

it. However, because the October 30, 2008 DSW revisions are less stringent than the hazardous waste regulations that applied to the affected hazardous secondary materials before the DSW rule went into effect, States that have been authorized to administer the RCRA Subtitle C hazardous waste program are not required to adopt these revisions. For States who do not adopt these revisions, the State hazardous waste regulations, as authorized by EPA, will remain the standards that apply to hazardous wastes sent to reclamation in that State.

Because the DSW final rule is in effect, States may decide to adopt these provisions (or to adopt a subset of these provisions, such as the generator-controlled exclusion) at any time. States may also decide not to adopt the DSW rule until such time as EPA completes the current process of reviewing the Sierra Club petition. If EPA subsequently decides to revise the rule, such that the revisions are more stringent than the October 30, 2008, rule, then those States who adopted the current version of the DSW rule would need to modify their program to adopt the more stringent provisions (because State RCRA regulations can be no less stringent than the Federal regulations).

Dated: May 11, 2009.

**Matt Hale,**

*Director, Office of Resource Conservation and Recovery.*

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BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket Nos. 07-294, 06-121, 02-277, 04-228; MM Docket Nos. 01-235, 01-317, 00-244; FCC 09-33]

### Promoting Diversification of Ownership in the Broadcasting Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM) seeks comment on whether to modify FCC Form 323-E, the Ownership Report filed by noncommercial educational (NCE) licensees of AM, FM, and TV broadcast stations, to obtain gender, race, and ethnicity data. Obtaining the information, the FCC believes, would further its goal to design policies to advance diversity in the broadcast

industry. The Fourth FNPRM also seeks comment on whether to collect gender, race and ethnicity ownership information for low power FM (LPFM) licensees or whether to continue to exempt LPFM licensees from the 323-E filing requirements.

**DATES:** Submit comments on or before June 26, 2009 and submit reply comment on or before July 13, 2009. Submit written comments on the PRA proposed information collection requirements on or before July 27, 2009.

**ADDRESSES:** You may submit comments, identified by MB Docket Nos. 07-294; 06-121; 02-277; 04-228; MM Docket Nos. 01-235; 01-317; 00-244, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Submit hand-delivery paper comments to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Submit commercial overnight mail to 9300 East Hampton Drive, Capitol Heights, MD 20743. Submit U.S. Postal Service First-Class, Express, and Priority mail to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or *phone:* (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Mania Baghdadi, (202) 418-2330; Amy Brett (202) 418-2300.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Fourth FNPRM adopted April 8, 2009, and May 5, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs>). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Submit PRA comments to Nicholas A. Fraser, Office of Management and Budget, by e-mail at

*Nicholas A. Fraser@omb.eop.gov* or via fax at (202) 395-5167 and to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC or by e-mail at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*.]

### Filing Requirements

*Ex Parte Rules.* The Fourth FNPRM will be treated as "permit-but-disclose" subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

*Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

**Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the FCC continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings between 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

**People with Disabilities:** 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). Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-0432 (TTY), or [bill.cline@fcc.gov](mailto:bill.cline@fcc.gov).

**Availability of Documents.** Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com); or via their Web site at <http://www.bcpiweb.com>.

### Summary of the Fourth Further Notice of Proposed Rulemaking

1. **Noncommercial Entities.** The FCC Form 323-E Ownership Report is filed by NCE licensees of AM, FM, and TV broadcast stations. Currently, Form 323-E does not ask gender, race, or ethnicity data questions. The FCC seeks comment on whether to include this information on the form. The FCC tentatively

concludes that obtaining gender, race, and ethnicity information would further its goal to design policies to advance diversity in the broadcast industry. The FCC believes that data from the entire universe of NCE stations are necessary to provide a comprehensive picture of broadcast ownership, including ownership by women and minorities in the broadcast industry. Researchers and the GAO support modifying the filing requirements to collect ownership data for NCE stations.

2. The FCC recognizes, however, that there are a number of data collection issues that could thwart its efforts to obtain minority and gender data due to the complex ownership structure of some NCE licensees. Many NCE broadcast licensees are non-profit, non-stock entities, or governmental organizations that are controlled by governing boards or trustees composed of members who do not have a financial stake in the licensee organization. Their structure and organization raise difficult issues as to how to define ownership in the NCE context.

3. The FCC seeks comment on how to define ownership, including minority and/or female ownership, in the NCE context. The FCC recognizes that organizational documents are important in defining an NCE entity's structure and mission, including whether it serves underserved audiences. However, these documents would not provide the same kind of empirical evidence that ownership statistics provide in the commercial context. The FCC asks whether looking at the composition of the board of directors or other governing entity of an NCE station would be adequate for this purpose. It also asks whether that information would meaningfully expand its information on minority and female ownership. In addition, the FCC seeks comment on any potential reporting and recordkeeping burdens on NCE entities. It asks whether difficulties in defining ownership in this context would compromise the integrity of the data and whether there are ways to minimize burdens on NCEs from this proposed reporting requirement. Assuming the FCC decides to seek information as to minority and female "ownership" of NCE licensees, it also seeks comment on whether to adopt the same or similar modifications to Form 323-E that are adopted in the accompanying Order for Form 323. For instance, it seeks comment on whether to establish a uniform biennial filing date and a uniform date as of which filers must identify ownership interests. It also seeks comment as to how to assure data quality, including whether measures

such as improving the computer interface process, building in additional checks for Form 323-E to perform verification and review functions, and ensuring that all data filed is in a format that can be electronically searched, aggregated, and cross-referenced, are appropriate and sufficient.

4. LPFM licensees and permittees are currently exempt from filing Form 323-E. As of December 31, 2008, there are 859 LPFM licensees, all of which are NCE entities. The FCC seeks comment on whether to require LPFM licensees to file Form 323-E as the FCC proposes to revise it, to collect minority and gender information for LPFM licensees or to continue to exempt LPFM licensees from the 323-E filing requirements. The FCC seeks comment on whether the exclusion of any NCE ownership information, such as information on LPFM licensees, would diminish the usefulness of the new data. The FCC also invites comment as to whether it would be burdensome for LPFM licensees to report this information and, if so, how burdensome. If the FCC decides to collect this data from LPFM licensees, it seeks comment on whether LPFM licensees should be required to file Form 323-E or another shorter form that only seeks minority and gender ownership information.

### Initial Paperwork Reduction Act Analysis

5. The Fourth FNPRM contains potential information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13. OMB, the general public, and other Federal agencies are invited to comment on the potential new and modified information collection requirements contained in this Fourth FNPRM. If the information collection requirements are adopted, the Commission will submit the appropriate documents to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA and OMB, the general public, and other Federal agencies will again be invited to comment on the new and modified information collection requirements adopted by the Commission. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Ex. Public Law 107-98, *see* 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

#### Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”), the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible economic impact on small entities by the policies and rules proposed in this Fourth FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Fourth FNPRM. The Commission will send a copy of the Fourth FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).

##### A. Need for, and Objectives of, the Proposed Rules

7. The Fourth FNPRM invites comment on proposed revisions to FCC Form 323-E, which would for the first time collect information on minority and female ownership of noncommercial radio and television licensees. The objective of the information collection is to obtain comprehensive ownership data to further the Commission’s goal to design policies to advance diversity in the broadcast industry. In addition, the Fourth FNPRM seeks comment on whether to require LPFM licensees, which are noncommercial broadcast licensees, to file Form 323-E on a biennial basis and to file information as to their minority and female ownership.

##### B. Legal Basis

8. This Fourth FNPRM is adopted pursuant to sections 1, 2(a), 3, 4(i, j), 257, 301, 303(r), 307-10, and 614-15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i, j), 257, 301, 303(r), 307-10, 534-35.

##### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term “small entity” as

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

10. *Television Broadcasting.* The rules and policies proposed herein apply to licensees of noncommercial television stations, as well as potential licensees of noncommercial television stations. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than \$14 million in annual receipts as a small business. Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.” According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of February 19, 2009 there are about 392 noncommercial television stations. The FCC does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the FCC will assume that all of these entities qualify as small businesses. In assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The FCC is unable to include or aggregate revenues from affiliated companies or entities so its assumption may overstate the number of small entities that might be affected by the proposal to require these entities to file Form 323-E.

11. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific noncommercial television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the proposed information collection may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess this criterion in the context of media

entities, and the Commission’s estimate of small businesses to which the proposed information collection may apply may be over-inclusive to this extent.

12. *Radio Broadcasting.* The rules and policies proposed herein apply to licensees of noncommercial radio stations, as well as to potential licensees of noncommercial radio stations. The Small Business Administration defines a radio broadcasting entity that has \$7 million or less in annual receipts as a small business. Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.” According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Radio Analyzer Database as of February 19, 2009 there are about 3,141 noncommercial radio stations. The FCC does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so it will assume that all of these entities qualify as small businesses. In assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The FCC is unable to include or aggregate revenues from affiliated companies or entities so its assumption may overstate the number of small entities that might be affected by the proposal to require these entities to file Form 323-E.

13. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The FCC is unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. The FCC notes that it is difficult at times to assess this criterion in the context of media entities, and its estimate of small businesses to which the proposed information collection may apply may be over-inclusive to this extent.

14. *Low Power FM Stations.* The proposed information collection could affect licensees of low power FM (LPFM) stations, as well as potential licensees in this radio service. The same

SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts. As of December 31, 2008, there are approximately 859 licensed LPFM stations. Given the nature of these services, the FCC will presume that all of these licensees qualify as small entities under the SBA definition.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

15. The Fourth FNPRM seeks comment on whether to revise Form 323-E, the ownership report for noncommercial educational broadcast licensees, to include minority and gender information. Therefore, the rules might contain modified information collections for noncommercial broadcast licensees. The FCC anticipates that changes in reporting or recordkeeping requirements for noncommercial broadcast entities would result from the changes in the Commission's Form 323-E necessary to implement the proposal to collect gender, race or ethnicity data. In addition, the FCC anticipates that changes in reporting or recordkeeping requirements for LPFM licensees would result from new 323-E filing requirements. The Fourth FNPRM also seeks comment on whether to require low power FM (LPFM) licensees to file, on a biennial basis, Ownership Report, Form 323-E. Therefore, the rules might contain modified information collections for LPFM licensees.

*E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

16. The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

17. As noted, the FCC is directed under law to describe any such alternatives it considers, including alternatives not explicitly listed above. The Fourth FNPRM seeks comment on

the tentative conclusion that obtaining gender and racial/ethnic information from all noncommercial stations would further the FCC's goal to design policies to advance diversity in the broadcast industry. In the alternative, the Commission could defer until a later time collection of such information. The Fourth FNPRM also seeks comment on whether the proposed data collection would impose a significant reporting, recordkeeping, or other compliance burden on noncommercial entities, especially smaller noncommercial entities, and whether there are alternative ways to minimize burdens on NCEs from this proposed reporting requirement. In particular, the Fourth FNPRM recognizes that organizational documents are important in defining a noncommercial entity's structure and mission, including whether it serves underserved audiences. However, the Fourth FNPRM notes that these documents would not provide the same kind of empirical evidence that ownership statistics provide in the commercial context. Therefore, the Fourth FNPRM asks whether looking at the composition of the board of directors or, in the alternative, some other governing entity of a noncommercial station would be adequate for this purpose and whether the information would meaningfully expand the FCC's information on minority and female ownership. In addition, the Fourth FNPRM asks whether to establish a uniform biennial filing date and a uniform date as of which filers must identify ownership interests. In addition, the Fourth FNPRM asks how to assure data quality, including whether improving the computer interface process, building in additional checks for Form 323-E to perform verification and review functions, and ensuring that all data filed is in a format that can be electronically searched, aggregated, and cross-referenced, are appropriate and sufficient. The Fourth FNPRM also seeks comment on the extent of the burden on LPFM licensees, all of which are smaller noncommercial entities. The Commission especially encourages small entities to comment on the proposals in the Fourth FNPRM in this proceeding. The Commission welcomes comment, including presentation of alternatives to or modifications of rules proposed herein, on how to minimize any burdens on small business licensees.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

None.

Federal Communications Commission.

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

[FR Doc. E9-12310 Filed 5-26-09; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 240**

[Docket No. FRA-2008-0091, Notice No. 3]

RIN 2130-AB95

**Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice to reopen comment period.

**SUMMARY:** FRA is reopening the comment period for the notice of proposed rulemaking (NPRM) published on December 31, 2008 (73 FR 80349) which proposed revisions to FRA regulations governing the qualification and certification of locomotive engineers. Reopening the comment period is necessary to provide interested parties the opportunity to submit comments on the information and testimony offered at the public hearing related to the NPRM that was conducted on April 14, 2009. The comment period is reopened until June 15, 2009.

**DATES:** Written comments must be received by Monday, June 15, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

**ADDRESSES:** Comments related to Docket No. FRA-2008-0091 may be submitted by any of the following methods:

- Fax: 1-202-493-2251;
- Mail: U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590;

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- Electronically through the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket name