March 15, 2022

BREAKING FCC COMPLIANCE NEWS

# New [FCC](#_FCC_Considering_Changes) Foreign Sponsorship ID Rules Take Effect

# **TODAY, March 15, 2022**;

# Litigation Regarding Rules Remains Pending

The FCC’s new foreign sponsorship ID rules—which were formally adopted by a [Report and Order](https://docs.fcc.gov/public/attachments/FCC-21-42A1.pdf) (the “Order”) nearly a year ago—were finally approved via publication in the *Federal Register* today, March 15, 2022. Pursuant to the terms of the Order, today’s publication triggers the effective date of the rules. Put differently, **compliance with the new foreign sponsorship ID rules is required starting today, March 15, 2022**. Importantly, although litigation brought by NAB and others to overturn the new rules remains pending, we are still likely months away from a decision in that case. Broadcasters must therefore begin to comply with the new rules immediately.

*Background*. Over opposition from the broadcast industry, in April 2021 the Order adopted additional requirements for broadcasters to make specific, standardized disclosures relating to broadcast material paid for or provided by foreign governments and their representatives and to undertake specified diligence to determine whether a lessee of airtime is, in fact, a foreign governmental entity—i.e., the so-called “foreign sponsorship ID” rules. The new foreign sponsorship ID rules are intended to supplement broadcasters’ preexisting sponsorship ID obligations, which, as broadcasters are well aware, require that when a broadcast licensee has received or been promised payment or other consideration for the airing of program material, the station must disclose that fact at the time of airing and identify who paid for or promised to pay for the material. Under the preexisting sponsorship ID rules, stations also have the responsibility to exercise “reasonable diligence” in determining whether sponsorship identification is needed, and, if so, in identifying the true sponsor of the broadcast material.

The new foreign sponsorship ID rules adopted in the Order (discussed at a very high level below) did not take effect immediately. Multiple aspects of the rules imposed new information collection burdens on broadcasters and therefore had to undergo additional regulatory approval processes before broadcasters could be obligated to comply with the new diligence and disclosure requirements. During that time, NAB and others challenged the foreign sponsorship ID rules—both at the FCC and in federal court—on multiple grounds, including under the First Amendment, the Communications Act, and the Administrative Procedure Act. NAB sought to stay the rules (i.e., to block the rules’ effective date), again, both at the FCC and in federal court, but both stay requests were denied. Oral argument on NAB’s challenge is currently scheduled for April 12, 2022, in the D.C. Circuit Court of Appeals. It will likely take weeks or even months after argument for the D.C. Circuit to render a decision in the case.

*The New Foreign Sponsorship ID Rules*. We’ve summarized below several of the most significant new requirements imposed by the rules:

Fundamentally, the new rules require broadcasters to (a) provide foreign sponsorship identification for programming content aired on a station pursuant to a lease of airtime if the direct or indirect provider of the programming qualifies as a “foreign governmental entity” as defined in the new rules, and (b) perform specified diligence in ascertaining whether such foreign sponsorship identification is required. The core operational aspects of the new rules require broadcasters that engage in any program leasing arrangement to:

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 of anyone further back in the chain of producing/distributing the programming to be aired pursuant to the lease agreement (or a sub-lease) that qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;
4. if the lessee does not identify itself and others in the production/distribution chain as foreign governmental entities, independently investigate the lessee’s status, at the time of agreement and at renewal, by consulting the DOJ’s Foreign Agent Registration Act (“FARA”) website and the FCC’s semi-annual U.S.-based foreign media outlets reports;
5. memorialize the above-listed inquiries and investigations to track compliance in the event documentation is required to respond to any future Commission inquiry on the issue;
6. when broadcasting any material, via lease of airtime, that has been supplied by a foreign governmental entity (or where anyone involved in the production or distribution of the programming qualifies as a foreign governmental entity and has provided some type of inducement to air the programming), air the following disclosure at the time of the broadcast:

*“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].”*; and

1. when such a foreign sponsorship disclosure is made, promptly place into the station’s online public inspection file (“OPIF”) a copy of the disclosure in a standalone folder marked as “Foreign Government-Provided Programming Disclosures.”

Although the new requirements are burdensome, it’s important to note that they only apply if content is being aired on a station pursuant to a lease of airtime. On that point, the Order stated that traditional short-form advertising does not qualify as a “lease of airtime.” Unhelpfully, the Order did not define “short-form” advertising and did not provide a standard that would allow licensees to distinguish between a spot that constitutes a “short-form” advertisement exempt from the new rules and some other type of advertisement that is covered by them. The Four Television Affiliates Associations filed a Petition for Clarification targeting that unresolved issue and, although the FCC issued a [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-945A1.pdf) seeking comments on the Petition in September 2021, no clarification has yet been provided.

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Again, compliance with the new rules is required **starting today, March 15, 2022**. Accordingly, broadcasters entering into new leases for airtime must promptly undertake the steps outlined above and must comply with all other aspects of the new rules. **The new rules also apply to lease agreements that are currently in effect**; however, the Order specifies that broadcasters have six months from today’s date to undertake the reasonable diligence steps outlined above for those preexisting leases.

Please bear in mind that the new foreign sponsorship ID rules contain many nuances that guide broadcasters’ assessment of and compliance with the disclosure and diligence requirements, and the foregoing list is **not** a comprehensive discussion of all the intricacies of the new rules. For instance, the number of times a foreign sponsorship disclosure must be broadcast varies based on the length of the programming to which it corresponds. And the definition of “foreign governmental entity” is broader than the term alone suggests, including a “foreign political party,” an “agent of a foreign principal,” and a “U.S.-based foreign media outlet” as expressly defined in the new rules and other law (where applicable). We will provide additional compliance information at a later date. In the interim, we strongly encourage you to consult with your communications counsel regarding how the new foreign sponsorship ID rules may affect your specific factual circumstances, or call the Association hotline with any general questions.

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This Legal Review should in no way be construed as legal advice or a legal opinion on any specific set of facts or circumstances. Therefore, you should consult with legal counsel concerning any specific set of facts or circumstances.

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