FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73
[MB Docket No. 14–226; FCC 15–118]

Broadcast Licensee-Conducted Contests

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission ("Commission") amends the portion of its rules known as the "Contest Rule" to permit broadcast licensees to comply with their obligation to disclose material contest terms either by broadcasting those terms or by making them available in writing on a publicly accessible Internet Web site. In particular, the Commission amends the Contest Rule to allow licensees to satisfy their disclosure obligation by posting material contest terms on the station's Web site, the licensee's Web site, or, if neither the individual station nor the licensee has its own Web site, any Internet Web site that is readily accessible to the public. Commenters in this proceeding uniformly support updating the Contest Rule, which has remained unchanged since its adoption by the Commission almost forty years ago.

2. We also adopt, with some modifications, requirements proposed in the Notice of Proposed Rulemaking that define the disclosure obligation in cases where a licensee has chosen to meet its obligation through an Internet Web site. Specifically, we revise the Contest Rule to specify that in such cases a licensee: (i) Must broadcast the relevant Web site address periodically with information sufficient for a consumer easily to find material contest terms online; (ii) must establish a link or tab to material contest terms on the Web site's home page; (iii) must maintain contest terms online for a period of at least thirty days after the contest has ended; and (iv) must announce on air that the material terms of a contest have changed since the contest was first announced, where that is the case, and direct participants to the Web site to review the changes. As discussed below, the announcements of any change in contest terms must be made within 24 hours of the change and periodically thereafter. Finally, we require that licensees ensure that any material terms disclosed on a Web site conform in all substantive respects to those mentioned over the air.

3. The actions we take in this Order to update the Contest Rule advance the public interest by affording broadcasters more flexibility in the manner of their compliance with Section 73.1216 while giving consumers improved access to important contest information. Through this Order, we take another step to modernize our rules to reflect how Americans access and consume information in the 21st century. At the same time, we affirm the core principles of the Contest Rule. Regardless of the medium of disclosure, broadcasters must provide complete, accurate, and timely information about the contests they conduct, ensure that such information is not false, misleading, or deceptive, and conduct their contests substantially as announced or advertised.

I. Introduction

1. Our "Contest Rule," Section 73.1216 of our rules, requires broadcast licensees to disclose on air the material terms of contests that they broadcast. In this Order, we update that rule to permit broadcast licensees to comply with their obligation to disclose material contest terms either by broadcasting those terms or by making them available in writing on a publicly accessible Internet Web site. In particular, we amend the Contest Rule to allow licensees to satisfy their disclosure obligation by posting material contest terms on the station’s Web site, the licensee’s Web site, or, if neither the individual station nor the licensee has its own Web site, any Internet Web site that is readily accessible to the public. Commenters in this proceeding uniformly support updating the Contest Rule, which has remained unchanged since its adoption by the Commission almost forty years ago.

II. Background

4. Radio and television broadcast stations often conduct contests as a means of entertainment, promoting station support, and deepening audience engagement. Almost forty years ago, in 1976, the Commission adopted the Contest Rule to address concerns about the way in which broadcast stations were conducting contests. Although under the existing broadcast standards in judging entries. The Petition for Rulemaking filed by Entercom Communications Corp., CGB Docket No. RM–11684 (filed Jan. 20, 2012) ("Entercom" or "Petitioner") sought comment on a number of possible revisions to the Contest Rule. Commenters responding to the NPRM largely broadcasters, support updating the Contest Rule but advocate some modifications to the Commission’s proposed revisions.

3 Although under the existing contest rules, broadcast stations were conducting contests. In 1976, the Commission issued a Notice of Proposed Rulemaking ("NPRM") seeking comment on a number of possible revisions to the Contest Rule. Commenters responding to the NPRM largely broadcasters, support updating the Contest Rule but advocate some modifications to the Commission’s proposed revisions.

3 See NPRM, 79 FR 75773.

5 See 47 CFR 73.1216; Amendment of Part 73 of the Commission’s Rules Relating to Licensee- Conducted Contests, Report and Order, 60 F.C.C.2d 1072 (1976). See also Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests Fairly, 45 F.C.C.2d 1056 (1974) (identifying contest practices that raise questions about a broadcast licensee’s responsibility to the public, such as: (1) Disseminating false or misleading information regarding the amount or nature of prizes; (2) failing to control the contest to assure a fair opportunity for contestants to win the announced prizes; (3) urging participation in a contest, or urging persons to stay tuned to the station in order to win, at times when it is not possible to win prizes; (4) failing to award prizes, or failing to award them within a reasonable time; (5) failing to set forth fully and accurately the rules and conditions for contests; (6) changing the rules or conditions of a contest without advising the public or doing so promptly; and (7) using arbitrary or inconsistently applied standards in judging entries).


III. Discussion

A. Satisfying the Obligation To Disclose Material Contest Terms through an Internet Web site

6 As advocated by all of the commenters, we amend the Contest Rule to allow broadcast licensees to meet their obligation to disclose material contest terms either by broadcasting the material terms or by making those terms available in written form on a readily accessible public Internet Web site. We agree with parties who assert that, given the ubiquitous nature of the Internet and current consumer expectations about how to obtain information, broadcast disclosure of material contest terms no longer reflects the best means of conveying such information to the public in all cases. For example, although on-air disclosure may be preferable in certain circumstances, e.g., simple contests and cases in which stations lack Web sites, we believe that broadcasters should be given flexibility to meet their disclosure obligation either through broadcast announcements or the Internet, and we will defer to broadcasters’ discretion in selecting between those means of disclosure. As explained below, we find that revising the Contest Rule to permit reliance on online disclosure will provide benefits to both consumers and broadcasters, and that such benefits outweigh any associated costs.

7 Based on the record, we conclude that allowing broadcasters to meet their obligation to disclose material contest terms through the Internet in lieu of broadcasting the terms will benefit consumers by improving their access to important contest information, to the extent that our action results in greater use of online disclosure. Because the current rule requires that licensees disclose material contest terms via broadcast announcements periodically, audience members interested in a contest may not hear or see contest disclosures if they are not tuned into the broadcast at the time the announcement is aired. Moreover, even in cases where prospective contestants hear or see a contest disclosure, the length or complexity of contest terms or the speed at which licensees communicate those terms may render it difficult for many to comprehend or recall the information conveyed. For these reasons, we agree with parties who assert that broadcasters’ online posting of material terms will allow consumers to obtain “on demand” access to those terms and to review them at their convenience, thereby increasing the likelihood that contest terms will be understood and remembered.

8 We find that this revision to the Contest Rule is consistent with consumer expectations about how to obtain contest information. As many parties note, the public today accesses information in ways that are dramatically different from how they did when the Contest Rule was adopted. The Internet has become a fundamental part of consumers’ daily lives and now represents the medium used most by the public to obtain information instantaneously. Given that Americans today are accustomed to using the Internet to obtain a broad range of information, we agree with parties who assert that consumers reasonably expect to obtain information about licensee-conducted contests through the Internet. Indeed, as some parties note, broadcasters already use the Internet to post contest-related information, and consumers often enter and participate in contests via the Internet. Amending the Contest Rule to permit reliance on online disclosure of material contest terms thus brings the rule into alignment with current consumer expectations.

9 As noted, permitting reliance on online disclosure of contest terms also will benefit broadcasters by affording them greater flexibility in the manner of their compliance with Section 73.1216 and by freeing up air time for other programming. Because many broadcasters already have dedicated Web sites where they can post complete contest information that the public can access “on demand,” and because we are not requiring broadcasters to use online posting if they prefer to broadcast contest terms over the air, we agree with parties who assert that the benefits of this rule change outweigh any associated costs.

B. Requirements Governing Online Disclosure of Material Contest Terms

10 Although this rule revision is intended, in part, to give broadcasters more flexibility in how they satisfy their obligation to disclose material contest terms, we find that the public interest will be served by establishing specific requirements that define the disclosure obligation in cases where a broadcaster chooses to meet that obligation through an Internet Web site. In particular, we believe that these requirements, which are comparable to those that apply to on-air disclosures, will provide guidance to licensees and facilitate useful access to contest information by the public. We discuss each requirement, in turn, below.

6 See 47 CFR 73.1216, Notes 1 through 3.
11. “Publicly Accessible” Web site. We require that any Internet Web site relied on by a broadcaster to disclose material contest terms be “publicly accessible.” We interpret the term “publicly accessible” to mean that the Internet Web site is designed to be accessible to the public 24/7, for free, and without any registration requirement. This may include either the station’s Web site, the licensee’s Web site, or, if neither the individual station nor the licensee has its own Web site, any Internet Web site that is readily accessible to the public. Commenters generally agree that consumers should have access to material contest terms disclosed on a Web site without any fee or registration, and we believe that adopting these requirements will facilitate widespread and unfettered access to contest terms by broadcast audiences. Some parties assert that broadcasters should not be required to make available material contest terms on a 24/7 basis because factors beyond their control, such as system outages, power failures, and hacked Web sites could prevent them from ensuring 24/7 access. Thus, they express concern that they could be exposed to liability for violation of the Contest Rule even where they have made a good faith effort to ensure public accessibility. Because we require that any Web site used to disclose material contest terms be designed to be accessible to the public on a 24/7 basis, we believe the rule we adopt accounts for factors beyond the control of the licensee.

12. Broadcast Identification of Web site Address. We also amend the Contest Rule to require that a licensee broadcast the address of an Internet Web site on which it relies to disclose material contest terms with information sufficient for a consumer to find those terms easily. Although we proposed in the NPRM to require licensees that choose to satisfy their disclosure obligation through the Internet to broadcast the “complete, direct Web site address” where contest terms are posted, we decline to adopt this requirement with commenters that a literal interpretation of such a requirement could be unduly burdensome to broadcasters and confusing to the public. Some parties contend, for example, that a rule requiring identification of the “complete, direct” Web site address could be interpreted to require a mechanical recitation of a web address as it appears on an Internet browser (e.g., “http://col-on-backslash, etc.”), and that such a rule is less helpful to consumers than one that allows broadcasters to identify the relevant address through simple instructions or natural language (e.g., “for contest rules go to kxyz.com and then click on the contest tab”). In addition, Joint Commenters assert that Web site addresses and their subdirectories may change while contests are ongoing, and thus requiring identification of a “complete, direct” address, including local host names and subdirectories, would be unnecessarily onerous to broadcasters and could be confusing to consumers. We require that broadcasters identify the Web site in language that enables a typical consumer easily to locate the Web site’s home page online, such as in the example provided above (“for contest rules go to kxyz.com and then click on the contest tab”). As with all elements of contest-related announcements, the burden is on the broadcaster to inform the public, not on the public to discern the message.

13. Consistent with broadcasters’ existing obligations to broadcast contest rule disclosures “periodically,” we conclude further that licensees must broadcast the Web site address where contest terms are posted “periodically” during the period of the contest. Although we proposed in the NPRM to require licensees to broadcast the Web site address “each time the station mentions or advertises the contest,”9 we decline to adopt this requirement, which parties uniformly oppose. For example, some commenters argue that such a requirement could create unnecessary aural clutter and disrupt the listener experience. Parties also assert that, given the number of contests that are conducted simultaneously and the multitude and variety of contest references, requiring licensees to identify the relevant Web site address each time a contest is mentioned will reduce the amount of air time that can be utilized for other programming. Some parties contend further that the burdens imposed by such a requirement could cause stations to reduce the number of contest mentions or not to adopt online disclosure. For these reasons, we are persuaded that the potential drawbacks of requiring broadcast identification of the Web site address where contest terms are posted each time a contest is mentioned outweigh any associated benefits. 14. We decline at this time to adopt a more prescriptive requirement governing the frequency of broadcast identification of the Web site address where contest terms are posted as some parties have suggested.10 We conclude that requiring on-air identification of the Web site address a specified number of times daily, e.g., an average of three times per day, would not serve the public interest because such a rule could lead broadcasters to identify the Web site address the specified minimum number of times irrespective of how often a contest is mentioned. Similarly, we decline to require broadcast identification of the Web site address only when a station substantially highlights or discusses a contest, as proposed by Hubbard and NSBA, as this approach would make the Contest Rule more challenging to enforce by requiring the Commission to assess in a particular case whether a contest has been “substantially” highlighted or discussed.11 On balance, we find that the public interest would be better served by providing licensees with flexibility to determine the frequency with which they broadcast the Web site address where contest terms are made available to the public. As noted, the requirement we adopt is harmonious with licensees’ existing obligation to broadcast contest disclosures “periodically”12 and the discretion long afforded licensees in this area.13 If we find that licensees are failing to broadcast the Web site address with adequate frequency, we will revisit this issue in the future.

15. Internet Link to Contest Terms. As proposed in the NPRM, we also amend

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9 See NPRM, 79 FR 75773, 75775.
10 See, e.g., iHeartMedia Comments at 13; Joint Parties Comments at 7 (suggesting that the Commission could require licensees to broadcast the Web site address an average of at least three times per day, excluding the hours of 12 to 6 a.m.). See also Hubbard Comments at 4; NSBA Comments at 5 (suggesting that the Commission could require licensees to broadcast the Web site address when they substantially highlight or discuss a contest, i.e., not during passing references). We note that some of these suggestions were proffered as an alternative to our proposal in the NPRM to require licensees to broadcast the relevant Web site address each time a contest is mentioned, and that some of these parties advocate principally for the requirement adopted herein (i.e., periodic broadcast identification of the Web site address). Nevertheless, we set forth above our reasons for declining to adopt those alternatives.
11 Given the potential number of spontaneous, unscripted contest promotions, e.g., by on-air radio personalities, we also believe that adopting this proposal could result in a high number of Contest Rule violations. See, e.g., Entercom Comments at 9; iHeartMedia Comments at 12; NSBA Comments at 5.
12 See 47 CFR 73.1216, Note 2 (directing, among other things, disclosure of material contest terms be made “periodically by announcement broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast”).
13 Id. (stating that “[i]n general, the time and manner of disclosure of the material terms of a contest are within the licensee’s discretion,” and that “[d]isclosure of material terms in a reasonable number of announcements is sufficient”).
the Contest Rule to require that licensees establish a link or tab on the home page of an Internet Web site used to disclose material contest terms, that takes consumers to contest information. That link or tab must be conspicuously located on the Web site home page and must be labeled in a way that makes clear its relation to contest information. We disagree with commenters’ assertions that the Commission need not adopt any rules to facilitate access to contest information because broadcasters have a natural incentive to make such information readily accessible and consumers can utilize Internet search engines to locate contest information quickly. Even if many consumers are able to locate contest terms absent any guidance, we believe that requiring broadcasters to establish a conspicuous link or tab on the Web site home page that takes users to contest terms will facilitate ready access to those terms by the public. As noted, the record reflects that many broadcasters already make available a link or tab to contest information on their Web site home page, which suggests that compliance with such a requirement is not unduly burdensome. Although some parties assert that licensees are in the best position to determine where contest information should be posted on a Web site, the rule we adopt requiring a link or tab to contest terms on a Web site home page does not dictate the location where material terms must be disclosed. To the contrary, the rule preserves the ability of broadcasters to maintain contest terms on a dedicated Web page, so long as that Web page is accessible by a link or tab on the home page that meets the requirements above.

16. Duration of Online Disclosure Obligation. We also require licensees that choose to disclose material contest terms via an Internet Web site to maintain such terms on the Web site for at least thirty days after the contest has concluded (i.e., thirty days after a winner has been selected and the station has notified the winner personally or publicly announced the winner by broadcast announcement or over the Internet Web site where it disclosed the contest rules). We note that under the existing rule, a licensee’s obligation to disclose material terms “arises at the time the audience is first told how to enter or participate and continues thereafter;” however, the rule is silent on when this obligation ends. In the NPRM, we sought comment on how long a licensee should be required to maintain contest information on an Internet Web site. Although no commenter proposed the thirty-day period we adopt herein, we believe this time period is reasonable because it strikes an appropriate balance between the public’s interest in accessing material terms after a contest has ended and the interest of broadcasters in keeping their Web sites up-to-date. We disagree with parties who assert that the Commission should refrain from specifying the duration that material contest terms must remain available online, or should require broadcasters to maintain online disclosures only until a contest winner has been selected. We believe that requiring broadcasters to maintain contest terms online for a reasonable period of time after a contest winner has been selected is necessary to ensure that contest information is readily available not only to potential contest participants, but also to actual contestants or others who wish to consult or confirm the rules after the contest has ended. To address concerns that maintaining contest rules online after a contest has ended could create confusion about whether a contest is ongoing, licensees should timely label expired contest terms to make clear that a contest has ended, including the date that a winner was selected.

17. Changes to Material Contest Terms. The Contest Rule prohibits false, misleading or deceptive contest descriptions and requires broadcasters to conduct their contests substantially as announced. Accordingly, we do not expect broadcasters to regularly change the material terms of a contest after the contest has commenced. Nevertheless, we recognize that, on rare occasions, limited changes to a contest’s terms may be necessary to address changes in circumstances beyond the anticipation or control of the broadcaster. We therefore adopt our proposal to require that, in cases where a licensee chooses to satisfy its disclosure obligation through the Internet, if the material terms of a contest are changed after the contest is first announced, the licensee must announce on air that the contest rules have been changed and direct participants to the Web site to review the changes. With the exception of NPR, commenters support this proposal. As suggested by some parties, we require licensees to make such announcements on air within 24 hours of the change in material terms on the Web site, and periodically thereafter, until the contest has concluded. We are not persuaded by NPR’s speculative assertion that requiring broadcasters to announce changes to material contest terms over the air could lead to public confusion about whether contest terms posted on a Web site are accurate. We believe that stations can address this concern by labeling contest terms with information that indicates, for example, the date that the terms were last updated. We believe that requiring on-air announcements of changes to contest terms is necessary to address the potential that some broadcasters will use their ability to disclose terms online as a means of changing contest rules in a way that is misleading or deceptive to the public. We emphasize that a broadcaster that effectuates a change in terms that unfairly or deceptively alters the

21 See NPRM, 79 FR 75775 (also seeking comment on the appropriate frequency and duration of this requirement).
22 See Entercom Comments at 11; iHeartMedia Comments at 14 (advocating a requirement that licensees announce changes to material contest terms within 24 hours of the change). We expect licensees to broadcast forthwith announcements of the changes in material terms that they have posted on a Web site, and to not wait 24 hours before doing so.
23 Although a few parties have suggested that licensees be required to announce on air that contest terms have changed three times daily, see Entercom Comments at 11; iHeartMedia Comments at 14; Joint Parties Comments at 9, we conclude that requiring such announcements on a periodic basis will give broadcasters more flexibility in how they satisfy their disclosure obligation, and is consistent with licensees’ existing obligation to broadcast contest disclosures “periodically” and the discretion granted licensees under the Contest Rule. We note that this requirement also is harmonious with the rule we adopt above governing broadcast identification of Web site contests.
24 See NPR Comments at 5 (rather than requiring licensees to disclose on air that material contest terms have changed, the Commission should require them to state clearly on the Web site that contest terms have changed).
IV. Procedural Matters

A. Regulatory Flexibility Act

19. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") 23 an Initial Regulatory Flexibility Act Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking ("NPRM") in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Act Analysis ("FRFA") conforms to the RFA. 30

1. Need for, and Objectives of, the Rule Changes

20. This proceeding stems from an unopposed Petition for Rulemaking filed by Entercom Communications Corp. requesting that the Commission update Section 73.1216 of its rules governing broadcast licensee-conducted contests (the "Contest Rule") 31 in a manner that reflects how consumers access information in the 21st Century. 32 In November 2014, the Commission issued a NPRM seeking comment on certain proposals intended to modernize the Contest Rule by providing broadcasters with more flexibility in how they satisfy their obligation to disclose material contest terms, without relaxing their duty to conduct contests with due regard for the public interest.

21. In the accompanying Order, the Commission amends the Contest Rule to permit broadcast licensees to comply with their obligation to disclose material contest terms either by broadcasting such terms or by making them available in writing on a publicly accessible Internet Web site. In particular, the Order amends the rule to allow a broadcast licensee to satisfy its disclosure obligation by posting material contest terms on the station’s Web site, the licensee’s Web site, or, if neither the individual station nor the licensee has its own Web site, any Internet Web site that is readily accessible to the public.

22. The Order also revises the Contest Rule to specify that, in cases where a licensee chooses to disclose material contest terms through an Internet Web site, the licensee: (i) Must broadcast the relevant Web site address periodically with information sufficient for a consumer to easily find material contest terms online; (ii) must establish a link or tab to material contest terms on the Web site’s home page; (iii) must maintain contest terms online for a period of at least thirty days after the contest has ended; and (iv) that changes the material terms of a contest after the contest is first announced must announce on air that the contest rules have changed and direct participants to the Web site to review the changes. The Order requires that such announcements be made on air within 24 hours of the change in contest terms on the Web site, and periodically thereafter. Finally, licensees must ensure that any material terms disclosed on a Web site conform in all substantive respects to those mentioned over the air.

3. Description and Estimates of the Number of Small Entities to Which the Proposed Rules Will Apply

24. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 33 The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 34 In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 35 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. 36 The rules

23 See 47 CFR 73.1216.
24 See NPRM, 79 FR 75775. As noted in the NPRM, for example, if a broadcast contest announcement identifies a particular prize by brand name or model, then the terms disclosed on the Web site must be the same. Id. para. 12, n.41.
25 See 47 CFR 73.1216.
26 See 5 U.S.C. 7803.
27 See NPRM, 79 FR 75775. As noted in the NPRM, for example, if a broadcast contest announcement identifies a particular prize by brand name or model, then the terms disclosed on the Web site must be the same. Id. para. 12, n.41.
28 See 47 CFR 73.1216.
31 47 CFR 73.1216.
33 5 U.S.C. 601(3).
34 5 U.S.C. 601(6).
35 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. 601(3).
36 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.
38 5 U.S.C. 601(3).
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adopted in the accompanying Order will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

25. Television Broadcasting. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” 37 The SBA has created the following small business size standard for this business category: Those having $38.5 million or less in annual receipts. 38 The Commission has estimated the number of licensed Class A television stations to be 432. 39 The Commission has also estimated the number of licensed LPTV stations to be 2,028. 40 Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

28. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations 41 must be included. Because we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the revenue threshold noted above, our estimate of the number of small entities affected is likely overstated. In addition, we note that one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, our estimate of small television stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

29. Radio Stations. This economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” 42 The SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. 43 For this reason, we estimate that the number of small entities affected is likely overstated. In addition, we note that one element of the definition of “small business” is that an entity not be dominant in its field of operation. Accordingly, we estimate that the majority of radio broadcast stations would apply to licensees of Class A television stations and low power television (LPTV) stations, as well as to potential licensees in these television services. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. 44 The Commission has estimated the number of licensed Class A television stations to be 2,028. 45 Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition. 46

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31. Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. 43 The Commission has estimated the number of licensed low power FM stations to be 814. 48 Given the nature of these services, we will presume that these licensees qualify as small entities under the SBA definition.

32. We note again, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations 41 must be included. Because
we do not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, our estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of “small business” is that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, our estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

33. In this section, we identify the reporting, recordkeeping, and other compliance requirements for small entities that the Commission adopts in the Order.

34. Reporting Requirements. The Order does not adopt reporting requirements.

35. Recordkeeping Requirements. The Order adopts certain recordkeeping requirements that apply to broadcast entities, including small broadcast entities, that choose to disclose material contest terms by posting such terms on an Internet Web site. In particular, the Order requires such entities:

- to broadcast the relevant Web site address periodically with information sufficient for a consumer to easily find material contest terms online;
- to establish a link or tab to material contest terms on the Web site’s home page;
- to maintain contest terms online for a period of at least thirty days after the contest has ended;
- in cases where such entities change the material terms of a contest after the contest is first announced, to announce on air that the contest rules have changed and direct participants to the Web site to review the changes, and to make such announcements on air within 24 hours of the change on the Web site and periodically thereafter; and
- to ensure that any material terms disclosed on a Web site conform in all substantive respects to those mentioned over the air.

36. Other Compliance Requirements. The Order does not adopt other compliance requirements.

37. Based on the record, we cannot estimate with precision the impact of the rules adopted in the Order on small entities. However, the rule revisions will afford all licensees, including small broadcasters, greater flexibility in their manner of compliance with the Contest Rule. In addition, we note that some of the rule revisions were derived from the Petition for Rulemaking in this proceeding, which was unopposed and supported by all commenters, including small broadcasters. Thus, we find it reasonable to conclude that any costs or burdens on small entities resulting from the requirements will be outweighed by the benefits.

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

38. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.57

39. The accompanying Order amends Section 73.1216 of the Commission’s rules by allowing all licensees, including small broadcasters, to meet their obligation to disclose material contest terms either through broadcast announcements or by making such terms available in writing on a publicly accessible Internet Web site. This revision to the rule is intended to give broadcasters greater flexibility in the manner by which they satisfy their obligation to disclose material contest terms, while ensuring adequate notice of such terms to the public. Whereas under the current rule, licensees must expend time and resources developing broadcast messages that adequately disclose important contest information, under the revised rule, licensees will have the option to disclose such information through the Internet. Permitting disclosure through this additional method likely is less costly and administratively burdensome for licensees, including small entities. One commenter has estimated, for example, that as much as two hours that are presently devoted by licensees to the production of contest-related broadcast spots will be spared. Moreover, the air time that is likely to be freed up as a result of more abbreviated contest-related announcements could be used for non-contest-related programming. As noted above, the Petition for Rulemaking in this proceeding was uniformly supported by commenting parties, including small entities. Thus, we expect that the rule revisions adopted in the Order will benefit small broadcast entities.

B. Report to Congress

40. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

C. Paperwork Reduction Act

41. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). The requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

V. Ordering Clauses

42. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, this Report and Order is ADOPTED, and shall become effective upon announcement in the Federal Register of OMB approval and an effective date of the rules adopted therein.

43. IT IS FURTHER ORDERED that, pursuant to the authority found in Sections 4(i), 4(j) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303, the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix B.

44. IT IS FURTHER ORDERED that the Commission’s Consumer and
Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

45. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Advertising, Consumer protection, Fraud, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch, Secretary.

Final Rules

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

PART 73—RADIO BROADCAST SERVICE

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


2. Revise §73.1216 to read as follows:

§73.1216 Licensee-conducted contests.

(a) A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised over the air or on the Internet. No contest description shall be false, misleading or deceptive with respect to any material term.

(b) The disclosure of material terms shall be made by the station conducting the contest by either:

(1) Periodic disclosures broadcast on the station; or

(2) Written disclosures on the station’s Internet Web site, the licensee’s Web site, or if neither the individual station nor the licensee has its own Web site, any Internet Web site that is publicly accessible.

(c) In the case of disclosure under paragraph (b)(1) of this section, a reasonable number of periodic broadcast disclosures is sufficient. In the case of disclosure under paragraph (b)(2) of this section, the station shall:

(1) Establish a conspicuous link or tab to material contest terms on the home page of the Internet Web site;

(2) Announce over the air periodically the availability of material contest terms on the Web site and identify the Web site address where the terms are posted with information sufficient for a consumer to find such terms easily; and

(3) Maintain material contest terms on the Web site for at least thirty days after the contest has concluded. Any changes to the material terms during the course of the contest must be fully disclosed on air within 24 hours of the change on the Web site and periodically thereafter or the fact that such changes have been made must be announced on air within 24 hours of the change, and periodically thereafter, and such announcements must direct participants to the written disclosures on the Web site. Material contest terms that are disclosed on an Internet Web site must be consistent in all substantive respects with those mentioned over the air.

Note 2 to §73.1216: In general, the material terms include:

- How to enter or participate; eligibility restrictions; entry deadline dates; whether prizes can be won; when prizes can be won; the extent, nature and value of prizes; basis for valuation of prizes; time and means of selection of winners; and/or tie-breaking procedures.

- Periodic announcements broadcast on the station; or

- Written announcements on the station’s Internet Web site, the licensee’s Web site, or if neither the individual station nor the licensee has its own Web site, any Internet Web site that is publicly accessible.

II. Summary of Comments and Responses

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Legal Authority

The purpose of this rulemaking is to add new DEAR Subparts 925.71 and 970.2571 to clarify requirements concerning compliance with export control laws and regulations applicable in the performance of DOE contracts.