerances for cherry, sweet; cherry, tart; peach; pecan; and walnut.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 21, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.172 as follows:

■ i. Revise the introductory text in paragraph (a).

■ ii. Remove the entries for cherry, sweet; cherry, tart; peach, pecan and walnut from the table in paragraph (a).

■ iii. Add alphabetically the entries for almond, hull; fruit, stone, crop group 12; and nuts, tree, crop group 14.

The additions and revision read as follows:

§ 180.172 Dodine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide dodine, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified in the table is to be determined by measuring only dodine, *N*-dodecylguanidine acetate; in or on the following commodities.

Commodity	Parts per million
Almond, hull	30.0
* * * * *	
Fruit, stone, crop group 12	5.0
Nuts, tree, crop group 14	0.3
* * * * *	

* * * * *

[FR Doc. 2012–29251 Filed 12–4–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–52; FCC 12–127]

Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration and clarification.

SUMMARY: In this document, the Commission denied four of six Petitions for Reconsideration, Petitions for Partial Reconsideration, and Petitions for Clarification of the Second Report and Order (Second R&O) in this proceeding, granting in part and denying in part two of the petitions. The Commission clarified some of the methodology to be used in applying the new rules and procedures in the Second R&O, in particular the method of counting reception services in service gain and loss areas, to assist applicants and allotment proponents in accurately applying the new rules and procedures. The Commission also further restricted the categories of applicants and allotment proponents to whom the new rules and procedures apply, finding that equitable considerations supported such restrictions. In addition to restrictions set forth in the Second R&O, the new rules will not apply to applications and allotment proposals filed before the new rules were proposed, or to those applications and proposals that have

already been subject to Commission decisions, but that remain pending due to subsequent legal challenges.

DATES: The rules discussed in the Second Order on Reconsideration (Order) became effective on May 6, 2011 (see 76 FR 18942 (Apr. 6, 2011)) and on July 19, 2011 (see 76 FR 42575 (Jul. 19, 2011)). The Commission, in the Order, clarified some of the methods to be used in applying the new rules, and further limited the categories of parties to whom the new rules apply.

ADDRESSES: Peter Doyle or Thomas Nessinger, Federal Communications Commission, Media Bureau, Audio Division, 445 12th Street SW., Room 2–B450, Washington, DC 20445.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418–2700 or *Peter.Doyle@fcc.gov;* Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418–2700 or *Thomas.Nessinger@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration (Order), FCC 12–127, adopted October 11, 2012, and released October 12, 2012. The full text of the Order is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Synopsis of Order

1. In the Order, the Commission addressed six petitions for reconsideration, petitions for partial reconsideration, and petitions for clarification of certain procedures adopted in the Second R&O in this proceeding (76 FR 18942, April 6, 2011, FCC 11–28, 26 FCC Rcd 2556, rel. Mar. 3, 2011). These included a number of measures designed to limit the use of population as the principal metric when considering competing proposals for new radio stations, a standard that has largely favored proposals located in or near large urbanized areas, rather than those located in less well-served rural areas and smaller communities. In the Second R&O, the Commission adopted procedures to limit dispositive preferences under 47 U.S.C. 307(b) (section 307(b)) for new AM construction permits, as well as new FM allotments, in already well-served urbanized areas.

2. The Commission also adopted procedures to forestall the movement of radio service from rural areas to more urban areas absent a compelling showing of need. Among these procedures was an urbanized area service presumption (UASP), under which a proposal for new or relocated radio service that would constitute the first local transmission service at a specified community is presumed to be a proposal to serve an entire urbanized area if the community is located within the urbanized area, or if the proposal would place, or could be modified to place, a daytime principal community signal over 50 percent or more of the urbanized area. The UASP can be rebutted by a compelling showing (1) that the specified community is truly independent of the urbanized area, (2) that the community has a specific need for an outlet for local expression separate from the urbanized area and (3) that the proposed station is able to provide that outlet. The basis for such a rebuttal showing is the longstanding test first set forth in *Faye and Richard Tuck,* Memorandum Opinion and Order, 3 FCC Rcd 5374, 5376 (1988) (*Tuck*), as slightly modified in the Second R&O. The UASP applies, albeit in somewhat different forms, to applications for new AM stations, proposals for new FM allotments, and applications to change a station's community of license.

3. The Commission also limited the circumstances under which a mutually exclusive applicant for a new AM station may receive a dispositive section 307(b) preference under Priority (4), other public interest matters, of the Commission's allotment priorities. In the context of proposals for new FM allotments, raw reception population totals will receive less weight than other legitimate service-based considerations, especially service to underserved populations. The UASP also applies to applications to change a station's community of license. Additionally, with regard to such applications, the Commission mandated greater transparency in applicants' section 307(b) showings, including the submission of more detailed showings demonstrating the populations gaining and losing radio service, and the numbers of services those populations receive before and after the proposed move. The Commission also announced it would strongly disfavor any proposed community of license change that would result in the net loss of third, fourth, or fifth reception service to more than 15 percent of the population in the station's current protected contour, or loss of a second local transmission service to a community with a population of 7,500 or greater. With two exceptions, the Commission stated that the new procedures would apply to all applications or proposals pending as of the Second R&O's adoption date.

4. Most of the Petitions for Reconsideration or Partial Reconsideration (Petitions) merely repeated points from the comments filed in this proceeding that were considered and rejected in the Second R&O. On that basis, the Commission denied the Petitions filed by Friendship Broadcasting, LLC; William B. Clay; M&M Broadcasters, Ltd.; and Educational Media Foundation and the Kent Frandsen Radio Companies. The Commission granted in part and denied in part the Petitions filed by Entravision Communications Corporation (Entravision) and Radio One, Inc., et al. (Radio One Parties). The Commission did address requests for clarification of certain issues, specifically, for clarification of the methodology for calculating reception service in section 307(b) analyses under Priority (4), other public interest matters; for clarification or amendment of some of the factors used to determine whether a community is independent of an urbanized area; and for clarification of the applicability of the UASP to intra-urbanized area station relocations. The Commission also addressed the requests of petitioners M&M Broadcasters, Inc. (M&M) and Entravision to exclude certain pending community of license change applications from the new policies.

5. Although many of the arguments in the Petitions were considered and rejected in the Second R&O, the Commission found it to be in the public interest to discuss the merits of these arguments in light of its contrary determinations. While some petitioners argued that the new procedures ''ignore current marketplace realities,'' causing radio stations to relocate to more populous areas because there is little or no money to be made in rural areas, the Commission reiterated that new stations are assigned or allotted on a demand basis, with the economic decision to locate a station in a particular community resting solely with the applicant. To the extent that changed circumstances render it an economic hardship for a station to remain in its community of license, the new

procedures allow for such a showing. The Commission again rejected the suggestion that rural residents should simply purchase any radio service they desire above ''basic'' broadcast service of as few as two reception services, or that section 307(b) obliges it only to assign minimal free radio service to certain Americans, based solely on where they choose to live.

6. The Radio One Parties contended that the new procedures, particularly the UASP, were arbitrary and capricious, based largely on reiterating arguments made in their comments, which were mostly confined to the context of community of license change applications. The Commission rejected the Radio One Parties' re-argument that ''only'' 19 percent of community of license change applications would trigger the UASP, and thus that this level of activity is insufficient to warrant remedial agency action. The Commission stated that the number of comments in the record indicating a strong interest of many radio broadcasters in relocating to more populated areas reflects the importance of the UASP as a section 307(b) licensing policy. For the reasons set forth in the Second R&O, the Commission reiterated that allowing such migration in all cases does not comport with its statutory duty under section 307(b), also noting that because the UASP is a presumption rather than a hard-and-fast rule, a licensee seeking to relocate its facilities due, for example, to changed conditions in its current community of license may rebut the presumption. Additionally, the Commission rejected the Radio One Parties' argument that the UASP constitutes an improper attempt to assume an applicant's service intentions based on the fact that the population of the proposed community of license may constitute a very small percentage of the overall coverage population. The UASP was not designed to divine an applicant's service intent, but rather to eliminate the undue, often dispositive advantage that prior section 307(b) policies conferred on proposals to serve communities located in large urbanized areas, especially in the context of selecting among mutually exclusive applications for new AM service. This advantage was based largely on the fact, supported by the record, that applicants would often designate as the community of license a community lacking local transmission service but whose population constituted a small percentage of the total audience to be served, to the detriment of mutually exclusive applicants proposing service to smaller, non-urbanized communities that might benefit more from new service.

7. The Radio One Parties again argued that the new procedures constitute a return to the policies eliminated in *The Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy,* Report and Order, 93 F.C.C.2d 436 (1993), an argument considered and rejected in the Second R&O. The Commission in that proceeding discontinued those policies based in part on application processes and procedural safeguards that now no longer exist. The Commission in the Second R&O also noted the dissimilarities between its new procedures and the processes formerly used to implement the policies that were discontinued in *Suburban Community Policy.* To the extent that similarities exist, it is because both are grounded in fulfilling the Commission's section 307(b) responsibilities. The record in this proceeding and the Commission's recent experience with broadcast auctions and community of license change proposals filed as minor modification applications—both licensing processes that post-date *Suburban Community Policy* by many years—convinced the Commission that the new procedures are necessary.

8. The Commission declined the Radio One Parties' request that it revise the eight factors, first enumerated in the *Tuck* case, that are used to evaluate the interdependence of the community of license specified by the applicant with the larger metropolitan area. It did, however, agree that some of the factors should be accorded less weight. For example, while disagreeing with the Radio One Parties' claim that the closing or consolidation of post office facilities necessarily invalidates the use of the remaining ZIP code as an indicator of community independence, the Commission agreed that the ubiquity of ZIP codes gives the presence of a dedicated ZIP code little probative significance of itself in establishing a community's independence, and thus that this factor should be given little weight. While generally declining to revise the *Tuck* factors, the Commission noted that it would provide applicants seeking to rebut the UASP wide latitude to present whatever facts they deem appropriate to its evaluation. While such showings would be scrutinized, the Commission will be receptive to presentations that may in some cases provide better and more reliable measures of community status than those set forth in *Tuck*. The Commission further emphasized that the eight *Tuck* factors are merely potential indicators of independence or interdependence, and that the burden remains on the applicant to show that the presence of such factors provides meaningful and relevant support for an ''independent'' community finding. The Commission also clarified that its analysis of showings rebutting the UASP will place primary emphasis on the first two prongs of the *Tuck* test, namely, the degree to which the proposed station would provide coverage to the urbanized area, and the size and proximity of the proposed community of license relative to the central city of the urbanized area.

9. The Radio One Parties also asked that the Commission clarify the methodology for measuring ''reception service'' for Priority (4) analyses of applications to change a station's community of license, as discussed in paragraph 39 of the Second R&O. Specifically, they ask, first, whether the contours of a non-reserved band FM station, for purposes of gain/loss analysis of a community of license change, should be calculated from the allotment coordinates at the proposed new community or from the transmitter coordinates specified in the actual proposal; second, when evaluating gain and loss areas, and in particular when determining the number of reception services to the gain and loss areas, which signal contour should be used; and third, in assessing reception service, whether ''potential services,'' such as vacant FM allotments or granted but unbuilt construction permits, should be counted. The Commission clarified the standards for evaluating reception services in the gain and loss areas for applications to change community of license, and thus granted the Radio One Petition in part.

10. First, when determining gain and loss areas for an FM station changing its community of license, the contours should be calculated using the authorized transmitter coordinates for the current facility, and the transmitter coordinates specified for the proposed new or modified facility. This is a change from past practice, under which the staff used allotment coordinates rather than the transmitter coordinates specified in the actual proposal. That practice, however, was an artifact of former licensing procedures, under which all community of license changes for FM stations first involved a reallotment of the station's channel at the new community. Since the Commission changed its procedures in 2006 to permit the filing of community of license change proposals by minor change applications, the staff can now evaluate the actual proposed transmitter

site. It is more appropriate to do so than to use allotment coordinates that may be miles from the actual transmitter site specified in the proposal. Moreover, this new approach is consistent with Commission practice regarding AM change of community applications, for which contours are calculated from the applicants' authorized and proposed transmitter sites.

11. Second, the Commission clarified that, when determining the number of reception services in gain and loss areas, the signal level to be evaluated for non-reserved band FM stations (including noncommercial educational [NCE] stations in the non-reserved band) shall be the service contour originating at the currently authorized and proposed transmitter coordinates. The service contour shall be calculated based on the facility's authorized and proposed effective radiated power (ERP) and height above average terrain (HAAT) and shall, as described below, take into account actual terrain. This is a departure from the method previously used to determine the number of reception services in gain and loss areas, which was based on maximum class facilities for all FM stations except for full Class C and NCE stations, and did not take into account actual terrain. However, in the Second R&O, the Commission required applicants proposing to change a station's community of license to provide detailed reports of populations receiving service and the numbers of services received. This increased scrutiny of the current and proposed reception service landscape demands a realistic picture of the populations receiving various levels of service, overruling the considerations of ''uniformity and certainty'' in service area calculations previously cited to justify the use of maximum rather than actual facilities. *See Greenup, Kentucky and Athens, Ohio,* Memorandum Opinion and Order, 6 FCC Rcd 1493, 1494 (1991). Moreover, population counts using the new methodology do not lack certainty. Additionally, many existing stations, for technical, economic, or other reasons, may never be able to realize full class facilities. Thus, the Commission believed it more appropriate to base an evaluation of the section 307(b) merits of community of license change applications on the populations actually receiving service from stations in an area, rather than on what may be, in many cases, merely a hypothetical level of reception service. For purposes of these gain and loss area calculations, the FM service contour shall be that set forth for the class of station in 47 CFR 73.215(a)(1), and shall be calculated using actual terrain under the standard prediction methodology set forth in 47 CFR 73.313 rather than assuming uniform terrain. For NCE reserved band stations, the service contours will be determined in the same manner, using actual currently authorized and proposed facilities (including directional patterns) and actual terrain. The service contour shall be the 60 dBμ contour, calculated as set forth in 47 CFR 73.509(c)(1).

12. For an AM station, the signal level to be evaluated for purposes of gain and loss calculations in applications to change community of license shall be the predicted or measured daytime 2.0 mV/m groundwave contour, calculated from the current and proposed transmitter coordinates using authorized facilities. When calculating AM reception services in gain and loss areas under Priority (4), ''reception service'' should include all AM daytime reception services. In this regard, the Commission noted that the AM primary service contours are set forth in 47 CFR 73.182(d), and are the daytime 0.5 mV/m groundwave contour for communities under 2,500 population, and the daytime 2.0 mV/m groundwave contour for communities over 2,500 population. The different primary service contours take into account the higher level of environmental noise resulting from greater population density. However, using different contours for communities of different sizes will often result in complicated calculations of the number of services to certain areas lying between the daytime 2.0 mV/m and 0.5 mV/m groundwave contours of an AM station. Because 47 CFR 73.182 implicitly recognizes that all areas, of whatever population, receive primary service within an AM station's daytime 2.0 mV/m groundwave contour, for purposes of determining the number of AM services and populations in gain and loss areas, the daytime 2.0 mV/m groundwave contour should be used. Applicants for new commercial AM stations providing showings under section 307(b) should, however, continue to count populations to be served by using the primary service contours (0.5 mV/m for communities under 2,500 population, 2.0 mV/m for communities over 2,500) set forth in 47 CFR 73.182(d). An applicant for a new AM station provides a section 307(b) showing only after being directed to do so by the staff (that is, after its application has been determined to be mutually exclusive with one or more other AM proposals), and in such cases the staff typically directs the applicant to provide the populations receiving both 0.5 mV/m and 2.0 mV/m daytime service from the proposed facilities.

13. Third, for purposes of the gain and loss calculations in Priority (4) analyses, as described in paragraph 39 of the Second R&O, applicants shall count all full-service AM (including daytime-only AM),[1] FM, and NCE FM stations, including granted, but unbuilt, construction permits for new stations. However, for purposes of these calculations applicants should not count vacant FM allotments. For the reasons cited above, the increased scrutiny of reception service in gain and loss areas requires an evaluation of actual, rather than hypothetical service. Thus, the Commission will evaluate the reception service as of the time of application, and will count only those facilities that have advanced to the point of a granted construction permit. Accordingly, in conducting the remaining services analysis and making a showing as described in paragraph 39 of the Second R&O, applicants should exclude vacant FM allotments from counts of reception services. Applicants for changes to a station's community of license following release of the Order shall use these clarified procedures when determining the number of reception services to gain and loss areas, and the procedures shall also apply to pending applications. However, the Commission found that because the Radio One Petition did not constitute notice to applicants of the exact nature of any clarifications of procedure on reconsideration, it shall allow parties with pending change of community applications as of the release date of the Order the option of either amending their application showings to conform to the clarified procedures announced in the Order, or proceeding based on the

[1] For purposes of the prohibition against any facility change that would create white or gray area, however (see Second R&O, 26 FCC Rcd at 2577), daytime-only AM stations will not count as providing full-time reception service. ''White'' area has been defined as that which receives no full-time aural service, while ''gray'' area is that which receives only one full-time aural service. Full-time aural (reception) service means both day and night service. While FM service contours are consistent for all dayparts, AM service contours vary between daytime and nighttime operation, with full-time AM reception service areas being those receiving both daytime 2.0 mV/m groundwave service and nighttime interference-free (NIF) service. For most stations, the daytime 2.0 mV/m groundwave contour completely encompasses the NIF contour, thus the NIF contour constitutes the full-time service area for such stations. Where the daytime 2.0 mV/m groundwave and NIF contours neither completely encompass nor are completely encompassed by the other, due to changes in antenna pattern and/or transmitter site between daytime and nighttime operation, the full-time service area is the common area within both contours.

reception service counts in their already-filed technical showings.

14. While, as noted above, vacant FM allotments will not be included in counts of reception services, the Commission will continue to count vacant FM allotments for purposes of section 307(b) analyses under Priority (3), provision of first local transmission service. This is because only one applicant or allotment proponent can claim to provide ''first'' transmission service at a given community. It would be inappropriate to accept a claim by a community of license change applicant to provide first local transmission service at the new community, if a channel had already been allotted there based on a showing that the allotment would constitute the first local transmission service. Of course, should the only channel allocated to a community be re-allotted to another community, a subsequent applicant or allotment proponent could propose first local transmission service there.

15. Petitioner William Clay (Clay) sought reconsideration, arguing that the new procedures will still allow grant of most applications claiming to provide first local transmission service while primarily serving communities and populations other than the proposed community of license, because the majority of the proposed communities are not located in or near urbanized areas and are thus not subject to the UASP, and further arguing that the procedures set forth in the Second R&O still fail to guarantee service to, and an outlet for self-expression of, the nominal community of license rather than the greatest populations to be served by a proposal. Clay contended, as he did in comments, that any new procedure should grant any local service preference to the community or collection of communities most likely to benefit from a proposed new service, no matter where situated. The Commission rejected Clay's proposal as overbroad, finding that its approach struck an appropriate balance between encouraging the goals of localism, allowing an applicant to propose to provide a chosen community with an outlet for expression, and the economic reality that a broadcaster will and must also provide for the needs and interests of its entire service area, of which the designated community of license may constitute a very small percentage. The record and the Commission's experience has shown this problem to be most acute in the case of applications for new and relocated radio service in and near urbanized areas, hence the limitation of the UASP to situations in which a station is located in or will cover most of an urbanized area. The Commission found that the new procedures will promote the Commission's goals under section 307(b) in a reasonable manner. *See AT&T Corp.* v. *FCC,* 220 F.3d 607, 621 (D.C. Cir. 2000) (''As long as the agency's interpretation is reasonable, we uphold it 'regardless whether there may be other reasonable, or even more reasonable, views.' '' quoting *Serono Lab, Inc.* v. *Shalala,* 158 F.3d 1313, 1321 (D.C. Cir. 1998)).

16. Entravision, in its Petition for Reconsideration and/or Clarification, raised issues concerning two aspects of the modified procedures. First, noting that the Commission had not typically required a *Tuck* showing for community of license change applications where both the current and the proposed communities of license are located in the same urbanized area, Entravision asked that the Commission clarify whether the UASP will apply, and a *Tuck* showing be required, in such situations in the future. The Commission clarified that *Tuck* showings will not be required where both the current and proposed communities are located in the same urbanized area, or the current facilities cover, and the proposed facilities would or could be modified to cover, more than 50 percent of the same urbanized area with a daytime principal community signal. However, in such community of license change cases, the UASP presumption would apply to the new community, i.e., would presumptively prohibit treating the service at the new community as a first local transmission service under Priority (3). Thus, in the absence of a showing to rebut the presumption that either the move-out or move-in community is sufficiently independent to warrant a first local transmission service priority, the applicant must make its showing under Priority (4), other public interest matters, by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.

17. Entravision and M&M, as well as Educational Media Foundation and the Kent Frandsen Radio Companies (filing a joint petition), also sought changes in the categories of cases subject to the new procedures. In the Second R&O, the Commission stated that the new procedures would apply to all pending applications and allotment rulemaking proceedings, with two exceptions. The first was AM Auction 84 applications, which were filed in 2004 and the majority of which have been processed under the prior procedures. The second was ''any non-final FM allotment proceeding, including 'hybrid' coordinated application/allotment proceedings, in which the Commission has modified a radio station license or granted a construction permit.'' 26 FCC Rcd at 2576. M&M argued that the same equities articulated to exempt these two categories should apply equally to pending community of license change applications, especially those in which other stations were required to make facility modifications. It contended that the decision to apply the new procedures to pending community of license change applications was arbitrary and capricious because ''similarly situated'' new AM applications and FM allotment proceedings were not treated in the same way. Entravision suggested that the Commission apply the prior procedures to any case in which there had been an ''initial decision'' as of March 2, 2011, the day before release of the Second R&O, even if the action was not final (i.e., if there is a pending petition for reconsideration or application for review).

18. The Commission questioned whether applicants proposing community of license modification were ''similarly situated'' to the two classes of applicants, permittees, and licensees that were exempted from the new policy. AM Auction 84 filing window applicants were required to file their applications during a filing window, in January 2004, that antedated the Notice of Proposed Rule Making in this proceeding (FCC 09–30, 74 FR 22498 (May 13, 2009), 24 FCC Rcd 5239 (2009)) (Rural NPRM) by over five years. Those applicants therefore had no reason to expect that their applications would be evaluated under a new section 307(b) standard. The Commission recognized, however, that the same equities apply to those few pending community of license change applicants, and petitioners seeking to amend the FM Table of Allotments, that filed their applications or rulemaking petitions before release of the Rural NPRM. Thus, on reconsideration the Commission determined that the new procedures should not apply to (1) applications for minor modification of a station to specify a new community of license filed before April 20, 2009, the release date of the Rural NPRM; or (2) FM allotment proceedings where the petition for rulemaking had been filed, and the rulemaking proceeding thus initiated, prior to the release date of the Rural NPRM.

19. Entravision, in its Petition, stated that the Commission did not ''precisely answer the question'' as to those cases to which the new section 307(b)

procedures would apply. Both Entravision and M&M suggested that the Commission draw a ''bright line'' as of the Second R&O's release date, to clarify the cases to which the new rules apply. Entravision stated that the prior section 307(b) procedures should apply in any instance in which the Commission had rendered a decision as of March 2, 2011, even if there was still a petition for reconsideration or application for review pending, as an equitable solution to keep parties from having to expend further time and resources revising their section 307(b) showings after having already obtained a favorable result from the Commission under pre-Second R&O procedures. M&M requested that the Commission only apply the new procedures to community of license change applications filed after release of the Second R&O.

20. The Commission disagreed that it was unclear, in the Second R&O, as to when the new procedures would apply, and further disagreed with M&M that all pending community of license change applications were ''similarly situated'' to the categories of cases the Commission exempted from the new procedures. The majority of pending community of license change applications were filed after release of the Rural NPRM, and thus were on notice that the procedures could change while their applications were pending. While the Commission further carved out a limited exception to the new procedures in FM allotment and hybrid proceedings where licenses were modified or construction permits granted, to the extent that similar equities may exist in the case of certain pending community of license change applications, it stated it would entertain requests for waiver of the revised procedures on a case-by-case basis. The Commission rejected M&M's attempt to analogize those pending community of license change applications without such equities, however, and thus M&M's request to apply the prior procedures to all such applications pending as of release of the Second R&O.

21. The Commission was more persuaded by Entravision's equitable argument to reconsider its application of the new policies. It envisioned situations in which, for example, two applications for change of community of license were granted on the same day, but one would become final under the pre-Second R&O procedures while the other would be subject to the new procedures merely because of a factor beyond the applicant's control, i.e., the filing of a petition for reconsideration or application for review of the application grant. The Commission found no principled reason to apply different procedures to such otherwise similarly situated applications, especially where any applicant facing reconsideration or review would have to go to the additional expense of revising its (previously successful) section 307(b) showing, above and beyond the expense of rebutting a reconsideration petition. On reconsideration, the Commission thus revised its previous determination as to the application of the new procedures. In addition to those categories of applications and rulemaking proceedings listed in paragraph 21 of the Order, and in the Second R&O (26 FCC Rcd at 2575–76), the Commission held that the revised section 307(b) procedures shall not apply to any pending community of license change application or FM allotment proceeding in which a decision on the application, or allotment *Report and Order,* was released prior to March 3, 2011, the release date of the Second R&O. The Commission therefore granted the Entravision Petition to the extent set forth in the Order, and denied the M&M Petition.

Report to Congress

22. Because no new rules are being adopted by the Commission in the Order, but merely clarifications of methodology and applicability of rules previously adopted, the Commission will not send a copy of the Order to Congress under the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

23. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j), that this *Second Order on Reconsideration is adopted.*

24. *It is further ordered* that the Petition for Reconsideration & Comments Regarding the Following Matter, filed by Anthony V. Bono, Friendship Broadcasting, LLC; the Petition for Partial Reconsideration, filed by William B. Clay; the Petition for Partial Reconsideration, filed by M&M Broadcasters, Ltd.; and the Petition for Reconsideration, filed by Educational Media Foundation and the Kent Frandsen Radio Companies, *are denied. It is further ordered* that the Petition for Reconsideration and/or Clarification, filed by Entravision Communications Corporation; and the Petition for Partial Reconsideration, filed by Radio One, Inc., et al., *are granted in part and denied in part.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–29423 Filed 12–4–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XC369

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; White Hake Trimester Total Allowable Catch Area Closure for the Common Pool Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: This temporary rule closes the White Hake Trimester Total Allowable Catch (TAC) Area to all common pool groundfish vessels fishing with trawl gear, sink gillnet gear, or longline/hook gear for the remainder of Trimester 2, through December 31, 2012. This action is necessary to prevent the common pool fishery from exceeding its Trimester 2 TAC or its annual catch limit for white hake. This rule is expected to slow the catch rate of white hake in the common pool fishery for the remainder of Trimester 2.

DATES: Effective December 5, 2012, through 2400 hours, December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, 978–675–2153, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the NE multispecies fishery are found at 50 CFR part 648, subpart F. Beginning in fishing year (FY) 2012 (May 1, 2012—April 30, 2013), the common pool's sub-annual catch limit (ACL) for each stock is apportioned into trimester TACs (Trimester 1 May 1—August 31; Trimester 2 September 1—December 31; and Trimester 3 January 1—April 30). The regulations at § 648.82(n) require the Regional Administrator to close the Trimester TAC Area for a stock when available information supports a determination that 90 percent of the Trimester TAC is projected to be caught. The Trimester TAC Area for a stock will close to all common pool vessels fishing