FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

Miscellaneous Wireless Communications Services

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 20 to 39, revised as of October 1, 2013, on page 351, in § 27.50, the stars following paragraph (d)(1) are removed and paragraphs (d)(1)(A) and (B) and (d)(2)(A) and (B) are reinstated to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(d) * * *

(1) * * *

(A) an equivalent isotropically radiated power (EIRP) of 3280 watts when transmitting with an emission bandwidth of 1 MHz or less;

(B) an EIRP of 3280 watts/MHz when transmitting with an emission bandwidth greater than 1 MHz.

(2) * * *

(A) an equivalent isotropically radiated power (EIRP) of 1640 watts when transmitting with an emission bandwidth of 1 MHz or less;

(B) an EIRP of 1640 watts/MHz when transmitting with an emission bandwidth greater than 1 MHz.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; FCC 14–12]

Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing; Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts non-quantitative quality standards for the closed captioning of pre-recorded, live, and near-live programming to ensure that caption viewers have full access to television programming; establishes best practices for the provision of good quality captions; imposes new requirements on broadcasters using Electronic Newsroom Technique (ENT) based on a best practices proposal offered by the National Association of Broadcasters (NAB); and takes various other actions to clarify and improve the Commission's closed captioning rules.

DATES: Effective April 30, 2014, except for 47 CFR 79.1(e)(11)(i) and (ii), which shall be effective June 30, 2014, and 47 CFR 79.1(c)(3), (e)(11)(iii), (iv) and (v), (j), and (k) of the Commission's rules, which contain new information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Closed Captioning of Video Programming; Telecommunications for the Deaf and Hard of Hearing; Petition for Rulemaking Report and Order* (*Order*), document FCC 14–12, adopted on February 20, 2014 and released on February 24, 2014, in CG Docket No. 05–231. In document FCC 14–12, the Commission also seeks comment in an accompanying Further Notice of Proposed Rulemaking (*FNPRM*), which is summarized in a separate **Federal Register** Publication. The full text of document FCC 14–12 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com*.

Document FCC 14–12 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/encyclopedia/disability-rights-office-headlines*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 14–12 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 14–12 as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, in a separate notice that will be published in the **Federal Register**.

Synopsis

1. Closed captioning is a technology that provides visual access to the audio content of video programs by displaying this content as printed words on the television screen. In addition to displaying text of verbal dialogue, captions generally identify speakers, sound effects, music, and audience reaction. Because closed captioning is hidden as encoded data transmitted within the television signal, consumers can turn the captions on or off.

2. In 1996, Congress added § 713 to the Communications Act (the Act), directing the Commission to prescribe rules for the closed captioning of televised video programming. 47 U.S.C. 613. Section 713(b) of the Act directs the Commission to prescribe regulations to ensure that ''video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions'' and that ''video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions. . . .'' In 1997, the Commission adopted rules that now require captioning on all *new* English and Spanish language programming, both analog and digital, which is not specifically exempt from the Commission's rules. In addition, 75% of all nonexempt *pre-rule* English and Spanish language programming must be closed captioned. *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95–176, Report and Order, (*1997 Closed Captioning Report and Order*); published at 62 FR 48487, September 16, 1997.

3. On July 23, 2004, advocacy groups representing individuals who are deaf and hard of hearing (Petitioners or Consumer Groups) filed a joint petition for rulemaking (*2004 Petition*) seeking amendments to the Commission's captioning rules pertaining to matters of captioning quality, scope, and enforcement. On September 2, 2004, the Commission placed the 2004 Petition on public notice. *Consumer and Governmental Affairs Bureau Reference*

Information Center Petition for Rulemaking Filed, Public Notice, Report No. 2670, RM–11065, September 2, 2004. On July 21, 2005, the Commission released the *2005 Closed Captioning NPRM* granting the *2004 Petition* and initiating a proceeding to examine the Commission's closed captioning rules. *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc., Petition for Rulemaking*, CG Docket No. 05–231, Notice of Proposed Rulemaking, (*2005 Closed Captioning NPRM*); published at 70 FR 56150, November 25, 2005.

4. On November 7, 2008, the Commission released the *2008 Closed Captioning Decision* that responded in part to the 2004 Petition by amending the captioning complaint process to allow consumers to file complaints directly with the Commission and by specifying new timelines by which such complaints must be addressed. *Closed Captioning and Video Programming, Closed Captioning Requirements for Digital Television Receivers*, CG Docket No. 05–231, ET Docket No. 99–254, Declaratory Ruling, Order and Notice of Proposed Rulemaking, (*2008 Closed Captioning Decision*); published at 74 FR 1594, January 13, 2009. The Commission also adopted rules requiring VPDs to make available contact information for the receipt and handling of immediate closed captioning concerns by consumers, and contact information for written closed captioning complaints. The Commission has since developed a database to collect VPD contact information, *Closed Captioning of Video Programming*, CG Docket No. 05–231, Order, (*Captioning Contact Webform Order*); published at 75 FR 7368, February 19, 2010, and issued public notices to inform VPDs of their obligation to file such contact information. In the *2008 Closed Captioning Decision*, the Commission also clarified that all nonexempt digital programming must be captioned pursuant to the applicable benchmark for that type of programming. The Commission also sought comment on the extent to which the self-implementing exemption in § 79.1(d)(12) of the Commission's rules for video programming channels that produce annual gross revenues of less than $3 million during the previous calendar year should apply to digital broadcasters that multicast.

5. On October 25, 2010, the Consumer and Governmental Affairs Bureau (CGB) issued a Public Notice seeking to refresh the record in this proceeding. *Consumer and Governmental Affairs Bureau Seeks to Refresh the Record on Notices of Proposed Rulemaking Regarding Closed Captioning Rules*, CG Docket No. 05–231, ET Docket No. 99–254, Public Notice, (*2010 Refresh Public Notice*); published at 75 FR 70168, November 17, 2010.

7. *Need for Standards.* Although the record in this proceeding shows that some effective quality control mechanisms for captions have been put into place during this period, hundreds of commenters remain dissatisfied with captioning quality that they claim impairs the accessibility of television programming by viewers who are deaf and hard of hearing. Specifically, commenters report captions that are inaccurate, garbled, incomplete, misspelled and/or misunderstood, incomprehensible, obscure the speaker, or significantly lag behind the spoken words they are intended to convey. This confirms inconsistencies in the quality of closed captioning throughout the industry and supports the Consumer Groups' contention that the marketplace alone has not provided effective incentives for all providers to maintain good quality captioning.

8. Accordingly, based on the instant record, the Commission identifies, in document FCC 14–12, quality standards that are necessary to achieve the Act's requirement for new video programming to be ''fully accessible through the provision of closed captions,'' and for ''video programming providers or owners [to] maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions. . . .'' 47 U.S.C. 613(b). These standards will help ensure the uniform provision of good quality captions as intended by Congress and will provide a mechanism for addressing consumer complaints about captioning problems. The Commission expects that the quality standards the Commission now adopts will have little impact on the operations of entities that already have quality control systems that provide high quality captioning.

9. Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260, 124 Stat. 2751 (October 8, 2010), *technical amendments*, Public Law 111–265, 124 Stat. 2795 (October 8, 2010), requires the Commission to mandate closed captioning on video programming delivered using Internet protocol (''IP'') when such programming is shown on television with captions after the effective date of the Commission rules. In January 2012, the Commission adopted rules to implement section 202, requiring that captioning of IP-delivered programs be of at least the same quality as when such programs are shown on television. *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11–154, Report and Order, (*IP Captioning Report and Order*); published at 77 FR 19480, March 30, 2012. The expanded availability of television programming on the Internet that will result from implementation of this section of the CVAA makes ensuring the quality of captioning on shows aired on television in the first instance all the more important.

10. *Accuracy, Synchronicity, Completeness and Placement.* Document FCC 14–12 amends the Commission's rules, as described below, to require that captions (1) accurately reflect what is in the program's audio track by matching the dialogue, music, and sounds, and identify the speakers; (2) are delivered synchronously with the corresponding dialogue and other sounds at a speed that can be read by viewers; (3) are complete for the entire program; and (4) do not obscure important on-screen information and are not obscured by other information on the screen. Each of these four components is essential to ensure that video programming is fully accessible to people who are deaf and hard of hearing through the provision of closed captions.

11. *Accuracy.* In order to be accurate, captions must match the spoken words in the dialogue, in their original language (English or Spanish), to the fullest extent possible and include full lyrics when provided on the audio track. To accurately convey the dialogue in a program, closed captions need to contain all words in the order spoken, without paraphrasing or substituting words for proper names and places, contain proper spelling (including appropriate homophones, such as ''their,'' not ''there''), and provide, as needed to understand the program, appropriate punctuation and capitalization to reflect natural linguistic breaks and the flow of the dialogue, the proper tense, and the accurate representation of numbers (including currency figures with appropriate symbols or words). Paraphrasing generally should not be used where the entirety of the dialogue can be conveyed through captions. Nevertheless, in certain circumstances, paraphrasing may be necessary to ensure that the intended audience can capture the content of the program. For example, at times, paraphrasing may be needed if time does not permit providing verbatim captions, such as

when the time lag between when the dialogue occurs and the captions appear on live programming would prevent complete captioning of the program's audio content unless summarization occurs.

12. Accurate captions do not rewrite dialogue, or use synonyms to replace actual dialogue. Where necessary to understand a program's content, accurate captions also convey the manner and tone of the speaker's voice. Similarly, where slang or grammatical errors are intentionally used in a program's dialogue, accuracy dictates that captions mirror such slang and errors. Accuracy also requires that utterances (*e.g.*, ''um'') and false starts be captioned if needed for the viewer to understand the program. In addition, except as prohibited by 47 CFR 73.3999 of the Commission's rules, which restricts the broadcast of obscene and indecent material pursuant to 18 U.S.C. 1464, in which case both aural and closed captioned programming must be treated equivalently, aural words and phrases that may appear objectionable to the program owner, provider or VPD or to the captioning agency when put in writing must nevertheless be captioned verbatim if made audible to the general public in a program's dialogue.

13. In order to be accurate, captions must also provide nonverbal information that is not observable, such as who is speaking, the existence of music (even when there are no lyrics to be captioned), sound effects, and audience reaction, to the greatest extent possible, given the nature of the program. If there is more than one speaker, the proper placement of captions dictates that each speaker be identified, through caption identification or caption placement, so that viewers can understand who is speaking at any given time. When a speaker is not on the screen, identification of that individual in the caption text must also be provided if viewers not using captions are able, from the program's audio content, to discern the speaker's identity. Finally, in order to be considered accurate, captions must also be legible, with appropriate spacing between words to allow for readability.

14. *Synchronicity.* In order to be synchronous, captions must coincide with their corresponding spoken words and sounds to the greatest extent possible, given the type of the programming. This means that captions should begin to appear at the time that the corresponding speech or sounds begin and end approximately when the speech or sounds end. In addition, synchronicity requires that captions be displayed on the screen at a speed that can be read by viewers. While the Commission recognizes that everyone reads at a different speed, captions should not blink on and off at a speed that is too quick to read or otherwise be paced at a speed that is difficult to read.

15. *Program Completeness.* In order for a program's captions to be complete, captions must run from the beginning to the end of the program, to the fullest extent possible.

16. *Placement.* To be appropriately placed, captions should not block other important visual content on the screen including, but not limited to, character faces, featured text (*e.g.*, weather or other news updates, graphics and credits), and other information that is essential to understanding a program's content when the closed captioning feature is activated. Appropriate caption placement also dictates that the caption font be sized appropriately for legibility, and that captions be adequately positioned so they do not run off the edge of the video screen. *Application of Standards to Types of Programming.* For purposes of assessing compliance with respect to each of these components, the Commission will consider the type of programming at issue, *i.e.*, pre-recorded, live, or near live programming, and thereby take into account, among other things, the time available to review and edit captions on the particular type of programming prior to its distribution and display to viewers. Although, for purposes of addressing captioning complaints with respect to live and near-live programming, the Commission will take into consideration the lack of an opportunity to review and edit captions on these types of programming, captions must make all types of programming understandable to the fullest extent possible, so that viewers who rely on captions have a comparable viewing experience to those who can hear the audio portion of the programming.

17. *Pre-recorded programming.* Pre-recorded programming is programming that is produced, recorded, and edited in advance of its first airing on television. Generally, captioning done for pre-recorded programming is referred to as offline captioning, which is the process of adding captions to a program after it has been produced, and combining these captions with the program before it airs. Because the period between the time that a captioning agency receives the program and the airing date is sufficient to allow the careful review and editing of captions to ensure accuracy, synchronicity, program completeness, and appropriate placement, captioning will be considered to comply with the Commission's captioning quality standards if it contains no other errors than those we consider *de minimis.* Rather than specifying particular criteria that it will apply for a *de minimis* determination, in determining whether a failure to comply with the captioning quality standards is *de minimis*, the Commission will consider the particular circumstances presented, including the type of failure, the reason for the failure, whether the failure was one-time or continuing, the degree to which the program was understandable despite the errors, and the time frame within which corrective action was taken to prevent such failures from reoccurring.

18. Use of real-time captioning techniques for pre-recorded programming. Although offline captioning techniques are generally used for pre-recorded programming, at times programming providers use real-time captioning techniques, which generate and add captions to their pre-recorded programming as it airs to the public. Although industry indicates that real-time captioning for pre-recorded programming is sometimes necessary, the record reflects that real-time captioning methods can result in a greater number of errors, greater omissions than captions carefully prepared and reviewed in advance, and greater lag time between when the words are spoken and captions appear, making it difficult to follow who is speaking during a program. The National Cable and Telecommunications Association (NCTA) has proposed Best Practices that state that a programmer will ensure that pre-recorded programs generally are captioned offline before airing except when, ''in the exercise of a programmer's commercially reasonable judgment,'' circumstances require real-time or live display techniques for pre-recorded programming. Accordingly, the Commission expects that as a general matter, the use of real-time captioning methods for pre-recorded programming will be limited to only those situations when it is necessary to do so. After the captioning quality standards have been in effect for one year, the Commission will review the extent to which the circumstances permitting the continued use of real-time captioning techniques for pre-recorded programming have been successful in improving captioning quality on this type of programming as part of an overall review of the Best Practices (discussed below). Depending on the outcome of this review, the Commission will consider additional

action to further limit the use of real-time techniques on pre-recorded programming, if necessary.

19. *Live Programming.* Document FCC 14–12 defines live programming as video programming that is shown on television substantially simultaneously with its performance. Captioning for live programming, referred to as ''real-time'' captioning, is generated and combined with programming while it is being aired, and there is little or no opportunity to edit the captioning for accuracy, synchronicity, program completeness, and placement prior to airing.

20. *Accuracy.* The Commission recognizes the greater hurdles involved with captioning live programming, given the simultaneous production of captions as the programming is aired, and the lack of time for the review and correction of captions. The Captioning Vendors Best Practices suggest a number of measures that VPDs can specify in their contracts with programmers to be taken to reduce errors and to produce more complete and timely captions, including providing captioners advance notice of vocabulary that the program is likely to use; ensuring that captioners are equipped with reliable, high speed Internet, multiple telephone lines and backup plans to minimize caption interruption due to malfunctions; providing captioning agencies with high quality audio program signals; and requiring appropriate captioner training and skills. The Commission encourages the continued use of these measures and other measures that are technically feasible, to provide live captions provide an accurate presentation of aural content.

21. Nonetheless, the Commission recognizes that it may be impossible, using today's technologies, to always achieve fully accurate captioning on live programming. In considering complaints on captioning quality of live programming, the Commission will take into consideration the nature of this programming and the challenges associated with accurately captioning such programming. The overall objective is to ensure that closed captions convey a program's content so that the program is fully accessible to viewers. The Commission will address complaints by considering, on a case-by-case basis, the overall accuracy or understandability of the programming, the ability of the captions to convey the aural content of the program in a manner equivalent to the aural track, the extent to which the captioning errors prevented viewers from having access to the programming, and whether the VPD made best efforts to receive certification from programmers that the programmer is either in compliance with the Commission's non-technical quality standards or with the Best Practices adopted herein, or is exempt from the captioning obligations.

22. *Synchronicity.* The Commission recognizes that a slight delay in the delivery of live captions is inevitable due to the time it takes for the captioner to hear the program, provide the captions, and have the captions transmitted to the viewer and will consider such technical limitations when reviewing consumer allegations of non-compliance regarding the lack of synchronicity between a live program's audio track and its captions. At the same time, in an effort to eliminate delays that prevent caption viewers from understanding a program's content, there are measures a programmer can take to keep the delay in their presentation of live captions to a minimum, consistent with an accurate presentation of what is said, so that the time between when words are spoken or sounds occur and captions appear does not interfere with the ability of viewers to follow the program. For example, VPDs can specify in their contracts with programmers that the programmers will provide captioners with advance materials that help them to generate caption text as they hear a program's audio, provide high quality audio program signals to reduce caption lag times, and enter into contracts with captioning agencies that require appropriate captioner training and skills to reduce captioning delays while a program is being aired.

23. *Program Completeness.* The Commission recognizes that the delays inherent in sending caption transmissions on live programs to viewers pose particular challenges with respect to ensuring that the entire program is captioned up to its very last second. The preceding paragraphs have noted various measures that programmers and captioners can take to minimize the lag time between a program's audio content and its captions; shortening the lag time for real-time captions will help provide a more complete program. In addition, to the extent technically feasible, the Commission encourages entities that send the audio feed to the live captioner to alert the captioner that a program's end is imminent, so that the captioner can paraphrase or abbreviate the remaining text before the program cuts off. Finally, to the extent available, the Commission encourages use of the following measures to capture as much of a live program as possible through captions: (1) A fade out after the last scene to add a few seconds for the transition to the next program content, (2) advance delivery of the audio to captioners by a few seconds, and (3) allowing captions remaining at the end of a program's audio to be placed in a location on the screen during captions on that advertisement or program.

24. *Placement.* Entities certifying to their compliance with the captioning quality standards will be considered to comply with the Commission's placement standards if they ensure the proper placement of captions on the screen to avoid obscuring on-screen information and graphics to the extent possible. However, the Commission recognizes that placement errors may be more frequent with certain types of live programming than with pre-recorded programming. The Commission will take into consideration the type and nature of the programming when considering complaints regarding violations of the placement standard.

25. *Near-Live Programming.* The Commission defines near-live programming as video programming performed and recorded less than 24 hours prior to the time it was first aired on television. The production schedules for near-live programming often do not afford an opportunity for reviewing and editing captions equivalent to offline captioning processes. Rather, because of the short turnaround time between taping and airing, programmers typically use real time-captioning techniques for this type of programming. For purposes of the caption quality standards discussed above, the Commission will treat near-live programming as if it were live programming. The Commission agrees with Petitioners that editing and synchronization of captions on near-live programming should be performed during the hours between taping and airing to the extent there is sufficient time for such activities.

26. Document FCC 14–12 also encourages the adoption of either of two industry practices to improve the quality of near-live programming. First, in advance of a program's airing, programmers may be able to deliver a complete program script or a near-completed program to a captioning agency, which the agency can then use to create a caption file that is later combined simultaneously with the program when it is aired. The process of synchronizing captions that were originally produced in real-time is known as ''live display,'' and it can serve to reduce errors and long lag times that can occur with real-time captioning. Alternatively, programmers may be able to provide a captioning

agency with access to a live feed of the taping of near-live programming, enabling a captioner to generate captions while the program is being taped. The captioner can then improve the captions for accuracy, synchronicity, program completeness and placement prior to its airing. During these intervening hours, the programming provider also could inform the captioning agency about any edits made to the show prior to airing.

27. *Program Re-feeds of Live and Near-Live Programming.* Captioning vendors have submitted best practices proposals encouraging the use of offline captioning for live and near-live programs that initially have been captioned using real-time captioning techniques, but that are later re-aired on television. The Commission believes that such practice will more effectively match the program's audio content and thereby ensure the full television access through captioning. While offline captioning may not always be possible, the Commission encourages it and other steps to be taken that are necessary to achieve improved accuracy, synchronicity, completeness and placement of captions on such programs prior to their being re-aired. For example, to the extent feasible, the Commission encourages efforts to correct errors inadvertently made and timing lags that occurred when the program first aired with real-time captions.

28. *VPD Obligations.* In the *Closed Captioning Report and Order*, the Commission chose to place exclusive responsibility for compliance with the closed captioning requirements on VPDs because they are ultimately responsible for ensuring the delivery of programming to consumers. Because VPDs are the entities that provide video programming directly to consumers' homes, keeping them in the chain of responsibility will provide consumers an entity to which they can address their complaints, and VPDs can assist in identifying other entities responsible for the captioning quality errors. Accordingly, document FCC 14–12 imposes obligations on VPDs to ensure compliance with the captioning quality standards.

29. For the purposes of document FCC 14–12, all references to VPDs are as defined in § 79.1 of the Commission's rules, unless otherwise noted. To avoid possible ambiguity, the Commission changes the heading for § 79.1 of its rules to now read ''Closed captioning of televised programming.'' Section 79.1(a) of the Commission's rules defines VPD as (1) any television broadcast station licensed by the Commission; (2) any multichannel video programming distributor (MVPD) as defined in § 76.1000(e) of the Commission's rules; and (3) 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. A different definition of VPD is used for purposes of programming distributed on the Internet under § 79.4 of the Commission's rules. 47 CFR 79.4(a)(3).

30. In acknowledgment of the critical role that video programmers play in the delivery of captions, each VPD must exercise best efforts to obtain a certification from each of its video programmers, by requesting, in writing, that each programmer that supplies it with programming provide a certification attesting that the programmer either (1) complies with the captioning quality standards adopted herein; (2) adheres to the Best Practices for video programmers set forth below, or (3) is exempt from the closed captioning rules under one or more properly attained exemptions, in which case such certification must identify the specific exemption claimed. In addition, the VPD must request, in writing, that the programmer make such certification widely available within 30 days after receiving a written request from the VPD. VPDs will further have the obligation to check Web sites or other widely available locations used for the purpose of posting widely available certifications, to determine which of their programmers have certified their compliance. VPDs that locate a programmer's certification on the programmer's Web site or other widely available location used for the purpose of posting certifications as of the effective date of these rules will be deemed in compliance with this best efforts obligation even if the VPD did not previously notify such programmer, in writing, of the need for this certification directly to such programmer. VPDs that fail to exercise best efforts to obtain the certification noted above may be subject to enforcement action.

31. If a video programmer does not provide the certification noted above, and if the VPD nevertheless carries the programmer's programming, it must report the non-certifying programmer to the Commission. The Consumer and Governmental Affairs Bureau will issue a Public Notice announcing the proper procedure for submitting such reports to the Commission. The Commission will compile a list of such programmers that will become available in a public database maintained by the Commission. If a VPD uses its best efforts to obtain one of these certifications from each of its programmers, and it reports to the Commission the identity of any programmer whose programming the VPD carries who has refused to provide the requested certification, no sanctions will be imposed on the VPD as a result of any captioning violations that are outside the control of the VPD. MVPDs will not need to obtain the above certifications from broadcast television stations that are carried on the MVPDs' systems because broadcast television stations themselves are VPDs, and the Commission is exercising direct authority over all VPDs with regard to the captioning quality rules adopted herein.

32. These requirements will become effective upon the latter of January 15, 2015 or a date announced in a public notice published in the **Federal Register** following approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995.

33. *Best Practices.* A number of parties to this proceeding, including VPDs, video programmers, captioning vendors, and consumers, have proposed Best Practices to ensure caption quality. Adherence to the Best Practices will provide the captioning industry with concrete steps it can take to achieve quality captions and ensure that caption quality problems that do arise are quickly resolved. One year after implementation of the rules adopted herein, the Commission will assess the extent to which its prediction about the effectiveness of these Best Practices has been accurate. If the Commission finds that this approach is not effective in ensuring the production and distribution of good quality captions, the Commission will revisit these rules to the extent necessary.

34. *Video Programmer Best Practices.* To satisfy its obligation to exercise its best efforts to obtain certification from its programmers regarding closed caption quality, a VPD may seek certification from its video programmers that they will adhere to the following practices.

- *Agreements with captioning services.* Video programmers complying with the Best Practices will take the following actions to promote the provision of high quality television closed captions through new or renewed agreements with captioning vendors:
  - *Performance requirements.* Include performance requirements designed to promote the creation of high quality closed captions for video programming substantially comparable to the

Captioning Vendors Best Practices set forth below. Some programmers may contract with captioning agencies that employ practices that vary somewhat from the Captioning Vendor Best Practices but nonetheless generate high quality closed captions for video programming. To provide the captioning industry with flexibility, compliance with these Best Practices will include compliance with performance requirements that are comparable to these practices. Such requirements should adhere to the basic tenets of the requirements set forth in document FCC 14–12, and will qualify only if they are designed to achieve captions that are accurate, synchronous, complete and appropriately placed, as required by these new standards.

○ *Verification.* Include a means of verifying compliance with the above performance requirements such as through periodic spot checks of captioned programming.

○ *Training.* Include provisions designed to ensure that captioning vendors' employees and contractors who provide caption services have received appropriate training and that there is oversight of individual captioners' performance.

• *Operational best practices.* Video programmers complying with the Best Practices will take the following actions to promote delivery of high quality television captions through improved operations:

○ *Preparation materials.* To the extent available, provide captioning vendors with advance access to preparation materials such as show scripts, lists of proper names (people and places), and song lyrics used in the program, as well as to any dress rehearsal or rundown that is available and relevant.

○ *Quality audio.* Make commercially reasonable efforts to provide captioning vendors with access to a high quality program audio signal to promote accurate transcription and minimize latency.

○ *Captioning for pre-recorded programming.*

■ The presumption is that pre-recorded programs, excluding programs that initially aired with real-time captions, will be captioned offline before air except when, in the exercise of a programmer's commercially reasonable judgment, circumstances require real-time or live display captioning. Examples of commercially reasonable exceptions may include instances when (1) a programmer's production is completed too close to initial air time be captioned offline or may require editorial changes up to air time (*e.g.,* news content, reality shows, (2) a program is delivered late, (3) there are technical problems with the caption file, (4) last minute changes must be made to later network feeds (*e.g.,* when shown in a later time zone) due to unforeseen circumstances, (5) there are proprietary or confidentiality considerations, or (6) video programming networks or channels with a high proportion of live or topical time-sensitive programming, but also some pre-recorded programs, use real-time captioning for all content (including pre-recorded programs) to allow for immediate captioning of events or breaking news stories that interrupt scheduled programming.

■ Make reasonable efforts to employ live display captioning instead of real-time captioning for pre-recorded programs if the complete program can be delivered to the caption service provider in sufficient time prior to airing.

• *Monitoring and remedial best practices.* Video programmers complying with the Best Practices will take the following actions aimed at improving prompt identification and remediation of captioning errors as they occur:

○ *Pre-air monitoring of offline captions.* As part of the overall pre-air quality control process for television programs, conduct periodic checks of offline captions on pre-recorded programs to determine the presence of captions.

○ *Real-time monitoring of captions.* Monitor television program streams at point of origination (*e.g.,* monitors located at the network master control point or electronic monitoring) to determine presence of captions.

○ *Programmer and captioning vendor contacts.* Provide to captioning vendors appropriate staff contacts who can assist in resolving captioning issues. Make captioning vendor contact information readily available in master control or other centralized location, and contact captioning vendor promptly if there is a caption loss or obvious compromise of captions.

○ *Recording of captioning issues.* Maintain a log of reported captioning issues, including date, time of day, program title, and description of the issue. Beginning one year after the effective date of the captioning quality standards, such log shall reflect reported captioning issues from the prior year.

○ *Troubleshooting protocol.* Develop procedures for troubleshooting consumer captioning complaints within the distribution chain, including identifying relevant points of contact, and work to promptly resolve captioning issues, if possible.

○ *Accuracy spot checks.* Within 30 days following notification of a pattern or trend of complaints from the Commission, conduct spot checks of television program captions to assess caption quality and address any ongoing concerns.

• *Certification procedures for video programmers.* Video programmers complying with the Best Practices will certify to video programming distributors that they comply with the quality captioning standards or adhere to Best Practices for video programmers and will make such certifications widely available to VPDs, for example, by posting on affiliate Web sites.

35. *Captioning Vendor Best Practices.* As noted above, as part of their Best Practices, certifying video programmers must have agreements with captioning vendors that include performance requirements that are comparable to the Captioning Vendor Best Practices set forth below. These practices are intended to result in high quality captions and ensure that captioners have adequate training and oversight. The Commission defines ''captioning vendor'' (also sometimes referred to in document FCC 14–12 as a ''captioning service provider'') to mean any entity that is responsible for providing captioning services to a video programmer. Consistent with the Captioning Vendors' proposal, the Commission divides these Best Practices into three sets of practices—first, for captioning vendors, second, for individual captioners who generate real-time captions, and third, for the generation of offline captioning.

36. *Best Practices for Real-time (Live) Captioning Vendors.*

• Create and use metrics to assess accuracy, synchronicity, completeness, and placement of real-time captions;

• Establish minimum acceptable standards based upon those metrics while striving to regularly exceed those minimum standards;

• Perform frequent and regular evaluations and sample audits to ensure those standards are maintained;

• Consider ''accuracy'' of captions to be a measurement of the percentage of correct words out of total words in the program, calculated by subtracting number of errors from total number of words in the program, dividing that number by total number of words in the program and converting that number to a percentage. For example, 7,000 total words in the program minus 70 errors equals 6,930 correct words captioned, divided by 7,000 total words in the program equals 0.99 or 99% accuracy;

- Consider at a minimum mistranslated words, incorrect words, misspelled words, missing words, and incorrect punctuation that impedes comprehension, and misinformation as errors;
  - Captions are written in a near-as-verbatim style as possible, minimizing paraphrasing;
  - The intended message of the spoken dialogue is conveyed in the associated captions in a clear and comprehensive manner;
  - Music lyrics should accompany artist performances;
- Consider synchronicity of captions to be a measurement of lag between the spoken word supplied by the program origination point and when captions are received at the same program origination point;
- Ensure placement of captions on screen to avoid obscuring on-screen information and graphics (*e.g.,* sports coverage);
- Ensure proper screening, training, supervision, and evaluation of captioners by experienced and qualified real-time captioning experts;
- Ensure there is an infrastructure that provides technical and other support to video programmers and captioners at all times;
- Ensure that captioners are qualified for the type and difficulty level of the programs to which they are assigned;
- Utilize a system that verifies captioners are prepared and in position prior to a scheduled assignment;
- Ensure that technical systems are functional and allow for fastest possible delivery of caption data and that failover systems are in place to prevent service interruptions;
- Regularly review discrepancy reports in order to correct issues and avoid future issues;
- Respond in a timely manner to concerns raised by video programmers or viewers;
- Alert video programmers immediately if a technical issue needs to be addressed on their end;
- Inform video programmers of appropriate use of real-time captioning (*i.e.,* for live and near-live programming, and not for pre-recorded programming) and what is necessary to produce quality captions, including technical requirements and the need for preparatory materials;
- For better coordination for ensuring high quality captions and for addressing problems as they arise, understand the roles and responsibilities of other stakeholders in the closed-captioning process, including VPDs, video programmers, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors; and
- Ensure that all contracted captioners adhere to real-time captioner Best Practices.

37. *Best Practices for Real-Time (Live) Captioners.*

- Caption as accurately, synchronously, completely, and appropriately placed as possible;
- Ensure they are equipped with a failover plan to minimize caption interruption due to captioner or equipment malfunction;
- Be equipped with reliable, high speed Internet;
- Be equipped with multiple telephone lines;
- Prepare as thoroughly as possible for each program;
- File thorough discrepancy reports with the captioning vendor in a timely manner;
- To the extent possible given the circumstances of the program, ensure that real-time captions are complete when the program ends;
- Engage the command that allows captions to pass at commercials and conclusion of broadcasts;
- Monitor captions to allow for immediate correction of errors and prevention of similar errors appearing or repeating in captions;
- Perform frequent and regular self-evaluations;
- Perform regular dictionary maintenance;
- Keep captioning equipment in good working order and update software and equipment as needed;
- Possess the technical skills to troubleshoot technical issues; and
- Keep abreast of current events and topics that they caption.

38. *Best Practices for Offline (Pre-recorded) Captioning Vendors and Captioners.*

- Ensure offline captions are verbatim;
- Ensure offline captions are error-free;
- Ensure offline captions are punctuated correctly and in a manner that facilitates comprehension;
- Ensure offline captions are synchronized with the audio of the program;
- Ensure offline captions are displayed with enough time to be read completely and that they do not obscure the visual content;
- Ensure offline captioning is a complete textual representation of the audio, including speaker identification and non-speech information;
- Create or designate a manual of style to be applied in an effort to achieve uniformity in presentation;
- Employ frequent and regular evaluations to ensure standards are maintained;
- Inform video programmers of appropriate uses of real-time and offline captioning, and strive to provide offline captioning for pre-recorded programming;
  - Encourage use of offline captioning for live and near-live programming that originally aired on television and feeds at a later time;
  - Encourage use of offline captioning for all original and library pre-recorded programming completed well in advance of its distribution on television; and
- For better coordination for ensuring high quality captions and for addressing problems as they arise, understand the roles and responsibilities of other stakeholders in the closed-captioning process, including VPDs, video programmers producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

39. In addition to following the Best Practices listed above, the Commission agrees that an ongoing dialogue among interested parties can help assess the industry's progress in implementing these practices and their impact on caption quality for television programs, as well as promote a better understanding of issues relevant to caption quality. The Commission supports commenters' proposal that trade associations sponsor an annual conference with VPDs, programmers, captioning vendors, representatives of the deaf and hard of hearing communities, the Commission, and other interested parties to review the state of caption quality on television, and to discuss developments in captioning technology and other issues of concern. The Commission also encourages industry and consumers to engage in frequent discussions so that the myriad of issues associated with captioning can be resolved to the mutual satisfaction of industry and consumers on an ongoing basis.

40. *Consumer Complaints.* The Commission will rely on consumers to bring any potential noncompliance with its captioning quality standards to the Commission's attention. The Commission disagrees with NCTA's argument that informal complaints regarding caption quality should be treated as informational filings only, with no requirement for the covered entity to investigate or respond to complaints brought to a company's attention. Commission experience with closed captioning informal complaints filed pursuant to § 79.1(g) of the

Commission's rules has been that they have been useful in bringing to its attention and to the attention of programming entities technical and other problems that these entities generally correct after investigating the problems raised in the informal complaints. However, CGB will forward informal complaints only if they contain the following information: (1) the channel number, channel name, call sign, or network; (2) the name of the MVPD, if applicable; (3) the date and time when the captioning problem occurred; (4) the name of the program with the captioning problem; and (5) a detailed description of the captioning problem, including specifics about the frequency and type of problem (*e.g.,* garbling, captions cut off at certain times or on certain days, and accuracy problems). CGB will undertake efforts to work with consumers to obtain additional information, as needed, to ensure complete information on deficient complaints prior to forwarding these to VPDs in order to ease the burdens on both consumers and industry.

41. *Use of Electronic Newsroom Technique (ENT) for Live Programming. Background.* Electronic Newsroom Technique (ENT) is a technique that can convert the dialogue included on a teleprompter script into captions. In the *1997 Closed Captioning Report and Order,* the Commission allowed the use of ENT for the captioning of newscasts and other live programming—for purposes of meeting the captioning benchmarks—to permit flexibility in the methods used to create closed captions and to address the record's conflicting accounts at that time as to the number of available real-time captioners. On reconsideration, because of the inability of ENT to capture interviews, field reports, and late breaking weather and sports reports, the Commission narrowed the circumstances under which captions created with this technique would be permitted. *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996 Video Programming Accessibility,* MM Docket No. 95–196, Order on Reconsideration, (*1998 Closed Captioning Reconsideration Order*); 63 FR 55959, October 20, 1998. The ENT rule now prohibits the four major national broadcast networks, their affiliates in the 25 largest DMAs as defined by the Nielsen ratings, and national non-broadcast networks serving at least 50 percent of all homes subscribing to multichannel video programming services from using ENT to caption live programming. 47 CFR 79.1(e)(3).

42. The Commission remains concerned about the inability of ENT, as it is currently used, to provide full and equal access to news programming for all Americans, no matter where they live. However, while the costs for real-time captioning have dropped significantly and steps have been taken to increase the number of real-time captioners since the Commission's rules was adopted in the *1997 Closed Captioning Report and Order,* the Commission recognizes that many stations continue to have significant concerns about their ability to provide local news if they are denied the opportunity to provide captions through ENT, and agrees that the public interest would not be served were television stations required to cut back on local news programming.

43. In document 14–12, the Commission amends § 79.1(e)(3) of its rules to describe the manner in which broadcast stations not subject to the prohibition on ENT will be deemed in compliance with the captioning rules if they continue to use ENT to provide captioning on their live programming. The record indicates that these enhanced ENT procedures, listed below, offer stations a means to continue using ENT, and a means to improve caption quality for consumers, without requiring all stations to assume the cost of real-time captioning of all news programming. The Commission anticipates that these procedures will ensure that most in-studio programming, such as weather, sports, news and entertainment, as well as breaking news and on-the-scene programming will be made more accessible to viewers who are deaf and hard of hearing.

44. *Effective Date.* The Commission will make these requirements effective 90 days after publication in the **Federal Register**. To the extent it is not technically feasible for a particular station to comply with its new requirements by this time, the station may request additional time by seeking a limited waiver of the effective date, supported by an appropriate good cause showing. Any station may, in lieu of following the enhanced ENT procedures, provide real-time captioning on their live programming.

45. *ENT Best Practices.* Accordingly, based on the proposals submitted by NAB, the Commission requires that to be deemed in compliance with the Commission rules requiring captioning of live programming, broadcast stations that are not subject to the current prohibition on ENT must adhere to the following procedures in the ordinary course of business if they continue to use ENT for live programming:

- In-studio produced programming will be scripted. These scripted elements will include in-studio news, sports, weather, and entertainment programming.
- For weather interstitials where there may be multiple segments within a news program, weather information explaining the visual information on the screen and conveying forecast information will be scripted, although the scripts may not precisely track the words used on air.
- Pre-produced programming will be scripted (to the extent technically feasible).
- If live interviews, live on-the scene and/or breaking news segments are not scripted, stations shall supplement them with crawls, textual information, or other means (to the extent technically feasible).
- These provisions do not relieve stations of their obligations to comply with requirements regarding the accessibility of programming providing emergency information under § 79.2 of the Commission's rules. 47 CFR 79.2.
- Stations will provide training to all news staff on scripting for improving ENT.
- Stations will appoint an ''ENT Coordinator'' accountable for compliance.

46. *One-year ENT Report.* Because the record is not fully developed on how the new ENT procedures will be applied by news programmers across the country, and the extent to which compliance with these procedures will fulfill the Act's requirement for full access to news programming, the Commission will reevaluate the effectiveness of these ENT enhancements in providing people who are deaf and hard of hearing with full access to television news programming one year after the effective date of the rules pertaining to ENT. To begin this process, no later than one year after the implementation of these ENT procedures, document FCC 14–12 requires broadcast stations that have relied on these procedures to prepare and submit to the Commission a report on their experiences with following these new measures, and the extent to which they have been successful in providing full and equal access to news programming. Such report shall be prepared in consultation with Consumer Groups and may be prepared by the NAB on behalf of the affected broadcasters. The Commission encourages, as recommended by Consumer Groups, that such report

include data to demonstrate the extent to which ENT captioning meets the principles of accuracy, completeness, synchronicity, and placement, the percentage and quantity of uncaptioned programming by stations using ENT, the impact of ENT usage on the ability of consumers who are deaf and hard of hearing to access programming, complaints filed about ENT, the state of the market for real-time captioners, the economic need for stations to continue using ENT in lieu of real-time captioning, and technological progress toward achieving improvements with ENT. Such data can assist the Commission in evaluating whether a further proceeding that may include the phase out of ENT for certain DMAs is necessary to ensure full access to televised news programming by people who are deaf and hard of hearing.

47. *Complaints.* The Commission will entertain informal complaints of noncompliance with the Commission's closed captioning rules by those stations using the above procedures for ENT, but will forward a complaint to a station only if it contains the following relevant information, which the Commission deems necessary to effectively respond to such complaint: The television channel number, network and/or call sign, the name of the subscription service, if relevant, the date and time of the alleged captioning problems, the name of the program with the alleged captioning problem, a detailed and specific description of the captioning problem, including the frequency and type of problem.

48. *Compliance Ladder.* The Commission further adopts the following compliance ladder in the event that complaints gathered by the Commission indicate a pattern or trend of noncompliance with the new ENT rules.

- If the Commission notifies a broadcast station that the Commission has identified a pattern or trend of possible noncompliance by the station, the station shall respond to the Commission within 30 days regarding such possible noncompliance, describing corrective measures taken, including those measures the station may have undertaken in response to informal complaints and inquiries from viewers.
- If, after the date for a broadcast station to respond to the above notification, the Commission subsequently notifies the broadcast station that there is further evidence indicating a pattern or trend of noncompliance, the broadcast station shall submit to the Commission, within 30 days of receiving such subsequent notification, an action plan describing specific measures it will take to bring the station's ENT performance into compliance with the Commission's regulations for ENT. Action plans could include, for example, training of station personnel, more prominent reminders of the need for accessibility, and, if appropriate, the use of improved equipment. In addition, the station shall be required to conduct spot checks of its ENT performance and report to the Commission on the results of such action plan and spot checks 180 days after submission of such action plan.
- If, after the date for submission of such report on the results of an action plan, the Commission finds continued evidence of a pattern or trend of noncompliance, the Commission will then consider, through its Enforcement Bureau, appropriate enforcement action including admonishments, forfeitures, and other corrective actions as necessary that may include a requirement to cease using ENT, and instead use real-time captioning for live programming.

49. In determining whether to require a station to implement real-time captioning, the Commission will take into consideration all relevant information regarding the nature of the problem and the station's efforts to correct the problem.

50. *Video Programming Distributor Technical Rules. Equipment Monitoring.* Even when captions delivered to VPDs are complete, accurate, synchronous, and appropriately located on the screen in compliance with the Commission's captioning quality standards, there still remains the possibility that technical problems may prevent these captions from reaching viewers. In the *1997 Closed Captioning Report and Order,* the Commission adopted a ''pass-through requirement'' for VPDs to ''ensure that captioned programming is always delivered to viewers complete and intact.'' The Commission stated that VPDs would ''be responsible for any steps needed to monitor and maintain their equipment and signal transmissions to ensure that the captioning included with the video programming reaches consumers,'' and cautioned that VPDs were to ''take corrective measures necessary to ensure that the captioning is consistently included with the video programming delivered to viewers.'' The Commission further clarified that it is the ''*video programming distributor's responsibility* . . . to ensure that the equipment used to transmit these channels to viewers is capable of passing the captioning through along with the programming [and] is in proper working order.''

51. The record shows that technical problems, which can occur in the delivery of captions from the point of origination to the end user, have been preventing some viewers from being able to fully access video programming as required by the Act and the Commission's captioning rules. Each time the program stream is transcoded or manipulated the captions can become garbled or disappear, or otherwise have their quality impaired. The Commission finds that VPDs could eliminate most technical captioning glitches if they have mechanisms in place to monitor and check their engineering equipment and procedures. In addition, complaints would be reduced if these entities actively monitor and maintain their equipment to eliminate the occurrence of technical problems in the first instance, and to quickly and efficiently repair such problems that do occur.

52. To ensure full technical compliance with the pass-through rule, the Commission reaffirms and codifies in its rules, its 1997 requirements for VPDs to take ''any steps needed to monitor and maintain their equipment and signal transmissions as part of their obligation to ensure that the captioning included with video programming reaches consumers,'' and to take any corrective measures necessary to ensure that such equipment is in proper working order. The Commission also adopts a new rule requiring technical equipment checks to take place in a manner that is sufficient to ensure that captions are passed through to viewers intact. The Commission expects that VPDs that already perform equipment checks and maintain adequate records to ensure that captions are passed through to their viewers should not have to change their practices as a result of these new rules. Others who have failed to perform technical equipment checks or do not currently maintain records will have to revise their practices to comply with the obligation to monitor their equipment for its proper maintenance.

53. As part of their pass-through requirement, the Commission reminds MVPDs that they must also ensure that the customer premises equipment (*e.g.,* set-top boxes) that they provide to consumers transmit all captions pursuant to the standards adopted under the CVAA. Additionally, the Commission encourages MVPDs to provide their installers and other employees who interact with consumers with information necessary to help those consumers effectively access closed captions through their MVPD-installed devices.

54. *Reporting and Recordkeeping.* At this time, the Commission declines to impose a requirement for VPDs to report on their compliance with the captioning rules. However, as explained below, document FCC 14–12 adopts a requirement for VPDs to keep records of their activities related to the maintenance, monitoring and technical checks of their captioning equipment. The Commission believes that the new complaint process, which allows consumers to skip the step of first contacting a VPD about a complaint and allows the initial filing of such complaints with the Commission, has made it easier for consumers to bring to the Commission's attention alleged violations of the captioning requirements, and thus reduces the need for a reporting requirement. However, the Commission continues to believe that each VPD should be required to maintain sufficient data to respond to consumer complaints and provide the Commission with information needed to make a determination as to the VPD's compliance with the closed captioning requirements. Although such requirement already exists, document FCC 14–12 now specifies that such data must include (though it need not be limited to) information about the VPD's efforts to monitor, maintain, and conduct technical checks of its captioning equipment and other related equipment to ensure the pass through of captions to viewers. The Commission further requires each VPD to retain such records and documentation for a period of at least two years, in order to effectively respond to a consumer complaint or Commission inquiry addressing compliance with the Commission's captioning rules. Because the statute of limitations to impose a penalty for captioning violations is one year for some VPDs, and additional time is needed to obtain the records once the proceeding has commenced, the Commission finds that this two-year document retention rule is reasonable. Finally, the Commission directs that VPDs be prepared to submit such data to the Commission upon request, if needed to resolve an enforcement proceeding. A VPD's efforts to dispute noncompliance alleged in a complaint or a Commission inquiry with conclusory or insufficiently supported assertions of compliance will not carry the VPD's burden of proof to show that it is in compliance with the Commission's rules. In the event that the Commission finds that these recordkeeping obligations are insufficient to achieve compliance with the closed captioning obligations, the Commission may revisit whether to impose reporting requirements.

55. The recordkeeping requirements will become effective upon the latter of January 15, 2015 or a date announced in a public notice published in the **Federal Register** following approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995.

56. *Treatment of Multicast Streams. Background.* In 1997, the Commission adopted a closed captioning exemption for video programming channels that produced annual gross revenues of less than $3 million during the previous calendar year. At that time, the Commission specified that ''[a]nnual 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.'' The Commission did not determine, however, what constituted a ''channel'' for purposes of satisfying this self-implementing exemption. In 1997, broadcasters used their spectrum allocation to provide analog programming on a single channel; with the advent of digital broadcasting, broadcasters may use their digital allotment to provide simultaneously several streams of programming on the same 6 MHz of spectrum. This is known as ''multicasting.'' In the *2008 Closed Captioning Decision,* the Commission sought comment on whether, for purposes of the $3 million exemption, each programming stream on a multicast signal constitutes a separate channel for purposes of the captioning requirements, or whether the broadcaster's entire operations attributable to its digital allotment should be considered one channel for captioning purposes.

57. The Commission concludes that, for purposes of § 79.1(d)(12) of the Commission's rules, each programming stream on a multicast broadcast signal will be considered separately for purposes of determining whether the $3 million annual gross revenue limit has been satisfied. The Commission agrees that applying § 79.1(d)(12) of its rules to each multicast stream separately is consistent with our ruling in 1997, which calculated gross revenues for each channel individually, and in the way it is applied to MVPDs. Accordingly, the Commission amends § 79.1(d)(12) of its rules to ensure application of the $3 million exemption to a channel or stream of programming when multiple streams of programming are offered by a broadcaster. The Commission reminds multicasting television broadcasters, however, that once the annual revenues for a multicasting stream reach $3 million, the captioning exemption will not apply to that stream and, at that point, all applicable captioning requirements will apply to that stream. The Commission will revisit the multicasting issue at a later time to determine whether the approach adopted in document FCC 14–12 is still needed to assure the viability of multicasting, as well as the extent to which any change of policy is needed to ensure the availability of closed captioning on multicast programming for people who are deaf and hard of hearing.

58. *Other Matters. Penalties for Violation of the Closed Captioning Rules.* Petitioners have requested that the Commission use its existing forfeiture guidelines to establish a base forfeiture amount of $8,000 for each captioning violation, with each hour of programming below the applicable benchmark counted as a separate violation. They also have asked the Commission to clarify that to the extent technical problems result in a portion of a program's captioning to be garbled or missing, such program not be counted toward the applicable captioning benchmark. In the *2005 Closed Captioning NPRM,* the Commission sought comment on whether the Commission should establish specific per-violation forfeiture amounts for non-compliance with the captioning rules, and if so, what those amounts should be.

59. The Commission declines to create sanctions or remedies for closed captioning enforcement proceedings that deviate from the Commission's flexible case-by-case approach governed by § 1.80 of its rules. The Commission already has sufficient authority to issue appropriate penalties, and it will adjudicate complaints on the merits and employ the full range of sanctions and remedies available to the Commission under the Act. In order to encourage compliance with its rules, the Commission will consider a wide variety of factors to determine whether enforcement is warranted, such as history of monitoring and maintenance, complaints received from consumers, frequency of captioning errors, and impact of captioning errors on the viewers' understandability of the program. In addition, as provided in § 79.1(g)(8) of the Commission's rules, a forfeiture penalty may be in addition to any other penalty that the Commission may impose.

60. *Electronic Filing of Exemption Requests* Section 713(d)(3) of the Act permits video programming providers or

owners to petition the Commission for an exemption from the closed captioning requirements where it can be shown that such requirements would be ''economically burdensome.'' The Commission has required parties seeking such exemption to file their petitions in paper form. In the *2005 Closed Captioning NPRM,* the Commission sought comment on whether to require or allow the electronic filing of exemption petitions, and asked about the impact electronic filing would have on entities filing such petitions and parties filing comments or oppositions to such petitions.

61. In the *2011 Electronic Filing Report and Order,* the Commission amended certain of its procedural rules to increase the efficiency of Commission decision-making and modernize Commission procedures in the digital age, including adoption of a requirement to use electronic filing whenever technically feasible. Document FCC 14–12 now amends Commission rules to require the electronic filing of individual closed captioning exemption requests in machine readable format, and further revises Commission rules to require that comments on and oppositions to such petitions also be filed electronically in machine readable format. Pursuant to § 79.1(f)(7) of the Commission's rules, however, any comment on or opposition to the petition, and any reply, must also be served on the other party and must include a certification that the filing was served on the other party.

62. *Correction to 47 CFR 79.1(i)(3) of the Commission's rules.* The email address in § 79.1(i)(3) of the Commission's rules that is provided for VPDs to submit contact information for closed captioning concerns and complaints is inaccurate. The correct address is *CLOSEDCAPTIONING_POC@fcc.gov.* The Code of Federal Regulations (CFR) will be amended accordingly.

Declaratory Ruling

63. *Mixed Language Programming—Bilingual English-Spanish Language Programming.* The Commission confirms that bilingual English-Spanish programs are subject to the same obligations with respect to the amount of required captioned programming as programming that is entirely in English or entirely in Spanish. (The Commission notes, however, that it would not consider a program to be bilingual if it has just a few lines of dialogue in the program's less predominant language.) Specifically, all *new* bilingual English-Spanish programming must be closed captioned, and 75 percent of *pre-rule* bilingual English-Spanish programming must be closed captioned in their respective languages at this time.

64. *Other Language Programming.* Section 79.1(d)(3) of the Commission's rules exempts from the closed captioning requirements ''. . . programming for which the audio is in a language other than English or Spanish, except that scripted programming that can be captioned using the 'electronic news room' technique is not exempt.'' The Commission confirms that programs that are in neither English nor Spanish but contain small amounts or ''snippets'' of English or Spanish words that account for only a small percentage of these programs, are also governed by § 79.1(d)(3) of its rules and need not to be captioned. The Commission reminds programmers and distributors, however, that § 79.1(d)(3) of its rules requires the use of ENT for closed captioning in instances where scripted programming would make this possible.

65. *Providing VPD Contact Information Where VPD Is Exempt from Certain Requirements.* The Commission clarifies that § 79.1(i) of its rules require all VPDs, even if they are exempt from certain closed captioning rules, to make contact information available to consumers and the Commission for the handling of immediate concerns and written complaints about closed captioning. Because all VPDs, including those that are exempt from certain captioning rules, are nevertheless required to provide captioning pursuant to the pass-through rule, all VPDs are subject to the obligation to receive and respond to complaints.

66. *Obligation to Caption ''On Demand'' Video Programming.* The Commission confirms that all ''on demand'' programming not subject to an exemption must comply with the relevant captioning requirements for new and pre-rule programming. More specifically, to the extent that ''on demand'' programming that airs today is ''new programming,'' it must be captioned unless it otherwise qualifies for an exemption under its rules. To the extent it is pre-rule programming, it must comply with the Commission's pre-rule 75 percent benchmark.

67. *Application of Closed Captioning Requirements to LPTV Stations.* In the *1997 Closed Captioning Report and Order,* the Commission declined to adopt a specific exemption for low power television (LPTV) stations, and included within the definition of VPD, ''[a]ny broadcast station licensed by the Commission.'' Because the *1997 Closed Captioning Report and Order* makes clear the Commission's intent to require closed captioning of non-exempt programming on all television stations, including LPTV stations, the Commission reminds LPTV stations that they must comply with Part 79 of its rules.

Final Regulatory Flexibility Analysis

68. Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the Notices of Proposed Rulemaking (*NPRMs*) in the *2005 Closed Captioning NPRM* and the *2008 Closed Captioning Decision* in this proceeding. 5 U.S.C. 603. The Commission sought written public comment on the proposals in the two *NPRMs,* including comment on the two IRFAs. The Commission received one comment on the IRFA incorporated in the *2005 Closed Captioning NPRM,* as discussed below. No comments were received on the IRFA incorporated in the *2008 Closed Captioning Decision.* This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. This Report and Order makes certain modifications to the closed captioning rules after consideration of the comments and reply comments received in response *2005 Closed Captioning NPRM,* the *2008 Closed Captioning Decision,* and the 2010 *Refresh Public Notice.*

69. In document FCC 14–12, the Commission adopts rules governing non-technical quality standards for closed captioning; Best Practices for video programmers, captioning vendors and captioners designed to ensure high quality closed captioning; certifications that VPDs must obtain from video programmers attesting to video programmers' compliance with the captioning quality standards or video programmer Best Practices or that the video programmer is exempt from the closed captioning rules; enhanced requirements for the use of ENT and a compliance ladder process for broadcasters that follow these practices; VPD monitoring and maintenance of equipment and signal transmissions and technical equipment checks to ensure greater technical compliance; maintenance of records of such monitoring, maintenance, and technical equipment checks; applicability of the $3 million exemption to multicast program streams; and electronic filing of economically burdensome exemption requests. These modifications to the closed captioning rules will serve the public interest by improving the availability and quality of closed captioning and making it easier for the public to learn whether a petition for exemption from the closed captioning rules has been filed.

70. The Commission notes that VPDs are the entities directly responsible for

compliance with closed captioning rules, and may air programming that is not captioned only if the programming is not subject to a captioning benchmark or is exempt from the rules pursuant to § 79.1(d) or § 79.1(f) of the Commission's rules. Even with regard to programming that is not produced by a VPD, the VPD is responsible for ensuring that the program owner has certified that it or its programming is exempt from the closed captioning rules. Although closed captioning companies play a vital role in the closed captioning regime, they are not the entities that are directly affected by the Commission's requirements that video programming be captioned, because they are not the entities ultimately responsible for compliance with the closed captioning rules. The IRFA included all multichannel video programming distributors (MVPDs) and broadcasters; these are the entities that are ultimately responsible for closed captioning. In addition to captioners, program owners and producers that are not the video programming distributors were also omitted from the IRFA, for the same reason—they are merely indirectly affected by the rules and are not ultimately responsible for compliance with the rules. However, in order to better inform the public about its actions and to create a more complete record, the Commission is including captioners and video programming producers in this FRFA.

71. 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 rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

72. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.''

73. *Cable Television Distribution Services.* These services have been included within the broad economic census category of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. According to data from the U.S. Census Bureau for the year 2007, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees.

74. *Cable Companies and Systems.* Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. 47 CFR 76.901(e) of the Commission's rules. Industry data shows that there are 1,100 cable companies. Of this total, all but 10 incumbent cable companies are small. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more.

75. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent 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.'' Based on available data, all but 10 incumbent cable operators are small under this size standard.

76. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Currently, only two entities, DIRECTV and DISH Network provide DBS service, and neither company is a small business.

77. *Wireless Cable Systems—Broadband Radio Service and Educational Broadband Service.* Wireless cable systems use the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to transmit video programming to subscribers. In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. Of the 67 auction winners, 61 met the definition of a small business, and of these 61 winners, 48 remain small business licensees. In addition, there are approximately 392 incumbent BRS licensees that are considered small entities. Accordingly, there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86 for the sale of 78 BRS licenses, and established three categories of small businesses: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years is a small business; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years is a very small business; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years is an entrepreneur Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

78. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based Educational Broadcasting Services. The SBA has developed a small business size standard for Wired Telecommunication Carriers, which is all such businesses having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 Wired Telecommunications Carrier firms that operated for the entire year in 2007. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. In addition to Census Bureau data, the Commission's internal records indicate that as of September 2012, there are 2,239 active EBS licenses. The Commission estimates that of these 2,239 licenses,

the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

79. *Open Video Services.* Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is all such firms having 1,500 or fewer employees. According to U.S. Census data for 2007, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with 1,000 or more employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees.

80. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $35.5 million in annual receipts. The Commission has estimated the number of licensed full power commercial television stations to be 1,388. According to U.S. Census Bureau data for 2007, there were 2,076 television broadcasting establishments in 2007. Of these, 1,515 establishments had receipts under $10 million, and 561 had receipts of $10 million or more. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business control affiliations must be included. Because many of these stations may be held by large group owners, and the revenue figures on which the Commission's estimate is based does not include or aggregate revenues from control affiliates, its estimate likely overstates the number of small entities that might be affected by its action.

81. The Commission has estimated the number of licensed noncommercial educational (NCE) full power television stations to be 396. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 428 Class A television stations and 1,986 low power television stations (LPTV). Given the nature of these services, the Commission will presume that all Class A television and LPTV licensees qualify as small entities under the SBA definition.

82. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and is therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimates of small businesses to which they apply may be over-inclusive to this extent.

83. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for ILECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small ILECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

84. According to Census Bureau data for 2007, there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of ILEC services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.

85. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of less than 1000 employees, and 44 firms had had employment of 1,000 employees or more. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either CLEC services or CAP services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Seventy-two carriers have reported that they are Other Local Service Providers, and of the 72, 70 have 1,500 or fewer employees and 2 have more than 1,500 employees.

86. *Electric Power Distribution Companies.* These entities can provide video services over power lines (BPL). The SBA has developed a small business size standard for this category, which is all such firms having 1,000 or fewer employees. Census Bureau data for 2007 show that there were 1,174 firms that operated for the entire year in this category. Of these firms, 50 had 1,000 employees or more, and 1,124 had fewer than 1,000 employees.

87. *Cable and Other Subscription Programming.* These entities may be indirectly affected by the Commission's action. The size standard established by the SBA for this business category is that annual receipts of $35.5 million or less determine that a business is small. According to 2007 Census Bureau data there were 396 firms that were engaged in production of Cable and Other Subscription Programming. Of these, 349 had annual receipts below $25 million, 12 had annual receipts ranging from $25 million to $49,999,999, and 35 had annual receipts of $50 million or more.

88. *Motion Picture and Video Production.* These entities may be indirectly affected by its action. The size standard established by the SBA for this business category is that annual receipts of $30 million or less determine that a business is small. According to 2007 Census Bureau data, there were 9,095 firms that were engaged in Motion Picture and Video Production. Of these, 8,995 had annual receipts of less than $25 million, 43 had annual receipts ranging from $25 million to $49,999,999, and 57 had annual receipts of $50 million or more.

89. *Internet Publishing and Broadcasting and Web Search Portals.* These entities may be directly or indirectly affected by the Commission's action. The SBA has deemed an Internet

publisher or Internet broadcaster or the provider of a web search portal on the Internet to be small if it has fewer than 500 employees. Census Bureau data for 2007 show that there were 2,705 such firms that operated that year. Of those 2,705 firms, 2,682 (approximately 99%) had fewer than 500 employees, and 23 had 500 or more employees.

90. *Closed Captioning Services.* These entities may be directly or indirectly affected by the Commission's action. The SBA has developed two small business size standards that may be used for closed captioning services, which track the economic census categories, ''Teleproduction and Other Postproduction Services'' and ''Court Reporting and Stenotype Services.''

91. The relevant size standard for small businesses in Teleproduction and Other Postproduction Services is annual revenue of less than $29.5 million. Census Bureau data for 2007 indicate that there were 1,605 firms that operated in this category for the entire year. Of that number, 1,587 had annual receipts totaling less than $25 million, 9 had annual receipts ranging from $25 million to $49,999,999, and 9 had annual receipts of $50 million or more.

92. The size standard for small businesses in Court Reporting and Stenotype Services is annual revenue of less than $14 million. Census Bureau data for 2007 show that there were 2,706 firms that operated for the entire year. Of this total, 2,687 had annual receipts of under $10 million, 11 firms had annual receipts of $10 million to $24,999,999, and 8 had annual receipts of $25 million or more.

93. In document FCC 14–12, the Commission takes the following actions to improve the quality of closed captions:

(1) Establishes non-technical captioning quality standards (*e.g.,* accuracy, synchronicity, program completeness and placement) to improve the quality of closed captioning, but does not adopt any reporting requirements along these lines.

(2) Adopts Best Practices for video programmers, captioning vendors and captioners.

○ Video programmers that choose to follow the Best Practices must include certain provisions in their agreements with captioning vendors, including performance requirements comparable to the captioning vendor Best Practices adopted in document FCC 14–12; follow certain operational, monitoring, and remedial best practices; and make certifications to VPDs that they comply with the video programmer Best Practices widely available.

○ Captioning vendors and captioners following the Best Practices or performance requirements comparable to the Best Practices must take actions to improve the quality of closed captions, including but not limited to actions regarding evaluation of captioning accuracy, captioner screening, training, and supervision, and technical systems and expertise.

○ There are no reporting requirements associated with the Best Practices adopted in document FCC 14–12.

(3) Requires VPDs to make best efforts obtain certifications from the video programmers from which they receive programming attesting that the video programmers (1) comply with the captioning quality standards, (2) adhere to the video programmer Best Practices, or (3) are exempt from the closed captioning rules under one or more properly attained and specified exemptions.

○ VPDs are not required to report to the Commission regarding their efforts to obtain certifications from video programmers.

○ However, if a video programmer does not provide either of the certifications noted above, the VPD must report the non-certifying programmer to the Commission.

(4) Requires broadcasters that use ENT to follow certain practices in order to be deemed in compliance with the Commission's rules requiring captioning of live programming.

(5) Adopts a compliance ladder that broadcasters following these ENT practices may use in the event of a Commission inquiry or investigation.

○ The compliance ladder calls for broadcasters to respond to notifications of noncompliance within 30 days by describing corrective measures. If a pattern or trend of noncompliance continues, the compliance ladder calls for broadcasters to respond to a subsequent notification of noncompliance within 30 days by setting forth an action plan describing specific measures it will take to bring the station's ENT performance into compliance with the Commission's regulations regarding ENT. In addition, the station shall be required to conduct spot checks of its ENT performance and report to the Commission on the results of such action plan and spot checks 180 days after submission of such action plan. If, after the date for submission of such report on the results of an action plan, the pattern or trend of noncompliance continues, the Commission will then consider, through its Enforcement Bureau, appropriate enforcement action.

(6) Requires broadcasters to create a report on their experiences using these ENT practices within one year of the implementation of these practices.

○ Such report shall be prepared in consultation with Consumer Groups and may be prepared by the National Association of Broadcasters (NAB) on behalf of the affected broadcasters.

(7) Specifies that each multicast program stream of a digital television station be considered separately for the purpose of the captioning exemption for channels producing revenues of less than $3 million, but does not adopt any reporting requirements along these lines.

(8) Requires VPDs to monitor and maintain their equipment and data streams and perform technical equipment checks to ensure greater technical compliance, and to maintain records of such monitoring, maintenance, and technical equipment checks for at least two years, but does not adopt any reporting requirements in this regard.

(9) Requires that petitions for exemption from the closed captioning rules, as well as comments or oppositions to such petitions, be filed electronically rather than on paper.

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

95. In amending its closed captioning rules, the Commission believes that it has minimized the effect on small entities while making video programming more accessible to persons who are deaf and hard of hearing. These efforts are consistent with the Congressional goal of increasing the availability of captioned programming while preserving the diversity of available programming. Consistent with its conclusions in 1997, when the closed captioning rules were first adopted, the Commission has limited the exemptions to the closed captioning rules because it has determined that all VPDs are technically capable of delivering captioning.

96. However, consistent with the RFA, several steps were taken to minimize the impact on small entities. The captioning quality standards adopted in the document FCC 14–12 are performance-orientated and avoid mandating the use of particular technologies. In addition, because the captioning quality standards are qualitative rather than quantitative, they afford the industry, including small entities, flexibility when complying and do not requiring monitoring of every program on every channel at all times. The captioning quality standards also take into consideration the extent to which compliance with the standards can be achieved for various types of programming, further enhancing the flexibility provided to the industry, including small entities, when complying with the standards. Moreover, the record in this proceeding shows that many entities already have undertaken practices to ensure caption quality, thereby minimizing any additional costs imposed by the new captioning quality standards.

97. Additionally, although document FCC 14–12 places the obligation to ensure compliance with the captioning quality standards on VPDs, VPDs can do so by making best efforts to obtain certifications from the video programmers from which they receive programming attesting that the video programmer (1) complies with the captioning quality standards, (2) adheres to the video programmer Best Practices, or (3) is exempt from the closed captioning rules under one or more properly attained and specified exemptions. The certification approach adopted by Document FCC 14–12 imposes only a minimal burden on VPDs, including small entities. The Commission permits the use of widely available certifications for this purpose, to obviate the need for individual contractual certifications, thus greatly reducing the burden on VPDs. Use of widely available certifications generally reduces the burden on small VPDs, who will generally rely upon widely available certifications arranged by the larger VPDs for programming that is nationwide or regional. In addition, VPDs that located a programmer's certification on the programmer's Web site or other widely available location used for the purpose of posting certification will be deemed in compliance with the best efforts obligation even if the VPD did not supply prior notification of the need for this certification to such programmer. While the Order requires VPDs to report to the Commission those video programmers whose programming the VPD carries who do not provide the certification noted above, this requirement is less burdensome to VPDs than alternatives such as having VPDs bear the risk of substandard caption quality of programming from video programmers who refuse to provide the certification.

98. The certification approach and Best Practices adopted by document FCC 14–12 may also impose additional compliance obligations on video programmers, including small entities, that elect to certify to compliance with either the standards or the Best Practices because they may be required to implement practices and incur some additional costs to ensure that the captioning they provide meets the Commission's caption quality standards or Best Practices. The Best Practices may also impose additional compliance obligations on captioning vendors and captioners, including small entities. Nevertheless, the Commission believes the overall burden on video programmers that choose to certify and on captioning vendors and captioners will be minimal for several reasons. First, the Best Practices are voluntary. Document FCC 14–12 allows video programmers the choice between certifying to compliance with the caption quality standards or Best Practices. Video programmers that do not want to follow the video programmer Best Practices can instead certify that they comply with the captioning quality standards. Second, the Best Practices provide video programmers, captioning vendors, and captioners with flexibility in establishing performance requirements designed to promote the creation of high quality closed captions for video programming by requiring practices comparable, but not necessarily identical, to the captioning vendor Best Practices. Third, the overall cost burden on video programmers that choose to certify will be relatively minimal, as demonstrated by the record, which reflects that caption prices have ''fallen dramatically'' since the Commission first implemented its 1997 captioning rules. Fourth, as noted above, document FCC 14–12 permits video programmers to provide widely available certifications, rather than having to provide individual certifications to each requesting VPD, which will substantially minimize the burden on video programmers choosing to certify.

99. Document FCC 14–12 declines to extend the prohibition on ENT to markets beyond the top 25. In declining to extend the prohibition on ENT, the Commission has considered the burden that real-time captioning would impose on broadcast stations in markets beyond the top 25, including small businesses. However, document FCC 14–12 does require broadcast stations that use ENT to follow certain Best Practices designed to improve the quality of captions created using ENT. The ENT Best Practices will impose minimal burdens on broadcasters because they are generally achievable without additional cost and, for those stations with older equipment, software upgrades necessary for compliance with the ENT Best Practices are available for relatively nominal cost. In addition, document FCC 14–12 adopts a compliance ladder for determining compliance with the ENT Best Practices, offering broadcast stations additional flexibility in complying with the Commission's ENT requirements. Document FCC 14–12 does require broadcast stations that rely on the ENT Best Practices to prepare and submit to the Commission, within one year after the effective date of the rules pertaining to ENT, a report on their experiences and the extent to which they have been successful in providing full and equal access to news programming. To minimize the burden on small entities, document FCC 14–12 specifies that the report may be prepared by the NAB jointly on behalf of the affected broadcasters.

100. Document FCC 14–12 reduces the captioning requirements for television stations that multicast by extending the provision in § 79.1(d)(12) of the Commission's rules, which exempts video programming providers from closed captioning where the distributor's annual gross revenues from the channel did not exceed $3 million for the previous calendar year, to each programming stream of a multicast digital television channel. Document FCC 14–12 does not disturb the existing exemption in § 79.1(d)(11) of the Commission's rules, which excuses a video programming provider from spending more than 2 percent of its annual gross revenues received from a channel on closed captioning. Sections 79.1(f), 79.1(d)(11) and 79.1(d)(12) of the Commission's rules are all intended to address the problems of small video programming providers that are not in a position to devote significant resources toward closed captioning by relieving small entities of any burdensome obligation to provide closed captioning. The § 79.1(f) mechanism in particular allows the Commission to address the impact of these rules on individual entities and grant exemptions to the rules to accommodate individual circumstances.

101. Document FCC 14–12 declines to adopt any requirements for VPDs to annually file reports or certifications with the Commission. By declining to adopt reporting requirements, the Commission has taken into consideration the burdens that reporting requirements would impose on VPDs, including small businesses.

102. However, document FCC 14–12 does require VPDs to maintain records of equipment monitoring and maintenance and technical equipment checks. These recordkeeping requirements will impose minimal burdens on VPDs because it is likely that many covered entities already keep such records, and document FCC 14–12 does not mandate any specific format for keeping records, providing covered entities with flexibility to establish their own recordkeeping procedures. Furthermore, the monitoring, maintenance, and technical equipment checks adopted in the Order are performance-orientated and avoid mandating the use of particular technologies or processes.

103. Document FCC 14–12 does modify the procedures for filing exemption petitions with the Commission pursuant to § 79.1(f) of its rules by requiring that such petitions and responsive pleadings be filed electronically rather than on paper. This procedure will make it easier for VPDs to file such petitions and consumers to respond to such petitions. Moreover, in the event any VPD or consumer finds it burdensome to file electronically, such VPD or consumer may ask the Commission for authorization to file on paper at the time it makes the filing.

104. *Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals*—None.

105. The Commission will send a copy of document FCC 14–12, including a copy of the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Congressional Review Act

106. The Commission will send a copy of document FCC 14–12 in a report to be sent to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained 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, document FCC 14–12 is *adopted* and the Commission's rules are *amended.*

Document FCC 14–12 *shall be* effective April 30, 2014, pursuant to 5 U.S.C. 553(d) and § 1.427(a) of the Commission's rules, 47 CFR 1.427(a), unless otherwise noted.

The final rules contained in 47 CFR 79.1(c)(3), (j), and (k) *shall be* effective upon publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995 and an effective date of the rule amendment, and such effective date shall be no sooner than January 15, 2015.

The final rules contained in 47 CFR 79.1(e)(11)(i) and (ii) *shall be* effective June 30, 2014.

The final rules contained in 47 CFR 79.1(e)(11)(iii), (iv) and (v) *shall be* effective upon publication in the **Federal Register** of a notice announcing the approval by the Office of Management and Budget of the modified information collection requirements under the Paperwork Reduction Act of 1995 and an effective date of the rule amendment.

The Declaratory Ruling adopted herein became effective on February 24, 2014.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 14–12, including the Final Regulatory Flexibility Certification, to the Chief Counsel for advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 79

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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

PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION 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, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.1 by revising the section heading and paragraphs (a), (c), (d)(12), (e)(3), and adding paragraph (e)(11), revising paragraphs (f)(4), (f)(7), and (i)(3), and adding paragraphs (j) and (k), to read as follows:

§ 79.1 Closed captioning of televised video programming.

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

(1) *Captioning vendor.* Any entity that is responsible for providing captioning services to a video programmer.

(2) *Closed captioning, or captioning.* The visual display of the audio portion of video programming pursuant to the technical specifications set forth in this part.

(3) *Live programming.* Video programming that is shown on television substantially simultaneously with its performance.

(4) *Near-live programming.* Video programming that is performed and recorded less than 24 hours prior to the time it is first aired on television.

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

(i) Analog video programming that is first published or exhibited on or after January 1, 1998.

(ii) Digital video programming that is first published or exhibited on or after July 1, 2002.

(6) *Non-exempt 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.

(7) *Prerecorded programming.* Video programming that is not ''live'' or ''near-live''.

(8) *Pre-rule programming.* (i) Analog video programming that was first published or exhibited before January 1, 1998.

(ii) Digital video programming that was first published or exhibited before July 1, 2002.

(9) *Video programmer.* Any entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming.

(10) *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.

(11) *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.

(12) *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.

* * * * *

(c) *Obligation to pass through captions of already captioned programs; obligation to maintain equipment and monitor for captions.* (1) 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 this part unless such programming is recaptioned or the captions are reformatted by the programming distributor.

(2) Video programming distributors shall take any steps needed to monitor and maintain their equipment and signal transmissions associated with the transmission and distribution of closed captioning to ensure that the captioning included with video programming reaches the consumer intact. In any enforcement proceeding involving equipment failure, the Commission will require video programming distributors to demonstrate that they have monitored their equipment and signal transmissions, have performed technical equipment checks, and have promptly undertaken repairs as needed to ensure that equipment is operational and in good working order.

(3) Each video programming distributor shall maintain records of the video programming distributor's monitoring and maintenance activities, which shall include, without limitation, information about the video programming distributor's monitoring and maintenance of equipment and signal transmissions to ensure the pass through and delivery of closed captioning to viewers, and technical equipment checks and other activities to ensure that captioning equipment and other related equipment are maintained in good working order. Each video programming distributor shall maintain such records for a minimum of two years and shall submit such records to the Commission upon request.

(d) * * *

(12) *Channels/Streams producing revenues of under $3,000,000.* No video programming provider shall be required to expend any money to caption any channel or stream 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 closed captioned when received pursuant to paragraph (c) of this section. For the purposes of this paragraph, each programming stream on a multicast digital television channel shall be considered separately for purposes of the $3,000,000 revenue limit.

* * * * *

(e) * * *

(3) The major national broadcast television networks (*i.e.,* ABC, CBS, Fox and NBC), affiliates of these networks in the top 25 television markets as defined by Nielsen's Designated Market Areas (DMAs) and national nonbroadcast networks serving at least 50% of all homes subscribing to multichannel video programming services shall not count electronic newsroom captioned programming towards compliance with these rules. The live portions of noncommercial broadcasters' fundraising activities that use automated software to create a continuous captioned message will be considered captioned;

* * * * *

(11) *Use of ''Electronic Newsroom Technique'' (ENT).* (i) A broadcast station that uses ENT to provide closed captioning for live programming or programming originally transmitted live and that is not subject to the current prohibition on the use of ENT in paragraph (e)(3) of this section shall be deemed in compliance with the Commission's rules requiring captioning of live programming or programming originally transmitted live if it adheres to the following procedures in the ordinary course of business:

(A) In-studio produced news, sports, weather, and entertainment programming will be scripted.

(B) For weather interstitials where there may be multiple segments within a news program, weather information explaining the visual information on the screen and conveying forecast information will be scripted, although the scripts may not precisely track the words used on air.

(C) Pre-produced programming will be scripted (to the extent technically feasible).

(D) If live interviews or live on-the scene or breaking news segments are not scripted, stations will supplement them with crawls, textual information, or other means (to the extent technically feasible).

(E) The station will provide training to all news staff on scripting for improving ENT.

(F) The station will appoint an ''ENT Coordinator'' accountable for compliance.

(ii) Nothing in this paragraph (e)(11) shall relieve a broadcast station of its obligations under § 79.2 of this chapter regarding the accessibility of programming providing emergency information.

(iii) *Informal complaints.* The Commission will forward an informal complaint regarding captioning to a broadcast station that utilizes ENT to provide captioning pursuant to the procedures set forth in paragraph (e)(11)(i) of this section only if the informal complaint contains the television channel number, network, or call sign, the name of the subscription service, if relevant, the date and time of the captioning problems, the name of the affected program, and a detailed and specific description of the captioning problems, including the frequency and type of problem.

(iv) *Compliance.* (A) *Initial response to pattern or trend of noncompliance.* If the Commission notifies a broadcast station that the Commission has identified a pattern or trend of possible noncompliance by the station with this paragraph (e)(11), the station shall respond to the Commission within 30 days regarding such possible noncompliance, describing corrective measures taken, including those measures the station may have undertaken in response to informal complaints and inquiries from viewers.

(B) *Corrective action plan.* If, after the date for a broadcast station to respond to a notification under paragraph (e)(11)(iv)(A) of this section, the Commission subsequently notifies the broadcast station that there is further evidence indicating a pattern or trend of noncompliance with this paragraph (e)(11), the broadcast station shall submit to the Commission, within 30

days of receiving such subsequent notification, an action plan describing specific measures it will take to bring the station's ENT performance into compliance with this paragraph (e)(11). In addition, the station shall be required to conduct spot checks of its ENT performance and report to the Commission on the results of such action plan and spot checks 180 days after the submission of such action plan.

(C) *Continued evidence of a pattern or trend of noncompliance.* If, after the date for submission of a report on the results of an action plan and spot checks pursuant to paragraph (e)(11)(iv)(B) of this section, the Commission finds continued evidence of a pattern or trend of noncompliance, additional enforcement actions may be taken, which may include admonishments, forfeitures, and other corrective actions, including, but not limited to, requiring the station to cease using ENT and to use real-time captioning for live programming.

(v) *Progress report.* No later than one year after the effective date of this paragraph (e)(11), broadcast stations that adhere to the procedures set forth in paragraph (e)(11)(i) shall jointly prepare and submit to the Commission, in consultation with individuals who rely on captions to watch television and organizations representing such individuals, a report on their experiences with following such procedures, and the extent to which they have been successful in providing full and equal access to live programming.

(f) * * *

(4) A petition requesting an exemption based on the economically burdensome standard, and all subsequent pleadings, shall be filed electronically in accordance with § 0.401(a)(1)(iii) of this chapter.

* * * * *

(7) Comments or oppositions to the petition shall be filed electronically and served on the petitioner and shall include a certification that the petitioner was served with a copy. Replies to comments or oppositions shall be filed electronically and served on the commenting or opposing party and shall include a certification that the commenting or opposing party was served with a copy. Comments or oppositions and replies may be served upon a party, its attorney, or other duly constituted agent by delivering or mailing a copy to the last known address in accordance with § 1.47 of this chapter or by sending a copy to the email address last provided by the party, its attorney, or other duly constituted agent.

* * * * *

(i) * * *

(3) *Providing contact information to the Commission.* Video programming distributors shall file the contact information described in this section with the Commission in one of the following ways: Through a web form located on the FCC Web site; with the Chief of the Disability Rights Office, Consumer and Governmental Affairs Bureau; or by sending an email to *CLOSEDCAPTIONING_POC@fcc.gov*. Contact information shall be available to consumers on the FCC Web site or by telephone inquiry to the Commission's Consumer Center. Distributors shall notify the Commission each time there is a change in any of this required information within 10 business days.

(j) *Captioning quality obligation; standards.* (1) A video programming distributor shall exercise best efforts to obtain a certification from each video programmer from which the distributor obtains programming stating:

(i) That the video programmer's programming satisfies the caption quality standards of paragraph (j)(2) of this section;

(ii) That in the ordinary course of business, the video programmer has adopted and follows the Best Practices set forth in paragraph (k)(1) of this section; or

(iii) That the video programmer is exempt from the closed captioning rules under one or more properly attained exemptions. For programmers certifying exemption from the closed captioning rules, the video programming distributor must obtain a certification from the programmer that specifies the exact exemption that the programmer is claiming. Video programming distributors may satisfy their best efforts obligation by locating a programmer's certification on the programmer's Web site or other widely available locations used for the purpose of posting widely available certifications. If a video programming distributor is unable to locate such certification on the programmer's Web site or other widely available location used for the purpose of posting such certification, the video programming distributor must inform the video programmer in writing that it must make widely available such certification within 30 days after receiving the written request. If a video programmer does not make such certification widely available within 30 days after receiving a written request, the video programming distributor shall promptly submit a report to the Commission identifying such non-certifying video programmer for the purpose of being placed in a publicly available database. A video programming distributor that meets each of the requirements of this paragraph shall not be liable for violations of paragraphs (j)(2) and (3) of this section to the extent that any such violations are outside the control of the video programming distributor.

(2) *Captioning quality standards.* Closed captioning shall convey the aural content of video programming in the original language (*i.e.* English or Spanish) to individuals who are deaf and hard of hearing to the same extent that the audio track conveys such content to individuals who are able to hear. Captioning shall be accurate, synchronous, complete, and appropriately placed as those terms are defined herein.

(i) *Accuracy.* Captioning shall match the spoken words (or song lyrics when provided on the audio track) in their original language (English or Spanish), in the order spoken, without substituting words for proper names and places, and without paraphrasing, except to the extent that paraphrasing is necessary to resolve any time constraints. Captions shall contain proper spelling (including appropriate homophones), appropriate punctuation and capitalization, correct tense and use of singular or plural forms, and accurate representation of numbers with appropriate symbols or words. If slang or grammatical errors are intentionally used in a program's dialogue, they shall be mirrored in the captions. Captioning shall provide nonverbal information that is not observable, such as the identity of speakers, the existence of music (whether or not there are also lyrics to be captioned), sound effects, and audience reaction, to the greatest extent possible, given the nature of the program. Captions shall be legible, with appropriate spacing between words for readability.

(ii) *Synchronicity.* Captioning shall coincide with the corresponding spoken words and sounds to the greatest extent possible, given the type of the programming. Captions shall begin to appear at the time that the corresponding speech or sounds begin and end approximately when the speech or sounds end. Captions shall be displayed on the screen at a speed that permits them to be read by viewers.

(iii) *Completeness.* Captioning shall run from the beginning to the end of the program, to the fullest extent possible.

(iv) *Placement.* Captioning shall be viewable and shall not block other important visual content on the screen,

including, but not limited to, character faces, featured text (*e.g.,* weather or other news updates, graphics and credits), and other information that is essential to understanding a program's content when the closed captioning feature is activated. Caption font shall be sized appropriately for legibility. Lines of caption shall not overlap one another and captions shall be adequately positioned so that they do not run off the edge of the video screen.

(3) *Application of captioning quality standards.* Captioning shall meet the standards of paragraph (j)(2) of this section for accuracy, synchronicity, completeness and placement, except for *de minimis* captioning errors. In determining whether a captioning error is *de minimis,* the Commission will consider the particular circumstances presented, including the type of failure, the reason for the failure, whether the failure was one-time or continuing, the degree to which the program was understandable despite the errors, and the time frame within which corrective action was taken to prevent such failures from recurring. When applying such standards to live and near-live programming, the Commission will also take into account, on a case-by-case basis, the following factors:

(i) *Accuracy.* The overall accuracy or understandability of the programming, the ability of the captions to convey the aural content of the program in a manner equivalent to the aural track, and the extent to which the captioning errors prevented viewers from having access to the programming.

(ii) *Synchronicity.* The extent to which measures have been taken, to the extent technically feasible, to keep any delay in the presentation of captions to a minimum, consistent with an accurate presentation of what is being said, so that the time between when words are spoken or sounds occur and captions appear does not interfere with the ability of viewers to follow the program.

(iii) *Completeness.* The delays inherent in sending captioning transmissions on live programs, and whether steps have been taken, to the extent technically feasible, to minimize the lag between the time a program's audio is heard and the time that captions appear, so that captions are not cut off when the program transitions to a commercial or a subsequent program.

(iv) *Placement.* The type and nature of the programming and its susceptibility to unintentional blocking by captions.

(4) *Complaints.* The Commission will forward an informal complaint regarding captioning quality to a video programming distributor only if the informal complaint contains the channel number, channel name, network, or call sign; the name of the multichannel video program distributor, if applicable; the date and time when the captioning problem occurred; the name of the program with the captioning problem; and a detailed description of the captioning problem, including specifics about the frequency and type of problem (*e.g.,* garbling, captions cut off at certain times or on certain days, and accuracy problems).

(k) *Captioning Best Practices.* (1) *Video Programmer Best Practices.* Video programmers adopting Best Practices will adhere to the following practices.

(i) *Agreements with captioning services.* Video programmers adopting Best Practices will take the following actions to promote the provision of high quality television closed captions through new or renewed agreements with captioning vendors.

(A) *Performance requirements.* Include performance requirements designed to promote the creation of high quality closed captions for video programming, comparable to those described in paragraphs (k)(2), (k)(3) and (k)(4) of this section.

(B) *Verification.* Include a means of verifying compliance with such performance requirements, such as through periodic spot checks of captioned programming.

(C) *Training.* Include provisions designed to ensure that captioning vendors' employees and contractors who provide caption services have received appropriate training and that there is oversight of individual captioners' performance.

(ii) *Operational Best Practices.* Video programmers adopting Best Practices will take the following actions to promote delivery of high quality television captions through improved operations.

(A) *Preparation materials.* To the extent available, provide captioning vendors with advance access to preparation materials such as show scripts, lists of proper names (people and places), and song lyrics used in the program, as well as to any dress rehearsal or rundown that is available and relevant.

(B) *Quality audio.* Make commercially reasonable efforts to provide captioning vendors with access to a high quality program audio signal to promote accurate transcription and minimize latency.

(C) *Captioning for prerecorded programming.* (*1*) The presumption is that pre-recorded programs, excluding programs that initially aired with real-time captions, will be captioned offline before air except when, in the exercise of a programmer's commercially reasonable judgment, circumstances require real-time or live display captioning. Examples of commercially reasonable exceptions may include instances when:

(*i*) A programmer's production is completed too close to initial air time be captioned offline or may require editorial changes up to air time (*e.g.,* news content, reality shows),

(*ii*) A program is delivered late,

(*iii*) There are technical problems with the caption file,

(*iv*) Last minute changes must be made to later network feeds (*e.g.,* when shown in a later time zone) due to unforeseen circumstances,

(*v*) There are proprietary or confidentiality considerations, or

(*vi*) Video programming networks or channels with a high proportion of live or topical time-sensitive programming, but also some pre-recorded programs, use real-time captioning for all content (including pre-recorded programs) to allow for immediate captioning of events or breaking news stories that interrupt scheduled programming.

(*2*) The video programmer will make reasonable efforts to employ live display captioning instead of real-time captioning for prerecorded programs if the complete program can be delivered to the caption service provider in sufficient time prior to airing.

(iii) *Monitoring and Remedial Best Practices.* Video programmers adopting Best Practices will take the following actions aimed at improving prompt identification and remediation of captioning errors when they occur.

(A) *Pre-air monitoring of offline captions.* As part of the overall pre-air quality control process for television programs, conduct periodic checks of offline captions on prerecorded programs to determine the presence of captions.

(B) *Real-time monitoring of captions.* Monitor television program streams at point of origination (*e.g.,* monitors located at the network master control point or electronic monitoring) to determine presence of captions.

(C) *Programmer and captioning vendor contacts.* Provide to captioning vendors appropriate staff contacts who can assist in resolving captioning issues. Make captioning vendor contact information readily available in master control or other centralized location, and contact captioning vendor promptly if there is a caption loss or obvious compromise of captions.

(D) *Recording of captioning issues.* Maintain a log of reported captioning issues, including date, time of day, program title, and description of the

issue. Beginning one year after the effective date of the captioning quality standards, such log should reflect reported captioning issues from the prior year.

(E) *Troubleshooting protocol.* Develop procedures for troubleshooting consumer captioning complaints within the distribution chain, including identifying relevant points of contact, and work to promptly resolve captioning issues, if possible.

(F) *Accuracy spot checks.* Within 30 days following notification of a pattern or trend of complaints from the Commission, conduct spot checks of television program captions to assess caption quality and address any ongoing concerns.

(iv) *Certification procedures for video programmers.* Video programmers adopting Best Practices will certify to video programming distributors that they adhere to Best Practices for video programmers and will make such certifications widely available to video programming distributors, for example, by posting on affiliate Web sites.

(2) *Real-Time (Live) Captioning Vendors Best Practices.* (i) Create and use metrics to assess accuracy, synchronicity, completeness, and placement of real-time captions.

(ii) Establish minimum acceptable standards based upon those metrics while striving to regularly exceed those minimum standards.

(iii) Perform frequent and regular evaluations and sample audits to ensure those standards are maintained.

(iv) Consider ''accuracy'' of captions to be a measurement of the percentage of correct words out of total words in the program, calculated by subtracting number of errors from total number of words in the program, dividing that number by total number of words in the program and converting that number to a percentage. For example, 7,000 total words in the program minus 70 errors equals 6,930 correct words captioned, divided by 7,000 total words in the program equals 0.99 or 99% accuracy.

(v) Consider, at a minimum, mistranslated words, incorrect words, misspelled words, missing words, and incorrect punctuation that impedes comprehension and misinformation as errors.

(A) Captions are written in a near-as-verbatim style as possible, minimizing paraphrasing.

(B) The intended message of the spoken dialogue is conveyed in the associated captions in a clear and comprehensive manner.

(C) Music lyrics should accompany artist performances.

(vi) Consider synchronicity of captions to be a measurement of lag between the spoken word supplied by the program origination point and when captions are received at the same program origination point.

(vii) Ensure placement of captions on screen to avoid obscuring on-screen information and graphics (*e.g.,* sports coverage).

(viii) Ensure proper screening, training, supervision, and evaluation of captioners by experienced and qualified real-time captioning experts.

(ix) Ensure there is an infrastructure that provides technical and other support to video programmers and captioners at all times.

(x) Ensure that captioners are qualified for the type and difficulty level of the programs to which they are assigned.

(xi) Utilize a system that verifies captioners are prepared and in position prior to a scheduled assignment.

(xii) Ensure that technical systems are functional and allow for fastest possible delivery of caption data and that failover systems are in place to prevent service interruptions.

(xiii) Regularly review discrepancy reports in order to correct issues and avoid future issues.

(xiv) Respond in a timely manner to concerns raised by video programmers or viewers.

(xv) Alert video programmers immediately if a technical issue needs to be addressed on their end.

(xvi) Inform video programmers of appropriate use of real-time captioning (*i.e.,* for live and near-live programming, and not for prerecorded programming) and what is necessary to produce quality captions, including technical requirements and the need for preparatory materials.

(xvii) For better coordination for ensuring high quality captions and for addressing problems as they arise, understand the roles and responsibilities of other stakeholders in the closed-captioning process, including broadcasters, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

(xviii) Ensure that all contracted captioners adhere to the Real-Time Captioners Best Practices contained in paragraph (k)(4) of this section.

(3) *Real-Time Captioners Best Practices.* (i) Caption as accurately, synchronously, completely, and appropriately placed as possible, given the nature of the programming.

(ii) Ensure they are equipped with a failover plan to minimize caption interruption due to captioner or equipment malfunction.

(iii) Be equipped with reliable, high speed Internet.

(iv) Be equipped with multiple telephone lines.

(v) Prepare as thoroughly as possible for each program.

(vi) File thorough discrepancy reports with the captioning vendor in a timely manner.

(vii) To the extent possible given the circumstances of the program, ensure that real-time captions are complete when the program ends.

(viii) Engage the command that allows captions to pass at commercials and conclusion of broadcasts.

(ix) Monitor captions to allow for immediate correction of errors and prevention of similar errors appearing or repeating in captions.

(x) Perform frequent and regular self-evaluations.

(xi) Perform regular dictionary maintenance.

(xii) Keep captioning equipment in good working order and update software and equipment as needed.

(xiii) Possess the technical skills to troubleshoot technical issues.

(xiv) Keep abreast of current events and topics that they caption.

(4) *Offline (Prerecorded) Captioning Vendors Best Practices.* (i) Ensure offline captions are verbatim.

(ii) Ensure offline captions are error-free.

(iii) Ensure offline captions are punctuated correctly and in a manner that facilitates comprehension.

(iv) Ensure offline captions are synchronized with the audio of the program.

(v) Ensure offline captions are displayed with enough time to be read completely and that they do not obscure the visual content.

(vii) Ensure offline captioning is a complete textual representation of the audio, including speaker identification and non-speech information.

(viii) Create or designate a manual of style to be applied in an effort to achieve uniformity in presentation.

(ix) Employ frequent and regular evaluations to ensure standards are maintained.

(x) Inform video programmers of appropriate uses of real-time and offline captioning and strive to provide offline captioning for prerecorded programming.

(A) Encourage use of offline captioning for live and near-live programming that originally aired on television and re-feeds at a later time.

(B) Encourage use of offline captioning for all original and library

prerecorded programming completed well in advance of its distribution on television.

(xi) For better coordination for ensuring high quality captions and for addressing problems as they arise, understand the roles and responsibilities of other stakeholders in the closed-captioning process, including video program distributors, video programmers, producers, equipment manufacturers, regulators, and viewers, and keep abreast of issues and developments in those sectors.

[FR Doc. 2014–06754 Filed 3–28–14; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

Small Business Programs

CFR Correction

■ In Title 48 of the Code of Federal Regulations, Chapter 2 (Parts 201 to 299), revised as of October 1, 2013, on page 136, before subpart 219.12, subpart 219.11 is reinstated to read as follows:

Subpart 219.11—Price Evaluation Adjustment for Small Disadvantaged Business Concerns

219.1101 General.

The determination to use or suspend the price evaluation adjustment for DoD acquisitions can be found at *http://www.acq.osd.mil/dpap/dars/classdev/index.htm.*

[72 FR 20763, Apr. 26, 2007]

219.1102 Applicability.

(b) The price evaluation adjustment also shall not be used in acquisitions that are for commissary or exchange resale.

(c) Also, do not use the price evaluation adjustment in acquisitions that use tiered evaluation of offers, until a tier is reached that considers offers from other than small business concerns.

[63 FR 41974, Aug. 6, 1998, as amended at 71 FR 53043, Sept. 8, 2006]

[FR Doc. 2014–07201 Filed 3–28–14; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

RIN 0750–AH54

Defense Federal Acquisition Regulation Supplement; Performance-Based Payments (DFARS Case 2011–D045)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide detailed guidance and instructions on the use of the performance-based payments analysis tool.

DATES: Effective March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 571–372–6099.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 77 FR 4638 on January 30, 2012, to provide requirements for the use of the performance-based payments (PBP) analysis tool. The PBP analysis tool is a cash-flow model for evaluating alternative financing arrangements, and is required to be used by all contracting officers contemplating the use of performance-based payments on new fixed-price type contract awards.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided as follows:

A. Adequate Accounting System

Comment: One respondent requested clarification on whether the proposed rule requires an accounting system deemed adequate by the Government.

DoD Response: FAR 32.1007(c) requires the contracting officer to determine the adequacy of controls established by the contractor for the administration of performance-based payments. Since the contractor will be required to report total cost incurred to date based on its existing accounting system, the contracting officer must consider the adequacy of the contractor's accounting system for providing reliable cost data. DFARS 232.1003–70, Criteria for use, is added to require contracting officers to consider the adequacy of an offeror's or contractor's accounting system prior to agreeing to use performance-based payments.

B. Administratively Burdensome and Costly

Comment: One respondent stated that the proposed rule is administratively burdensome, and that implementation will surpass the one hour average burden per response.

DoD Response: Performance-based payments will be paid for completed events, but not more frequently than monthly. Each request for a PBP will require the contractor to provide two dollar values: Cumulative value of PBP events completed to date and total cost incurred to date. The rule is, therefore, not administratively burdensome since it requires the contractor to provide information that should be readily available in the contractor's accounting system in the ordinary course of business. Accordingly, DoD estimates, on average, it will not take more than one hour per response.

Comment: One respondent requested clarification regarding in what manner contractors will be required to verify, or otherwise state, total costs incurred.

DoD Response: Each request for a PBP will require the contractor to provide two dollar values: Cumulative value of PBPs completed to date and total cost incurred to date. For DoD verification purposes, the final rule includes the requirement for the contractor to provide access, upon request of the contracting officer, to the contractor's books and records, as necessary, for the administration of the clause.

Comment: One respondent expressed concern that since the proposed rule forces contractors to disclose extensive cost information and report incurred costs per milestone, the costs associated with this reporting obligation will increase the cost to the Government.

DoD Response: The cost information to be provided by the contractor takes two forms: A projected expenditure profile of total cost per month which is required once when PBPs are initially proposed (i.e., as part of the contractor's proposed performance-based payments schedule that includes all performance-based payments events, completion criteria, event values, etc.) and cumulative value of PBPs completed to date and total cost incurred to date, which are required during the performance of the contract. The expenditure profile is a key element in determining the expected financing needs over time and is needed by both parties in order to establish appropriate