

DATES: This suspension is effective May 31, 2012. It has been enforced with actual notice since April 26, 2012.

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

FOR FURTHER INFORMATION CONTACT: For additional information or questions, please contact Mr. Keith Harper of the Wireless Telecommunications Bureau, (202) 418-2759, Keith.Harper@fcc.gov, regarding Part 22 applications; Mr. Terry Fishel of the Wireless Telecommunications Bureau, (717) 338-2602, Terry.Fishel@fcc.gov, regarding Part 90 Industrial/Business Pool applications; or Mr. Tracy Simmons of the Public Safety and Homeland Security Bureau, (717) 338-2657, Tracy.Simmons@fcc.gov, regarding Part 90 Public Safety Pool applications.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, ("PN") in DA 12-643, which was released on April 26, 2012. The full text of this document available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY-A257, Washington, DC, 20554 or by downloading the text from the Commission's Web site at <http://www.fcc.gov/>. The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY-B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [<FCC504@fcc.gov>](mailto:FCC504@fcc.gov) or calling the Consumer and Government Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis of the Public Notice

On April 26, 2012, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau released a *Public Notice* which suspended the acceptance and processing of certain applications for Part 22 and 90 services operating in the 470-512 MHz spectrum band (T-Band). The suspension will serve to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band, solicits input from interested parties, and determines how best to implement recent spectrum legislation contained in the Middle Class Tax Relief and Job Creation Act of 2012.¹

The filing and processing suspension applies only to applications for new or expanded use of T-Band frequencies for the following radio services in the 470-512 MHz band:

Part 22 Public Mobile Services: Paging and Radiotelephone (radio service code CD), Offshore Radiotelephone (radio service code CO)

Part 90 Industrial/Business Pool: Industrial/Business Pool—Conventional (radio service code IG), Industrial/Business Pool—Commercial, Conventional (radio service code IK), Industrial/Business Pool—Trunked (radio service code YG), Industrial/Business Pool—Commercial, Trunked (radio service code YK)

Part 90 Public Safety Pool: Public Safety Pool—Conventional (radio service code PW), Public Safety Pool—Trunked (radio service code YW).

As such, effective immediately and until further notice, the Bureaus will not accept or process (1) applications for new licenses; (2) applications that seek to modify existing licenses by adding or changing frequencies or locations; (3) applications that seek to modify existing licenses by changing technical parameters in a manner that expands the station's spectral or geographic footprint, such as, but not limited to, increases in bandwidth, power level, antenna height, or area of operation; and (4) any other application that could increase the degree to which the 470-512 MHz band currently is licensed. We clarify that affected applications that are now pending will not be further processed until the Commission decides how to implement the Act, except that defective applications and applications in return status that are not timely resubmitted will be dismissed.

The decision to impose this suspension is procedural in nature, and therefore is not subject to the notice, comment, and effective date requirements of the Administrative Procedure Act.² Moreover, there was good cause for not delaying the effect of the

nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band * * * currently used by public safety eligibles * * *." *Id.* at 6103(a). The Act instructs the Commission to "begin a system of competitive bidding under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum." *Id.* It also provides that "relocation of public safety entities from the T-Band Spectrum" shall be completed not later than two years after completion of the system of competitive bidding. *Id.* at 6103(b) and (c).

² See 5 U.S.C. 553(b)(A), (d); see also, e.g., *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971).

suspension until after publication in the **Federal Register**. Such a delay would have been impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of the suspension.³

Procedural Matters

1. Paperwork Reduction Act Analysis

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "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).

2. Congressional Review Act

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Public Notice* 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).

Federal Communications Commission.

Scot Stone,

Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

[FR Doc. 2012-12953 Filed 5-30-12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09-52; FCC 11-190]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements and form revisions associated with the Commission's rules contained in the Third Report and Order, FCC 11-190, pertaining to the policies to promote rural radio service and to streamline allotment and assignment procedures. This notice is consistent with the Third Report and Order, which stated that the Commission would publish a document

¹ Public Law 112-96, 126 Stat. 156 (2012). Section 6103 of the Act provides that, not later than

³ See 5 U.S.C. 553(b)(B), (d)(3).

in the **Federal Register** announcing the effective date of these rules and form changes.

DATES: 47 CFR 73.3573 and FCC Form 301, published at 77 FR 2916, January 20, 2012, are effective July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Cathy Williams on (202) 418-2918 or via email to: Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on April 27, 2012, OMB approved, for a period of three years, the information collection requirements contained in the Commission's Third Report and Order, FCC 11-190, published at 77 FR 2916, January 20, 2012. The OMB Control Number is 3060-0027. The Commission publishes this notice as an announcement of the effective date of the rule section and form revisions.

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on April 27, 2012, for the information collection requirements contained in the Commission's rule at 47 CFR 73.3573 and form revisions to FCC Form 301.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060-0027.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060-0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

OMB Approval Date: April 27, 2012.

OMB Expiration Date: April 30, 2015.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not for profit entities; State, local or Tribal governments.

Number of Respondents and Responses: 4,604 respondents and 8,040 responses.

Estimated Time per Response: 1-6.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 20,497 hours.

Total Annual Costs: \$90,659,382.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking ("First R&O") in MB Docket No. 09-52, FCC 10-24. To enhance the ability of federally recognized Native American Tribes to provide vital radio services to their citizens on Tribal lands, in the First R&O the Commission established a Tribal Priority for use in its radio licensing procedures. On March 3, 2011, the Commission adopted a Second Report and Order ("Second R&O"), First Order on Reconsideration, and Second Further Notice of Proposed Rule Making in MB Docket No. 09-52, FCC 11-28. On December 28, 2011, the Commission adopted a Third Report and Order in MB Docket No. 09-52, FCC 11-190 ("Third R&O"). In the Third R&O the Commission further refined the use of the Tribal Priority in the commercial FM context, specifically adopting a "threshold qualifications" approach to commercial FM application processing.

In the commercial FM context, the Tribal Priority is applied at the allotment stage of the licensing process. A Tribe or Tribal entity initiates the process by petitioning that a new Tribal Allotment be added to the FM Table of Allotments using the Tribal Priority. A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments, like all other FM allotment proponents, must file FCC Form 301 when submitting its Petition for Rule Making. Under the new "threshold qualification" procedures adopted in the Third R&O, once a Tribal Allotment has been successfully added to the FM Table of Allotments using the Tribal Priority through an FM allocations rulemaking, the Commission will announce by Public Notice a Threshold Qualifications Window ("TQ Window"). During the TQ Window, any Tribe or Tribal entity that could qualify to add that particular Tribal Allotment may file an FCC Form 301 application for that Tribal Allotment. Such an applicant must demonstrate that it meets all of the eligibility criteria for the Tribal Priority, just as the original Tribal

Allotment proponent did at the allotment stage. If it wishes its application to be considered at this stage, then during the TQ Window the original Tribal Allotment proponent must submit notice to process its pending Form 301 application immediately.

If only one acceptable application is filed during the TQ Window, whether by the original Tribal allotment proponent submitting notification to process its previously filed Form 301, or by another qualified applicant, that application will be promptly processed and the Tribal Allotment will not be auctioned. In the event that two or more acceptable applications are filed during the TQ Window, the Commission will announce a limited period in which the parties may negotiate a settlement or bona fide merger, as a way of resolving the mutual exclusivity between their applications. If a settlement or merger is reached, the parties must notify the Commission and the staff will process the surviving application pursuant to the settlement or merger. If a settlement cannot be reached among the mutually exclusive applicants, the Tribal Allotment will be auctioned during the next scheduled FM auction. At that time, only the applicants whose applications were accepted for filing during the TQ Window, as well as the original Tribal Allotment proponent, will be permitted to bid on that particular Tribal Allotment. This closed group of mutually exclusive TQ Window applicants must comply with applicable established auction procedures.

In the event that no qualifying party applies during the TQ Window, and the original Tribal allotment proponent requests that its pending Form 301 application not be immediately processed, the Tribal Allotment will be placed in a queue to be auctioned in the normal course for vacant FM allotments. When the Tribal Allotment is offered at auction for the first time, only applicants meeting the "threshold qualifications" may specify that particular Tribal Allotment on FCC Form 175, Application to Participate in an FCC Auction (OMB Control No. 3060-0600). Should no qualifying party apply to bid or qualify to bid on a Tribal Allotment in the first auction in which it is offered, then the Tribal allotment will be offered in a subsequent auction and any applicant, whether or not a Tribal entity, may apply for the Tribal Allotment.

Consistent with actions taken by the Commission in the Third R&O, Form 301 has been revised to accommodate applicants applying in a TQ Window for

a Tribal Allotment. As noted above, an applicant applying in the TQ Window, who was not the original proponent of the Tribal Allotment at the rulemaking stage, must demonstrate that it would have qualified in all respects to add the particular Tribal Allotment for which it is applying. Form 301 contains a new question in Section II—Legal titled “Tribal Priority-Threshold Qualifications.” An applicant answering “yes” to the question must provide an Exhibit demonstrating that it meets all of the Tribal Priority eligibility criteria. The Instructions for the Form 301 have been revised to assist applicants with completing the responsive Exhibit.

In addition, Form 301 contains a new option under Section I—General Information—Application Purpose, titled “New Station with Petition for Rulemaking to Amend FM Table of Allotments using Tribal Priority.” A petitioner seeking to add a Tribal Allotment to the FM Table of Allotments must file Form 301 when submitting its Petition for Rule Making. This new Application Purpose field will assist the staff in quickly identifying Form 301 applications filed in connection with a petition to add a Tribal Allotment and initiating the “threshold qualification” procedures.

This information collection is being revised to accommodate applicants applying in a Threshold Qualifications Window for a Tribal Allotment that had been added to the FM Table of Allotments using the Tribal Priority under the new “threshold qualifications” procedures adopted in the Third R&O.

OMB approved the information collection requirements and form revisions for this collection on April 27, 2012.

Federal Communications Commission.

Bulah P. Wheeler,

*Deputy Manager, Office of the Secretary,
Office of Managing Director.*

[FR Doc. 2012–13130 Filed 5–30–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XC044

Atlantic Highly Migratory Species; Commercial Porbeagle Shark Fishery Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the commercial fishery for porbeagle sharks. This action is necessary because landings for the 2012 fishing season have reached at least 80 percent of the available quota.

DATES: The commercial porbeagle shark fishery is closed effective 11:30 p.m. local time May 30, 2012, until, and if, NMFS announces in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Peter Cooper, 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), shark dealers are required to report to NMFS all sharks landed every two weeks. Dealer reports for fish received between the 1st and 15th of any month must be received by NMFS by the 25th of that month. Dealer reports for fish received between the 16th and the end of any month must be received by NMFS by the 10th of the following month. Under § 635.28(b)(2), when NMFS projects that fishing season landings for a species group have reached or are about to reach 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a closure action for that shark species group that will be effective no fewer than 5 days from the date of filing. From the effective date and time of the closure until NMFS announces in the **Federal Register** that additional quota is available and the season is reopened, the fishery for that species group is closed, even across fishing years.

On January 24, 2012 (77 FR 3393), NMFS announced that the porbeagle shark fishery for the 2012 fishing year was open and the available porbeagle shark quota was 0.7 metric tons (mt) dressed weight (dw) (1,585 lb dw). Dealer reports through May 17, 2012, indicate that 0.67 mt dw or 93.3 percent of the available quota for porbeagle sharks has been landed. Dealer reports received to date indicate that 4.3 percent of the quota was landed from the opening of the fishery on January 24,

2012, through March 6, 2012; 12.2 percent of the quota was landed from March 7, 2012, through March 28, 2012; 5.7 percent was landed from March 29, 2012, through April 17, 2012; and 71.1 percent of the quota was landed from April 18, 2012, through May 17, 2012. The fishery has reached 93.3 percent of the quota, which exceeds the 80 percent limit specified in the regulations. Accordingly, NMFS is closing the commercial porbeagle shark fishery as of 11:30 p.m. local time May 30, 2012. This closure does not affect any other shark fishery.

During the closure, retention of porbeagle sharks is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under 50 CFR 635.4, unless the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (50 CFR 635.22(a) and (c)). A shark dealer issued a permit pursuant to § 635.4 may not purchase or receive porbeagle sharks from a vessel issued an Atlantic shark limited access permit (LAP), except that a permitted shark dealer or processor may possess porbeagle sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under this closure, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a porbeagle sharks if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest because the fishery is currently underway, and any delay in this action would cause overharvest of the quota and be inconsistent with management requirements and objectives. If the quota is exceeded, the affected public is likely to experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.