

and will later be subject to the NEPA process, either collectively or case-by-case"). Therefore, the proposed action is categorically excluded from environmental review under the National Environmental Policy Act (NEPA).

We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### *Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. This proposed rule would amend only BLM regulations that could impact non-energy solid leasable minerals. A Statement of Energy Effects is not required.

#### *Clarity of This Regulation*

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### *Author*

The principal authors of this rule are: Alfred Elser, Division of Solid Minerals; Bill Radden-Lesage, Division of Solid Minerals; Adam Merrill, Division of Solid Minerals; Lindsey Curnutt, Division of Solid Minerals; Charles Yudson, Division of Regulatory Affairs; assisted by the Office of the Solicitor.

Dated: October 8, 2019.

#### **Casey Hammond,**

*Acting Assistant Secretary, Land and Minerals Management.*

#### **List of Subjects in 43 CFR Part 3500**

Government contracts, Hydrocarbons, Mineral royalties, Mines, Phosphate,

Potassium, Public lands-mineral resources, Reporting and recordkeeping requirements, Sodium, Sulphur, Surety bonds.

#### **43 CFR Chapter II**

For the reasons set out in the preamble, the Bureau of Land Management proposes to amend 43 CFR part 3500 as follows:

#### **PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE**

- 1. The authority citation for part 3500 continues to read as follows:

**Authority:** 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1701 *et seq.*; and sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

- 2. Revise § 3513.11 to read as follows:

#### **§ 3513.11 May BLM relieve me of the lease requirements of rental, minimum royalty, or production royalty while continuing to hold the lease?**

Yes. The BLM has a process that may allow you temporary relief from these lease requirements (See 30 U.S.C. 209).

- 3. Revise § 3513.15 to read as follows:

#### **§ 3513.15 How do I apply for reduction of rental, royalties or minimum production?**

You must submit your application with the following information for all leases involved:

- (a) The serial numbers;
- (b) The name of the record title holder(s);
- (c) The name of the operator and operating rights owners if different from the record title holder(s);
- (d) A description of the lands by legal subdivision, if the application is for a portion of the lease;
- (e) A map showing the serial number and location of each mine or excavation and the extent of the mining operations;
- (f) If you are applying for relief from the minimum production requirement, complete information as to why you did not attain the minimum production;
- (g) Justification showing why you cannot successfully operate the mines under the royalty or rental fixed in the lease and other lease terms;
- (h) Any other information BLM needs to determine whether the request satisfies the standards in § 3513.12 of this part.

- 4. Add a new § 3513.17 to read as follows:

#### **§ 3513.17 How will BLM implement a reduction of rental, royalties or minimum production?**

- (a) The BLM may reduce rental, royalties, or minimum production on its own initiative if the BLM determines,

based on available information, that it is necessary to promote development of the mineral resource. Such a reduction may be for a specific geographic area, or on an industry-wide basis.

(b) The BLM may reduce rental, royalties, or minimum production in response to an application submitted under § 3513.15 if the application meets the criteria in § 3513.12.

(c) The BLM may grant a reduction not to exceed:

(1) 10 years from the date of implementation under paragraph (a) of this section, or

(2) 10 years from the date of the decision to approve the application submitted paragraph (b) of this section or for a maximum quantity of mineral production as determined by the BLM.

[FR Doc. 2019–22535 Filed 10–17–19; 8:45 am]

**BILLING CODE 4310–84–P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[MB Docket Nos. 05–6, 17–105, 17–264; FCC 19–97]

### **Filing of Applications; Modernization of Media Regulation Initiative; Revision of Requirements**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission adopted a Further Notice of Proposed Rulemaking, in which it sought comment on proposals to change the rules governing local public notice given by broadcast station applicants. These specific rule changes were proposed based on responses to the Notice of Proposed Rule Making in this proceeding.

**DATES:** Comments may be filed on or before November 18, 2019 and reply comments may be filed on or before December 2, 2019.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 17–264, by any of the following methods:

- *Federal Communications Commission's website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* 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 Commission 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.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 888-835-5322.

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:**

Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418-2700; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418-2700. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), MB Docket Nos. 05-6, 17-105, 17-264; FCC 19-97, adopted and released on September 26, 2019. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/ndbdp>.

**Initial Paperwork Reduction Act of 1995 Analysis**

The FNPRM in document FCC 19-97 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act, Public Law 104-13; 44 U.S.C. 3501-3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107-198; 44 U.S.C. 3506(c)(4).

**Synopsis**

1. Section 311(a) of the Communications Act of 1934, as

amended (the Act), 47 U.S.C. 311(a), provides that when there is filed with the Commission any application to which section 309(b)(1) applies, for an instrument of authorization for a station in the broadcasting service, the applicant shall give notice of such filing in the principal area which is served or is to be served by the station. The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given. Section 73.3580 of the Commission's rules, 47 CFR 73.3580, through which this statute was implemented, requires applicants for broadcast authorizations to notify the public of the filing of applications, with certain exceptions. Section 73.3580 applies to a broad range of applications, thus ensuring that the relevant communities to be served are made aware of applications and are given the opportunity to participate in the broadcast licensing process. As the rule has been revised, it has evolved into a number of different procedures depending on the type of station, applicant, or application. Generally, stations that are able to provide on-air public notice are required to do so. In many cases, but not all, these stations also must provide written public notice in a newspaper. In other cases where stations cannot provide on-air public notice, the station is required to provide only written public notice in a newspaper. The rule also prescribes the timing, frequency, duration, and content of both the on-air and written public notice and the type of newspaper in which the written notice must be published. Broadcasters have urged the Commission to update 47 CFR 73.3580 to allow applicants to notify the public of applications through the internet, in conjunction with broadcast announcements, and to consider simplifying the rule. The Commission released a 2017 Notice of Proposed Rule Making (NPRM), 32 FCC Rcd 8203 (2017), to seek comment generally on whether to update or even eliminate § 73.3580.

2. After considering the comments filed in response to the NPRM, the Commission proposes to eliminate the requirement to publish written public notice in newspapers, replacing newspaper publication with online written notice, and that online notice should link to the actual online application available in the Commission-hosted Online Public Inspection File (OPIF). It is believed that this rule change will reduce costs and

burdens on applicants, while providing the public with superior information in the form of links to filed applications rather than summaries of those applications. The Commission further proposes that broadcasters currently required to give public notice by on-air announcements should make simpler and less frequent announcements that emphasize referring viewers and listeners to OPIF, and that the schedule of such announcements should be the same for all applicants, broadcast services, and application types. The Commission also proposes to streamline both on-air and online written public notices, and to replace detailed application descriptions with directions on how viewers and listeners can review applications in OPIF or Commission databases. Thus, the Commission's proposal would retain the basic structure of applicants' public notice obligations, but to modernize and streamline the process by substituting online notices for newspaper publication and by standardizing and simplifying those notices. The goal is to reduce burdens on broadcasters while providing the public with better and more accurate information. The Commission solicits comment as to these proposals, inviting commenters to opine as to whether some or all applicants should have different types of public notice obligations under new local public notice rules. The Commission also invites comment as to whether it should allow or require other means of public outreach, for example, social media accounts or mobile apps, as means of providing local public notice, and what the costs and benefits of such alternate means would be. Would use of these methods allow greater repetition of public outreach announcements without imposing significant additional burdens on broadcasters? Would it present challenges? Commenters should describe and, if possible, quantify the costs and benefits of the proposal(s) to broadcasters and the public. The Commission tentatively concludes that the proposed rules would be less costly to applicants and the public, would provide more effective public notice by improving the public's access to applications, and would satisfy the statutory notice requirement, and seeks comment on these tentative conclusions.

3. *Proposed elimination of public notice requirement.* Despite the Commission's suggestion in the NPRM to repeal 47 CFR 73.3580 in its entirety, the Commission tentatively concludes that it is statutorily required to retain

some form of local public notice. 47 U.S.C. 311 imposes a local public notice obligation on an applicant's part. The Commission therefore proposes not to repeal the rule.

4. *Substitution of online written public notice for newspaper publication.* The Commission proposes to substitute online written public notice for the requirement that applicants publish notice of broadcast applications in a local newspaper. Under the proposed rule, members of the public would be directed to the application itself in the applicant's OPIF, providing more effective notice of filed applications, reducing costs for the applicants and the public, and providing the public with greater opportunities to discover applications that are relevant to the communities where they live. Under the proposal, those applicants currently required to give written public notice by newspaper publication would instead post notice of the filing of an application on an internet website and include a hyperlink to the actual application in OPIF.

5. Broadcasters favor elimination of the newspaper publication requirements, contending that newspaper publication is expensive and increasingly ineffective for giving public notice. Newspapers and their trade organizations argue in favor of retaining the newspaper publication requirements, arguing that most Americans read a newspaper in some form at least once a month, and that newspaper publication continues to be superior to online notice. These commenters also note that a sizable percentage of Americans lack internet access, especially older people and those living in rural areas. The Commission tentatively concludes that adopting online written notice as a substitute for newspaper publication would provide more effective notice for the public. Newspaper public notice imposes costs on both the applicant, which must pay for the notice, and the public, which must pay for a newspaper. Online written notice has the advantage of eliminating costs for applicants and consumers, except in the limited number of cases when an applicant may have to pay to post written notice on a third-party site. The proposed rule for online written notice would result in written notice being available for continuously for 30 days, compared to the current rule, which requires newspaper publication for no more than four days. Online publication also allows the public to take advantage of online search tools to automate tracking and discovering new applications in a manner that is not

possible with newspaper written notice. Thus, the Commission tentatively concludes that posting written public notice online, in the manner described in detail below, would be more effective in reaching viewers than publishing in a print newspaper, and invites comment on this tentative conclusion. Commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

6. *Online notice requirements.* Given our tentative conclusion that online public notice of application filing is more effective than and should replace newspaper publication, we propose that in the majority of cases such public notice should be posted on the applicant station's, licensee's, or affiliated website; should remain posted continuously (24 hours a day, seven days a week); and should link directly to the noticed application in OPIF or, if the station has no OPIF, in Commission licensing databases. We believe that this will effectively provide public notice that is available to viewers and listeners at any time, compared to printed summaries published occasionally in newspapers. Newspaper notice was designed to provide the public with sufficient information to decide whether to travel to a station's main studio to view a physical copy of an application. Using online databases, the public is able to access actual filed broadcast applications at any time, day or night, merely by entering station information and clicking on links to applications filed by broadcast stations. Thus, the Commission believes that the goal of the local public notice rules should be to enable viewer and listener access to filed applications, rather than the current practice of summarizing applications and facilitating physical inspection. The Commission proposes the following specific rules for online public notice.

7. *Sites for posting online notice.* In order to make online public notice meaningful to the local communities served by broadcast stations, the Commission proposes that an applicant post online notice on its own website or one as closely affiliated with the station as possible, as that would be the first place listeners or viewers would be expected to turn for station information. The online public notice should be posted in a manner designed to promote discovery by the public in the principal area that is served or to be served by the station that is the subject of an application. Therefore, if the station to which the application pertains has a website, the notice should be conspicuously posted on that website's

home page. In addition, the text of the notice should be apparent to the average internet user, with a reasonably large font in a contrasting color from the background. If the station does not have its own website but the station licensee has a website, the notice should be posted on the licensee's website's home page. If neither the station nor the station licensee maintains a website but the licensee's parent entity has a website, online notice must be posted on the home page of the parent entity website. In each case, the applicant-affiliated website must be publicly accessible, that is, able to be accessed without payment, registration, or any other requirement that the user provide information, or respond to a survey or questionnaire in exchange for being able to access the online notice. The Commission tentatively concludes that posting on such applicant-affiliated websites will be feasible in the vast majority of cases, and seeks comment on its conclusion, as well as on the details of its proposal. Do commenters believe that there are more effective sites on which to post online notice of application filings? Are there third-party local websites that would be just as effective as applicant-affiliated websites? What costs, if any, would the applicant incur by posting on such a website? In particular, how expensive would postings be for broadcasters on such sites compared to print newspapers required under the current rule? To the extent that commenters disagree with the proposal and maintain that newspaper publication is more effective than online notice, they should detail their claim with specificity and provide data regarding the costs and benefits of continuing such an approach. Whether they agree or disagree with the proposal, commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

8. If an applicant does not maintain a station or other applicant-affiliated website, the Commission proposes that online notice should be posted on a locally targeted, publicly accessible website. The Commission further proposes to define that as an internet website (a) that members of the public can access without payment, registration, or any other requirement that the user provide information or respond to a survey or questionnaire in exchange for being able to access the online notice, and (b) that is locally targeted to the area served and/or to be served by the applicant station (e.g., local government website, local community bulletin board website, local

newspaper website, state broadcasters' association website). The Commission seeks comment on this proposal, as well as on other alternative non-applicant affiliated websites that commenters believe would provide adequate and accessible notice.

9. Online notice texts. The Commission proposes that the content of the online notice be shorter than that required to be in newspaper publications under the current rule and that it contain a direct link to the application for which notice is being given. We believe that requiring less information is justified because a detailed summary or list of parties to the application is unnecessary when the actual application is a click away for the user. Thus, we propose the following text for the required online notice for authorized stations (with a granted construction permit or license):

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

For proposed stations that have not been authorized, we propose the following text:

On [DATE], [APPLICANT NAME], [APPLICANT FOR] [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

The Commission seeks comment on this proposed text, and any suggested amendments along with reasons for such proposed changes. For example, in addition to the link to the application, should the notice include a link to the public notice publishing the pleading cycle for the application, or a statement of the purpose of the application together with pertinent details such as those specified in our existing rules, to facilitate viewer/listener comments or objections? Should the controlling shareholder of a licensee also be required in the notice? Should the online notice include specific language regarding whether the applicant is seeking a waiver of Commission rules

and the nature of the waiver sought, *e.g.*, a media ownership waiver?

10. Duration of posting for online notice. The Commission proposes that the online notice, if posted on an applicant-affiliated site or other third-party site for which the applicant does not have to compensate the website owner for publication, be posted continuously (that is, available for viewing 24 hours a day, seven days a week) for a minimum of 30 days, starting no earlier than the release date of the Commission's public notice of acceptance of the application for filing, and no later than five days following release of that public notice. The Commission seeks comment on the length of continuous posting, in particular, whether the proposed switch from newspaper publication to online posting on an applicant-controlled or affiliated website should increase or decrease the frequency or duration of such notice, especially given that in most cases online notice would be posted 24/7 as opposed to being published in a newspaper on discrete days over a certain time period. Where an applicant must post its online notice on a website that requires the applicant to pay for posting, it is further proposed that such notice be posted for a period of not less than 24 consecutive hours, once a week for four consecutive weeks, starting no earlier than the release date of the Commission's public notice of acceptance of the application for filing, and no later than five days following release of that public notice. A four-week schedule of paid postings is consistent with both the current schedule of newspaper publication and the proposed schedule of on-air announcements, below. What would be the costs associated with a continuous 30-day posting on a website requiring payment, such as a local newspaper? Would such expense outweigh the benefits of extended notice? The Commission seeks comment on this proposal, and in particular whether commenters believe that a substantial number of applicants would need to avail themselves of the pay-to-post option. Commenters may also wish to address whether applicants needing to pay for online notice posting should be required to post more or less frequently, or for a greater or lesser number of consecutive weeks, and to what extent this option affects the costs and benefits of the proposal.

11. Noncommercial online announcements. Under the current rule, noncommercial educational (NCE) stations may fulfill their local notice requirements solely through on-air announcements, where possible. 47 CFR

73.3580(e), among other things, exempts NCE stations from the rule's newspaper publication requirements, unless they are not broadcasting during the part of the year when on-air announcements are required. The Commission has, in the past, questioned whether NCE applicants should be exempt from the newspaper publication requirement, at least in the assignment and transfer application context. Imposing greater burdens on NCE applicants than under the current rules may not comport with the goal of modernizing and streamlining local public notice obligations. At the same time, eliminating the newspaper publication requirement in favor of online notices would substantially reduce burdens on broadcast applicants. The Commission therefore seeks comment as to whether, consistent with the current rule, it should continue to exempt NCE stations generally from the proposed obligation to post online notice of applications. Additionally, in order to clarify the public notice obligations of entities applying for initial construction permits for new NCE stations, it is proposed that applicants for initial construction permits for new NCE broadcast stations comply with the online notice requirements only, as they are unable to broadcast on-air announcements. The Commission also proposes to eliminate the notification exemption in current 47 CFR 73.3580(e) for "the only operating station in its broadcast service which is located in the community involved," as there are more media choices now than when this exemption was adopted, and the fact that a station is the sole AM, FM, or TV station licensed at a community may not guarantee listenership or viewership as may once have been the case. The Commission seeks comment on these proposals.

12. Silent stations. The Commission also proposes that any station required to make on-air announcements that is not broadcasting or that is unable to broadcast during all or a portion of the period during which the on-air announcements are required to be broadcast, such as a silent station, must comply with the online notice requirements during the time period in which it is not broadcasting or is unable to broadcast. To the extent that a station must provide both online notice and on-air announcements, the applicant would be expected to provide online notice for the entire 30-day period notwithstanding whether it was currently broadcasting. However, if the station returns to the air during the period that on-air announcements are required, the station must resume on-air

announcements. Comment is requested on this proposal.

13. Authorizations pursuant to section 325(c) of the Communications Act. The Commission proposes to require applicants for authorization under 47 U.S.C. 325(c)—applicants that propose to locate, use, or maintain a studio supplying programming to a foreign broadcast station whose signals are consistently received in the United States—to provide online notice only, rather than newspaper publication, with the online notice posted on a website locally targeted to the principal area to be served in the United States by the foreign broadcast station. What types of websites would meet this requirement? Would this comport with the statutory requirement to provide “notice” in the principal area the broadcaster serves or would serve? Current § 73.3580 requires applicants for authorization under section 325(c) to give public notice via newspaper publication, unless the programs to be transmitted are special events not of a continuing nature, in which case local public notice is not required. The following text for such applicants’ online notice is proposed:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU MYIBFS DATABASE].

The Commission further proposes to retain the exemption from local public notice for stations applying for section 325(c) authorization for special event programming only. The Commission seeks comment on these proposals.

14. *Streamlining content of on-air announcements.* The Commission proposes to continue requiring on-air announcements for those applicants currently required to make such announcements, but to standardize and simplify the requirements. It further proposes to make the schedule of on-air announcements, basic content of such announcements, and timing of broadcast uniform for all applicants, broadcast services, and application types, rather than the current system that has different broadcast schedules for different application types. Specifically, the Commission proposes that all on-air announcements commence with acceptance of an application for filing, which would eliminate pre-filing announcements currently broadcast by license renewal applicants. Also, the on-

air announcements would direct viewers and listeners to either the applicant’s OPIF or, if it does not have an OPIF, toward the application itself in the LMS database.

15. Number of on-air announcements. The Commission proposes to require on-air announcements for all applicants, broadcast services, and application types mandated to make on-air announcements to be aired a total of four times, once per week, for four consecutive weeks, commencing no earlier than the release date of the Commission public notice announcing that the application has been accepted for filing, and not later than five days after release of the Commission public notice. Comment is sought on this proposal. Do commenters believe that the revised rule should require more or fewer on-air announcements than proposed? Should the on-air announcements commence with the applicant’s submission of the application, rather than release of the Commission public notice of acceptance for filing? In this regard, the date of the Commission public notice triggers the time period in which petitions to deny may be filed, and for certain application types (e.g., applications for initial construction permits) there can be a substantial delay between application submission and its acceptance for filing, as Commission staff performs core technical review. With regard to license renewal applications specifically, the proposal for uniform on-air announcement schedules would eliminate the “pre-filing” announcements currently broadcast by television and radio stations filing such applications. Unlike when the pre-filing announcements adopted, public notices and applications themselves are available instantly online, and petitions to deny are prepared and filed electronically. Thus, the long lead times of the days when pleadings were typed and mailed or messengered are no longer necessary. Moreover, pre-filing announcements would not be able to direct viewers and listeners to an application that they could review. The Commission therefore tentatively concludes that pre-filing announcements are no longer necessary and seeks comment on this conclusion.

16. Timing of on-air announcements. In the interest of further simplifying the public notice process, the Commission proposes that on-air announcements may be aired at any time from 7:00 a.m. to 11:00 p.m. local time at the community of license, from Monday through Friday, and seeks comment on this proposal. The current rule’s differing times of airing based on

applicant and application type are overly complex, given trends in radio listenership and especially television viewership, such as time-shifting and streaming. Do commenters believe that there should be separate time windows based on differing usage patterns between radio and television, for example, between 7:00 a.m. and 7:00 p.m. for radio, but between 6:00 p.m. and 11:00 p.m. for television? Would other time periods better maximize the number of viewers/listeners exposed to on-air announcements, while reducing the complexity of the current rule? Should the rule specify, for example, that a certain number of announcements be made during local television news, or during radio morning or evening drive time? Commenters proposing different time windows for radio and television should support their proposals with specific listenership/viewer data.

17. On-air announcement scripts. The Commission tentatively concludes that the content of notices should be updated and streamlined to direct listeners and viewers to online resources, where the details of the filed applications may easily be found. The current rule contains scripts that broadcasters must follow for on-air announcements. The Commission proposes to update these scripts to the following for both radio and television on-air announcements:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [publicfiles.fcc.gov](http://publicfiles.fcc.gov) and search in [STATION CALL SIGN’S] public file.

For stations without an OPIF, the following script is proposed:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit [www.fcc.gov/searchlms](http://www.fcc.gov/searchlms), and search in the list of [STATION CALL SIGN’S] filed applications.

The Commission seeks comment on these scripts, as well as to any additional information that commenters believe should be required. For example, should the on-air announcement include specific language regarding whether the applicant is seeking a waiver of

Commission rules and the nature of the waiver sought, *e.g.* a media ownership waiver?

18. The Commission further proposes to require a television station to use visuals of the full text of the on-air announcement along with the spoken text of the on-air announcement. Because of the reduced length of the on-air announcement, it is believed to be in the public interest and minimally burdensome to require that the entire text be displayed visually. Would requiring additional text “crawls” over television programming containing the text of the announcement effectively convey notice to viewers, or would text crawls present unanticipated challenges in this context? Could text “crawls” be used to achieve additional repetition of the notice without burdening broadcasters? Are they necessary? It is also proposed to retain the rule recommending that foreign language stations broadcast on-air announcements in the primary language used for broadcast. Comment is sought on these scripts and proposals. For example, should the deadline for filing comments and petitions to deny be included in the on-air announcement? Do commenters believe it is necessary or desirable to include language in on-air announcements advising viewers and listeners of the applicant or licensee’s duty to operate a broadcast station in the public interest? Such language is currently required only in the text for on-air announcements of renewal applications. *See* 47 CFR 73.3580(d)(4)(ii). Should the announcement text highlight the licensee’s public interest obligation, consistent with the existing text of on-air announcements of renewal applications? If so, should such language apply only to renewal applications or to on-air announcements of all application filings? The Commission also seeks comment as to whether uniform announcement language across all application types, as opposed to language applying only to specific applications such as those for renewals, would aid in overall compliance with the public notice requirements. Commenters are invited to discuss whether there may be better ways of verbally describing how to access applications from OPIF or LMS, without being overly or confusingly detailed.

19. *International Broadcast Station applications.* The Commission’s rules state that applications for international broadcast station facilities, also known as HF or shortwave stations, are subject to the local notice provisions. These stations are governed by Subpart F of

Part 73 of the rules, 47 CFR 73.701–73.788, and thus would be considered a “station in the broadcasting . . . services” under the terms of 47 U.S.C. 311(a)(1). The Commission proposes to streamline the local public notice provisions and seek comment on whether it would serve the public interest to eliminate any on-air notice obligations for these broadcasters. Specifically, with respect to the requirement for local public notice through newspaper publication, the current rules state that this local public notice must be published in a community in which a station is located or proposed to be located. Consistent with the proposals above, the Commission proposes to allow applicants for international broadcast stations to publish the notice on a website that targets the local community in which the international broadcast station is proposed to be located (*e.g.*, local government internet website, local community bulletin board internet website). It is noted that the current rules provide that applications for renewal of an international broadcast station license, and for modification, assignment, or transfer of such licenses, are exempt from the newspaper publication requirements. 47 CFR 73.3580(c), (d)(3). The proposal to substitute online public notice for newspaper publication, if adopted, would eliminate any need to continue this exemption. The Commission seeks comment on these proposals.

20. With respect to on-air notice requirements, comment is sought on whether it would serve the public interest to replace any on-air announcement obligations for international broadcast stations with online notice requirements. Under the current rules, although international broadcast stations are located in the United States, they “are intended to be received directly by the general public in foreign countries.” 47 CFR 73.701(a). Thus, unlike other broadcast stations with an on-air announcement obligation, on-air announcements of an international broadcast station primarily give notice to people in multiple foreign countries. Accordingly, the Commission seeks comment on whether to replace on-air announcement obligations for these international broadcast stations with notices on applicant-affiliated websites. An applicant-affiliated website would be accessible by all communities in which the station is either located or received. Any commenters favoring the complete elimination of on-air notices, without replacing them with any other form of

notice, should discuss how such elimination would be consistent with 47 U.S.C. 311.

21. *Other provisions.* The Commission proposes to retain the categories of applicants, broadcast services, and application types for which local public notice is not required, as currently listed in 47 CFR 73.3580(a)(1)–(7). Such stations are exempt from the provisions of 47 U.S.C. 309(b), and thus from the provisions of 47 U.S.C. 311(a).

22. The Commission proposes to retain the requirement that applicants certify in any application for which public notice is required that it will comply with the applicable requirements of the local public notice rule, and to retain the requirement that applicants for license renewal, which are obliged to provide public notice only through on-air announcements, add to OPIF the list of dates and times the required on-air announcements were broadcast. (It is recommended that applicants for a new construction permit and permittees and licensees of low-power TV (LPTV), TV translator, TV booster, low-power FM (LPFM), FM translator and FM booster stations, which do not have Commission-hosted OPIFs, retain a record of the dates and times of public notice to demonstrate compliance with 47 CFR 73.3580.) However, based on the proposals in the *FNPRM*, the Commission proposes to eliminate the requirement that the script of the on-air announcements be added to the OPIF, as broadcasters would be expected to follow the mandatory language proposed above. The Commission seeks comment on this proposal. What costs are associated with posting this information? Commenters that urge retention of the requirement that renewal applicants list the dates and times of on-air announcements in their OPIF should specifically describe what benefits justify retention.

23. Lastly, the Commission proposes to continue to apply the local public notice rules to LPFM stations. Although current 47 CFR 73.3580 does not specifically reference LPFM stations’ local public notice obligations, other NCE FM and TV stations have such obligations, and there is nothing in 47 U.S.C. 311 that could be read as exempting LPFM stations from its requirements. To eliminate any potential for confusion, it is proposed to make the local public notice requirements of LPFM stations explicit in 47 CFR 73.3580. Because all LPFM stations are licensed as NCE stations (47 CFR 73.853) and locally originate programming, the Commission proposes in the revised rule to apply the public notice requirements that are applied to

other NCE stations; specifically, comment is sought as to whether LPFM stations should be required to give public notice through on-air announcements only, except in the case of applications for new LPFM construction permits and during time periods when the LPFM station may be off the air. Also, because the Commission does not host OPIFs for LPFM stations, their on-air announcements should direct listeners to the application in LMS. The Commission seeks comment on this proposal.

24. *Other rules.* The Commission proposes to update rules related to 47 CFR 73.3580. Specifically, in the *NPRM*, the Commission noted that two other rules also provide for public notice by on-air announcements and/or newspaper publication. 47 CFR 73.3594 requires that when an application that is subject to § 73.3580 is designated for hearing, the applicant must give separate public notice of the hearing designation. With the advent of competitive bidding and point system procedures for awarding initial construction permits, as well as renewal expectations for existing broadcast licensees, hearings are required far less frequently than used to be the case. The Commission thus proposes to amend 47 CFR 73.3594 by streamlining on-air announcements and requiring online notice with links to the hearing designation order or other Commission order (e.g., order to show cause) designating issues for evidentiary hearing. The Commission tentatively concludes that applicants so designated should provide notice by on-air announcements, if the station is on air, and by online notice in all cases. Proposed on-air announcements would follow the same rules regarding commencement, timing, and frequency as proposed for § 73.3580: They would be broadcast once a week for four consecutive weeks, between the hours of 7:00 a.m. and 11:00 p.m. Monday through Friday, commencing no earlier than the release date of the hearing designation order or other order setting forth issues for hearing, and no later than the fifth day following release of such order. The on-air announcement would consist of the following script:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues

can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the "Hearing Designation Order" notice.

The Commission seeks comment on this proposal. Commenters should describe and, if possible, quantify the costs and benefits of this proposal to broadcasters and the public.

25. The Commission further proposes that an applicant whose application is designated for hearing should also provide online notice generally following the proposal for § 73.3580: notice would be posted continuously (24/7) for not less than 30 consecutive days, commencing no earlier than the release date of the hearing designation order or other order setting forth issues for hearing, and no later than the fifth day following release of such order. The online notice would consist of the following text:

#### Hearing Designation Order

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC'S ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC'S INTERNET WEBSITE].

The Commission seeks comment on this proposal, and on the costs and benefits of the proposal to broadcasters and the public. With regard to both the online notice and on-air announcement proposals, commenters are invited to address whether notice should be for a shorter or longer period of time (e.g., until the hearing has concluded), whether there should be more frequent on-air announcements, or whether the Commission should allow or require online notice to be posted on publicly accessible third-party websites. Additionally, do commenters believe that, given the rarity of hearings on broadcast licenses and the significant questions often raised in the context of a hearing designation order, any on-air announcements and/or online notices should include a brief description of the issues specified for hearing? If not, why not? It is further proposed to retain the provisions of current paragraphs (g) and

(h) of 47 CFR 73.3594, which address, respectively, the applicant's obligation to file a certification that public notice was given as required, and the presiding officer's discretion to modify the manner in which public notice is given upon a showing of special circumstances. The Commission seeks comment on the retention of these provisions.

26. Finally, current 47 CFR 73.3525(b) requires local public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity. This provision pertains to conflicting applications for initial construction permits that involve a determination of fair, efficient, and equitable distribution of service under 47 U.S.C. 307(b). As with 47 CFR 73.3594, these requirements were adopted at a time when procedures for awarding new construction permits were very different than they are today. Under current window filing procedures for broadcast auctions and point system evaluations of NCE station applications, the occasions for such inter-applicant agreements rarely if ever arise. The Commission therefore proposes to delete the publication requirement from § 73.3525 and seek comment on this proposal. Commenters arguing for retention of this requirement should address both the consumer benefit of publication and the annual number of applicants they believe would be affected by retention of this portion of the rule.

#### Comments and Reply Comments.

27. *Filing Requirements.*—*Comments and Replies.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy 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. All



filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20743.

- U.S. postal first class service, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

**People with Disabilities.** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

**28. 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 will also be available via ECFS. Documents will be available electronically in ASCII.

## Procedural Matters

### Ex Parte Rules

29. In the *NPRM* in this proceeding, the Commission stated that the proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* This proceeding shall continue to be so treated. Persons making *ex parte* presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the

presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppl, searchable .ppl). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

### Initial Regulatory Flexibility Analysis

30. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 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 Small Business Administration (SBA).

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Further Notice of Proposed Rulemaking (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 *FNPRM* provided on the first page of the *FNPRM*. The Commission will send a copy of this entire *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the *FNPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

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

32. The Commission initiates this rulemaking proceeding to obtain comments concerning proposals designed (a) to clarify and simplify the rules and procedures to be followed by certain applicants for broadcast authorizations in order to give local public notice of those applications; and (b) to give local public notice of the designation of certain applications for evidentiary hearing. The Commission proposes to replace the current rules (see generally 47 CFR 73.3580, 73.3594), which are difficult to follow and which contain varying local public notice requirements based on the type of application and the type of station to which the application pertains, with a more uniform, and thus more convenient, set of procedures for providing notice through on-air announcements and by online posting of links to applications, rather than publication in local newspapers. Additionally, by eliminating the need to publish some public notices in local newspapers and allowing a broadcaster instead to post notices on its website or an affiliated website, the proposal would eliminate an expense currently borne by broadcasters. The Commission also proposes to eliminate the current rule requiring public notice of the withdrawal of an application pursuant to an agreement with another applicant to resolve mutual exclusivity. 47 CFR 73.3525(b).

### B. Legal Basis

33. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303(r), 309, 311, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 311, and 336.

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

34. 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. 5 U.S.C. 603(b)(3). The RFA generally defines the



term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). 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. The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

35. *Television Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. *Id.* These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of this number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999, and 70 had annual receipts of \$50 million or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

36. The Commission has estimated the number of licensed commercial television stations to be 1,371. *See Broadcast Station Totals as of June 30, 2019*, FCC News Release (rel. July 9, 2019) (*Broadcast Station Totals*). Of this total, 1,263 stations had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 5, 2019, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 386. *See Broadcast Station Totals.* The Commission, however, does not compile

and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

37. In assessing whether a business concern qualifies as “small” under the above definition, however, business (control) affiliations must be included. This estimate, therefore, likely overstates the number of small entities that might be affected by the *FNPRM*, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

38. There are also 387 Class A stations. *See Broadcast Station Totals.* Given the nature of these services, including their limited ability to cover the same size geographic areas as full power stations, thus restricting their ability to generate similar levels of revenue, it is presumed that these licensees qualify as small entities under the SBA definition. In addition, there are 1,897 LPTV stations and 3,648 TV translator stations. Given the nature of these services as secondary and in some cases purely a “fill-in” service, it is presumed that all of these entities qualify as small entities under the above SBA small business size standard.

39. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” The SBA has created the following small business size standard for this category: Those having \$41.5 million or less in annual receipts. Census data for 2012 show that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than \$25 million, and 43 firms had annual receipts of \$25 million or more. *Id.* Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

40. Apart from the U.S. Census, the Commission has estimated the number

of licensed commercial AM radio stations to be 4,406 and the number of commercial FM radio stations to be 6,726 for a total number of 11,132, along with 8,126 FM translator and booster stations. *See Broadcast Station Totals.* As of September 2019, 4,294 AM stations and 6,739 FM stations had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,179. *See Broadcast Station Totals.* NCE stations are non-profit, and therefore considered to be small entities. 5 U.S.C. 601(4), (6). Therefore, it is estimated that the majority of radio broadcast stations are small entities.

41. *Low Power FM Stations.* The same SBA definition that applies to radio stations applies to low power FM stations. As noted, the SBA has created the following small business size standard for this category: Those having \$41.5 million or less in annual receipts. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,178. *See Broadcast Station Totals.* In addition, as of June 30, 2019, there were a total of 8,126 FM translator and FM booster stations. *Id.* Given the fact that low power FM stations may only be licensed to not-for-profit organizations or institutions that must be based in their community and are typically small, volunteer-run groups, it is presumed that these licensees qualify as small entities under the SBA definition.

42. Again, however, in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, the estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, the estimate of small radio stations potentially affected by the rule revisions discussed in the *FNPRM* includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

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

43. In this section, the reporting, recordkeeping, and other compliance requirements proposed in the *FNPRM* are identified and any disproportionate effects on small entities are considered.

44. *Reporting Requirements.* The *FNPRM* does not propose to adopt reporting requirements.

45. *Recordkeeping Requirements.* The *FNPRM* proposes to adopt recordkeeping requirements insofar as it amends 47 CFR 73.3526(e) and 73.3527(e) to reflect the nature of the proposed new on-air announcement requirements for which licensees must certify compliance and retain the certification in the online public inspection file (OPIF). The proposed new requirements are no more extensive than the current certification and retention requirements, and in fact are less onerous in that there are fewer announcements requiring certification, and the OPIF is online rather than a physical file. Thus, the impact on small entities will be no greater than it is currently and in most cases the new rules will be less burdensome.

46. *Other Compliance Requirements.* The *FNPRM* proposes to adopt new rules amending, streamlining, and standardizing the local public notice requirements for television and radio stations, including small entities. These proposed new rules prescribe the content, number, frequency, and times of day that on-air announcements must be made, and the proposed rules require fewer and shorter announcements than the current rules, with greater flexibility as to time of broadcast. The proposed new rules would also replace newspaper publication of certain public notice with online notice, either on an applicant-affiliated website or another publicly accessible, locally targeted website. The new online notice rule also provides for shorter notices than the current newspaper publication requirement, and would result in substantial cost savings to applicants in most cases. Thus, the proposed rules would significantly reduce burdens on broadcast applicants, most of whom are small entities.

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

47. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which 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 such 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. 5 U.S.C. 603(c)(1)–(c)(4).

48. The *FNPRM* proposes to amend 47 CFR 73.3580 to reorganize, simplify, and clarify broadcasters' public notice obligations when filing certain applications, such as license renewal applications and applications to assign or transfer broadcast authorizations. In addition to streamlining and making uniform the requirement of some stations to provide public notice through on-air announcements, the *FNPRM* proposes to require public notice of the filing of certain broadcast applications through online postings on the internet, instead of publishing such notice in a newspaper. These proposals, if adopted, would reduce burdens on all broadcast applicants, including small entities, when meeting their obligation to notify the public of pending or prospective applications, while improving the public's access to information enabling it to participate in the licensing process. Some commenters assert that permitting public notice through the internet would be less costly and administratively burdensome than the existing requirement of newspaper publication, and thus the proposal would provide a less burdensome compliance option for all applicants, including small entities. With regard to just one category of applicants, those applying for consent to assign a broadcast authorization or to transfer control of the entity holding a broadcast authorization, the Commission has estimated that there are 4,020 annual applicants, each of which must publish public notice in a local newspaper four times at a cost of \$113.25 per publication, for a total annual burden of \$1,820, 256, for applicants in this category alone. Thus, it can be seen that replacing newspaper publication with online notices can result in considerable cost savings to broadcasters and broadcast applicants.

#### *F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals*

49. None.

50. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files,

audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

#### **Ordering Clauses**

51. Accordingly, *It is ordered* that, pursuant to sections 1, 4(i), 4(j), 303(r), 309, 311, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 311, and 336, this *Further Notice of Proposed Rule Making* is adopted.

52. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

#### **List of Subjects in 47 CFR Part 73**

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

#### **Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

#### **§ 73.3525 [Amended]**

■ 2. In § 73.3525, remove paragraph (b) and redesignate paragraphs (c) through (l) as paragraphs (b) through (k).

■ 3. In § 73.3526, revise paragraph (e)(13) to read as follows:

#### **§ 73.3526 Local public inspection file of commercial stations.**

\* \* \* \* \*

(e) \* \* \*

(13) *Local public notice announcements.* Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this requirement. The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period

specified in § 73.3580(e)(2) (for as long as the application to which it refers).

\* \* \* \* \*

■ 4. In § 73.3527, revise paragraph (e)(10) to read as follows:

**§ 73.3527 Local public inspection file of noncommercial educational stations.**

\* \* \* \* \*

(e) \* \* \*

(10) *Local public notice announcements.* Each applicant for renewal of license shall, within 7 days of the last day of broadcast of the local public notice of filing announcements required pursuant to § 73.3580(c)(3), place in the station's online public inspection file a statement certifying compliance with this requirement. The dates and times that the on-air announcements were broadcast shall be made part of the certifying statement. The certifying statement shall be retained in the public file for the period specified in § 73.3580(e)(2) (for as long as the application to which it refers).

\* \* \* \* \*

■ 5. Revise § 73.3580 to read as follows:

**§ 73.3580 Local public notice of filing of broadcast applications.**

(a) *Definitions.* The following definitions shall apply to this section:

(1) *Acceptance public notice:* A Commission public notice announcing that an application has been accepted for filing.

(2) *Applicant-affiliated website:* Any of the following internet websites, to the extent they are maintained, in order of priority:

(i) The applicant station's internet website;

(ii) The applicant's internet website; or

(iii) The applicant's parent entity's internet website. An applicant maintaining or having access to more than one of the above-listed internet websites shall post online notice on the website with the highest priority.

(3) *Locally originating programming:* A low power television (LPTV) or television translator station broadcasting programming as defined in § 74.701(h).

(4) *Major amendment:* A major amendment to an application is that defined in §§ 73.3571(b), 73.3572(c), 73.3573(b), 73.3578, and 74.787(b).

(5) *Publicly accessible website:* An internet website (a) that is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website, and (b) that is locally targeted to the area served and/or to be served

by the applicant station (e.g., local government internet website, local community bulletin board internet website, state broadcasters' association internet website). For international broadcast stations application filed pursuant to § 73.3574, the internet website must locally target the community in which the International broadcast station is proposed to be located (e.g., local government internet website, local community bulletin board internet website).

(b) *Types of Public Notice.* Public notice is required of applicants for certain broadcast authorizations in the manner set forth below:

(1) *On-Air Announcement:* An applicant shall broadcast on-air announcements of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, over its station as follows:

(i) *Content:* The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions on the application can visit [publicfiles.fcc.gov](http://publicfiles.fcc.gov), and search in [STATION CALL SIGN'S] public file.

An applicant station without an online public inspection file shall instead broadcast the following on-air announcement:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application or obtain information about how to file comments and petitions can visit [www.fcc.gov/searchlms](http://www.fcc.gov/searchlms), and search in the list of [STATION CALL SIGN'S] filed applications.

Television broadcast stations, in presenting on-air announcements, must use visuals with the full text of the on-air announcement when this information is being orally presented by the announcer.

(ii) *Frequency of broadcast:* The applicant shall broadcast the on-air announcements once per week (Monday through Friday) for four consecutive weeks, for a total of four (4) broadcasts.

(iii) *Commencement of broadcast:* The applicant shall air the first broadcast of the on-air announcement no earlier than the date of release of the acceptance public notice for the application, and no later than the fifth day following release

of the acceptance public notice for the application.

(iv) *Time of broadcast:* The applicant shall broadcast all on-air announcements between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) *Language of broadcast:* A station broadcasting primarily in a foreign language should broadcast the announcements in that language.

(vi) *Silent stations or stations not broadcasting:* Any station required to broadcast on-air announcements that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, including silent stations and noncommercial educational broadcast stations that are not scheduled to broadcast during the portion of the year during which on-air announcements are required to be broadcast, must comply with the provisions of paragraph (b)(2) of this section during the time period in which it is unable to broadcast required on-air announcements, and must broadcast required on-air announcements during the time period it is able to do so.

(2) *Online Notice:* An applicant shall conspicuously post on an internet website notice of the filing of certain applications for authorization, if required as set forth in paragraph (c) of this section, as follows:

(i) *Content:* The online notice shall be in the following form:

On [DATE], [APPLICANT NAME], [PERMITTEE/LICENSEE] of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LINK IN APPLICANT'S ONLINE PUBLIC INSPECTION FILE (OPIF) OR, IF THE STATION HAS NO OPIF, TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

An applicant for a proposed but not authorized station shall post the following online notice:

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM].

An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering

Programs to a Foreign Station) shall post the following online notice:

On [DATE], [APPLICANT NAME] filed an application with the Federal Communications Commission for a permit to deliver programs to foreign station [FOREIGN STATION CALL SIGN], [FOREIGN STATION FREQUENCY], [FOREIGN STATION COMMUNITY OF LICENSE]. Members of the public wishing to view this application can visit [INSERT HYPERLINK TO APPLICATION LOCATION IN THE INTERNATIONAL BUREAU'S MYBFS DATABASE].

(ii) *Site*: The applicant shall post online notice on an applicant-affiliated website, as defined in paragraph (a)(2) of this section. If the applicant does not maintain or have access to an applicant-affiliated website, the applicant may post the online notice on a publicly accessible website, as defined in paragraph (a)(5) of this section. An applicant for an authorization under section 325(c) of the Communications Act (Studio Delivering Programs to a Foreign Station) shall post online notice on a publicly accessible website that is locally targeted to the principal area to be served in the United States by the foreign broadcast station.

(iii) *Duration of posting*: If the online notice is posted on an applicant-affiliated website or on a publicly accessible website for which the applicant is not required to compensate the website owner in exchange for posting the online notice, then the applicant must post the online notice for a minimum of 30 consecutive days. If the applicant does not maintain an applicant-affiliated website, and the applicant is required to compensate a website owner in exchange for posting on a publicly accessible website, the applicant must post the online notice for a period of not less than 24 consecutive hours, once per week (Monday through Friday), for four consecutive weeks.

(iv) *Commencement of posting*: The applicant must post the online notice no earlier than the date of release of the acceptance public notice for the application, and not later than five days following release of the acceptance public notice for the application.

(c) *Applications Requiring Local Public Notice*. The following applications filed by licensees or permittees of the following types of stations must provide public notice in the manner set forth below:

(1) *Applications for a new construction permit authorization or major amendments thereto*:

(i) For a commercial or noncommercial educational full power television; full-service AM or FM radio

station; Class A television station; low power television (LPTV) or television translator station; low-power FM (LPFM) station; or commercial or noncommercial FM translator or FM booster station, the applicant shall give online notice only.

(ii) For an international broadcast station, the applicant shall give online notice in a publicly accessible website, locally targeted to the community in which the station is to be located.

(2) *Applications for a major modification to a construction permit or license, or major amendments thereto*:

(i) For a noncommercial educational full power television; noncommercial full-service AM or FM radio station; or for an LPFM station, the applicant shall broadcast on-air announcements only.

(ii) For a commercial full power television; commercial full-service AM or FM radio station; or a Class A television station, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV or television translator station; or an FM translator or FM booster station, the applicant shall give online notice only.

(iv) For an international broadcast station, the applicant shall give online notice only.

(3) *Applications for renewal of license*:

(i) For a full power television; full-service AM or FM radio station; Class A television station; LPTV station locally originating programming; or LPFM station, the applicant shall broadcast on-air announcements only.

(ii) For an LPTV station that does not locally originate programming; or for a TV or FM translator station, the applicant shall give online notice only.

(iii) For an international broadcast station, the applicant shall give online notice only.

(4) *Applications for assignment or transfer of control of a construction permit or license, or major amendments thereto*:

(i) For a noncommercial educational full power television; noncommercial full-service AM or FM radio station; or an LPFM station, the applicant shall broadcast on-air announcements only.

(ii) For a commercial full power television; commercial full-service AM or FM radio station; Class A television station; or an LPTV station that locally originates programming, the applicant shall both broadcast on-air announcements and give online notice.

(iii) For an LPTV station that does not locally originate programming or a TV translator station, the applicant shall give online notice only.

(iv) For an international broadcast station, the applicant shall give online notice only.

(5) *Applications for a minor modification to change a station's community of license, or major amendments thereto*:

(i) For a noncommercial educational full-service AM or FM radio station, the applicant shall broadcast on-air announcements only.

(ii) For a commercial full-service AM or FM radio station, the applicant shall both broadcast on-air announcements and give online notice. In addition to the online notice set forth in paragraph (b)(2) of this section locally targeted to the applicant station's current community of license, the applicant shall also give online notice on a publicly accessible website locally targeted to the community that the applicant proposes to designate as its new community of license, for the same time periods and in the same manner as set forth in paragraph (b)(2) of this section.

(6) *Applications for a permit pursuant to section 325(c) of the Communications Act (Studio Delivering Programming to a Foreign Station)*: The applicant shall give online notice only.

(d) *Applications For Which Local Public Notice Is Not Required*. The following types of applications are not subject to the local public notice provisions of this section:

(1) A minor change in the facilities of an authorized station, as indicated in §§ 73.3571, 73.3572, 73.3573, 73.3574, and 74.787(b), except a minor change to designate a different community of license for an AM or FM radio broadcast station, pursuant to the provisions of §§ 73.3571(j) and 73.3573(g).

(2) Consent to an involuntary assignment or transfer or to a voluntary assignment or transfer which does not result in a change of control and which may be applied for on FCC Form 316, or any successor form released in the future, pursuant to the provisions of § 73.3540(b).

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license.

(4) Extension of time to complete construction of authorized facilities.

(5) An authorization of facilities for remote pickup or studio links for use in the operation of a broadcast station.

(6) Authorization pursuant to section 325(c) of the Communications Act

(Studio Delivering Programs to a Foreign Station) where the programs to be transmitted are special events not of a continuing nature.

(7) An authorization under any of the proviso clauses of section 308(a) of the Communications Act concerning applications for and conditions in licenses.

(e) *Certification of Local Public Notice.*

(1) The applicant must certify in the appropriate application that it will comply with the public notice requirements set forth in paragraph (c) of this section.

(2) An applicant for renewal of a license that is required to maintain an online public inspection file shall, within seven (7) days of the last day of broadcast of the required on-air announcements, place in its online public inspection file a statement certifying compliance with § 73.3580, along with the dates and times that the on-air announcements were broadcast. An applicant for renewal of a license that is required to maintain an online public inspection file, and that is not broadcasting during all or a portion of the period during which on-air announcements are required to be broadcast, as set forth in paragraph (b)(1)(v) of this section, shall, within seven (7) days of the last on-air announcement or last day of posting online notice, whichever occurs last, place in its online public inspection file a statement certifying compliance with § 73.3580, along with the dates and times that any on-air announcements were broadcast, along with the dates and times that online notice was posted and the Universal Resource Locator (URL) of the internet website on which online notice was posted. This certification need not be filed with the Commission but shall be retained in the online public inspection file for as long as the application to which it refers.

(f) *Time for Acting on Applications.* Applications (as originally filed or amended) will be acted upon by the FCC no sooner than 30 days following release of the acceptance public notice, except as otherwise permitted in § 73.3542, "Application for emergency authorization," or in § 73.1635, "Special temporary authorizations (STA)."

■ 6. Revise § 73.3594 to read as follows:

**§ 73.3594 Local public notice of designation for hearing.**

(a) When an application subject to the provisions of § 73.3580 is designated for hearing, the applicant shall give notice of such designation as follows:

(1) *On-Air Announcement:* The applicant (except an applicant filing an

application for an International broadcast, low power TV, TV translator, FM translator, and FM booster station) shall broadcast an on-air announcement of the designation of an application for hearing over its radio or television station as follows:

(i) *Content:* The on-air announcement shall be in the following form:

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on certain issues. Members of the public wishing to view the Hearing Designation Order and list of issues can visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE'S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the "Hearing Designation Order" notice.

Television broadcast stations (commercial and noncommercial educational), in presenting on-air announcements, must use visuals [with the full text of the on-air announcement] when this information is being orally presented by the announcer.

(ii) *Frequency of broadcast:* The on-air announcements shall be broadcast a total of four (4) times, once per week for four consecutive weeks.

(iii) *Commencement of broadcast:* The first broadcast of the on-air announcement shall occur no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth day following release of said order.

(iv) *Time of broadcast:* The on-air announcements shall be broadcast between the hours of 7:00 a.m. and 11:00 p.m. local time at the applicant station's community of license, Monday through Friday.

(v) *Language of broadcast:* A station broadcasting primarily in a foreign language shall broadcast the announcements in that language.

(2) *Online Notice:* The applicant shall also post an online notice of the designation of an application for hearing conspicuously on an internet website as follows:

(i) *Content:* The online notice shall be in the following form:

Hearing Designation Order

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for

an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC'S ORDER OR SUMMARY OF DESIGNATION FOR HEARING]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC'S INTERNET WEBSITE].

(ii) *Site:* The applicant shall post online notice on one of the following internet websites, to the extent such websites are maintained, in order of priority:

(A) the applicant station's internet website;

(B) the applicant's internet website; or

(C) the applicant's parent entity's internet website.

If the applicant does not maintain an internet website for the station or itself, or if the applicant's parent entity does not maintain an internet website, the applicant shall post online notice on an internet website (a) that is accessible to members of the public without registration or payment requirements, or any other requirement that the user provide information, or response to a survey or questionnaire in exchange for being able to access information on the website, and (b) that is locally targeted to the area served and/or to be served by the applicant station (e.g., local government internet website, local community bulletin board internet website, state broadcasters' association internet website).

(iii) *Commencement of posting:* The online notice shall be posted no earlier than the date of release of the Hearing Designation Order, Order to Show Cause, or other order designating issues for hearing, and no later than the fifth day following release of said order.

(iv) *Length of posting:* The online notice must be posted for a minimum of 30 consecutive days.

(b) Within seven (7) days of the last day of broadcast of the notice required by paragraph (a)(1) of this section, the applicant shall file an original statement and one copy with the Secretary of the Commission setting forth the dates and times on which the on-air announcements were made, the date the online notice was first posted, and the Universal Resource Locator (URL) address of the internet website on which online notice is posted.

(c) The failure to comply with the provisions of this section is cause for dismissal of an application with prejudice. However, upon a finding that applicant has complied (or proposes to comply) with the provisions of section

311(a)(2) of the Communications Act, and that the public interest, convenience, and necessity will be served thereby, the presiding officer may authorize an applicant, upon a showing of special circumstances, to give notice in a manner other than that prescribed by this section; may accept notice that is given in a manner which does not conform strictly in all respects with the provisions of this section; or may extend the time for giving notice.

[FR Doc. 2019–22052 Filed 10–17–19; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1539 and 1552

[EPA–HQ–OARM–2018–0743; FRL–10000–34–OMS]

### Environmental Protection Agency Acquisition Regulation (EPAAR); Open Source Software

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is writing a new EPAAR clause to address open source software requirements at EPA, so that the EPA can share open source software developed under its procurements.

**DATES:** Comments must be received on or before December 17, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2018–0743, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Valentino, Policy, Training and Oversight Division, Acquisition Policy and Training Branch (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4522; email address: [valentino.thomas@epa.gov](mailto:valentino.thomas@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

1. *Submitting Classified Business Information.* Do not submit CBI to EPA website <https://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a *Code of Federal Regulations* (CFR) Part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## II. Background

The EPA is writing a new EPAAR clause to address open source software requirements at EPA, so that the EPA can share custom-developed code as open source code developed under its procurements, in accordance with Office of Management and Budget's (OMB) Memorandum M–16–21, *Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software*. In meeting the requirements of Memorandum M–16–21 the EPA will be providing an enterprise code inventory indicating if the new code (source code or code) was custom-developed for, or by, the agency; or if the code is available for Federal reuse; or if the code is available publicly as open source code; or if the code cannot be made available due to specific exceptions.

## III. Proposed Rule

The proposed rule amends EPA Acquisition Regulation (EPAAR) Part 1539, *Acquisition of Information Technology*, by adding Subpart 1539.2, *Open Source Software*; and § 1539.2071, *Contract clause*. EPAAR Subpart 1552.2, *Texts of Provisions and Clauses*, is amended by adding EPAAR § 1552.239–71, *Open Source Software*.

1. EPAAR Subpart 1539.2 adds the new subpart.

2. EPAAR § 1539.2071 adds the prescription for use of § 1552.239–71 in all procurements where open-source software development/custom development of software will be required.

3. EPAAR § 1552.239–71, *Open Source Software*, provides the terms and conditions for open source software code development and use.

## IV. Statutory and Executive Orders Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the E.O.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).