establish an exemption from the requirement of a tolerance for residues of dextrin, hydrogen 1-octenylbutanedioate (CAS Reg. No. 68070–94–0), when used as an inert ingredient in pesticide formulations under 40 CFR 180.920 for use as a seed treatment only. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

2. *PP IN–11696.* EPA–HQ–OPP–2022–0848. Rosen's Inc., 700 SW 291 Hwy, Suite 204, Liberty, MO 64068, requests to establish an exemption from the requirement of a tolerance for residues of the inert ingredient potassium polyaspartate (CAS Reg. No. 64723–18–8) when used as a complexing agent at no more than 10% in pesticide formulations under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

3. *PP IN–11715.* EPA–HQ–OPP–2022–0841. Ingredion Incorporated, 5 Westbrook Corporate Center, Westchester, IL 60154, requests to establish an exemption from the requirement of a tolerance for residues of amylopectin, 2-hydroxypropyl ether, acid-hydrolyzed (CAS Reg. No. 2756130–86–4), when used as an inert ingredient in pesticide formulations under 40 CFR 180.920 for use as a seed treatment only. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

C. New Tolerances for Non-Inerts

1. *PP 1E8951.* EPA–HQ–OPP–2021–0658. Interregional Research Project Number 4, IR–4, IR–4 Project Headquarters, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to establish a tolerance in 40 CFR 180.658 for residues of penthiopyrad *N*-2-1,3-dimethylbutyl-3-thienyl-1-methyl-3-trifluoromethyl-1H-pyrazole-4-carboxamide including its metabolites and degradates, in or on banana at 2 parts per million (ppm). A high-performance liquid chromatography method with tandem mass spectrometry (LC–MS/MS) detection, is used to measure and evaluate the chemical. *Contact:* RD.

2. *PP 0F8890.* EPA–HQ–OPP–2021–0529. Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27410, requests to establish a tolerance in 40 CFR part 180 for inadvertent residues of the fluazifop-p-butyl metabolite 5-Trifluoromethyl-2-Pyridone TFP in or on corn forage and grain at 0.01 ppm and corn stover at 0.015 ppm. The methods GRM044.09A, MRMT Multi Residue Method Test using QuEChERS, ILV, and Radiovalidation of GRM044.09A are used to measure and evaluate the chemical fluazifop-p-butyl metabolite TFP. *Contact:* RD.

3. *PP 1F8979.* EPA–HQ–OPP–2022–0452. Gowan Company, LLC., 370 South Main Street, Yuma, AZ 85364, requests to establish a tolerance in 40 CFR part 180 for residues of the miticide acynonapyr, 3-*endo*-2-propoxy-4-trifluoromethyl phenoxy-9-5-trifluoromethyl-2-pyridyloxy-9-azabicyclo 3.3.1 nonane and its metabolites AP, 3-*endo*-2-propoxy-4-trifluoromethyl phenoxy-9-azabicyclo 3.3.1 nonane, and AY, 5-trifluoromethyl-2-pyridinol in or on almond at 0.03 ppm; almond, hulls at 4.0 ppm; crop group 10-10; citrus fruits at 0.3 ppm; citrus, oil at 15.0 ppm; orange, dried pulp at 0.7 ppm; grape at 0.6 ppm; raisins at 3.0 ppm; hops at 50.0 ppm; crop group 11-10, pome fruits at 0.2 ppm; and apple, wet pomace at 0.4 ppm. LC–MS/MS detection is used to measure and evaluate the chemical acynonapyr and its metabolites AP, AP-2, AY, AY-3, and AY-1-Glc. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: November 8, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2022–25071 Filed 11–16–22; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 20–299; FCC 22–77; FR ID 111067]

Sponsorship Identification Requirements for Foreign Government-Provided Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on a certification requirement proposal for broadcasters, which would strengthen and fortify the foreign sponsorship identification rules in light of the D.C. Circuit's recent decision that vacated the verification component of the Commission's rules.

DATES: Comments due on or before December 19, 2022; reply comments due on or before January 3, 2023.

ADDRESSES: You may submit comments, identified by MB Docket No. 20–299, by any of the following methods:

- *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* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Media Bureau, Industry Analysis Division, *Radhika.Karmarkar@fcc.gov,* (202) 418–1523.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Notice of Proposed Rulemaking (*Second NPRM*), FCC 22–77, in MB Docket No. 20–299, adopted on October 4, 2022, and released on October 6, 2022. The complete text of this document is available electronically via the search function on the FCC's website at *https://*

www.fcc.gov/document/fcc-proposes-modifications-foreign-sponsorship-id-requirements.

Synopsis

1. With this Second Notice of Proposed Rulemaking (*Second NPRM*), we take the next step to ensure that we have strong foreign sponsorship identification rules. On April 22, 2021, the Commission released a Report and Order (*Order*) in the above captioned proceeding adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and setting forth the procedures for exercising reasonable diligence to determine whether such a disclosure is needed. The *Order* defined the term ''foreign governmental entity'' to include those entities or individuals that would trigger a disclosure pursuant to the foreign sponsorship identification rules. This Second Notice of Proposed Rulemaking accords to the term ''foreign governmental entity'' the definition established in the *Order.* We adopted the requirements in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations. The principle that the public has a right to know the identity of those soliciting their support is a fundamental and long-standing tenet of broadcast regulation. We promulgated the foreign sponsorship identification rules against the backdrop of regulation that has evolved over ninety years to ensure that the public is informed when airtime has been purchased on broadcast stations in an effort to persuade audiences, enabling the public to distinguish between paid content and material chosen by the broadcaster itself.

2. On August 13, 2021, the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB) (collectively, Petitioners) filed a Petition for Review of the *Order* with the U.S. Court of Appeals for the District of Columbia Circuit challenging one step in our reasonable diligence requirement, established to ensure that broadcasters independently confirm the lessee's status when determining whether programming is provided by a foreign governmental entity. The Petitioners alleged that the Commission lacked statutory authority to adopt such a requirement and also contended that such a requirement violated the First Amendment and the Administrative Procedure Act.

3. On July 12, 2022, the D.C. Circuit ruled on the Petition for Review, leaving untouched the bulk of the foreign sponsorship identification requirements and vacating only the provision that broadcasters check two federal sources to verify whether a lessee is a ''foreign governmental entity,'' as defined in the rules.

4. This *Second NPRM* seeks to fortify the rules in the wake of the court's decision. Specifically, pursuant to section 317(e), which directs the Commission to prescribe rules and regulations to carry out the provisions of section 317, we propose that, in order to comply with the ''reasonable diligence'' requirement regarding foreign sponsorship identification, a licensee must certify that it has informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a ''foreign governmental entity.'' In turn, we propose that the lessee submit a certification in response to a licensee's request. These new certification requirements would subsume the duty of licensees under § 73.1212(j)(3)(v) of our rules to memorialize and retain their reasonable diligence inquiries. As this *Second NPRM* proposes to establish standardized certification language for licensees and lessees, the time and cost associated with compliance should be minimal. This *Second NPRM* also seeks comment on an alternative approach to the certification requirement. This alternative approach was raised as a hypothetical by the D.C. Circuit during the oral argument in *NAB* v. *FCC.* Under this approach, in the event that a lessee states it is not a ''foreign governmental entity'' a licensee must obtain from the lessee appropriate documentation (*e.g.,* a screen shot(s)) showing that the lessee's name does not appear on either of the two federal government websites which we identified in the *Order* as reference points for determining whether a given individual/entity is a ''foreign governmental entity.'' Finally, this *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification ''regarding the applicability of the foreign sponsorship identification rules to advertisements sold by local broadcast stations.''

Background

5. The *Order* amended the Commission's long-standing sponsorship identification rules by establishing new foreign sponsorship identification rules designed to identify foreign government-provided programming airing on broadcast radio and television stations. In this *Second NPRM,* our use of the term ''foreign government-provided programming'' refers to all programming that is provided by an entity or individual that falls into one of the four categories listed in § 73.1212(j)(2) of our rules. The foreign sponsorship identification rules seek to increase transparency and ensure that audiences of broadcast stations are aware when a foreign government, or its representatives, are seeking to persuade the American public. The rules require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on a licensee's station has been sponsored, paid for, or furnished by a foreign governmental entity. Consistent with section 317(a)(2) of the Communications Act of 1934, as amended (Act) and the pre-existing sponsorship identification rules, the foreign sponsorship identification rules also require disclosure of political programming or programming involving the discussion of a controversial issue if such programming is provided by a foreign governmental entity for free, or for nominal compensation, as an inducement to air. Hence, the phrase ''provided by'' when used in relation to ''foreign government programming'' covers both the broadcast of programming in exchange for consideration *and* the furnishing of any ''political program or any program involving the discussion of a controversial issue'' for free as an inducement to broadcast the programming.

6. The requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor. The foreign sponsorship identification rules established a definition of ''foreign governmental entity'' based on existing definitions, statutes, or determinations by the U.S. government. Pursuant to the foreign sponsorship identification rules, to meet the ''reasonable diligence'' standard of section 317(c) of the Act, with regard to foreign government-provided programming, a licensee must at a minimum:

(1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;

(2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a ''foreign governmental entity;''

(3) Inquire of the lessee at the time of agreement and at renewal whether it knows if any individual/entity further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) Independently confirm the lessee's status, at the time of agreement and at renewal by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports for the lessee's name. This need not be done if the lessee has already disclosed that it falls into one of the covered categories and/or that there is a separate need for a disclosure because an individual/entity further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming;

(5) Memorialize the above-listed inquiries and investigations and retain such memorialization in its records for the remainder of the then current license term or one year, whichever is longer.

7. The requirements listed above apply to licensees in the case of leased programming when ''money, service or other valuable consideration'' is provided pursuant to section 317(a)(1) of the Act. Likewise, the requirements apply to licensees, pursuant to section 317(a)(2), in the case of political programming or programming involving a controversial issue even when the programming itself has been provided as an inducement to air such programming.

8. While the ''reasonable diligence'' requirements of section 317(c) apply to licensees, as noted in the *Order,* lessees have an obligation, pursuant to section 507 of the Act, to communicate information to the licensee relevant to determining whether a sponsorship identification disclosure is required. Pursuant to section 507, the lessee's obligation to communicate information to the licensee is not limited to just programming provided in exchange for consideration. As stated in the *Order,* the provision of any ''political program or any program involving the discussion of a controversial issue'' by a foreign governmental entity to a party in the distribution chain for no cost and as an inducement to air that material on a broadcast station is a ''service of other valuable consideration'' under the terms of section 507. Thus, under this section, if an individual/entity involved in the production, preparation, or supply of programming that is intended to be aired on a station has received any ''political program or any program involving the discussion of a controversial issue'' from a foreign governmental entity for free, or at nominal charge, as an inducement for its broadcast, this individual/entity must disclose this fact to its employer, the person for whom the program is being produced, or the licensee of the station. In addition, this programming will require an appropriate identification.

9. Further, the *Order* established requirements concerning the format and frequency of the disclosure that must accompany foreign government-provided programming. The foreign sponsorship identification rules apply to all new leases and renewals of existing leases as of March 15, 2022. Lease agreements that were in place prior to March 15, 2022, were given an additional six months to come into compliance—*i.e.,* by September 15, 2022. On June 17, 2021, a summary of the *Order* was published in the **Federal Register**, and thirty days after publication, the rules adopted became effective, although compliance with the information-collection and recordkeeping portions was not required until after review by the Office of Management and Budget (OMB). On March 7, 2022, OMB approved the information collection requirements associated with the foreign sponsorship identification and public inspection filing rules. On March 15, 2022, the Media Bureau announced that the notice of the compliance date for the rule changes was published in the **Federal Register** on March 15, 2022, and thus the compliance date for the Commission's foreign sponsorship identification rules is March 15, 2022. Sponsorship Identification Requirements for Foreign Government-Provided Programming, 87 FR 14404 (Mar. 15, 2022) (to be codified at 47 CFR part 73).

10. As stated above, following the Petitioners' challenge to the *Order,* the D.C. Circuit vacated the fourth reasonable diligence requirement itemized above, leaving all other elements of the rules in place. The court held that the Commission lacked authority under section 317(c) of the Act to require licensees to review two federal government websites to ascertain a lessee's status. The D.C. Circuit stated that the ''reasonable diligence'' requirement contained in section 317(c) of the Act imposes on licensees only ''a duty of inquiry, not a duty of investigation.'' The court looked to prior precedent in asserting that ''Section 317(c) 'is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast.' ''

11. Before the Commission's *Order* was appealed, on July 19, 2021, the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, ''the Affiliates'') filed a Petition for Clarification. The Affiliates asked us to clarify what constitutes ''traditional, short-form advertising,'' which we exempted from the foreign sponsorship identification requirements adopted in the *Order.* In their petition, the Affiliates recommended that the foreign sponsorship identification rules not apply when a licensee ''sells time to advertisers in the normal course of business, no matter the length of the advertisement.'' The petition resulted in just two responses from commenters, each requesting the Commission to clarify that all forms of advertising for commercial goods and services are not subject to the foreign sponsorship rules. The petition remains pending.

Discussion

A. Certification Requirement for the Foreign Sponsorship Identification Rules

12. With this *Second NPRM,* we seek to strengthen the process supporting the foreign sponsorship identification rules in the wake of the D.C. Circuit's vacatur of the requirement that licensees search two government websites to verify a lessee's assertion that it is not a foreign governmental entity. As stated above, the foreign sponsorship identification rules require licensees to notify their lessees of the disclosure requirement pertaining to foreign government-provided programming at the time of entering into a lease agreement or at renewal of such an agreement. In addition, the licensee must inquire whether the lessee is a foreign governmental entity and if the lessee is aware of any individual/entity further back in the chain of production or distribution of the programming that may qualify as a foreign governmental entity and has provided compensation (including the programming itself, in the case of political programming or programming involving a controversial issue) as an inducement to air the programming. Finally, the licensee must memorialize these inquiries in writing and retain such documentation for a set time period. The rules do not, however,

establish a format for this memorialization.

13. With the court's elimination of the obligation that a licensee verify the lessee's status independently using two federal government websites, the exchange between a licensee and lessee about the lessee's status takes on heightened importance in ensuring that the necessary disclosure is made, if needed. It is now even more imperative that the licensee inform any lessee in as clear a manner as possible about the foreign sponsorship identification rules and obtain a complete response in return regarding whether the lessee is, or is not, a foreign governmental entity or is aware of one further back in the chain that has produced/provided the programming in question.

14. Accordingly, in this *Second NPRM,* we seek comment on establishing a transparent mechanism to determine whether the licensee made the requisite inquiries of each lessee and that each lessee responded in a complete manner regarding whether it qualifies as a foreign governmental entity (or is aware of one further back in the chain) pursuant to our rules. We tentatively conclude that the optimal mechanism for achieving this outcome is to require both licensee and lessee to certify their respective parts in this critical inquiry regarding the lessee's status and lessee's knowledge of any individual/entity further back in the programming production or distribution chain who may qualify as a foreign governmental entity. Specifically, we propose that the licensee certify that it has made the appropriate inquiry of each lessee and sought a certification from the lessee regarding its status. Likewise, we propose that the lessee certify as to whether it is or is not a foreign governmental entity and whether it knows of any entity or individual further back in the programming production or distribution chain that qualifies as a foreign governmental entity and has provided some form of compensation, or, in some cases the programming itself, as an inducement to air the programming. In the case of political programming or programming concerning a controversial issue, provision of the programming itself as an inducement to air the programming triggers the disclosure requirement. We tentatively conclude that the proposed certification requirement for the licensee would subsume the licensee's duty to memorialize its inquiry of its lessee pursuant to § 73.1212(j)(3)(v) of the Commission's rules. We seek comment on our proposed rule and approach.

15. As these certifications would formalize an inquiry process that, under our current foreign sponsorship identification rules, occurs at the time that parties either enter into or renew a lease agreement, we tentatively conclude that this certification process should occur at those same times. Further, we tentatively conclude that a certification, in particular one containing standardized language, as proposed below, provides the most efficient means of gauging a licensee's compliance with both the disclosure to a lessee of the foreign sponsorship identification rules and the request for lessee's certification. Likewise, a certification from the lessee provides increased assurance that it has taken the time to fully understand licensee's query and given due consideration to its own response. Moreover, the proposed certifications provide the Commission with a straightforward mechanism to monitor compliance with the inquiry requirements contained in the foreign sponsorship identification rules. It will also provide the information necessary for the Commission to independently confirm the certification, should an investigatory need arise. We seek comment on these tentative conclusions and our proposed approach of requiring certifications by the parties involved in a leasing agreement.

16. We recognize that there may be rare instances in which a lessee declines to make the necessary certification or fails to submit the certification regarding its status to the licensee. We seek comment on whether, in these limited instances, the licensee's own certification is sufficient to demonstrate that the licensee has complied with its obligation to inform the lessee of the foreign sponsorship identification rules and to seek a certification from lessee. In these instances, should the licensee be permitted to move forward with the lease agreement, or has lessee's refusal to complete the certification as to its status raised sufficient questions about the involvement of a foreign governmental entity such that further action is required on the licensee's part? What additional actions, if any, could the licensee undertake consistent with section 317(c) of the Act to verify a lessee's status? In this regard, we note that § 73.1212(e) of our rules requires the licensee to disclose the ''true identity of the person'' who has sponsored the programming. Would notifying the Commission about the lessee's failure to certify alleviate some of the concerns associated with lessee's lack of response? Absent such a response, if the licensee decides to proceed with the lease agreement, should we require the licensee to notify the Media Bureau, via a designated email box, about a lessee's failure to certify? Should such notification include the lessee's full name and contact information (such as address, email address, and/or telephone number)? Such a notification with the contact information could enable the Media Bureau, perhaps in conjunction with the Enforcement Bureau, to conduct its own inquiry regarding the lessee's status and whether the lessee has violated its obligations pursuant to section 507 of the Act. Would such a notification alleviate the licensee of its responsibility under § 73.1212(e) of our rules to disclose the ''true identity of the person'' who has sponsored the programming?

17. *Submission of Certifications to the Commission.* With regard to oversight, we tentatively conclude that submission of licensee and lessee certifications to the Commission provides an efficient and transparent means of verifying compliance with the certification requirement. Given that a licensee must already upload copies of its lease agreements to its online public inspection file (OPIF), and that this certification process will essentially occur at the time of entering into, or renewing a lease, we tentatively conclude that the licensee should upload both its own and the lessee's certifications into the same designated public inspection file subfolder in which it places its lease agreements. In addition, we tentatively conclude that such certifications should be conspicuous, clear, and arranged in such a manner that the parties' certifications are readily discernable. While we do not propose to require that the certifications be incorporated into a lease agreement itself, we observe that incorporation into the lease, or attachment as an appendix to the lease, could be the most efficient means of facilitating oversight and ensuring the certification process is completed. In this regard, we note that a number of broadcasters already incorporate into their leases provisions concerning compliance with various Commission requirements. We seek comment on this proposed approach for memorializing and submitting the certifications and our tentative conclusions outlined above.

18. Further, we tentatively conclude that the transparency we seek regarding a licensee's inquiries of its lessee(s) depends, in part, upon the licensee placing the certifications into its public file in a timely manner. Thus, in accordance with current requirements

for licensees to place their lease agreements into their OPIFs within 30 days of execution, we also propose that licensees place the certifications into their OPIFs within 30 days of execution. We expect that this filing period will impose minimal additional burden on licensees given that licensees should, under existing rules, be accustomed to placing copies of their agreements in their public file. Consistent with the guidance regarding lease agreements in the *Order,* for licensees that do not have obligations to maintain OPIFs, we propose that such licensees retain a record of the certifications in their station files within 30 days of execution. We seek comment on these proposals and proposed timing.

19. *Time Period for Retaining Certifications.* We recognize there is a divergence between the time period for which licensees must retain their leases in their public file and the time period that licensees are required, under the foreign sponsorship identification rules, to maintain their documentation memorializing their inquiries of the lessee. Pursuant to § 73.3526(e)(14) of our rules, a lease must be retained in the public file for as long as the agreement is in force; however, pursuant to § 73.1212(j)(3)(v) of our rules, the licensee must retain its memorialization for the remainder of the then current license term or one year, whichever is longer. We propose above that the certification requirement set forth herein would replace the licensee's duty to memorialize its inquiries of the lessee and tie the documentation memorializing such inquiries more closely to the lease agreement itself (*i.e.,* by requiring that the certifications be filed along with the lease in the public file). In the event that we adopt this proposal, we seek comment on whether to align the requirement to retain the certifications with the current time period mandated in § 73.3526(e)(14) for retention of the lease in the public file (*i.e.,* for the life of the lease agreement). We tentatively conclude that such an alignment would simplify compliance for licensees by conforming the time period for retaining a lease with the time period for retaining the licensee's documentation of its inquiries of the lessee.

20. *Application of Certification Requirements on a Prospective Basis.* We recognize that beginning on March 15, 2022, licensees had to comply with the new foreign sponsorship identification rules with respect to new lease agreements and renewals. The *Order,* however, gave licensees an additional six months to bring existing lease agreements into compliance (*i.e.,* by September 15, 2022). With respect to the certification requirement we propose today, we similarly propose to apply the requirement on a going forward basis with a six-month grace period for existing lease agreements to come into compliance. We seek comment on this proposal and on any alternative approaches.

B. Standardized Language To Be Included in Certification Requirement

21. We tentatively conclude that establishing standardized certification language would both minimize the compliance burden on licensees and lessees and bring greater uniformity to the certification process. In this regard, we note that, in previous filings in this proceeding, certain broadcaster groups had asserted that ''they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status.'' The establishment of standardized certification language would eviscerate any need for licenses or lessees to seek outside assistance in crafting or reviewing certifications. Licensees and lessees can cut and paste the standardized certification language into the relevant documents and fill in simple details, such as the name of the licensee or lessee, whether the lessee is or is not a foreign governmental entity, and the name of any foreign governmental entity further back in the programming chain. Accordingly, we tentatively conclude that the adoption of standardized certification language should reduce any time and cost licensees have to expend on compliance.

22. *Proposed Licensee Certification.* We propose that broadcast licensees use the following standardized language when making the required certifications:

I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR 73.1212(j), [Licensee] has:

(1) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of a foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), define these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) Sought and obtained from [Lessee] a certification stating that [Lessee] [is OR is not] a ''foreign governmental entity,'' as that term is defined above;

(5) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(6) If [Lessee] qualifies, or knows of an individual/entity further back in the

chain of producing and distributing the programming that qualifies, as a ''foreign governmental entity,'' as defined above, then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

I, [insert name of person/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

23. *Proposed Lessee Certification.* We propose that lessees use the following language when making the required certifications:

I am authorized on behalf of [Lessee] to certify to the following:

(1) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of a foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), defines these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) [Lessee] certifies that it [is OR is not] a ''foreign governmental entity,'' as that term is defined above;

(5) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(6) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(7) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(8) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee's programming consistent with the FCC's rules, found at 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(9) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee's] status as a ''foreign governmental entity'' changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined above, and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

24. We seek comment both on the utility of providing standardized language for licensees and lessees to use for their respective certifications and on the specific language laid out above. Should the standard certification language be modified in any way to better suit the needs of licensees or lessees, including licensees and lessees that are small entities?

C. Section 325(c) Permits

25. A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States. Given the nature of the section 325(c) permits, pursuant to § 73.1212(k) of the Commission rules, the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an

inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity. Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station.

26. In proposing § 73.1212(k), the Commission noted that applying foreign sponsorship identification disclosures to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act would level the playing field between programming aired by non-U.S. and U.S. broadcasters in the same geographic area within the United States and would eliminate any potential loophole in our regulatory framework with respect to the identification of foreign government-provided programming that may result from this proceeding. Under § 73.1212(j), if a content provider, including one that also holds a section 325(c) permit, meets the definition of foreign governmental entity and provides its content to a U.S. broadcaster under a lease agreement, its content is subject to foreign sponsorship identification disclosures. If such a content provider provides the same content to a foreign broadcast station under its section 325(c) permit, such content also is subject to foreign sponsorship identification disclosures. The disclosure requirements in that situation apply to materials permitted to be delivered to a foreign broadcast station under an authorization pursuant to section 325(c) of the Act regardless of the nature of the arrangement, if any, between the permit holder and the foreign broadcast station. In the context of section 325(c) permits, leasing of airtime is not a relevant prerequisite for application of the foreign sponsorship identification rules because section 325(c) permit holders' foreign broadcast arrangements can be struck in various ways, not just through leasing of airtime, under the laws of foreign countries. In this context, our rules ensure that no material provided by a permit holder that is a foreign governmental entity is broadcast into the United States through the use of section 325(c) permits without the appropriate disclosures. To provide greater clarity regarding the application of these disclosure requirements in the context of programming subject to a section 325(c) permit, we propose to modify § 73.1212(k) as shown in Appendix A. Pending a determination as to whether the proposed due diligence modifications to 47 CFR 73.1212(j) should apply to section 325(c) permittees, our proposed revisions to subsection (k) reflect the subsection (j) duty to memorialize due diligence efforts.

27. We expect that a section 325(c) permit holder would have direct knowledge of whether it is a foreign governmental entity as that term is defined in § 73.1212(j) of the rules and whether disclosures are required on that basis. However, even if a permit holder is not itself a foreign governmental entity, the disclosure requirements apply to any part of its programming that is sponsored, paid for, or furnished for free by a foreign governmental entity either directly to the permit holder or to an entity farther back in the content production chain. We seek comment on whether there is a need to apply any due diligence requirements proposed in this *Second NPRM* to any programming permitted to be delivered to a foreign station pursuant to a section 325(c) permit and, if applicable, whether the proposed certifications or other due diligence documentation should be placed in the IBFS by section 325(c) permit holders and for how long.

D. Proposed Certification Requirement Is Consistent With the Act and NAB v. FCC

28. We tentatively conclude that the certification requirements we propose above are consistent with both the Act and the court's decision in *NAB* v. *FCC.* Section 317(c) of the Act states that the licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section. Section 317(e), in turn, directs the Commission to prescribe appropriate rules and regulations to carry out the provisions of section 317. We tentatively conclude that sections 317(c) and (e) together provide ample authority to implement our proposed requirement that a licensee make inquiries of a lessee in the form of a certification and seek a lessee's response in the form of a reciprocal certification. We tentatively conclude that such an inquiry requirement for the licensee is entirely consistent with its statutory reasonable diligence obligation to discern the lessee's status as a ''foreign governmental entity'' and what the lessee knows about those further back in the chain of producing and distributing the programming. The licensee must ask these questions of lessee to obtain the information needed ''to enable such licensee to make the announcement required by [section 317(c)].'' We seek comment on these tentative conclusions.

29. Consistent with the court's holding that section 317(c) imposes only a duty of inquiry for licensees, rather than a duty to investigate and verify, the proposal contained in this *Second NPRM* merely requires licensees to certify to inquiries they must already undertake pursuant to the existing foreign sponsorship identification rules and formalizes the existing requirement to memorialize such inquiries. Accordingly, we tentatively conclude that our proposed certification requirements are consistent with the D.C. Circuit's vacatur of the prior requirement that a licensee independently verify whether a lessee is a ''foreign governmental entity'' by consulting two federal government sources. The court did not question the Commission's authority to require inquiries and memorialize responses, as we propose to do more formally today. Further, the proposed certification requirements do not require, or have the effect of requiring, licensees to engage in any ''investigation'' regarding the lessee's status nor to consult with any person or source other than that with whom it deals directly, namely, the lessee. We seek comment on these tentative conclusions.

30. With regard to the lessee specifically, we note that sections 507(b)–(c) impose an obligation on the lessee to disclose information relevant to determining whether a sponsorship identification is required. Section 507(c) states that any person who supplies to any other person program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program. As the individual/entity providing the programming to the licensee, the lessee is subject to the strictures of section 507(c). Likewise, section 507(b) imposes the same obligations on those involved in the production or preparation of programming and would similarly apply to the lessee if the lessee were involved in the production or preparation of the programming. The significance of lessee's transmission of relevant information is highlighted by the fact that section 317(b) of the Act requires

the licensee to take note of information received pursuant to the section 507 disclosure requirement. We seek comment on the analysis laid out above with regard to section 507 of the Act.

E. Alternative Approach

31. We also seek comment on an alternative approach raised by the D.C. Circuit. At oral argument, the court asked whether it would be consistent with the Act and accomplish the same goal as the requirement that the court ultimately vacated to instead require a licensee to ask its lessee to provide the licensee with appropriate documentation (*e.g.,* the relevant FARA page showing that its sponsors are not listed there). In accord with the court's question, would it be consistent with the Commission's authority under section 317 to define licensees' reasonable diligence obligation by requiring them to seek or obtain such proof from lessees (*e.g.,* by a screen shot)? Should a licensee have to seek or obtain from its lessee proof that the lessee's name does not appear in either the FARA database or the Commission's U.S.-based foreign media outlet reports? Would this approach accomplish the same purpose as the vacated rule requirement? What would be the burdens of this approach on licensees and lessees? Would it have any benefits or drawbacks as compared to requiring the licensee to obtain a certification from the lessee?

F. Petition for Clarification

32. As stated above, on July 19, 2021, the Affiliates filed a Petition for Clarification regarding the meaning of the phrase ''traditional, short-form advertising'' as it appeared in the *Order*. In their Petition, the Affiliates seek a clarification that the foreign sponsorship identification rules, and in particular the inquiries associated with these rules, do not apply when a station ''sells time to advertisers in the normal course of business,'' in contrast to when it leases airtime on the station. According to the Affiliates, the reference to ''traditional short-form advertising'' as an exception to the foreign sponsorship identification requirements has caused confusion amongst the Affiliates' members about what type of programming arrangements are subject to the requirements. As stated, the Affiliates' Petition generated minimal response. We seek comment on whether experience with these rules has provided licensees or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime in a way that does not jeopardize the Commission's goals in this proceeding. For example, we seek comment on whether there are key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station, such as duration, content, editorial control, or differences in the nature of the contractual relationship between the licensee and the entity that purchases an advertising spot versus leasing airtime for programming. What criteria might we adopt to ensure that the concept of ''advertising'' does not subsume ''leased time'' or vice versa? Might the establishment of a safe harbor assist in this regard? For example, could we establish a presumption that any broadcast matter that is two minutes or less in length, absent any other indicia, will be considered ''short-form advertising'' for purposes of the foreign sponsorship identification rules?

G. Digital Equity and Inclusion

33. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

Procedural Matters

34. *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 in *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.

35. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.1415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

36. *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 dominated in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

37. With respect to this Second Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA)

under the RFA is contained in the Appendix. Written public comments are required on the IRFA 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 Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

38. *Paperwork Reduction Act.* This document seeks comment on whether the Commission should adopt new 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

39. 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 Second Notice of Proposed Rulemaking (*Second NPRM*). 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 *Second NPRM.* The Commission will send a copy of the *Second NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

40. On April 22, 2021, the Commission released a Report and Order adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and setting forth the procedures whereby stations must exercise reasonable diligence to determine whether such a disclosure is required. The Commission promulgated these foreign sponsorship identification rules in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations. The Commission's rules established a definition of ''foreign governmental entity'' based on existing definitions, statutes, or determinations by the U.S. government. The Commission's requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor. The Commission promulgated the foreign sponsorship identification rules based on a fundamental and long-standing tenet of broadcast regulation; namely, that the public has a right to know the identity of those soliciting their support.

41. On August 13, 2021, the National Association of Broadcasters (NAB) and two public interest groups (collectively, ''Petitioners'') filed a Petition for Review of the Commission's *Order* with the U.S. Court of Appeals for the District of Columbia Circuit challenging the Commission's reasonable diligence requirements, alleging that the Commission lacked statutory authority to adopt such requirements. On July 12, 2022, the D.C. Circuit ruled on the Petition for Review, upholding the core of the foreign sponsorship identification rules but vacating the requirement that broadcasters check two federal sources to verify whether a lessee is a ''foreign governmental entity,'' as that term is defined in the Commission's rules.

42. The Second Notice of Proposed Rulemaking (*Second NPRM*) seeks to fortify the Commission's rules in the wake of the court's decision by proposing that, in order to comply with the ''reasonable diligence'' requirement regarding foreign sponsorship identification, a licensee must certify that it has informed its lessee of the foreign sponsorship identification rules and sought, or obtained, a certification from its lessee stating whether the lessee is or is not a foreign governmental entity pursuant to the rules. The *Second NPRM* also proposes that the lessee submit a certification in response to licensee's request. These new certification requirements would subsume the duty of licensees under § 73.1212(j)(3)(v) of our rules to memorialize and retain their reasonable diligence inquiries. The *Second NPRM* also seeks comment on an alternative approach to the certification requirement. This alternative approach was raised as a hypothetical during the oral argument before the D.C. Circuit in *NAB* v. *FCC.* Under this approach, in the event that a lessee states it is not a ''foreign governmental entity'' a licensee must obtain from the lessee appropriate documentation (*e.g.,* a screen shot(s)) showing that the lessee's name does not appear on either of the two federal government websites which the Commission identified in the *Order* as reference points for determining whether a given individual/entity is a ''foreign governmental entity.'' Finally, the *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification regarding the applicability of the foreign sponsorship identification rules to broadcast stations when they sell time to advertisers in the normal course of business.

B. Legal Basis

43. The proposed action is authorized under sections 1, 2, 4(i), 4(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508.

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

44. 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.

45. *Television Broadcasting.* This industry is comprised of ''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 small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

46. As of June 2022, there were 1,373 licensed commercial television stations. Of this total, 1,280 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,865 LPTV stations and 3,224 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

47. *Radio Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

48. The Commission estimates that as of June 30, 2022, there were 4,498 licensed commercial AM radio stations and 6,689 licensed commercial FM radio stations, for a combined total of 11,187 commercial radio stations. Of this total, 11,185 stations (or 99.98%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2022, there were 4,184 licensed noncommercial (NCE) FM radio stations, 2,034 low power FM (LPFM) stations, and 8,951 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

49. We note, however, that 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, 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 radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

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

50. The *Order* had established certain requirements that licensees had to meet to comply with the ''reasonable diligence'' standard of section 317(c) of the Act, with regard to foreign government-provided programming. Specifically, pursuant to the *Order,* a licensee had to, at a minimum:

(1) Inform the lessee at the time of agreement and at renewal of the foreign sponsorship disclosure requirement;

(2) Inquire of the lessee at the time of agreement and at renewal whether it falls into any of the categories that qualify it as a ''foreign governmental entity;''

(3) Inquire of the lessee at the time of agreement and at renewal whether it knows if anyone further back in the chain of producing/distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) Independently confirm the lessee's status, at the time of agreement and at renewal by consulting the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports for the lessee's name. This need not be done if the lessee has already disclosed that it falls into one of the covered categories and/or that there is a separate need for a disclosure because an entity/individual further back in the chain of producing/transmitting the programming falls into one of the covered categories and has provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming; and

(5) Memorialize the above-listed inquiries and investigations and retain such memorialization in its records for the remainder of the then current license term or one year, whichever is longer.

51. Following the Petitioners' challenge to the *Order,* the D.C. Circuit decision vacated the fourth reasonable diligence requirement itemized above, leaving all other elements of the Commission's rules in place. The *Second NPRM* seeks to fortify the rules in the wake of the court's decision by proposing that a licensee must certify it has informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a ''foreign governmental entity,'' as that term is defined in the Commission's rules. The *Second NPRM* also proposes that the lessee submit a certification in response to the licensee's request. These new certification requirements, if adopted by the Commission, would replace the duty of a licensee, as laid out above in items (1), (2), and (3) to inquire of its lessee whether it, or anyone further back in the

chain of distributing/producing the programming, qualifies as a ''foreign governmental entity,'' and has provided some type of inducement (*e.g.,* compensation) to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The proposed certifications themselves would replace the memorialization requirement contained in item (5) above.

52. The *Second NPRM* recognizes that there may be rare instances in which a lessee declines to make the necessary certification or fails to submit the certification regarding its status to the licensee. The *Second NPRM* seeks comment on whether, in these limited instances, the licensee's own certification is sufficient to demonstrate that the licensee has complied with its obligation to inform the lessee of the foreign sponsorship identification rules and to seek a certification from lessee. The *Second NPRM* asks whether requiring the licensee to notify the Commission about lessee's failure to certify would alleviate some of the concerns associated with lessee's lack of response. In the event that the licensee decides to proceed with the lease agreement, the *Second NPRM* seeks comment on whether to require the licensee to notify the Commission's Media Bureau, via a designated email box, about a lessee's failure to certify along with the lessee's full name and contact information (such as address, email address, and/or telephone number).

53. *Submission of Certifications to the Commission.* The *Second NPRM* tentatively concludes that submission of licensee's and lessee's certifications to the Commission provides an efficient and transparent means of verifying compliance with the certification requirement. Given that a licensee must already upload copies of its lease agreements to its online public inspection file (OPIF), and that this certification process will essentially occur at the time of entering into, or renewing a lease, the *Second NPRM* tentatively concludes that the licensee should upload both its own and the lessee's certifications into the same public inspection file in which it places its lease agreements. While the *Second NPRM* does not propose to require that the certifications be incorporated into the lease agreement, it notes that incorporation into the lease, or attachment as an appendix to the lease, could be the most efficient means of ensuring the certification process is completed. The *Second NPRM* notes that a number of broadcasters already incorporate into their leases provisions concerning compliance with various Commission requirements.

54. In accordance with the current requirements for licensees to place their lease agreements into their OPIFs within 30 days of execution, the *Second NPRM* proposes that licensees place the certifications into their OPIFs within 30 days of execution. This filing period will impose minimal additional burden on licensees given that licensees should, under existing rules, be accustomed to placing copies of their agreements in their public files. For licensees that do not have obligations to maintain OPIFs, the *Second NPRM* proposes that such licensees retain a record of the certifications in their station files within 30 days of execution.

55. *Time Period for Retaining Certifications.* The *Second NPRM* proposes to align the time period for retaining the certifications with the current time period for retaining lease agreements in the licensees' OPIFs. Specifically, the *Second NPRM* proposes that, just as a licensee must retain its lease agreement in the public file for as long as the agreement is in force, the certifications should also be retained for this same time period. The *Second NPRM* tentatively concludes that such an alignment will simplify compliance for licensees by conforming the time period for retaining a lease with the time period for retaining the licensee's documentation of its inquiries of the lessee.

56. *Standardized Language to be Included in Certification Requirement.* The *Second NPRM* tentatively concludes that establishing standardized certification language would both minimize the compliance burden on licensees and lessees and bring greater uniformity to the certification process. In this regard, the *Second NPRM* notes that, in previous filings in this proceeding, certain broadcaster groups had asserted that they would have to expend extensive time and resources to alter their lease agreements so as to obtain certifications from lessees regarding their status. Accordingly, the *Second NPRM* tentatively concludes that the adoption of standardized certification language should reduce any time and cost licensees have to expend on compliance.

57. *Proposed Licensee Certification.* The *Second NPRM* proposes that broadcast licensees use the following standardized language when making the required certifications:

I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR 73.1212(j), [Licensee] has:

(1) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communication's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), define these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 U.S.C. 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) Sought and obtained from [Lessee] a certification stating whether [Lessee] [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 U.S.C. 73.1212(j)(2);

(5) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 U.S.C. 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(6) If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing or distributing the programming that qualifies, as a ''foreign governmental entity,'' pursuant to 47 CFR 73.1212(j)(2), then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

I, [insert name of individual/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

58. *Proposed Lessee Certification.* The *Second NPRM* proposes that lessees use the following language when making the required certifications:

I am authorized on behalf of [Lessee] to certify to the following:

(1) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(2) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that the term ''foreign governmental entity'' includes a ''government of foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), defines these terms in the following manner:

(i) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(e);

(ii) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 47 U.S.C. 611(f);

(iii) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in § 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(iv) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(3) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(4) [Lessee] certifies that it [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2);

(5) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(6) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(7) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(8) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee's programming consistent with the FCC's rules, found at 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(9) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee's] status as a ''foreign governmental entity'' changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

59. *Section 325(c) Permits.* A section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States. The

Second NPRM seeks to clarify under § 73.1212 of the Commission's rules that the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity. Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station. The *Second NPRM* also seeks comment on whether there is a need to apply any reasonable diligence requirements proposed in this *Second NPRM* to any programming permitted to be delivered to a foreign station pursuant to a section 325(c) permit and if applicable whether the proposed certifications or other due diligence documentation should be placed in the IBFS by section 325(c) permit holders.

60. The *Second NPRM* proposes the following language to replace the existing language of § 73.1212(k):

Where any material delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act (47 U.S.C. 325(c)) has been sponsored by a foreign governmental entity; paid for by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4)–(6): ''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].'' A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing system (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4)–(6) apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3), information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term ''foreign governmental entity'' shall have the meaning set forth in paragraph (j)(2).

61. *Alternative Approach.* The *Second NPRM* also seeks comment on an alternative approach raised by the D.C. Circuit. At oral argument, the court asked whether it would be consistent with the Act and accomplish the same goal as the requirement that the court ultimately vacated to instead require licensees to ask lessees to provide appropriate documentation (*e.g.,* the relevant FARA page showing that their sponsors are not listed there). In accord with the court's question, the *Second NPRM* asks whether would it be consistent with the Commission's authority under section 317 of the Act to require licensees to seek or obtain such proof from lessees (*e.g.,* by a screen shot)? Should a licensee have to seek or obtain from its lessee proof that the lessee's name does not appear in either the FARA database or the Commission's U.S.-based foreign media outlet reports? Would this approach accomplish the same purpose as the vacated rule requirement? What would be the burdens of this approach on licensees and lessees? Would it provide greater assurance of ensuring identification of any foreign governmental entity sponsorship of the programming at issue compared to requiring the licensee to obtain a certification from the lessee?

62. *Petition for Clarification.* Finally, the *Second NPRM* provides interested parties an additional opportunity to comment on a pending Petition for Clarification ''regarding the applicability of the foreign sponsorship identification rules to advertisements sold by local broadcast stations.'' The *Second NPRM* seeks comment on whether experience with these rules has provided broadcasters or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime. For example, are there key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station, such as duration, content, editorial control, or differences in the nature of the contractual relationship between the licensee and the entity that purchases an advertising spot versus leasing airtime for programming. What criteria might the Commission adopt to ensure that the concept of ''advertising'' does not subsume ''leased time'' or vice versa? Additionally, might the establishment of a safe harbor assist in this regard? For example, could the Commission establish a presumption that any broadcast matter that is two minutes or less in length, absent any other indicia, will be considered ''short-form advertising'' for purposes of the foreign sponsorship identification rules?

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

63. 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.

64. In proposing certification requirements, the Commission has carefully considered the resources available to radio and television broadcast stations, many of which are small entities. The *Second NPRM* proposes a certification process for licensees and lessees using proposed standardized certification language, which should significantly reduce the cost, time, and effort that licensees and lessees have to expend to comply with the ''reasonable diligence'' standard

contained in section 317(c) of the Act with regard to foreign government-provided programming. The establishment of standardized certification language would eviscerate any need for licenses or lessees to seek outside assistance in crafting or reviewing certifications. Licensees and lessees can cut and paste the standardized certification language into the relevant documents and fill in simple details such as the name of the licensee or lessee, whether the lessee is or is not a foreign governmental entity, and the name of any foreign governmental sponsor further back in the programming chain. Separately, by seeking comment on the alternative approach offered by the D.C. Circuit, as described in paragraph 22, we seek feedback on other mechanisms that could potentially streamline the process for small broadcasters tasked with satisfying their reasonable diligence requirements under the Commission's rules. Additionally, the *Second NPRM* proposes and seeks comment on the harmonization of the time period for retaining certifications within the licensee's OPIF and the time period for retaining lease agreements. As stated in the *Second NPRM,* such an alignment can further simplify compliance for licensees.

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

65. None.

Ordering Clauses

66. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303(r), 307, 317, 325(c), 403, and 507 of the Communications Act, 47 U.S.C. 151, 152, 154(i), 154(j), 303(r), 307, 317, 325(c), 403, and 508 this Second Notice of Proposed Rulemaking *is adopted.*

67. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Second Notice of Proposed Rulemaking in MB Docket No. 20–299 on or before thirty (30) days after publication in the **Federal Register** and reply comments on or before sixty (45) days after publication in the **Federal Register**.

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

List of Subjects in 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

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

PART 73—RADIO BROADCAST SERVICE

■ 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.

■ 2. Amend § 73.1212 by:

■ a. Revising paragraphs (j)(3)(iv) and (v);

■ b. Adding paragraphs (j)(3)(vi) and (vii) and (j)(8); and

■ c. Revising paragraph (k).

The revisions and additions read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

* * * * *

(j) * * *

(3) * * *

(iv) Certifying that it has informed lessee about paragraph (j)(1) of this section, foreign sponsorship disclosure requirement, and made inquiries of lessee in conformance with paragraphs (j)(3)(ii) and (iii) of this section. Licensee shall incorporate the following language in its certification:

(A) I am authorized on behalf of [Licensee] to certify the following: I certify that in accordance with 47 CFR 73.1212(j), [Licensee] has:

(*1*) Informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(*2*) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

The FCC's rules state that term ''foreign governmental entity'' includes a ''government of a foreign country,'' ''foreign political party,'' an ''agent of a foreign principal,'' and a ''United States-based foreign media outlet.'' 47 CFR 73.1212(j)(2). The FCC's rules, at 47 CFR 73.1212(j)(2)(i) through (iv), define these terms in the following manner:

(*i*) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(*ii*) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(*iii*) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in 47 CFR 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(*iv*) The term ''United States-based foreign media outlet'' has the meaning given such term in section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(*3*) Inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(*4*) Sought and obtained from [Lessee] a certification stating whether [Lessee] [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2);

(*5*) Sought and obtained from [Lessee] a certification about whether it knows if any individual/entity in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself; and

(*6*) If [Lessee] qualifies, or knows of an individual/entity further back in the chain of producing or distributing the programming that qualifies, as a

''foreign governmental entity,'' pursuant to 47 CFR 73.1212(j)(2), then [Licensee] obtained from [Lessee] the information needed to append the following disclosure to lessee's programming consistent with 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(*7*) I, [insert name of individual/entity authorized to certify on behalf of Licensee] by my signature attest to the truth of the statements listed above.

(v) Requesting that lessee provide a certification responding to the inquiries contained in paragraphs (j)(3)(ii) and (iii) of this section. Lessee shall incorporate the following language in its certification:

(1) I am authorized on behalf of [Lessee] to certify to the following:

(A) [Licensee] has informed [Lessee] at the time of [entering into OR renewal of] this agreement of the foreign sponsorship disclosure requirement contained in 47 CFR 73.1212(j);

(B) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] falls into any of the categories listed in the Federal Communications Commission's (FCC) rules at 47 CFR 73.1212(j) such that the [Lessee] qualifies as a ''foreign governmental entity,'';

(*1*) The term ''government of a foreign country'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(e);

(*2*) The term ''foreign political party'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. 611(f);

(*3*) The term ''agent of a foreign principal'' has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(c)), and who is registered as such with the Department of Justice, and whose ''foreign principal'' is a ''government of a foreign country,'' a ''foreign political party,'' or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a ''government of a foreign country'' or a ''foreign political party'' as defined in 47 CFR 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such ''foreign principal;''

(*4*) The term ''United States-based foreign media outlet'' has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. 624(a)).

(C) [Licensee] has inquired of [Lessee] at the time of [entering into OR renewal of] this agreement whether [Lessee] knows if any individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or a sub-lease, qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(D) [Lessee] certifies that it [is OR is not] a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2);

(E) If applicable: [Lessee] certifies that to its knowledge [Individual/Entity] qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(F) If applicable: [Lessee] certifies that to its knowledge there is no individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself;

(G) If applicable: [Lessee] certifies that to its knowledge there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself. The name, address, phone number, and email address, if known, of such individual/entity is [individual/entity name, address, phone number, and email address, if known];

(H) To the extent applicable, [Lessee] has provided [Licensee] the information needed to append the following disclosure to lessee's programming consistent with the FCC's rules, found at 47 CFR 73.1212(j)(1)(i):

''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].''

(I) [Lessee] certifies that during the course of the lease agreement, [Lessee] commits to notify [Licensee] if [Lessee's] status as a ''foreign governmental entity'' changes or if [Lessee] learns that there is an individual/entity further back in the chain of producing or distributing the programming that will be aired pursuant to the lease agreement, or sub-lease, that qualifies as a ''foreign governmental entity,'' as that term is defined in 47 CFR 73.1212(j)(2), and has provided some type of inducement to air the programming, including, in the case of political programming or programming involving the discussion of a controversial issue, the programming itself.

(J) I, [insert name of individual/entity authorized to certify on behalf of Lessee] by my signature attest to the truth of the statements listed above.

(vi) Retaining the certifications, described above in paragraphs (j)(3)(iv) and (v) of this section, within the station's online public inspection file for a period equal to the time that the lease agreement remains in force.

(vii) In the event lessee does not provide a certification responding to the inquiries contained in paragraphs (j)(3)(ii) and (iii) of this section and licensee proceeds with the lease agreement, notifying the Media Bureau at [email address] about lessee's failure to submit a certification and providing the Media Bureau with lessee's contact information, including, to the extent known, lessee's name, postal address, email address, and phone number.

* * * * *

(8) A station shall place copies of the certifications required by paragraphs (j)(3)(iv) and (v) of this section in its online public inspection file within 30 days of the execution of the lease agreement with which the certifications are associated.

* * * * *

(k) Where any material delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act (47 U.S.C. 325(c)) has been sponsored, by a foreign governmental entity; paid for by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c)

permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4) through (6) of this section: ''The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].'' A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Bureau's public filing System (IBFS) under the relevant IBFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the IBFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4) through (6) of this section apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3) of this section, information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term ''foreign governmental entity'' shall have the meaning set forth in paragraph (j)(2) of this section.

■ 3. Amend § 73.3526 by revising paragraph (e)(19) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

* * * * *

(e) * * *

(19) *Foreign sponsorship disclosures and certifications.* Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7) and (8).

* * * * *

■ 6. Amend § 73.3527 by revising paragraph (e)(15) to read as follows:

§ 73.3527 Online public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(15) *Foreign sponsorship disclosures and certifications.* Documentation sufficient to demonstrate that the station is continuing to meet the requirements set forth at § 73.1212(j)(7) and (8).

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–IA–2021–0099; FXIA16710900000–223–FF09A30000]

RIN 1018–BG66

Endangered and Threatened Wildlife and Plants; Revision to the Section 4(d) Rule for the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or FWS), propose to revise the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA). The intended purposes are threefold: To increase protection for African elephants in light of the recent rise in international trade of live African elephants by establishing ESA enhancement permit requirements for international trade in live elephants and specific enhancement requirements for the import of wild-sourced elephants, as well as requirements to ensure that proposed recipients of live African elephants are suitably equipped to house and care for them; to clarify the existing enhancement requirement during our evaluation of an application for a permit to import African elephant sport-hunted trophies; and to incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory and sport-hunted trophies. We anticipate these measures will affect implementation in foreign countries of management measures that enhance African elephant conservation.

DATES: We will accept comments on the proposed rule and the draft environmental assessment received or postmarked on or before January 17, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below), must be received by 11:59 p.m. eastern time on the closing date.

Public hearing: On January 5, 2023, we will hold a virtual public hearing via ZOOM (*https://zoom.us*) from 1 p.m. to 4 p.m., Eastern Time.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB (see ''Information Collection'' section below under **ADDRESSES**) by January 17, 2023.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov*. In the Search box, enter FWS–HQ–IA–2021–0099, which is the docket number for this rulemaking. Then click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–IA–2021–0099, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

(3) *By public hearing:* Submit during the public hearing, described above under **DATES**.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

Document availability: This proposed rule and supporting documentation, including the draft environmental assessment and economic analysis, are available on *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2021–0099.

Information collection requirements: Written comments and suggestions on