Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0296; Airspace Docket No. 21–ASW–6]

RIN 2120–AA66

Proposed Revocation of Class E Airspace; Palestine, TX: Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing the NPRM published in the **Federal Register** on May 20, 2021, to amend Class E airspace extending upward from 700 feet above the surface at Palestine Municipal Airport, Palestine, TX. Upon further consideration, the FAA has determined that an operational requirement for the airspace still exists; therefore, withdrawal of the proposed rule is warranted.

DATES: The FAA is withdrawing the proposed rule published May 20, 2021 (86 FR 27327), as of August 31, 2021.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

History

On May 20, 2021, the FAA published in the **Federal Register** (86 FR 27327; May 20, 2021) for Docket No. FAA–2021–0296, an NPRM proposing to modify Class E airspace extending upward from 700 feet above the surface at Palestine, TX, due to the decommissioning of the Palestine NDB and associated extension from the airspace legal description; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

FAA's Conclusions

In reviewing the NPRM, we have determined that the amending of the Class E airspace would increase the radius of the airspace to 8.2 miles from the current 7.1 mile radius, rather than reducing the radius to 6.2 miles, as proposed in the NPRM. In addition, the current airspace definition doesn't include the Palestine NDB or any associated extension. The proposed rule would also need to include removal of the Frankston VOR/DME and the associated extension. The FAA has concluded that this NPRM needs to be withdrawn, and the FAA will begin the process again with a new NPRM.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

■ Accordingly, pursuant to the authority delegated to me, the NPRM published in the **Federal Register** on May 20, 2021 (86 FR 27328) [FR Doc. 2021–10560] is hereby withdrawn.

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Fort Worth, Texas, on August 24, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–18638 Filed 8–30–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 98–204; FCC 21–88; FR ID 42735]

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to update the record in MB Docket No. 98–204, regarding how the Commission can recommence the collection of data on the FCC Form 395–B, as contemplated by the Communications Act of 1934, as amended (Act).

DATES: Comments are due on or before September 30, 2021; reply comments are due on or before November 1, 2021.

ADDRESSES:

- *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.
- Filings can be sent 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.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

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* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Brendan Holland, Media Bureau, Industry Analysis Division, *Brendan.Holland@fcc.gov,* (202) 418–2757.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 21–88, in MB Docket No. 98–204, adopted on July 23, 2021, and

released on July 26, 2021. The complete text of this document is available electronically via the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-21-88A1.pdf.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. *Introduction:* By this FNPRM, we seek to refresh the existing record regarding the statutorily mandated collection of data on the FCC Form 395–B (Form 395–B, the broadcast station Annual Employment Report, can be found at *https://transition.fcc.gov/Forms/Form395B/395b.pdf*), as contemplated by the Communications Act of 1934, as amended (Act). This employment report form is intended to gather workforce composition data from broadcasters on an annual basis but the form and data have not been collected for many years. The filing of the form was suspended in 2001 in the wake of a decision by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating certain aspects of the Commission's Equal Employment Opportunity (EEO) requirements. While the Commission in 2004 adopted revised regulations regarding the filing of Form 395–B and updated the form, the requirement that broadcasters once again submit the form to the Commission was suspended until issues were resolved regarding confidentiality of the employment data. To date, those issues remain unresolved, and the filing of Form 395–B remains suspended. Accordingly, by this FNPRM, we seek to refresh the record regarding the collection of broadcaster workforce composition data and obtain further input on the legal, logistical, and technical issues surrounding FCC Form 395–B.

2. *Background.* The Commission has administered regulations governing the EEO responsibilities of broadcast licensees since 1969, and of cable operators since 1972. The Commission's EEO rules prohibit employment discrimination on the basis of race, color, religion, national origin, age, or sex, and require broadcasters and MVPDs to provide equal employment opportunities. In addition to the broad EEO protections applicable to all full-power radio and television broadcasters, licensees including Low Power and Class A television stations and multichannel video programming distributors (MVPDs) of a specific size must also adhere to EEO program requirements. (Permittees and licensees of Low Power FM are not subject to the EEO program requirements of this rule section. *See* 47 CFR 73.801.) Specifically, the Commission's rules require that each broadcast station that is part of an employment unit of five or more full-time employees, and each MVPD employment unit with six or more full-time employees establish, maintain, and carry out a positive continuing program to ensure equal opportunity and nondiscrimination in employment policies and practice.

3. The Commission has also historically collected data from broadcasters and MVPDs about their workforce composition based on race and gender categories. After finding that, among other things, ''increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media,'' Congress established a statutory requirement for the Commission to maintain its existing EEO regulations and forms as applied to television stations, which included its collection of workforce composition data from television broadcasters. (While Congress did not codify the Commission's previously existing EEO requirements for radio broadcast licensees, the Commission has found that Congress ratified the Commission's authority to promulgate EEO rules for radio as well as television licensees.) In addition, Congress revised the requirement that cable operators report employment data, first established in the 1984 Cable Act, to include additional job categories and extended the requirement to include MVPDs.

4. Section 334(a) of the Communications Act of 1934, as amended (the Act), states that ''except as specifically provided in this section, the Commission shall not revise (1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080) as such regulations apply to television broadcast station licensees and permittees; or (2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.'' Section 334(c) authorizes the Commission to make only ''nonsubstantive technical or clerical revisions'' to the regulations described in section 334(a) ''as necessary to reflect changes in technology, terminology, or Commission organization.'' Thus, the Commission has previously concluded that it is directed by statute to require the submission of such employee data from television broadcast licensees. The Commission regularly collected this data from 1970 until 2001 when the Commission suspended filing of Form 395–B in response to two D.C. Circuit decisions regarding the unconstitutionality of the Commission's use of data collected on the Form 395–B to assess compliance with EEO requirements, although the collection of data itself has never been held facially invalid on constitutional grounds.

5. Specifically, in *Lutheran Church-Missouri Synod* v. *FCC* (*Lutheran Church*), the D.C. Circuit reversed and remanded a Commission finding—based on rules that required comparison of the race and sex of each applicant and person hired with the overall availability of minorities in the relevant labor force—that Lutheran Church had failed to make adequate efforts to recruit minorities. *Lutheran Church-Missouri Synod* v. *FCC,* 141 F.3d 344, 347–48 (D.C. Cir. 1998) (*Lutheran Church*), *pet. for reh'g denied,* 154 F.3d 487, *pet. for reh'g en banc denied,* 154 F.3d 494 (D.C. 1998). The court concluded that use of broadcaster employee data to assess EEO compliance in the context of license renewal pressured broadcasters to engage in race-conscious hiring in violation of the equal protection component of the Due Process Clause of the Fifth Amendment of the Constitution. In reaching this conclusion, the court applied strict constitutional scrutiny applicable to racial classifications imposed by the federal government and determined that the Commission's stated purpose of furthering programming diversity was not compelling and its broadcast EEO rules were not narrowly tailored to further that interest. The court made clear that ''[i]f the regulations merely required stations to implement racially neutral recruiting and hiring programs, the equal protection guarantee would not be implicated.''

6. On remand, the Commission crafted new EEO rules requiring that broadcast licensees undertake an outreach program to foster equal employment opportunities in the broadcasting industry. The Commission also reinstated the requirement that broadcasters file employee data on Form 395–B with the Commission annually. In adopting these revised rules and reinstating the collection of workforce data, the Commission stated that:

7. The Commission will no longer use the employment profile data in the annual employment reports in screening renewal applications or assessing compliance with EEO program

requirements. The Commission will use this information only to monitor industry employment trends and report to Congress.

8. On reconsideration, the Commission explained that it ''disagree[d] with [the] contention that the collection of employment data might result in raced-based hiring decisions.'' The Commission also explained that it ''will summarily dismiss any petition filed by a third party based on Form 395–B employment data'' and it ''will not use this data as a basis for conducting audits or inquiries.'' The Commission also codified the following Note to § 73.3612 of its rules (which requires the collection of employment data from broadcasters).

9. Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's compliance with the equal employment opportunity requirements of § 73.2080 of the Commission's rules.

10. In *MD/DC/DE Broadcasters Association* v. *FCC,* several state broadcaster associations challenged the revised EEO outreach rules, which had allowed broadcasters the flexibility to choose between two options designed to foster employment opportunities in the industry. Specifically, the revised EEO outreach rules consisted of Option A, which required licensees to undertake four approved recruitment initiatives in a two-year period without reporting the race and sex of each job applicant, or Option B, which allowed broadcasters to design their own outreach programs but required reporting of the race and sex of each applicant. *MD/DC/DE Broadcasters Association* v. *FCC,* 236 F.3d 13, 17 (2001) (*MD/DC/DE Broadcasters*), *pet. for reh'g denied.,* 253 F.3d 732 (D.C. Cir. 2001), *cert. denied,* 122 S. Ct. 920 (2002). The D.C. Circuit again applied strict judicial scrutiny and found that Option B violated the equal protection component of the Due Process Clause of the Fifth Amendment because, by examining the number of women and minorities in the applicant pool and then investigating any broadcaster with ''few or no'' women or minority applicants, the Commission ''pressured'' broadcasters to focus resources on recruiting women and minorities. The court further found that racial data about job applicants were not probative on the question of a broadcaster's efforts to achieve broad outreach or ''narrowly tailored to further the Commission's stated goal of non-discrimination in the broadcast industry.'' Because the court found that Option B was not severable from the rest of the rules, it vacated them in their entirety. Following this decision, on January 31, 2001, the Commission suspended the requirement for broadcasters and MVPDs to file employee data on Forms 395–B and 395–A, respectively, and thus no workforce composition data has been collected in over twenty years.

11. On November 20, 2002, the Commission released its *Second Report and Order and Third NPRM,* establishing new EEO rules requiring broadcast licensees and MVPDs to recruit for all full-time job openings, provide notice of job vacancies to recruitment organizations that request notification, undertake additional outreach measures, such as job fairs and scholarship programs, and refrain from discrimination in employment practices. The Commission eliminated the former Option B, which had linked the outreach requirement to data regarding the race and sex of each applicant. The Commission explained that its new EEO rules were ''race and gender neutral'' and ''will not pressure employers to favor anyone on the basis of race, ethnicity, or gender.'' The Commission deferred action on issues relating to the annual employment report forms, in part because it needed to incorporate new standards for classifying data on race and ethnicity adopted by the Office of Management and Budget (OMB) in 1997. The Commission also explained that the annual employment report is ''unrelated to the implementation and enforcement of our EEO program'' and ''data concerning the entity's workforce is no longer pertinent to the administration of our EEO outreach requirements.''

12. On June 4, 2004, the Commission released its *Third Report and Order and Fourth Notice of Proposed Rulemaking* reinstating the requirement for broadcasters and MVPDs to report employee data on Forms 395–B and 395–A, respectively. The Commission re-adopted the Note to § 73.3612 that it previously adopted in 2000 stating that the data collected would be used *exclusively* for the purpose of compiling industry employment trends and making reports to Congress, and not to assess any aspect of a broadcaster's or MVPD's compliance with the EEO rules. Although the Commission stated that it does not ''believe that the filing of annual employment reports will unconstitutionally pressure entities to adopt racial or gender preferences in hiring,'' it acknowledged the concerns raised by broadcasters and sought comment in the *Fourth NPRM* on whether, moving forward, data reported on Form 395–B should be kept confidential.

13. In the *Fourth NPRM,* the Commission noted that its practice for more than thirty years before suspending collection of the Form 395–B in 2001 had been to make the Forms 395–B filed by broadcasters available for public inspection. The Commission also stated that there was no exemption from the disclosure requirements of the Freedom of Information Act (FOIA) that would have permitted the Commission to keep the Form's data confidential, and therefore it did not specifically seek comment on this issue. The Commission noted, however, that the then-recently passed Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) allows agencies to collect information for statistical purposes under a pledge of confidentiality. The *Fourth NPRM* noted that, if an agency collects information pursuant to CIPSEA under a pledge of confidentiality, the information is exempt from release under FOIA and may not be disclosed in an identifiable form for any non-statistical purpose without the informed consent of the respondent. The *Fourth NPRM* therefore sought comment on whether CIPSEA could apply to the Form 395–B and whether changing the Commission's approach of making the information public would be consistent with section 334 of the Act. These issues remain unresolved, and to date, the collection of employee data from broadcast stations or MVPDs has not recommenced.

14. *Discussion:* As discussed above, this FNPRM seeks to refresh the record with respect to the questions raised in the 2004 *Fourth NPRM* and specifically asks for any additional input on the outstanding issue of whether employee data reported by broadcast licensees on Forms 395–B can or should be kept confidential and/or on a non-station-attributable basis. As detailed below, there are a number of statutes, regulations, and legal precedent relevant to the issue, as well as technical concerns regarding the collection and maintenance of the data. In exploring these issues, we seek to balance our statutory obligation under section 334(a) of the Act to collect pertinent employment data with the guidance provided by the D.C. Circuit's rulings in *Lutheran Church* and *MD/DC/DE Broadcasters,* which place limits on how data regarding the racial, ethnic, and gender make-up of a licensee's workforce may be used in the regulatory

context. We seek comment on these and other relevant issues. We note that the Commission has broad authority under the Act to collect information to carry out its responsibilities and prepare reports to inform Congress and the public.

15. Importantly, neither *Lutheran Church* nor *MD/DC/DE Broadcasters* invalidated the Congressionally mandated data collection of employment data or making the data available to the public. Rather, the courts vacated certain rules based on how the Commission *used* employment data to assess EEO compliance, but neither court ruled that simply collecting and making the data public is unconstitutional. Nor did the courts address the constitutionality of the Form 395–B itself, or the requirement that the Commission collect employee data using the Form 395–B that would be available to the public. Given the passage of time, we seek to update the record to better inform the Commission's consideration of these matters as they may bear on the collection and permissible use of this required data collection. Specifically, we seek to refresh the now sixteen-year-old record by encouraging commenters to provide any new, innovative, and different suggestions for collecting and handling employment information on Form 395–B.

16. Broadcasters have expressed concern previously that the collection of employment data on a station-attributed basis and its access by Commission staff and, in particular, release to the public will ''pressure'' stations to adopt race- or gender-based hiring policies in contravention of the D.C. Circuit's decisions. Since the Commission last sought comment on this issue, have there been any relevant developments in the public disclosure of employment data? For example, do broadcast licensees, either themselves or through third parties, now make station-attributed employment data available to the public, despite suspension (but not repeal) of our reporting requirements? If so, how prevalent is the practice? And if some, but not all, stations are releasing such information to the public, how should that impact our consideration of the issue of confidentiality?

17. To the extent that broadcasters are concerned that the Commission or the public might use employment data against stations as a basis for audits or to file petitions to deny, should the Commission take any additional steps to ensure that the employment data it is required to collect will be used only for its stated purposes (*i.e.,* analyzing industry trends and making reports to Congress)? Are there other appropriate purposes aside from official Commission actions that we should consider? What are the public interest benefits of making the information publicly available? What impact, if any, should the requirement in the Act that MVPDs make their employment reports ''available for public inspection'' at their facilities have on our consideration of whether broadcasters must also make their employment data available for public inspection?

18. Recognizing that these data have historically been made publicly available on a station-attributed basis, we seek comment on the benefits of continuing to do so. In particular, we ask commenters about specific circumstances in which public availability of Form 395–B would be beneficial to the public interest or helpful to the Commission, Congress, and industry observers. If we decide to collect and make this data available publicly on a station-attributed basis, how should we go about doing so? Moreover, given that the Act explicitly requires MVPDs to make their employment reports ''available for public inspection'' at their facilities, would it make sense for the Commission to harmonize the treatment of employment data from broadcasters with that of MVPDs and require Form 395–B be publicly available? If not, what purpose would be served by treating broadcasters and MVPDs differently for purposes of EEO data collection? To the extent broadcasters can provide appropriate grounds for treating Form 395–B data as confidential, we also seek comment on specific filing approaches that would enable the Commission to collect and maintain Form 395–B employee data confidentially. In particular, if the Commission were to collect employment data confidentially, we seek input on collection mechanisms that could segregate the employment data from any station or employment unit identifying information, thereby allowing the data to be filed on a non-station-attributable basis while at the same time capturing whether a particular entity or station has complied with the annual reporting requirement. For example, could the completed Form 395–B be collected in such a way that the employment data would be filed separately from the station/employment unit identifying information? We note that the Commission previously had raised concerns about a similar filing approach almost twenty years ago, particularly with regard to FOIA and the Federal Records Act (FRA). In that case, however, the Commission was considering an approach where it would receive completed paper filings and then ''tear off'' the station information from the employment data. We ask commenters to consider whether an electronic filing approach would raise concerns under either FOIA or the FRA if information were collected or maintained in a separated fashion. For example, how could the Commission ensure that the separation of station identifying information and employment data will not prevent the identification of employee data relating to a specific station if the Commission was required to produce information pursuant to a FOIA request?

19. The Commission also previously expressed concerns about the public's and its own inability to connect data with the station filing the data, were it to adopt a completely anonymous filing methodology. Specifically, the Commission noted that an anonymous filing approach could impede it from contacting the licensee if there were problems with the data. We invite comment on how we might address that concern. Further, how would we conduct audits of compliance with the Form 395–B annual filing requirement if Form 395–B is not filed on a station-attributable basis? In such a case, should we require each filer to retain a copy of their filings in order to present them to Commission staff in case of an audit to verify the submission of the report and the accuracy of the data submitted? To the extent data submitted in response to an audit can be obtained under FOIA, does that undermine the goal of this separation regime? Alternatively, would a certification by the licensee, for example on the FCC Form 396–B Broadcast Equal Employment Opportunity Program Report or the FCC Form 303–S License Renewal, attesting to the submission of the required annual Form 395–B be sufficient for tracking compliance with the annual filing of a Form 395–B for a particular station?

20. We also seek comment on any implementation issues that might arise from either an approach in which the Form 395–B is filed and maintained completely anonymously, or where station-specific information is available to the Commission but not the public. What technical issues, from both the station and the Commission perspective, would need to be addressed to ensure that the employment data cannot in any way be linked to the individual licensee who filed the data, by either Commission staff or others? We also welcome any examples of similar filing approaches that have been established,

either in the private or public sector, and the benefits or drawbacks of using such systems.

21. We further invite comment on whether any potential changes to the collection of this information or Form 395–B would be consistent with the directive in section 334(a) of the Act, which states that the Commission ''shall not revise . . . the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080)'' as they pertain to TV stations or the ''forms used by such licensees to report pertinent employment data.'' What impact does this statutory language have on potential revisions to Form 395–B, including on the ability of the Commission to modify the Form's public filing requirements? To the extent commenters believe that the language of section 334(a) allows for some changes in the format of the Form 395–B or the manner in which the employment data is collected as applied to broadcast licensees, please specify.

22. Additionally, we seek comment on how we should interpret the phrase ''pertinent employment data'' as used in section 334(a)(2). Should the term ''pertinent employment data'' be read in context as data related to administration and enforcement of the EEO regulations, considering that section 334(a)(1) codified ''the regulations concerning equal employment opportunity as in effect on September 1, 1992''? The Commission no longer uses station-specific employment data to screen licensee renewal applications or assess any aspect of a broadcaster's compliance with the Commission's EEO rules as a result of the D.C. Circuit's decisions. To what extent is station-specific data necessary to carry out our statutory and regulatory obligations, including to monitor industry employment trends and report to Congress. How can the Commission continue to meet these obligations to collect EEO data from broadcast station licensees and permittees without requiring station-specific data? Is station-specific data no longer ''pertinent'' employment data within the meaning of section 334(a)(2) because the data are no longer used to screen licensee renewal applications or assess EEO compliance, thereby allowing us to revise the forms to accommodate the filing of information on a non-station-specific basis? Does the permission granted to the Commission in section 334(c) to make technical revisions to ''the regulations described in subsection (a)'' provide sufficient authority to revise the Form 395–B or the filing procedures? In particular, section 334(c) contemplates that the Commission may make ''nonsubstantive technical or clerical revisions in such regulations,'' but says nothing about FCC forms. Assuming the authority in subsection (c) extends to Form 395–B, would the revisions contemplated constitute ''nonsubstantive technical or clerical revisions'' and would they be necessary ''to reflect changes in technology, terminology, or Commission organization''? If not, what impact would this have on the Commission's ability to make changes to the Form 395–B and the collection of the relevant employment data? In addition, the Commission previously noted that it could be ''called upon to provide trend data based on markets, size of stations, services, or other criteria'' that could not be reconstructed from data submitted on a non-station-attributable basis. Would the collection of other types of information from filers lead to a more useful data set and enable meaningful tracking of industry trends?

23. In the *Third Report and Order,* the Commission noted that it had previously sought to track the racial classification standards employed by the Equal Employment Opportunity Commission (EEOC), which in turn applies the classifications established by the Office of Management and Budget (OMB). Given the passage of time, it is possible that the racial classifications reflected on the FCC Form 395–B are no longer entirely consistent with the classifications employed by the current EEO–1 form. Accordingly, we seek comment on the desirability of harmonizing the racial classifications employed on the Form 395–B with the EEOC's current EEO–1 form, and any related issues. In addition, although we note that the Commission has made such changes to the Form 395–B in the past, consistent with the discussion above, we seek comment on whether the form can be revised to reflect any updated racial classifications consistent with section 334 of the Act. We note that although the filing of the Form 395–B has been suspended since 2001, OMB has approved the information collection through June 2023, subject to the Commission's decision resolving the data confidentiality issues. OMB Control Number History, OMB Control Number: 3060–0390, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202004-3060-047* (last visited Feb. 16, 2021). Thus, the Commission must consult further with OMB prior to re-implementing the data collection.

24. As part of refreshing the record, we also seek comment on whether the Form 395–B data could be collected pursuant to the CIPSEA under a pledge of confidentiality. While the Commission previously sought comment on the applicability of CIPSEA in 2004, at that time the statute was barely two years old. Given the passage of time and our desire to obtain as complete a record as possible, we seek comment anew on the applicability of CIPSEA. Could the Commission or one of its subordinate offices or bureaus qualify as a federal ''statistical agency or unit'' as defined in CIPSEA and in accordance with the various directives issued by the Office of Management and Budget over the years? To the extent the Commission, as a non-statistical agency, could avail itself of CIPSEA's provision protecting data from public disclosure, we note CIPSEA imposes various limitations and requirements on the confidential collection of data by a non-statistical agency that could significantly impede the Commission's ability to collect and use the data, including the requirement for direct acquisition of data by Commission employees without the use of contractors. Because the Commission relies on information technology contractors to assist filers with questions and to compile reports and other information based on data in its forms, we question whether the Commission can comply with this requirement. We seek comment on these issues.

25. Moreover, we note that, in the intervening years since the Form 395–B was suspended, additional regulations or guidance may have arisen that could affect our analysis and the restoration of this data collection. In particular, we note that the Foundations for Evidence Based Policymaking Act of 2018 (Evidence Act) would appear to require that the Commission publish data it collects in an open format if the data collection mechanism [is] created on or after January 14, 2019, the Act's date of enactment, and absent a statutory exemption prohibiting the disclosure of the information. Accordingly, we seek comment on whether this recently enacted statute would require the publication of employment data collected on Form 395–B. If the Commission were to reinstate the Form 395–B data collection, with or without modifications to the form or filing system, would this constitute a new data collection mechanism subject to the Evidence Act? And if so, would any existing FOIA exemptions apply to this data collection? We seek comment on the applicability of FOIA exemptions in general, including any recent developments in FOIA case law applicable to Form 395–B data.

26. Finally, given the significant passage of time since the FCC Form

395–B filing requirement was suspended, are there any other issues or developments that we should consider at this time? We also seek comment on the attendant costs and benefits of any proposals advanced in response to this item.

Procedural Matters

27. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a 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 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, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

28. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking 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).

29. With respect to this FNPRM, an Initial Regulatory Flexibility Analysis (FRFA) under the RFA appears below. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this FNPRM and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

30. *Paperwork Reduction Act.* This document seeks comment on whether the Commission should adopt modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Act Analysis

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 small entities of the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the Further Notice. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

32. The FNPRM seeks to refresh the record regarding the Commission's annual collection of broadcaster workforce composition data by race and gender on FCC Form 395–B. (Form 395–B, the broadcast station Annual Employment Report, can be found at *https://transition.fcc.gov/Forms/Form395B/395b.pdf.*) The filing of this Form was suspended in 2001 in the wake of a D.C. Circuit decision vacating certain aspects of the Commission's Equal Employment Opportunity requirements. While the Commission adopted revised regulations regarding its data collection to prevent use of the data in assessing compliance with its general EEO rules and possibly exerting pressure on broadcasters to hire women and minorities, and subsequently obtained OMB approval for collecting data on updated Form 395–B, collection of the data was delayed until issues regarding confidentiality of the data were resolved. To date, those issues remain unresolved. Accordingly, the FNPRM seeks to refresh the record regarding the collection of broadcaster workforce composition data, and asks for further input on the legal, logistical, and technical issues surrounding FCC Form 395–B.

33. Specifically, the FNPRM seeks to refresh the record with additional input on the outstanding issue of whether employee data reported by broadcasters can or should be kept confidential and/or on a non-attributable basis, or whether there are benefits from disclosure. Among other issues, the FNPRM asks whether there have been relevant developments in the public disclosure of employment data since the Commission last sought comment on collecting these data, including whether broadcast licensees now make station-attributed employment data available to the public, how prevalent this practice may be, and how such practices should impact our consideration of the issue of confidentiality.

34. The FNPRM asks, to the extent that broadcasters are concerned that the Commission or the public might use employment data against stations as a basis for audits or to file petitions to deny license applications, whether it should take any additional steps to ensure that the employment data it is required to collect will be used only for their stated purposes (*i.e.,* analyzing

industry trends and making reports to Congress)? The FNPRM asks whether there are other appropriate purposes of collecting data aside from official Commission actions that it should consider, and what public benefits derive from making the information publicly available. The FNPRM also asks what impact the Act's requirement that MVPDs make their employment reports ''available for public inspection'' at their facilities have on its consideration of whether broadcasters must also make their employment data available for public inspection.

35. Recognizing that these data have historically been made publicly available on a station-attributed basis, the FNPRM seeks comment on the benefits of continuing to do so. The FNPRM asks commenters to describe circumstances in which public availability of Form 395–B would be beneficial to the public interest or helpful to the Commission, Congress, and industry observers. The FNPRM asks how the Commission should go about making data publicly available on a station-attributed basis if it decides to continue doing so. To the extent broadcasters can provide appropriate grounds for treating Form 395–B data as confidential, the FNPRM seeks comment on specific filing approaches that would enable the Commission to collect and maintain Form 395–B employee data confidentially. The FNPRM asks commenters to consider whether an electronic filing approach would raise concerns under either FOIA or the Federal Records Act (FRA) if information were collected or maintained in a separated fashion.

36. The FNPRM invites comment on how the Commission might address any concerns that an anonymous filing approach could impede it from contacting the licensee if there were problems with the data or from conducting compliance audits. The FNPRM also seeks comment on any implementation issues that might arise from either an approach in which the Form 395–B is filed and maintained completely anonymously, or where station-specific information is available to the Commission but not the public.

37. The FNPRM also invites comment on whether any potential changes to the collection of this information or Form 395–B would be consistent with the directive in section 334(a) of the Act, which states that the Commission ''shall not revise . . . the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 CFR 73.2080)'' as they pertain to TV stations or the ''forms used by such licensees to report pertinent employment data.'' As part of refreshing the record, the FNPRM asks whether the Commission or one of its subordinate offices or bureaus qualify as a federal ''statistical agency or unit'' as defined in CIPSEA and in accordance with the various directives issued by the Office of Management and Budget since passage of CIPSEA in 2002. The FNPRM also seeks comment on whether the Foundations for Evidence-Based Policymaking Act would require the publication of employment data collected on Form 395–B. Finally, given the significant passage of time since the FCC Form 395–B filing requirement was suspended, the FNPRM seeks comment on any other issues or developments that the Commission should consider and on the attendant costs and benefits of any proposals advanced in response to the FNPRM.

B. Legal Basis

38. The proposed action is authorized under sections 1, 2(a), 4(i), 4(j), 4(k), 303, 334, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(k) 303, 334, and 403.

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

39. 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 rule revisions, if adopted. 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 (SBA). 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

40. *Television Broadcasting.* This U.S. 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. 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 that 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 these data, we estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

41. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,371. Of this total, 1,265 stations (or 92%) had revenues of $41.5 million or less in 2020, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 9, 2021, and therefore these stations qualify as small entities under the SBA definition. In addition, the Commission estimates the number of noncommercial educational stations to be 388. The Commission does not compile and 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. There are also 388 Class A stations. Given the nature of this service, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard.

42. *Radio Stations.* This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in the establishment's 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. Economic Census data for 2012 show that 2,849 firms in this category operated in that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Based on these data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

43. The Commission has estimated the number of licensed commercial AM radio stations to be 4,551 and the number of commercial FM radio stations to be 6699 for a total of 11,250

commercial stations. Of this total, 11,245 stations (or 99%) had revenues of $41.5 million or less in 2020, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 9, 2021, and therefore these stations qualify as small entities under the SBA definition. In addition, there were 4195 noncommercial educational FM stations. The Commission does not compile and does not have access to information on the revenue of NCE radio stations that would permit it to determine how many such stations would qualify as small entities.

44. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the 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 radio or television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio or television station from the definition of small business on this basis and is therefore possibly over-inclusive.

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

45. In this section, we identify the reporting, recordkeeping and other compliance requirements contained in the FNPRM and consider whether small entities are affected disproportionately by any such requirements. The FNPRM proposes no new reporting, recordkeeping or compliance requirements, only seeks to refresh the record on resuming, after a suspension, collection of broadcaster workforce composition data on FCC Form 395–B. The FNPRM also seeks to refresh the record to resolve an issue outstanding since 2004 on whether the Commission can or should change its handling of the data to keep it confidential. The FNPRM also asks whether and how more recently enacted statutes affect its handling of broadcaster employee composition data. If the FNPRM is adopted, broadcasters will simply resume filing Form 395–B and the FCC may change the way it handles data contained in Form 395–B. Because the FNPRM contains no new reporting or recordkeeping obligations and proposes only resuming filing of an existing Form, the reporting, recordkeeping and other compliance requirements of small entities will not change from such requirements under existing rules, and the burden imposed by the FNPRM will be no greater than under current rules. Additionally, stations with four or less full-time employees are exempt from filing the report. Therefore, because no new requirements are imposed and small stations are exempt, the Commission concludes that small entities will not be disproportionately affected by the FNPRM.

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

46. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

47. This FNPRM seeks to refresh the record regarding the Commission's annual collection of broadcaster workforce composition data by race and gender on FCC Form 395–B. It would lead only to resumption of this data collection and would impose no new requirements for which the Commission can consider alternatives that would minimize the economic burden on small entities. Further, as detailed in the FNPRM, section 334(a) of the Act states that the Commission shall not revise either the EEO regulations in effect as of September 1992 as such regulations apply to television broadcast station licensees or permittees or the ''forms used by such licensees to report pertinent employment data.''

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

48. None.

Ordering Clauses

49. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 4(k), 303, 334, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(k), 303, 334, and 403, this Further Notice of Proposed Rulemaking *is adopted.*

50. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2021–18665 Filed 8–30–21; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517, 538, and 552

[GSAR Case 2020–G509; Docket No. GSA–GSAR 2021–0015; Sequence No. 1]

RIN 3090–AK19

General Services Administration Acquisition Regulation (GSAR); Extending Federal Supply Schedule Orders Beyond the Contract Term

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to incorporate existing internal Federal Supply Schedule (FSS) policy concerning the option to extend the term of the contract and performance of orders beyond the term of the base FSS contract.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before November 1, 2021 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to GSAR Case 2020–G509 to: *Regulations.gov: https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''GSAR Case 2020–G509''. Select the link ''Comment Now'' that corresponds with GSAR Case 2020–G509. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''GSAR Case 2020–G509'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.