

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

**Final rules**

For the reasons set forth in the preamble, the Federal Communications Commission amends part 15 of Title 47 of the Code of Federal Regulations to read as follows:

**PART 15—RADIO FREQUENCY DEVICES**

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a and 549.

■ 2. Section 15.35 is amended by revising paragraph (b) to read as follows:

**§ 15.35 Measurement detector functions and bandwidths.**

\* \* \* \* \*

(b) Unless otherwise specified, on any frequency or frequencies above 1000 MHz, the radiated emission limits are based on the use of measurement instrumentation employing an average detector function. Unless otherwise specified, measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. When average radiated emission measurements are specified in this part, including average emission measurements below 1000 MHz, there also is a limit on the peak level of the radio frequency emissions. Unless otherwise specified, e.g., see §§ 15.250, 15.252, 15.253(d), 15.255, and 15.509–15.519, the limit on peak radio frequency emissions is 20 dB above the maximum permitted average emission limit applicable to the equipment under test. This peak limit applies to the total peak emission level radiated by the device, e.g., the total peak power level. Note that the use of a pulse desensitization correction factor may be needed to determine the total peak emission level. The instruction manual or application note for the measurement instrument should be consulted for determining pulse desensitization factors, as necessary.

\* \* \* \* \*

■ 3. Section 15.253 is revised to read as follows:

**§ 15.253 Operation within the bands 46.7–46.9 GHz and 76.0–77.0 GHz.**

(a) Operation within the band 46.7–46.9 GHz is restricted to vehicle-mounted field disturbance sensors used as vehicle radar systems. The transmission of additional information, such as data, is permitted provided the primary mode of operation is as a

vehicle-mounted field disturbance sensor. Operation under the provisions of this section is not permitted on aircraft or satellites.

(b) The radiated emission limits within the bands 46.7–46.9 GHz are as follows:

(1) If the vehicle is not in motion, the power density of any emission within the bands specified in this section shall not exceed 200 nW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure.

(2) For forward-looking vehicle mounted field disturbance sensors, if the vehicle is in motion the power density of any emission within the bands specified in this section shall not exceed 60 µW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure.

(3) For side-looking or rear-looking vehicle-mounted field disturbance sensors, if the vehicle is in motion the power density of any emission within the bands specified in this section shall not exceed 30 µW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure.

(4) The provisions in § 15.35 limiting peak emissions apply.

(c) Operation within the band 76.0–77.0 GHz is restricted to vehicle-mounted field disturbance sensors used as vehicle radar systems and to fixed radar systems used at airport locations for foreign object debris detection on runways and for monitoring aircraft as well as service vehicles on taxiways and other airport vehicle service areas that have no public vehicle access. The transmission of additional information, such as data, is permitted provided the primary mode of operation is as a field disturbance sensor. Operation under the provisions of this section is not permitted on aircraft or satellites.

(d) The radiated emission limits within the band 76.0–77.0 GHz are as follows:

(1) The average power density of any emission within the bands specified in this section shall not exceed 88 µW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure (average EIRP of 50 dBm).

(2) The peak power density of any emission within the band 76–77 GHz shall not exceed 279 µW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure (peak EIRP of 55 dBm).

(e) The power density of any emissions outside the operating band shall consist solely of spurious emissions and shall not exceed the following:

(1) Radiated emissions below 40 GHz shall not exceed the general limits in § 15.209.

(2) Radiated emissions outside the operating band and between 40 GHz and 200 GHz shall not exceed the following:

(i) For field disturbance sensors operating in the band 46.7–46.9 GHz: 2 pW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure.

(ii) For field disturbance sensors operating in the band 76–77 GHz: 600 pW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure.

(3) For radiated emissions above 200 GHz from field disturbance sensors operating in the 76–77 GHz band: the power density of any emission shall not exceed 1000 pW/cm<sup>2</sup> at a distance of 3 meters from the exterior surface of the radiating structure.

(4) For field disturbance sensors operating in the 76–77 GHz band, the spectrum shall be investigated up to 231 GHz.

(f) Fundamental emissions must be contained within the frequency bands specified in this section during all conditions of operation. Equipment is presumed to operate over the temperature range – 20 to +50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

(g) Regardless of the power density levels permitted under this section, devices operating under the provisions of this section are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 79**

[CG Docket No. 11–175; FCC 12–83]

**Closed Captioning and Video Description of Video Programming**

AGENCY: Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) determines that the four factors contained in section 713(e) of the Communications Act of 1934, as amended (Act) will continue to apply when evaluating individual requests for closed captioning exemptions under section 713(d)(3) and our corresponding rules, notwithstanding a change in terminology in the statute, enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which replaced the term “undue burden” in that section with the term “economically burdensome.” The Order further amends the Commission’s rules to replace all current references to “undue burden” with the term “economically burdensome.” These rule amendments correspond with the new statutory language in the CVAA requiring petitioners seeking individual closed captioning exemptions under section 713(d)(3) of the Act to show that providing captions on their programming would be economically burdensome.

**DATES:** Effective September 12, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karen Peltz Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau; phone: (202) 418-2388; email: [Karen.Strauss@fcc.gov](mailto:Karen.Strauss@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order, document FCC 12-83, adopted on July 19, 2012, and released on July 20, 2012. The full text of document FCC 12-83 is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, facsimile (202) 488-5563, or via email at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com). The complete text is also available on the Commission’s Web site at <http://transition.fcc.gov/DailyReleases/DailyBusiness/2012/db0720/FCC-12-83A1.doc>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### **Paperwork Reduction Act of 1995 Analysis**

Document FCC 12-83 does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

### **Synopsis**

1. In 1996, Congress added section 713 to the Act (47 U.S.C. 613) establishing requirements for closed captioning on video programming to ensure access by persons with hearing disabilities to television programming and directing the Commission to prescribe rules to carry out this mandate. The Commission’s closed captioning rules currently require video programming distributors to caption one-hundred percent of all new, non-exempt English and Spanish language programming.

2. Section 713 of the Act authorizes the Commission to grant individual exemptions from the closed captioning requirements. As originally enacted, section 713 of the Act authorized the Commission to grant individual closed captioning exemptions on a case-by-case basis upon a showing that the provision of closed captions would “result in an undue burden.” 47 U.S.C. 613(d)(3). Section 713(e) of the Act defined “undue burden” to mean “significant difficulty or expense,” and directed the Commission to consider four factors in making an undue burden determination. Those factors are: (1) The nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.

3. In October 2010, Congress adopted the CVAA, in which it amended section 713(d)(3) of the Act by replacing the “undue burden” terminology with the term “economically burdensome.” Congress did not change the definition of “undue burden” contained in section 713(e) of the Act or the four factors to be considered in evaluating individual petitions. As a result, on October 20, 2011, the Commission adopted an Order, published at 76 FR 67376, November 1, 2011 and at 76 FR 67377, November 1, 2011, offering provisional guidance on how it would interpret this

statutory change and a *Notice of Proposed Rulemaking* (the NPRM), published at 76 FR 67397, November 1, 2011, proposing to amend § 79.1 of its rules to replace the term “undue burden” with the term “economically burdensome.” In neither the Order nor the NPRM did the Commission make or propose to make any substantive change in the standard for evaluating individual exemption petitions or the factors it would consider when deciding these petitions.

4. In response to the NPRM, the Commission received a single comment filed jointly by Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Deaf and Hard of Hearing, the Consumer Advocacy Network, the Association of Late-Deafened Adults, the Hearing Loss Association of America, and the Cerebral Palsy and Deaf Organization (Consumer Groups). Consumer Groups agreed with the Commission’s proposed interpretation of the economically burdensome standard and concluded that it was consistent with Congress’s expressed and unambiguous intent.

5. In document FCC 12-83, the Commission concludes that, for purposes of evaluating individual exemptions under section 713(d)(3) of the Act, Congress intended the term “economically burdensome” to be synonymous with the term “undue burden” as defined by section 713(e) of the Act and as interpreted and applied in Commission rules and precedent. This conclusion is supported by the CVAA itself, which preserves, unchanged, the language in section 713(e) defining an “undue burden” and enumerating the factors to be considered in an “undue economic burden” analysis, and by the CVAA’s legislative history, which encouraged the Commission in its determination of “economically burdensome” petitions to continue using these factors in assessing individual exemption requests.

6. Accordingly, document FCC 12-83 concludes that in changing the terminology from “undue burden” to “economically burdensome” in section 713(d)(3) of the Act, Congress did not intend any substantive change to the criteria that the Commission consistently has used for individual closed captioning petitions. It notes that this interpretation is consistent with the manner in which the Commission has interpreted the term “economically burdensome” in other recent Commission rules adopted pursuant to the CVAA governing the delivery of closed captioning on video programming delivered using Internet

protocol and rules governing video description, and concludes that the Commission and CGB under delegated authority, will continue to evaluate individual exemption petitions filed under section 713(d)(3) of the Act using the four factors set forth in section 713(e) of the Act.

#### Final Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA), (5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 857 (1996)), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities” (5 U.S.C. 605(b)). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” (5 U.S.C. 601(6)). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (5 U.S.C. 601(3)). A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA) (15 U.S.C. 632).

8. In document FCC 12–83, the Commission conforms the terminology used in § 79.1(f) of the Commission’s rules to the requirements of section 202 of the CVAA. Under the rule amendments adopted herein, a petitioner seeking an exemption from the closed captioning requirements will have to demonstrate that compliance with such captioning requirements would be “economically burdensome” as mandated by the CVAA. Prior to this amendment, the Act and our rules required a petitioner to show that complying with the captioning requirements would constitute an “undue burden.” In mandating this change in terminology, the Commission concludes that Congress intended no substantive change to the factors used to evaluate individual petitions for closed captioning exemptions. Because no substantive changes to the Commission’s rules or procedures were contemplated by the NPRM, the Commission concluded in the NPRM that the proposed change in our rules to reflect the terminology adopted by Congress in section 202 of the CVAA

would have no economic impact on small business entities or consumers and included in the NPRM an Initial Regulatory Flexibility Certification.

9. No comments were received concerning the Certification, and the *Report and Order* finds no reason to change the Commission’s conclusions as contained in that Certification. Therefore, the Commission certifies that the rule amendments adopted in document FCC 12–83 will not have a significant economic impact on a substantial number of small entities. The amendments contain no new obligations or prohibitions. Nor do they remove any requirements or have substantive implications of any sort. They simply change the nomenclature utilized by the Commission’s rules to describe the showing that must be made by petitioners to warrant exemptions from the closed captioning requirements, as mandated by Congress in section 202 of the CVAA. In addition, document FCC 12–83, including a final certification, will be sent to the Chief Counsel for Advocacy of the SBA.

#### Congressional Review Act

10. The Commission will send a copy of document FCC 12–83, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act (5 U.S.C. 801(a)(1)(A)).

#### Ordering Clauses

11. Pursuant to 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, document FCC 12–83 *is adopted* and the Commission’s rules *are hereby amended*.

12. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 12–83, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

13. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 12–83, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

#### List of Subjects in 47 CFR Part 79

Cable television, Closed captioning, Federal Communications Commission.  
**Marlene H. Dortch**,  
*Secretary*.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 79 as follows:

#### PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.1 by revising paragraph (d)(2), the heading of paragraph (f), and paragraphs (f)(1) through (4), (f)(10), and (f)(11) to read as follows:

#### § 79.1 Closed captioning of video programming.

\* \* \* \* \*

(d) \* \* \*  
(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 is economically burdensome on the basis of a petition for exemption filed in accordance with the procedures specified in paragraph (f) of this section.

\* \* \* \* \*

(f) *Procedures for exemptions based on economically burdensome standard.*

(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 be economically burdensome.

(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 be economically burdensome. The term “economically burdensome” means significant difficulty or expense. Factors to be considered when determining whether the requirements for closed captioning are economically burdensome 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. The extent to which the provision of closed captions is economically burdensome 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 economically burdensome standard, and all subsequent pleadings, shall be filed in accordance with § 0.401(a) of this chapter.

\* \* \* \* \*

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

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

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[FR Doc. 2012-18898 Filed 8-10-12; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2012-0112]

#### Federal Motor Vehicle Safety Standards; Motorcycle Helmets

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; grant of petition for reconsideration.

**SUMMARY:** This document responds to a petition for reconsideration of a final rule issued by this agency on May 13, 2011. The final rule amended the Federal Motor Vehicle Safety Standard for motorcycle helmets. Specifically, the final rule amended the helmet labeling requirements and compliance test procedures in order to make it more difficult to misleadingly label novelty helmets and to aid the agency in enforcing the standard. This document addresses issues raised in a petition for reconsideration relating to early compliance with the amended requirements.

**DATES:** *Effective date:* The effective date of the final rule amending 49 CFR part

571 published at 76 FR 28132, May 13, 2011, is May 13, 2013.

**Compliance date:** Voluntary early compliance with the final rule amending 49 CFR part 571 published at 76 FR 28132, May 13, 2011, is permitted as of August 13, 2012 if all of the amended requirements of the final rule are met.

Petitions for reconsideration must be received by September 27, 2012.

**ADDRESSES:** Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

*For policy and technical issues:* Mr. Check Kam, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-7002.

*For legal issues:* Mr. William H. Shakely, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366-2992.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

On May 13, 2011, NHTSA published a final rule amending the helmet labeling requirements and compliance test procedures of FMVSS No. 218, *Motorcycle helmets*, in order to make it more difficult to misleadingly label novelty helmets and to aid the agency in enforcing the standard.<sup>1</sup> Specifically, the final rule required a single, enhanced certification label that the agency believes will discourage the production, sale, and attachment of labels that misleadingly resemble legitimate certification labels. The final rule further required that the size label state the helmet size in discrete, numerical terms in order to facilitate compliance testing. Additionally, the final rule amended the retention and impact attenuation test procedures and adopted helmet conditioning tolerances.

Two petitions for reconsideration, each dated June 23, 2011, were received from the Motorcycle Industry Council (MIC), a not-for-profit national trade association representing manufacturers and distributors of motorcycles and motorcycle parts and accessories, as

well as members of allied trades. The first petition requested that the agency include in the preamble a statement permitting voluntary early compliance prior to the effective date of May 13, 2013. This document responds to that petition.

The second petition requested that the definition of "discrete size" in FMVSS No. 218 be amended by adding language requiring that this value reflect the actual size of the helmet. MIC also submitted a clarification of its second petition, which noted various issues regarding the measurement of "discrete size." The agency will respond to this petition in a separate, forthcoming document.

**II. Petition for Reconsideration and Agency's Response**

MIC requested that the agency include in the preamble a statement permitting voluntary early compliance prior to the effective date of May 13, 2013, stating that such a provision is usually included in final rules with safety benefits. MIC asserted that allowing immediate voluntary compliance would serve to accelerate the goals of the rule and would provide needed flexibility to motorcycle helmet manufacturers seeking to introduce helmets complying with the amended requirements on a gradual basis, rather than having to stockpile inventory until the effective date.

*Agency Response*—NHTSA is granting MIC's petition and is including a provision in the **DATES** section of this document permitting voluntary early compliance with the amended requirements of 49 CFR 571.218 established by the May 13, 2011 final rule. We emphasize that a helmet manufactured to meet the amended requirements of FMVSS No. 218 before the effective date must meet all of the amended labeling and performance requirements.

Issued on: August 6, 2012.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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BILLING CODE 4910-59-P

<sup>1</sup> Final Rule, Federal Motor Vehicle Safety Standards; Motorcycle Helmets, 76 FR 28132 (May 13, 2011).