

3060-0995
January 28, 2010

JUSTIFICATION FOR NON-MATERIAL/NON-SUBSTANTIVE CHANGE:

The Commission amended the rule specifying how to report potential violations of section 1.2105(c), which prohibits certain communications between auction applicants from the auction application deadline until the post-auction down payment deadline. In particular, we provide that such reports shall be made as directed by public notice or, absent such direction, solely to the Auctions and Spectrum Access Division ("Division") of the Wireless Telecommunications Bureau ("Bureau") by the most expeditious means available, rather than both to the Division and to the Office of the Secretary of the Commission. This revised procedure will reduce the risk that bidding-related information might be disseminated to auction applicants, which would be contrary to the purpose of section 1.2105(c).

The two paragraphs below are conclusions about the PRA implications of the proposed change.

Modification of section 1.2105(c)(6) which requires that any applicant making or receiving prohibited communications report such communication to the Commission by filing a report "with the Office of the Secretary, and a copy shall be sent to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau" by eliminating the filing with the Secretary. The reporting requirement is approved by OMB under OMB Control No. 3060-0995. There is no change in the Commission's burden estimates.

The PRA implementing rules suggest that even burden reductions have to be approved by OMB. See 5 CFR 1320.5(g); 44 USC 3507(h)(3); page 35 of the OMB Implementing Guide (section entitled Modifications of Collections Previously Approved by OMB). The rules mention "substantive or material modifications," without restriction to increases in burdens. 5 CFR 1320.5(g). In addition, 5 CFR 1320.5(a) notes that "An agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information" Eliminating one of the filing points (or the entire reporting requirement) would be a revision of an approved collection (3060-0995) that this rule seems to indicate requires OMB approval. However, further research into the rule revealed the following. Section 1302.5(g) dates back to the origins of the PRA. OMB observed: "This paragraph is intended to permit agencies to make minor adjustments in the wording of collections of information without resubmission to OMB. However, if the substance of the collection of information is changed, or if the change is in any way material, it must still be submitted to OMB for clearance. For agencies to make substantive or material modifications without OMB clearance would enable them to avoid the strictures of the Act. Special administrative arrangements can be made to effectuate prompt decreases in paperwork requirements." Controlling Paperwork Burdens on the Public, 48 FR 13666, 13683 (1983) (discussing 5 CFR 1302.5(g) (previously 1302.11(h))).