

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-24213 Filed 9-15-97; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MM Docket No. 95-176; FCC 97-279]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts rules implementing Section 713 of the Communications Act of 1934, as amended. Section 713, Video Programming Accessibility, was added to the Communications Act by section 305 of the Telecommunications Act of 1996 and directed the Commission to adopt rules by August 8, 1998, that generally require the closed captioning of video programming. The rules adopted by the Commission generally assign responsibility for compliance with the closed captioning requirements to the entity which delivers the programming to the consumer, establish separate transition schedules for programming first published or exhibited on or after the effective date of these rules and for programming first published or exhibited prior to the effective date of the rules, provide for a number of exemptions authorized by Congress and establish mechanisms for enforcement and compliance review. These rules are intended to increase the accessibility of video programming for persons with hearing disabilities.

EFFECTIVE DATE: These requirements and regulations become effective January 1, 1998.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-3561 or via Internet at fain_t@al.eop.gov, and to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Marcia Glauber, John Adams or Alexis Johns, Cable Services Bureau, (202) 418-7200, TTY (202) 418-7172. For additional information concerning the information collections contained in

this *Report and Order*, contact Judy Boley at (202) 418-0217, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No. 95-176, FCC 97-279, adopted August 7, 1997 and released August 22, 1997. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS") at (202) 857-3800, 1919 M Street, NW, Suite 246, Washington, DC 20554. For copies in alternative formats, such as braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act

This rulemaking contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. *OMB Approval Number:* 3060-0761.

Title: Closed Captioning of Video Programming.

Type of Review: Revision to an existing collection.

Respondents: Individuals or households; business and other for-profit entities.

Number of Respondents: 100 petitions + 100 petition responses + 1,500 viewer complaints to program providers + 1,500 complaint responses from program providers + 500 instructions to refile complaints + 300 viewer complaints to the Commission + 300 complaint responses to the Commission = 4,300.

Estimated Time Per Response: .5-5 hours estimated for both the petition and complaint processes. Estimated annual burden to petitioners and respondents for petition processes: We

estimate that program providers will annually initiate 100 petitions requesting exemption from the closed captioning requirements. We estimate that the average burden to complete all aspects of each petition process, including filing any possible reply comments and associated certifications, will be 5 hours. We estimate that 50% of petitions will be prepared using in-house assistance to draft petitions and that 50% of petitions will be prepared using outside legal assistance. Petitions prepared using outside legal assistance will undergo an average burden of 2 hours for each petition to coordinate information with outside legal assistance.

50 (50% of petitions prepared in-house assistance) x 5 hours = 250 hours.

50 (50% of petitions prepared using outside legal assistance) x 2 hours = 100 hours.

We estimate that there will be an average of one response to every petition filed. The average burden to complete all aspects of the response process, including making certification, is estimated to be 5 hours. We estimate that 50% of responses will be prepared using in-house assistance and that 50% of responses will be prepared using outside legal assistance. Commenters using outside legal assistance will undergo an average burden of 2 hours for each response to coordinate information with outside legal assistance.

50 (50% of responses prepared using in-house assistance) x 5 hours = 250 hours.

50 (50% of responses prepared using outside legal assistance) x 2 hours = 100 hours.

Estimated annual burden to viewers and program providers for the complaint process: We estimate there will be 1,500 annual complaints filed by viewers at the local level. The average burden for each complaint and response is estimated to be 1 hour per viewer and 1 hour per program provider. 1,500 viewer complaints x 1 hour and 1,500 program provider responses x 1 hour = 3,000 hours. In the case of an alleged violation by a television broadcast station or other program distributor for which the programming distributor is exempt from closed captioning responsibility pursuant to § 79.1(e)(9), the complaint shall be sent directly to the station or owner of the programming. A video programming distributor receiving a complaint regarding such programming must forward the complaint within seven days of receipt to the programmer or

send written instructions to the complainant on how to refile with the programmer. We estimate that one-third of complaints at the local level will have to be refiled in this manner, and that the average burden for programmers to either forward the complaint or send written instructions to the complainant on how to refile will have an average burden of 30 minutes (.5 hours) per complaint. 500 complaint x .5 hours = 250 hours.

We estimate that the majority of complaints will be resolved at the local level between the respective viewer and program provider. We estimate that approximately 300 (20% of 1,500) will go unresolved, resulting in complaints and responses being filed with the Commission. A copy of the complaint and any supporting documentation that is filed with the Commission must also be served on the video programming distributor. Responses to complaints filed with the Commission must also be served on the complainant. The average burden for all aspects of each complaint and response in this instance is estimated to be 2 hours per viewer and 4 hours per program provider. 300 viewer complaints x 2 hours and 30000 program provider responses x 4 hours = 1,800 hours.

Total Annual Burden to Respondents: 250 + 100 + 250 + 100 + 1,500 + 1,500 + 1,800 = 5,750 hours.

Total Annual Cost to Respondents: \$42,100 estimated as follows: Program providers will use outside legal assistance paid at \$150 per hour to complete approximately 50 petitions. 50 petitions x 5 hours per petition x \$150 per hour = \$37,500. Postage and stationery costs for petitions are estimated at an average of \$5 per waiver. 100 petitions x \$5 = \$500. Viewers and program providers will undergo average postage and stationery costs for the complaint process estimated as follows: 1,500 viewer complaints filed with program providers x \$1 = \$1,500. 1,500 complaint responses x \$1 = \$1,500. 500 instructions to refile complaints x \$1 = \$500. 300 viewer complaints filed at the Commission x \$1 per complaint = \$300. 300 program provider responses x \$1 = \$300. Total annual cost to respondents: \$37,500 + \$500 + \$1,500 + \$1,500 + \$500 + \$300 + \$600 = \$42,100.

Needs and Uses: This Report and Order is adopted pursuant to section 713 of the Communications Act of 1934, as amended. The requirements set forth in section 713 are intended to ensure that video programming is accessible to individuals with hearing disabilities through closed captioning, regardless of the delivery mechanism used to reach consumers.

Synopsis of Report and Order

1. By the *Report and Order* ("R&O"), the Commission adopts rules to implement section 713 of the Communications Act, 47 U.S.C. 613, which generally requires video programming be closed captioned. In particular, this provision required the Commission to prescribe by August 8, 1997, rules and implementation schedules for the closed captioning of video programming and to establish appropriate exemptions. The rules we adopt are based on comments received in response to a *Notice of Proposed Rulemaking* in this proceeding summarized at 62 FR 4959 (February 3, 1997).

2. In the R&O, we address: (a) The responsibility for compliance with the rules we adopt; (b) obligations as to programming first published or exhibited on or after the effective date of our rules ("new programming") and programming first published or exhibited prior to the effective date of our rules ("pre-rule programming"), including phase-in schedules; (c) the measurement of compliance with our rules; (d) exemptions authorized by Congress, including those based on the "economically burdensome standard," existing contracts, and the undue burden standard; (e) standards for quality and accuracy of closed captioning; (f) mechanisms for enforcement and compliance review; and (g) other issues relating to the implementation of section 713 and matters for future review. The rules will become effective January 1, 1998.

3. Video programming distributors, defined as all entities that provide video programming directly to customers' homes, regardless of distribution technology used (e.g., broadcasters, cable operators, DBS operators) will, generally, be responsible for compliance with the new closed captioning requirements. Video programming distributors, however, will not be responsible for the captioning of programming that is not subject to their editorial control. The responsibility for compliance with respect to such programming will be placed on the providers and owners of such programming.

4. Section 713 requires the Commission to adopt rules to ensure that video programming first published or exhibited after the effective date of the rules be fully accessible through closed captioning. For this new programming that does not meet any of the criteria for exemption, we adopt an eight year transition period with benchmarks specified as a number of

hours of required captioning at two year intervals. We will define full accessibility as the captioning of 95% of all new, nonexempt programming to provide for unforeseen difficulties that may arise. Compliance will be measured on a channel-by-channel basis for multichannel video programming distributors ("MVPDs") and will be measured over each calendar quarter. During the transition period, each channel of programming will be required to meet the specified benchmark unless the amount of new, nonexempt programming offered on the channel is less than the benchmark. In such instances, at least 95% of the nonexempt, new programming will be required to be captioned. The first benchmark becomes effective during the first calendar quarter of 2000 and requires that 450 hours of programming be captioned during each quarter of 2000 and 2001. During each calendar quarter of 2002 and 2003, 900 hours of new, nonexempt programming must be captioned. The benchmark for each calendar quarter of 2004 and 2005 is 1350 hours of new, nonexempt programming.

5. Section 713 also requires the Commission to maximize the accessibility of video programming first published or exhibited prior to the effective date of the rules. For programming first published or exhibited before January 1, 1998, that does not meet any of our criteria for exemption, we will require that at least 75% of such programming be captioned after the end of a ten year transition period. We will not set specific benchmarks for pre-rule programming. We will, however, monitor distributors' efforts to increase the amount of captioning of pre-rule programming to ensure that channels are progressing toward the 75% requirement. After four years, we will reevaluate our decision not to establish specific benchmarks and consider whether the 75% threshold is appropriate to meet the goals of the statute.

6. We will also require video programming providers to continue to provide closed captioning at a level substantially the same as the average level of captioning that they provided during the first six months of 1997, even if the amount of captioned programming exceeds that required under the benchmarks. In addition, video programming distributors are required to pass through to consumers any programming they receive with closed captioning, when they do not edit the programming.

7. Section 713 permits the Commission to exempt by regulation

programs, classes of programs or services for which we determine a requirement to provide closed captioning will be economically burdensome. In creating these exemptions we intend to preserve the economic viability of certain classes of programming or certain entities associated with discreet classes of programming. We will, therefore, exempt non-English language programming and programming distributed between 2 a.m. and 6 a.m. local time. We will also exempt primarily textual programming for which captioning would be largely redundant, including programming guide services or community bulletin boards, which provide the relevant information about program schedules or events in textual form. This exemption does not apply to programming, such as sports programming, home shopping or weather reports, where a significant amount of the relevant information is not readily available as text. Similarly, we will exempt programming which consists primarily of instrumental music such as a symphony or ballet. In such cases, where the majority of the program simply could not be captioned, we will also exempt any introductory discussion because the resources necessary to caption such minor portions of the program would outweigh any possible benefit. We will also exempt interstitial announcements, promotional programming and public service announcements that are ten minutes or less in duration. In this context, advertisements that are five minutes or less in duration are not considered programming and are not subject to our closed captioning rules. Similarly, we will exempt locally-produced and distributed non-news programming with limited repeat value such as local parades, local high school or nonprofessional sports or community theater productions. This exemption does not include programming readily captioned using ENR or programs with repeat value. We also adopt several exemptions designed to protect certain classes of video programming providers which might otherwise be harmed if subject to our rules. Thus programming produced for the instructional television fixed service ("ITFS") will be exempt regardless of whether it is distributed by an ITFS licensee or other video programming distributor. We further exempt the programming on a new network for its first four years of operation. In addition, we will not require any video programming provider from the closed captioning requirements where the provider had

annual gross revenues for an individual channel during the proceeding year of less than three million dollars. Finally, we will not require any video programming provider to spend more than 2% of its annual gross revenues for the proceeding year on the captioning of any channel of video programming.

8. Under section 713(d)(2), a video programming provider is exempt from captioning programming if such action would be inconsistent with a contract in effect on the date of enactment of the 1996 Act. Accordingly, we exempt programming subject to a contract in effect on February 8, 1998, for which compliance with our closed captioning requirements would constitute a breach of that contract.

9. Under section 713(d)(3), the Commission is required to consider petitions for exemption from the closed captioning rules if the requirements would impose an undue burden, which is defined as a significant burden or expense. A petition may be submitted by any party in the programming distribution chain, including video programming producers, syndicators and providers. Petitions must include information that demonstrates how our closed captioning requirements would result in an undue burden. Factors we will consider include: (a) The nature and cost of the closed captions for the programming; (b) the impact on the operation of the provider or program owner; (c) the financial resources of the provider or program owner; and (d) the type of operations of the provider or program owner. Petitioners may also submit any other information they deem appropriate for our evaluation of their circumstances. Depending on the individual circumstance, we may grant partial exemptions and may consider proposals that programming be made more accessible through alternative means (e.g., additional text or graphics).

10. The rules require video programming providers to deliver intact the closed captioning they receive as part of the programming they distribute to viewers, if the programming is not edited. They also must maintain their equipment to ensure the technical quality of the closed captioning they transmit. We will not, however, adopt standards for the non-technical aspects of closed captioning. We will monitor the captions that result from the implementation of our rules and may revisit this issue at a later date. We will not restrict the use of captioning methodology generally and will permit the use of electronic news room ("ENR") capability to create captions from teleprompter scripts.

11. We will enforce our rules through a complaint process modeled after existing complaint procedures. Complaints alleging violation of our closed captioning rules must first be directed in writing to the video programming distributor responsible for delivery of the programming directly to the customer's home. Complaints must be filed no later than the end of the calendar quarter following the calendar quarter in which the alleged violation occurred. The video programming distributor must respond to the complaint no later than 45 days after the end of the calendar quarter in which the violation is alleged to have occurred or 45 days after receipt of the written complaint, whichever is later. If a video programming distributor fails to respond to a complaint or a dispute remains following this initial procedure, a complaint may be filed with the Commission within 30 days after the time allotted for the video programming distributor to respond has ended. The video programming distributor will have 15 days to respond to any complaint filed with the Commission. We will not adopt any specific recordkeeping requirements. In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the rules. We also will permit video programming distributors to rely on certifications from program suppliers to demonstrate compliance.

12. In addition, in the R&O, we indicated that there are several issues related to the implementation of closed captioning requirements that need to be studied further or reevaluated during our transition period. We intend to study further technological changes that may affect closed captioning in a subsequent proceeding, including issues relating to digital television and other technologies that may change the way captions are created and delivered. We also are concerned about providing viewers with hearing disabilities with accurate information regarding fast breaking news of great importance such as severe weather conditions, earthquakes and disruptions of the transportation system. As we did not receive sufficient information on this issue in this proceeding, we will initiate a proceeding to determine whether additional rules are needed in this area. Moreover, we will reexamine a number of our decisions during the transition period, including the captioning requirements for pre-rule programming, the appropriateness of certain

exemptions, the use of ENR and the decision not to adopt standards relating to non-technical quality.

Regulatory Flexibility Act Certification

13. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice of Proposed Rulemaking in this proceeding. We sought written public comment on the expected impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

14. *Need for Action and Objectives of the Rule:* The 1996 Act added a new Section 713 to the Communications Act of 1934 that *inter alia* requires the Commission to develop rules to increase the availability of video programming with closed captioning. We are promulgating these rules in order to implement this provision of section 713. The statutory objective of the closed captioning provisions is to promote the increased accessibility of video programming for persons with hearing disabilities.

15. *Summary of Significant Issues Raised by the Public Comments in Response to the IRFA:* The Small Cable Business Association ("SCBA") filed the only comment specifically responsive to the IRFA. Several other commenters addressed the IRFA in their general comments. Other parties, while not specifically commenting on the IRFA, discuss the potential effect of the proposed rules on small entities.

16. SCBA concurs with our estimates regarding the number of small cable operators that may be affected by our closed captioning requirements. SCBA offers several specific suggestions to minimize the effects of the closed captioning requirements on small cable operators. These proposals include: (a) Allocating the burden of compliance to programming producers and owners; (b) a class exemption for small cable operators serving 1,000 or fewer subscribers; (c) streamlined compliance and complaint rules for small cable systems serving 15,000 or fewer subscribers including; (d) streamlined waiver procedures to permit qualifying small systems to access a simplified, low-cost waiver process; (e) a class exemption for PEG programming; (f) a class exemption for local origination programming.

17. Cassidy asserts that our conclusions are overly inclusive and, if all small providers were exempted, Congress' intent to increase the availability of closed captioned

programming would be circumvented. Commenters representing smaller captioning agencies suggest ways to minimize the effect of the new regulations on small captioners. Specifically, Para Technologies proposes that we adopt a phase-in schedule requiring video program providers to increase closed captioned programming 4% every three months over the eight year transition period. According to Para Technologies, this plan would increase competition in the captioning industry, leading to lower rates and more widely available captioned programming. MCS suggests that we should require that video producers and program providers use small captioning companies for a minimum of 25% of their real time captioning requirements.

18. Kaleidoscope indicates that its proposal to define economic burden as a situation where the cost of captioning would exceed 10% of the relative program budget should minimize the burden on small entities. Kaleidoscope asserts that this is an objective test that would exempt small entities from closed captioning requirements that they may find economically burdensome.

19. The Association of America's Public Television Stations ("APTS") asserts that the closed captioning requirements would be especially onerous to its smaller members. APTS suggests that a \$3 million benchmark is generally accepted among noncommercial stations as indicative of a small station and urges us to adopt an economic burden exemption for local programming produced by such stations.

20. Instructional Television Fixed Services ("ITFS") licensees argue that their programming should not be subject to the closed captioning requirements as they represent a formidable economic burden. Several commenters argue that they are already obligated to ensure that their services are accessible under both the ADA and the Rehabilitation Act of 1973. These commenters propose excluding ITFS providers from the definition of "video programming provider" and exempting ITFS programming carried on wireless cable systems from any closed captioning requirements.

21. Several low power television station ("LPTV") operators assert that as small businesses, LPTV operators warrant an exemption based on the economic burden that closed captioning requirements would pose. The Community Broadcasters Association ("CBA") suggests that specific classes of programming carried by some LPTV

stations should be exempt in order to relieve these providers of an economic burden.

22. Access centers and organizations providing governmental programming assert that their operations qualify as small entities. These commenters assert that, in many cases, the financial requirements for closed captioning would exceed or substantially consume their entire annual budgets. Several of these commenters state that mandatory captioning requirements could effectively eliminate public, educational and governmental ("PEG") programming. Accordingly, these commenters seek an exemption based on the economic burden posed by closed captioning requirements unless an alternative funding mechanism becomes available. The Greater Metro Telecommunications Consortium ("GMTC") suggests that PEG programmers should be allowed to weigh the costs and the benefits of providing captioning and consider alternatives. Several commenters representing multichannel video programming distribution systems ("MVPDs") join the access centers in arguing that PEG channels should be exempt. These commenters concur that PEG channels generally operate on very limited budgets which preclude captioning.

23. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply:* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

24. *Small MVPDs:* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201 (SIC 4841). This definition includes cable system operators, closed circuit television services, direct broadcast satellite services ("DBS"), multichannel multipoint distribution systems ("MMDS"), satellite master antenna systems ("SMATV") and subscription television services. According to the Bureau of the Census, there were 1,758 total cable and other pay television

services and 1,423 had less than \$11 million in revenue as of 1992. We address below each service individually to provide a more precise estimate of small entities.

25. *Cable Systems*: We have developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under our rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules we are adopting.

26. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." 47 U.S.C. 543(m)(2). We have determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

27. *MMDS*: We refined the definition of "small entity" for the auction of MMDS spectrum as an entity that together with its affiliates has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. This definition of a small entity in the context of MMDS auctions has been approved by the SBA. 47 CFR 21.961(b)(1).

28. We completed the MMDS auction in March 1996 for authorizations in 493

basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MMDS facility generates revenue in excess of \$11 million annually. We conclude that, for purposes of this FRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the auction rules.

29. *ITFS*: There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. 5 U.S.C. 601(5). However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition.

30. *DBS*: Because DBS provides subscription services, DBS falls within the SBA definition of cable and other pay television services (SIC 4841). As of December 1996, there were eight DBS licensees. We do not collect annual revenue data for DBS and, therefore, are unable to ascertain the number of small DBS licensees that could be affected by these rules. Estimates of 1996 revenues for various DBS operators are significantly greater than \$11,000,000 and range from a low of \$31,132,000 for Alphastar to a high of \$1,100,000,000 for Primestar. Accordingly, we now conclude that no DBS operator qualifies as a small entity.

31. *Home Satellite Dish ("HSD")*: The market for HSD service is difficult to quantify. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide. This

is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

32. *Open Video System ("OVS")*: We have certified nine OVS operators. Of these nine, only two are providing service. They are Bell Atlantic serving its Dover, New Jersey system and Metropolitan Fiber Systems operating OVS systems in Boston and New York. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

33. *SMATVs*: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we conclude that a substantial number of SMATV operators qualify as small entities.

34. *Local Multipoint Distribution System ("LMDS")*: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). The SBA definition for cable and other pay services is defined in paragraph 24 *supra*. A small radiotelephone entity is one with 1500 employees or less. 13 CFR 121.1201. However, for the

purposes of this R&O on closed captioning, we include only an estimate of LMDS video service providers.

35. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the *Third NPRM*, CC Docket No. 92-297, 58 FR 6400 (January 28, 1993), we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than \$40 million. We have not yet received approval by the SBA for this definition.

36. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules. We also conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

37. *Small Broadcast Stations:* The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts. 13 CFR 121.201.

38. *Estimates Based on Census and BIA Data:* According to the Bureau of the Census, in 1992, 1155 out of 1478 operating television stations reported revenues of less than \$10 million for 1992. This represents 78% of all television stations, including noncommercial stations. The Bureau of the Census does not separate the revenue data by commercial and noncommercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of \$10.5 million in annual receipts. Census data also indicate that 81% of operating firms (that owned at least one television station) had revenues of less than \$10 million.

We also have performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database, which lists a total of 1141 full power commercial television stations. It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA database may be underinclusive because the database does not list revenue estimates for noncommercial educational stations, and these therefore are excluded from our calculations based on the database. The BIA data

indicate that, based on 1995 revenue estimates, 440 full power commercial television stations had an estimated revenue of \$10.5 million or less. That represents 54% of full power commercial television stations with revenue estimates listed in the BIA program. The database does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of \$10.5 million or less, representing approximately 68% of the 1141 full power commercial television stations listed in the BIA data base.

40. Alternatively, if we look at owners of commercial television stations as listed in the BIA database, there are a total of 488 owners. The database lists estimated revenues for 60% of these owners, or 295. Of these 295 owners, 156 or 53% had annual revenues of less than \$10.5 million. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, then small entities would constitute 72% of the total number of owners.

41. In summary, based on the foregoing worst case analysis using Bureau of the Census data, we estimate that our rules will apply to as many as 1150 commercial and noncommercial television stations (78% of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as 771 commercial television stations (about 68% of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. The estimates overstate the number of small entities since the revenue figures on which they are based do not include or aggregate such revenues from non-television affiliated companies.

42. *Program Producers and Distributors:* The Commission has not developed a definition of small entities applicable to producers or distributors of television programs. Therefore, we will utilize the SBA classifications of Motion Picture and Video Tape Production (SIC 7812), Motion Picture and Video Tape Distribution (SIC 7822), and Theatrical Producers (Except

Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922). These SBA definitions provide that a small entity in the television programming industry is an entity with \$21.5 million or less in annual receipts for SIC 7812 and 7822, and \$5 million or less in annual receipts for SIC 7922. 13 CFR 121.201. The 1992 Bureau of the Census data indicate the following: (1) There were 7265 U.S. firms classified as Motion Picture and Video Production (SIC 7812), and that 6987 of these firms had \$16,999 million or less in annual receipts and 7002 of these firms had \$24,999 million or less in annual receipts; (2) there were 1139 U.S. firms classified as Motion Picture and Tape Distribution (SIC 7822), and that 1007 of these firms had \$16,999 million or less in annual receipts and 1013 of these firms had \$24,999 million or less in annual receipts; and (3) there were 5671 U.S. firms classified as Theatrical Producers and Services (SIC 7922), and that 5627 of these firms had less than \$5 million in annual receipts.

43. Each of these SIC categories is very broad and includes firms that may be engaged in various industries including television. Specific figures are not available as to how many of these firms exclusively produce and/or distribute programming for television or how many are independently owned and operated. Consequently, we conclude that there are approximately 6987 small entities that produce and distribute taped television programs, 1013 small entities primarily engaged in the distribution of taped television programs, and 5627 small producers of live television programs that may be affected by the rules adopted in this R&O.

44. *Description of Reporting, Recordkeeping and Other Compliance Requirements:* We do not prescribe any reporting requirements. While several parties encouraged adoption of such requirements, we believe that our enforcement process alleviates the need for reporting. Thus, we are not imposing recordkeeping requirements for video programming distributors. Rather, we allow them to exercise their own discretion and only require that they retain records sufficient to demonstrate compliance with our rules (§ 79.1(g)(6)). In order to further relieve small video programming distributors of any unnecessary recordkeeping burden, we permit video programming distributors to rely on certifications from the programming suppliers to demonstrate compliance with our closed captioning rules (§ 79.1(g)(6)).

45. *Steps Taken to Minimize Significant Economic Impact On Small*

Entities and Significant Alternatives Considered: In formulating our closed captioning rules, we have taken steps to minimize the effect on small entities while making video programming more accessible to persons with hearing disabilities. These efforts are consistent with the Congressional goal of increasing the availability of closed captioned programming while preserving the diversity of available programming.

46. Generally, we do not specifically exempt any class of video programming distributor because we have determined that all video programming distributors are technically capable of delivering captioning. We do, however, recognize that ITFS licensees serve a particular, well defined niche as distributors of specialized programming directed at specified sites and not generally intended for residential use. We also recognize that the general public benefits from the redistribution of this programming by MMDS operators. We therefore determine that ITFS operators warrant a blanket exemption. Accordingly, we exempt programming originated by ITFS licensees, regardless of the facility used to distribute this programming (§ 79.1(d)(7)).

47. We also recognize the significance of locally produced and distributed non-news programming of primarily local interest and limited repeat value. Much of this programming is produced on a low budget as a public service and our closed captioning requirements might impose a significant economic burden that could result in such programming not being televised. We therefore create a limited exemption for such programming (§ 79.1(d)(8)).

48. We recognize that many new video programming services will often qualify as small entities. We also recognize the need to allow new and innovative services designed to serve emerging or niche markets greater flexibility than more established services serving well defined markets. Accordingly, our rules provide an exemption to relieve new services from our captioning requirements for their first four years of operation (§ 79.1(d)(9)).

49. We do not require any video programming provider to spend more than 2% of its annual gross revenues received from a channel on closed captioning (§ 79.1(d)(11)). This will require video programming providers to devote a reasonable portion of their revenue stream to closed captioning. This mechanism will help to avoid an "all or nothing" approach thus ensuring that accessibility to captioned programming is increased without

creating an economic burden on video programming providers.

50. Furthermore, we exempt from our closed captioning requirements any video programming provider with less than \$3 million in annual gross revenues except that it will be required to pass through any captioning it may receive (§ 79.1(d)(12)). This provision is intended to address the problems of small video programming providers that are not in a position to devote significant resources towards captioning and who would, even if they expended 2% of their revenues on captioning, provide only a minimal amount of captioned programming. This will relieve the smallest of entities of any burdensome obligation to provide captioning without significantly reducing the availability of captioning.

51. In order to further minimize the impact of any unanticipated burdens that may be created by our closed captioning requirements, we adopt a petition process that permits us to consider requests for individual exemptions from these rules based on the statutory undue burden standard (§ 79.1(f)). This mechanism will allow us to address the impact of these rules on individual entities and modify the rules to accommodate individual circumstances. We have specifically designed these procedures to ameliorate the impact of the closed captioning rules in a manner consistent with the objective of increasing the availability of captioned programming.

Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to authority found in sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the Commission's rules are *hereby amended* by adding a new part 79 as set forth below. The amendments set forth below shall become effective January 1, 1998.

53. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 79

Cable television, Closed captioning, Television.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Title 47 of the Code of Federal Regulations is amended by adding a new Part 79 consisting of § 79.1 to read as follows:

PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

Sec.

79.1 Closed captioning of video programming.

Authority: 47 U.S.C. 613.

§ 79.1 Closed captioning of video programming.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use. Video programming includes advertisements of more than five minutes in duration but does not include advertisements of five minutes' duration or less.

(2) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor as defined in § 76.1000(e) of this chapter, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. An entity contracting for program distribution over a video programming distributor that is itself exempt from captioning that programming pursuant to paragraph (e)(9) of this section shall itself be treated as a video programming distributor for purposes of this section. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.

(3) *Video programming provider.* Any video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to broadcast or nonbroadcast television network and the owners of such programming.

(4) *Closed captioning.* The visual display of the audio portion of video programming contained in line 21 of the vertical blanking interval (VBI) pursuant to the technical specifications set forth in § 15.119 of this chapter or the equivalent thereof.

(5) *New programming.* Video programming that is first published or exhibited on or after January 1, 1998.

(6) *Pre-rule programming.* (i) Video programming that was first published or exhibited before January 1, 1998. (ii) Video programming first published or exhibited for display on television receivers equipped for display of digital transmissions or formatted for such transmission and exhibition prior to the date on which such television receivers must, by Commission rule, be equipped with built-in decoder circuitry designed to display closed-captioned digital television transmissions.

(7) *Nonexempt programming.* Video programming that is not exempt under paragraph (d) of this section and, accordingly, is subject to closed captioning requirements set forth in this section.

(b) *Requirements for closed captioning of video programming—(1) Requirements for new programming.* Video programming distributors must provide closed captioning for nonexempt video programming that is being distributed and exhibited on each channel during each calendar quarter in accordance with the following requirements:

(i) Between January 1, 2000, and December 31, 2001, video programming distributors shall provide at least 450 hours of captioned video programming, or if the video programming distributor provides less than 450 hours of new nonexempt video programming, then 95% of its new nonexempt video programming must be provided with captions;

(ii) Between January 1, 2002, and December 31, 2003, video programming distributors shall provide at least 900 hours of captioned video programming, or if the video programming distributor provides less than 900 hours of new nonexempt video programming, then 95% of its new nonexempt video programming must be provided with captions;

(iii) Between January 1, 2004, and December 31, 2005, video programming distributors shall provide at least an average of 1350 hours of captioned video programming, or if the video programming distributor provides less than 1350 hours of new nonexempt video programming, then 95% of its new nonexempt video programming must be provided with captions; and

(iv) As of January 1, 2006, and thereafter, 95% of the programming distributor's new nonexempt video programming must be provided with captions.

(2) *Requirements for pre-rule programming.* As of January 1, 2008,

and thereafter, 75% of the programming distributor's pre-rule nonexempt video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning.

(3) Video programming distributors shall continue to provide captioned video programming at substantially the same level as the average level of captioning that they provided during the first 6 months of 1997 even if that amount of captioning exceeds the requirements otherwise set forth in this section.

(c) *Obligation to pass through captions of already captioned programs.*—All video programming distributors shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of § 15.119 of this chapter unless such programming is recaptioned or the captions are reformatted by the programming distributor.

(d) *Exempt programs and providers.*—For purposes of determining compliance with this section, any video programming or video programming provider that meets one or more of the following criteria shall be exempt to the extent specified in this paragraph.

(1) *Programming subject to contractual captioning restrictions.* Video programming that is subject to a contract in effect on or before February 8, 1996, but not any extension or renewal of such contract, for which an obligation to provide closed captioning would constitute a breach of contract.

(2) *Video programming or video programming provider for which the captioning requirement has been waived.* Any video programming or video programming provider for which the Commission has determined that a requirement for closed captioning imposes an undue burden on the basis of a petition for exemption filed in accordance with the procedures specified in paragraph (f) of this section.

(3) *Non-english language programming.* All programming for which the audio is in a language other than English, except that scripted programming that can be captioned using the "electronic news room" technique is not exempt.

(4) *Primarily textual programming.* Video programming or portions of video programming for which the content of the soundtrack is displayed visually through text or graphics (e.g., program

schedule channels or community bulletin boards).

(5) *Programming distributed in the late night hours.* Programming that is being distributed to residential households between 2 a.m. and 6 a.m. local time. Video programming distributors providing a channel that consists of a service that is distributed and exhibited for viewing in more than a single time zone shall be exempt from closed captioning that service for any continuous 4 hour time period they may select, commencing not earlier than 12 a.m. local time and ending not later than 7 a.m. local time in any location where that service is intended for viewing. This exemption is to be determined based on the primary reception locations and remains applicable even if the transmission is accessible and distributed or exhibited in other time zones on a secondary basis. Video programming distributors providing service outside of the 48 contiguous states may treat as exempt programming that is exempt under this paragraph when distributed in the contiguous states.

(6) *Interstitials, promotional announcements and public service announcements.* Interstitial material, promotional announcements, and public service announcements that are 10 minutes or less in duration.

(7) *ITFS programming.* Video programming produced for the instructional television fixed service (ITFS).

(8) *Locally produced and distributed non-news programming with limited repeat value.* Programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the "electronic news room" technique of captioning is unavailable.

(9) *Programming on new networks.* Programming on a video programming network for the first four years after it begins operation.

(10) *Primarily non-vocal musical programming.* Programming that consists primarily of non-vocal music.

(11) *Captioning expense in excess of 2% of gross revenues.* No video programming provider shall be required to expend any money to caption any video programming if such expenditure would exceed 2% of the gross revenues received from that channel during the previous calendar year.

(12) *Channels producing revenues of under \$3,000,000.* No video programming provider shall be required to expend any money to caption any channel of video programming producing annual gross revenues of less

than \$3,000,000 during the previous calendar year other than the obligation to pass through video programming already captioned when received pursuant to paragraph (c) of this section.

(e) *Responsibility for and determination of compliance.*—(1)

Compliance shall be calculated on a per channel, calendar quarter basis;

(2) Open captioning or subtitles in the language of the target audience may be used in lieu of closed captioning;

(3) Live programming or repeats of programming originally transmitted live that are captioned using the so-called “electronic news room” technique will be considered captioned. The live portions of noncommercial broadcasters’ fundraising activities that use automated software to create a continuous captioned message will be considered captioned;

(4) Compliance will be required with respect to the type of video programming generally distributed to residential households. Programming produced solely for closed circuit or private distribution is not covered by these rules;

(5) Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards the compliance with the requirements for new programming prior to January 1, 2006. Video programming that is exempt pursuant to paragraph (d) of this section that contains captions, except that video programming exempt pursuant to paragraph (d)(5) of this section (late night hours exemption), can count towards compliance with the requirements for pre-rule programming.

(6) For purposes of paragraph (d)(11) of this section, captioning expenses include direct expenditures for captioning as well as allowable costs specifically allocated by a programming supplier through the price of the video programming to that video programming provider. To be an allowable allocated cost, a programming supplier may not allocate more than 100% of the costs of captioning to individual video programming providers. A programming supplier may allocate the captioning costs only once and may use any commercially reasonable allocation method;

(7) For purposes of paragraphs (d)(11) and (d)(12) of this section, annual gross revenues shall be calculated for each channel individually based on revenues received in the preceding calendar year from all sources related to the programming on that channel. Revenue

for channels shared between network and local programming shall be separately calculated for network and for non-network programming, with neither the network nor the local video programming provider being required to spend more than 2% of its revenues for captioning. Thus, for example, compliance with respect to a network service distributed by a multichannel video service distributor, such as a cable operator, would be calculated based on the revenues received by the network itself (as would the related captioning expenditure). For local service providers such as broadcasters, advertising revenues from station-controlled inventory would be included. For cable operators providing local origination programming, the annual gross revenues received for each channel will be used to determine compliance. Evidence of compliance could include certification from the network supplier that the requirements of the test had been met. Multichannel video programming distributors, in calculating non-network revenues for a channel offered to subscribers as part of a multichannel package or tier, will not include a pro rata share of subscriber revenues, but will include all other revenues from the channel, including advertising and ancillary revenues. Revenues for channels supported by direct sales of products will include only the revenues from the product sales activity (e.g., sales commissions) and not the revenues from the actual products offered to subscribers. Evidence of compliance could include certification from the network supplier that the requirements of this test have been met.

(8) If two or more networks (or sources of programming) share a single channel, that channel shall be considered to be in compliance if each of the sources of video programming are in compliance where they are carried on a full time basis;

(9) Video programming distributors shall not be required to provide closed captioning for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed pursuant to sections 614 and 615 of the Communications Act or pursuant to the compulsory copyright licensing provisions of sections 111 and 119 of the Copyright Act (Title 17 U.S.C. 111 and 119); programming involving candidates for public office covered by sections 315 and 312 of the Communications Act and associated policies; commercial leased access, public access, governmental and educational access programming carried pursuant to sections 611 and 612 of the

Communications Act; video programming distributed by direct broadcast satellite (DBS) services in compliance with the noncommercial programming requirement pursuant to section 335(b)(3) of the Communications Act to the extent such video programming is exempt from the editorial control of the video programming provider; and video programming distributed by a common carrier or that is distributed on an open video system pursuant to section 653 of the Communications Act by an entity other than the open video system operator. To the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section.

(f) *Procedures for exemptions based on undue burden.*—(1) A video programming provider, video programming producer or video programming owner may petition the Commission for a full or partial exemption from the closed captioning requirements. Exemptions may be granted, in whole or in part, for a channel of video programming, a category or type of video programming, an individual video service, a specific video program or a video programming provider upon a finding that the closed captioning requirements will result in an undue burden.

(2) A petition for an exemption must be supported by sufficient evidence to demonstrate that compliance with the requirements to closed caption video programming would cause an undue burden. The term “undue burden” means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning impose an undue burden include:

- (i) The nature and cost of the closed captions for the programming;
- (ii) The impact on the operation of the provider or program owner;
- (iii) The financial resources of the provider or program owner; and
- (iv) The type of operations of the provider or program owner.

(3) In addition to these factors, the petition shall describe any other factors the petitioner deems relevant to the Commission’s final determination and any available alternatives that might constitute a reasonable substitute for the closed captioning requirements including, but not limited to, text or graphic display of the content of the audio portion of the programming. Undue burden shall be evaluated with regard to the individual outlet.

(4) An original and two (2) copies of a petition requesting an exemption based on the undue burden standard, and all subsequent pleadings, shall be filed in accordance with § 0.401(a) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Comments or oppositions to the petition shall be served on the petitioner and shall include a certification that the petitioner was served with a copy. Replies to comments or oppositions shall be served on the commenting or opposing party and shall include a certification that the commenter was served with a copy.

(8) Upon a showing of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) All petitions and responsive pleadings shall contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an undue burden exemption from the closed captioning requirements.

(11) During the pendency of an undue burden determination, the video programming subject to the request for exemption shall be considered exempt from the closed captioning requirements.

(g) *Complaint procedures.*—(1) No complaint concerning an alleged violation of the closed captioning requirements of this section shall be filed with the Commission unless such complaint is first sent to the video programming distributor responsible for delivery and exhibition of the video programming. A complaint must be in writing, must state with specificity the alleged Commission rule violated and must include some evidence of the alleged rule violation. In the case of an alleged violation by a television broadcast station or other programming for which the video programming distributor is exempt from closed captioning responsibility pursuant to paragraph (e)(9) of this section, the complaint shall be sent directly to the station or owner of the programming. A video programming distributor receiving a complaint regarding such programming must forward the complaint within seven days of receipt to the programmer or send written

instructions to the complainant on how to refile with the programmer.

(2) A complaint will not be considered if it is filed with the video programming distributor later than the end of the calendar quarter following the calendar quarter in which the alleged violation has occurred.

(3) The video programming distributor must respond in writing to a complaint no later than 45 days after the end of the calendar quarter in which the violation is alleged to have occurred or 45 days after receipt of a written complaint, whichever is later.

(4) If a video programming distributor fails to respond to a complaint or a dispute remains following the initial complaint resolution procedures, a complaint may be filed with the Commission within 30 days after the time allotted for the video programming distributor to respond has ended. An original and two (2) copies of the complaint, and all subsequent pleadings shall be filed in accordance with § 0.401(a) of this chapter. The complaint shall include evidence that demonstrates the alleged violation of the closed captioning requirements of this section and shall certify that a copy of the complaint and the supporting evidence was first directed to the video programming distributor. A copy of the complaint and any supporting documentation must be served on the video programming distributor.

(5) The video programming distributor shall have 15 days to respond to the complaint. In response to a complaint, a video programming distributor is obligated to provide the Commission with sufficient records and documentation to demonstrate that it is in compliance with the Commission's rules. The response to the complaint shall be served on the complainant.

(6) Certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, may be relied on to demonstrate compliance. Distributors will not be held responsible for situations where a program source falsely certifies that programming delivered to the distributor meets our captioning requirements if the distributor is unaware that the certification is false. Video programming providers may rely on the accuracy of certifications. Appropriate action may be taken with respect to deliberate falsifications.

(7) The Commission will review the complaint, including all supporting evidence, and determine whether a violation has occurred. The Commission shall, as needed, request additional

information from the video programming provider.

(8) If the Commission finds that a violation has occurred, penalties may be imposed, including a requirement that the video programming distributor deliver video programming containing closed captioning in an amount exceeding that specified in paragraph (b) of this section in a future time period.

(h) *Private rights of action prohibited.*—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

[FR Doc. 97-24504 Filed 9-15-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. PS-151; Amdt. 193-13]

RIN 2137-AC 88

Liquefied Natural Gas Regulations—Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Correcting RIN numbers.

SUMMARY: This document corrects the RIN number of direct final rule [Docket No. PS-151; Amdt. 193-13], published in the **Federal Register** on February 25, 1997 (62 FR 8402). In the document heading on page 8402, the RIN number "RIN 2137-AC91" is changed to read "RIN 2137-AC88." The direct final rule updates Liquefied Natural Gas (LNG) regulations by replacing older models for calculating distances for gas dispersion and thermal radiations with the current models. This document also corrects the RIN number of the Notice [Docket No. PS-151; Notice 1], published in the **Federal Register** on July 8, 1997 (62 FR 36465). In the document heading on page 36465, the RIN number "RIN 2137-AC91" is changed to read "RIN 2137-AC88." The notice confirmed the effective date of the direct final rule above.

EFFECTIVE DATE: September 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366-4571.