

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(c) *Exceptions.* Indian Health Services and tribal facilities. The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638).

(d) \* \* \*

(1) For non-State government-owned or operated hospitals—March 19, 2002.

\* \* \* \* \*

## PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 10. The authority for part 457 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

### Subpart B—General Administration—Reviews and Audits; Withholding for Failure To Comply; Deferral and Disallowance of Claims; Reduction of Federal Medical Payments

■ 11. Section 457.220 is revised to read as follows:

#### § 457.220 Funds from units of government as the State share of financial participation.

(a) Public funds may be considered as the State's share in claiming FFP if they meet the conditions specified in paragraphs (b) and (c) of this section.

(b) The public funds are appropriated directly to the State or local SCHIP agency, or are transferred from other public agencies (including Indian tribes) to the State or local agency and are under its administrative control, or are certified by the contributing public agency as representing expenditures eligible for FFP under this section.

(c) The public funds are not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds.

### Subpart F—Payments to States

■ 12. Section 457.628 is amended by revising the introductory text and paragraph (a) to read as follows:

#### § 457.628 Other applicable Federal regulations.

Other regulations applicable to SCHIP programs include the following:

(a) HHS regulations in 42 Subpart B—433.51–433.74 sources of non-Federal share and Health Care-Related Taxes and Provider-Related Donations; apply to States' SCHIP programs in the same manner as they apply to States' Medicaid programs.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 28, 2010.

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: August 20, 2010.

**Kathleen Sebelius**

*Secretary.*

[FR Doc. 2010-30066 Filed 11-29-10; 8:45 am]

**BILLING CODE 4120-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 09-52; FCC 10-24]

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

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of compliance 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 associated with the Commission's rules and FCC Forms 301, 314, 315, 316 and 340. These rules and form changes were approved on May 27, 2010 and June 4, 2010 and the compliance date will be November 30, 2010.

**DATES:** The compliance date for §§ 73.3571(k), 73.7000, 73.7002(b), and 73.7002(c) and FCC Forms 301, 314, 315, 316 and 340 published at 75 FR 9797, March 4, 2010 is November 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cathy Williams on (202) 418-2918 or send an e-mail to: [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on May 27,

2010, and June 4, 2010, for a period of three years, for the information collection requirements contained in Sections 73.3571(k), 73.7000, 73.7002(b), and 73.7002(c) of the Commission's rules and FCC Forms 301, 314, 315, 316 and 340 and that the compliance date for these rules and forms published at 75 FR 9797, March 4, 2010, is November 30, 2010. If you have any comments on the burden estimates, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include OMB Control Numbers 3060-0029, 3060-0027, 3060-0996, 3060-0031 and/or 3060-0009 in your correspondence. The Commission also will accept your comments via the Internet if you send them to [PRA@fcc.gov](mailto:PRA@fcc.gov). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Under 5 CFR 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 valid OMB Control Number. The OMB Control Numbers are 3060-0027, 3060-0029, 3060-0996, 3060-0031 and 3060-0009 and the total annual reporting burdens and costs for respondents are as follows:

*OMB Control Number:* 3060-0029.

*OMB Approval Date:* June 4, 2010.

*Expiration Date:* June 30, 2013.

*Title:* Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station.

*Form Number:* FCC Form 340.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

*Number of Respondents and Responses:* 2,710 respondents and 2,710 responses.

*Estimated Time per Response:* 2 to 5 hours.

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

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections

154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 6,700 hours.

*Total Annual Costs:* \$27,894,950.00.

*Nature and Extent of Confidentiality:*

There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* On April 7, 2009, the Commission adopted a Notice of Proposed Rule Making in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09–52, FCC 09–30, 24 FCC Rcd 5239 (2009). On January 28, 2010, the Commission adopted a First Report and Order in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures (the “Order”), MB Docket No. 09–52, FCC 10–24, 25 FCC Rcd 1583 (2010). In the Order, the Commission adopted the Tribal Priority proposed in the Notice of Proposed Rule Making, with some modifications. Under the Tribal Priority, a Section 307(b) priority will apply to an applicant meeting all of the following criteria: (1) The applicant is either a federally recognized Tribe or tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes (with the Tribes or entities occupying tribal lands that are covered by at least 50 percent of the daytime principal community contour of the proposed facility); (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) the applicant proposes the first local tribal-owned noncommercial educational transmission service at the proposed community of license. The proposed Tribal Priority would apply, if applicable, before the fair distribution analysis currently used by noncommercial educational applicants. The Tribal Priority does not prevail over an applicant proposing first overall reception service to a significant population.

FCC Form 340 and its instructions are being revised to accommodate those applicants qualifying for the new Tribal Priority. Specifically, we are adding new Questions 1 and 2, which seek information as to the applicant's eligibility for the Tribal Priority and direct applicants claiming the priority to prepare and attach an exhibit, to Section III. The instructions for Section III have been revised to assist applicants with

completing the new questions and preparing the exhibit. Also, the Commission removed FCC Form 302–DTV, Application for Digital Television Broadcast Station License, and FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, from this information collection to allow the Commission to more effectively manage the information collections.

*OMB Control Number:* 3060–0027.

*OMB Approval Date:* June 4, 2010.

*Expiration Date:* June 30, 2013.

*Title:* Application for Construction Permit for Commercial Broadcast Station.

*Form Number:* FCC Form 301.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

*Number of Respondents and Responses:* 4,453 respondents and 7,889 responses.

*Estimated Time per Response:* 3 to 6.25 hours.

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

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

*Total Annual Burden:* 19,561 hours.

*Total Annual Costs:* \$85,096,314.00.

*Nature and Extent of Confidentiality:*

There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the “Order”) in MB Docket No. 09–52, FCC 10–24, 25 FCC Rcd 1583 (2010). The Order adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b) of the Communications Act of 1934, as amended (the “Act”). With regard to AM application processing, the Commission adopted a proposal to explicitly prohibit the downgrading of proposed AM facilities that receive a dispositive preference under Section 307(b) of the Act and thus are not awarded through competitive bidding. Specifically, an AM applicant that receives a dispositive preference under Section 307(b) will not be

allowed to later modify that proposal to serve a smaller population or otherwise negate the factors that led to the award of the preference. The Commission imposed these restrictions for a period of four years of on-air operations. These procedural safeguards are necessary to protect the integrity of our Section 307(b) analyses. Consistent with actions taken by the Commission in the Order, FCC Form 301 has been revised to add questions, specifically asking the applicant to certify that the construction permit application complies with the four year service requirements. The instructions for FCC Form 301 have been revised to assist applicants with completing the new questions.

*OMB Control Number:* 3060–0996.

*OMB Approval Date:* May 27, 2010.

*Expiration Date:* May 31, 2013.

*Title:* AM Auction Section 307(b) Submissions.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

*Number of Respondents and Responses:* 160 respondents and 160 responses.

*Estimated Time per Response:* 0.5 to 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 375 hours.

*Total Annual Costs:* \$71,200.00.

*Nature and Extent of Confidentiality:* There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the “Order”) in MB Docket No. 09–52, FCC 10–24, 25 FCC Rcd 1583 (2010). The Order adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the Order, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, tribal consortia, and majority tribal-owned entities proposing to serve tribal lands. The priority is only

available when all of the following conditions are met: (1) The applicant is either a federally recognized Tribe or tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities will cover tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial tribal-owned transmission service to the proposed community of license, which must be located on tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims. The Commission will dismiss, without further processing, the previously filed AM auction filing window application and technical proposal of any applicant that fails to file an amendment addressing the Section 307(b) criteria, where required. Mutually exclusive AM applicants may not use this as an opportunity to change the technical proposal specified in the AM auction filing window application. The Section 307(b) showing must be based on the technical proposal as specified in the AM auction filing window application.

*OMB Control Number:* 3060-0031.

*OMB Approval Date:* May 27, 2010.

*Expiration Date:* May 31, 2013.

*Title:* Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

*Form Number:* FCC Forms 314 and 315.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

*Number of Respondents and Responses:* 4,820 respondents and 12,520 responses.

*Estimated Time per Response:* 2 to 6 hours.

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

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

*Total Annual Burden:* 18,443 hours.

*Total Annual Costs:* \$36,168,450.00.

*Nature and Extent of Confidentiality:* There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09-52; FCC 10-24, 25 FCC Rcd 1583 (2010). The Order adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. In the Order, the Commission also adopted a priority under Section 307(b) of the Communications Act of 1934, as amended, to assist federally recognized Native American Tribes and Alaska Native Villages ("Tribes"), enrolled members of Tribes, and entities primarily owned or controlled by Tribes or enrolled members of Tribes, in obtaining broadcast radio construction permits designed primarily to serve tribal lands (the "Tribal Priority"). Applicants affiliated with Tribes who meet certain conditions regarding tribal membership and signal coverage qualify for the Tribal Priority, which in most cases will enable the qualifying applicants to obtain construction permits without proceeding to competitive bidding, in the case of commercial stations, or to point system evaluation, in the case of noncommercial educational ("NCE") stations. Once a permit is obtained, it cannot be assigned or transferred to another person or entity for a period beginning with issuance of the construction permit until the station has completed four years of on-air operations, unless the assignee or transferee also qualifies for the Tribal Priority.

Consistent with actions taken by the Commission in the Order, the following changes are made to Forms 314 and 315: Section I of each form includes a new question asking applicants to indicate whether any of the authorizations involved in the transaction were obtained (or, in the case of non-reserved band commercial FM stations the allotment for the station was obtained) through the Tribal Priority. The instructions for Section I of Forms 314 and 315 have been revised to assist applicants with completing the new questions.

*OMB Control Number:* 3060-0009.

*OMB Approval Date:* May 27, 2010.

*Expiration Date:* May 31, 2013.

*Title:* Application for Consent to Assignment of Broadcast Station

Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

*Form Number:* FCC Form 316.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

*Number of Respondents and Responses:* 750 respondents and 750 responses.

*Estimated Time per Response:* 1.5 to 4.5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 1,231 hours.

*Total Annual Costs:* \$711,150.00.

*Nature and Extent of Confidentiality:* There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09-52, FCC 10-24, 25 FCC Rcd 1583 (2010). The Order adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. To prevent unjust enrichment by parties that acquire broadcast construction permits through the use of a bidding credit in an auction, Section 73.5007(c) of the Rules requires reimbursement to the Commission of all or part of the bidding credit upon a subsequent assignment or transfer of control, if the proposed assignee or transferee is not eligible for the same percentage of bidding credit. The rule is routinely applied to "long form" assignment or transfer applications filed on FCC Forms 314 and 315. In the Order, the Commission also sought to clarify that the unjust enrichment payments to the government must be made even when an assignment or transfer is pro forma in nature and therefore filed on FCC Form 316. This ensures that applicants do not use the summary pro forma assignment and transfer procedures to circumvent the unjust enrichment requirements.

Consistent with actions taken by the Commission in the Order, FCC Form 316 has been revised to add the broadcast auction-based questions presently included on FCC Forms 314

and 315, specifically asking the applicants to certify that the proposed assignment or transfer complies with the unjust enrichment provisions of the Commission's competitive bidding rules. The instructions for FCC Form 316 have been revised to assist applicants with completing the new questions.

Federal Communications Commission.

**Gloria Miles,**

*Federal Register Liaison.*

[FR Doc. 2010-29671 Filed 11-29-10; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100813358-0560-02]

RIN 0648-BA16

#### Fisheries of the Northeastern United States; Discard Provision for Herring Midwater Trawl Vessels Fishing in Groundfish Closed Area I

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

**ACTION:** Final rule.

**SUMMARY:** Through this action, NMFS removes a regulatory exemption for midwater trawl herring vessels, which was originally implemented by a November 2, 2009, final rule. The exemption allowed midwater trawl vessels with an All Areas and/or Areas 2 and 3 Atlantic herring limited access permit fishing in Northeast (NE) multispecies Closed Area I (CA I) to release fish that cannot be pumped from the net at the end of pumping operations, without those fish being sampled by a NMFS at-sea observer. As a result of this rule, vessels will be required to bring the fish on board the vessel and make them available to the at-sea observer for sampling. The publication of this action is part of a Court-approved joint motion to stay pending litigation.

**DATES:** Effective January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 4, 2009, NMFS published a proposed rule (74 FR 45798) to implement changes to access

requirements for midwater trawl vessels fishing in CA I, at the request of the New England Fishery Management Council (Council), with the intended goal of collecting better information on bycatch in the midwater trawl fishery. A final rule was published on November 2, 2009 (74 FR 56562), that implemented regulations requiring 100-percent observer coverage of trips by vessels with limited access Atlantic herring All Areas and/or Areas 2 and 3 category permits fishing for herring in CA I with midwater trawl gear. The rule also prohibited these vessels from releasing fish from the codend of the net, transferring fish to another vessel that is not carrying an observer, or otherwise discarding fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer. The regulations implemented by the November 2, 2009, rule (74 FR 56562) provided the following exemptions to this prohibition:

- The vessel operator has determined there is a compelling safety reason; or
- A mechanical failure precludes bringing the fish aboard the vessel for inspection; or,
- After pumping of fish onto the vessel has begun, the vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. Under this scenario, the vessel operator must take reasonable measures (such as strapping and splitting the net) to remove all fish that can be pumped from the net prior to release; or
- When there are small amounts of fish that cannot be pumped and remain in the net at the completion of pumping operations.

Additionally, under these regulations, if a codend is released in accordance with one of the first three exemptions, the vessel operator must complete and sign an affidavit to NOAA's Office of Law Enforcement (OLE) stating the vessel name and permit number; the vessel trip report (VTR) serial number; where, when, and for what reason the catch was released; the total weight of fish caught on that tow; and the weight of fish released (if less than the full tow). Completed affidavits are to be submitted to OLE at the conclusion of the trip. Following a released codend under one of the first three exemptions, the vessel may not fish in CA I for the remainder of the trip.

The exception allowing small amounts of fish that cannot be pumped from the net (sometimes called operational discards) to be released unobserved from the net while still in the water was not specifically

mentioned in the proposed rule. NMFS considered this exemption to be a logical outgrowth of the proposed rule that needed no further public comment because it addressed a foreseeable practical problem that a small amount of fish may be left in a net after pumping operations were completed.

However, following publication of the final rule three fishermen filed a lawsuit challenging the exemption allowing the release of small amounts of fish that remain after pumping (*Taylor et al. v. Locke*, 09-CV-02289-HHK). Plaintiffs alleged that this additional exemption violated the Administrative Procedure Act because it was not a "logical outgrowth" of the proposed rule and should have been subjected to public comment, and that it violated conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by allowing fish to be released from herring nets unobserved. Plaintiffs also claimed that the terms "small amounts of fish" and "at the completion of pumping operations" were not adequately defined.

Without admitting any violation of applicable law in publishing the original final rule, NMFS and the plaintiffs agreed to stay the litigation while NMFS repromulgated the challenged provision, to solicit public comment. On September 7, 2010, NMFS published a proposed rule (75 FR 54292), that repromulgated the challenged provision (§ 648.80(d)(7)(ii)(D)) and solicited public comment on whether to retain, delete, or amend the additional exemption in question. The proposed rule sought comment on: Retaining the exemption as it currently exists (status quo); eliminating the exemption (Alternative 1); modifying the exemption by specifying a maximum of 200 lb (90.7 kg) of fish that could be released (Alternative 2); or modifying the exemption by requiring that the codend either be brought on board or lifted out of the water, at the captain's discretion, so the observer could better estimate the amount and type of fish being released (Alternative 3). Public comments were accepted through October 7, 2010. Comments received are summarized and responded to below.

Based on public comment received, NMFS is implementing "Alternative 1," and is removing the exemption for operational discards at § 648.80(d)(7)(ii)(D). Therefore, if fish remain in the net at the conclusion of pumping operations, those fish will have to be brought on board the vessel and made available for sampling and