Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201–205, 251, 272, 274–276, and 303(r) this Report and Order in WC Docket No. 10–132 *is adopted.* The requirements of this Report and Order *shall be effective* 30 days after publication in the **Federal Register**.

Federal Communications Commission.

Sheryl Todd,

Deputy Secretary.

[FR Doc. 2013–15642 Filed 7–1–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11–154; FCC 13–84]

Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission affirms, modifies, and clarifies certain decisions adopted in the *Report and Order* in MB Docket No. 11–154 regarding closed captioning requirements for video programming delivered using Internet protocol (''IP'') and apparatus used by consumers to view video programming. The action is taken in response to three petitions for reconsideration of the *Report and Order,* which adopted rules governing the closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming.

DATES: Effective August 1, 2013.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, *Diana.Sokolow@fcc.gov,* or Maria Mullarkey, *Maria.Mullarkey@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration,* FCC 13–84, adopted on June 13, 2013 and released on June 14, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

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

Summary of the Order on Reconsideration

I. Introduction

1. In this *Order on Reconsideration,* we affirm, modify, and clarify certain decisions adopted in the *Report and Order* in MB Docket No. 11–154 regarding closed captioning requirements for video programming delivered using Internet protocol (''IP'') and apparatus used by consumers to view video programming. The actions we take will provide the industry and consumers with certainty about the scope of the captioning obligations before the January 1, 2014 compliance deadline for apparatus.

2. Specifically, we address three petitions for reconsideration of the *Report and Order,* which adopted rules governing the closed captioning requirements for the owners, providers, and distributors of IP-delivered video programming and rules governing the closed captioning capabilities of certain apparatus on which consumers view video programming. First, we address the Petition for Reconsideration of the Consumer Electronics Association (''CEA'') by: (1) Granting narrow class waivers for certain apparatus that are primarily designed for activities other than receiving or playing back video programming, while denying CEA's broader request that the Commission narrow the scope of § 79.103 of its rules; (2) denying CEA's request that removable media players are not subject to the closed captioning requirements but, at the same time, temporarily extending the compliance deadlines for Blu-ray players as well as for those DVD players that do not currently render or pass through captions, pending resolution of the *Further Notice of Proposed Rulemaking* (''FNPRM''); [1] and (3) granting CEA's request to modify the January 1, 2014 deadline applicable to apparatus to refer only to the date of manufacture, and not to the date of importation, shipment, or sale. Second, we deny the Petition for Reconsideration of TVGuardian, LLC (''TVGuardian''), which requests that the Commission reconsider its decision to allow video programming providers and distributors to enable the rendering *or* pass through of captions to end users and instead to require video programming providers and distributors, and digital source devices, to pass through closed captioning data to consumer equipment. Third, we address the Petition for Reconsideration of Consumer Groups by: (1) deferring resolution of whether to reconsider the Commission's decision to exclude video clips from the scope of the IP closed captioning rules, and directing the Media Bureau to issue a Public Notice to seek updated information on this topic within six months; and (2) issuing an *FNPRM* to obtain further information necessary to determine whether the Commission should impose synchronization requirements on device manufacturers. Our goal in this proceeding remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. In considering the requests made in the petitions for reconsideration, we have evaluated the effect on consumers who are deaf or hard of hearing as well as the cost of compliance to affected entities.

II. Background

3. On October 8, 2010, President Obama signed into law the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''). The CVAA required the Commission, by January 12, 2012, to establish closed captioning rules for the owners, providers, and distributors of IP-delivered video programming, and for certain apparatus on which consumers view video programming. The CVAA also required the Commission to establish an advisory committee known as the Video Programming Accessibility

[1] The *FNPRM,* adopted with the *Order on Reconsideration,* is published elsewhere in this publication.

Advisory Committee (''VPAAC''), which submitted its statutorily mandated report on closed captioning of IP-delivered video programming to the Commission on July 12, 2011 (''VPAAC First Report''). The Commission initiated this proceeding in September 2011, and it adopted the *Report and Order* on January 12, 2012. In the *NPRM* and the *Report and Order,* the Commission provided extensive background information regarding the history of closed captioning, IP-delivered closed captioning, applicable provisions of the CVAA, the VPAAC First Report, and the evolution of video programming distribution, which we need not repeat here.

4. The *Report and Order* was published in the **Federal Register** on March 30, 2012. CEA, TVGuardian, and Consumer Groups each filed a timely petition for reconsideration within 30 days of the **Federal Register** publication date. Each of the petitions for reconsideration is discussed in turn below.

III. Order On Reconsideration

A. Petition for Reconsideration of the Consumer Electronics Association

1. Scope of the Apparatus Closed Captioning Rules

5. As explained below, we address CEA's claims regarding the scope of the Commission's apparatus closed captioning rules, adopted pursuant to section 203 of the CVAA, by: (1) Affirming the Commission's decision that, to determine what an apparatus was ''designed to'' accomplish, we should consider the capabilities of the apparatus and not the manufacturer's subjective intent; (2) revising the note to paragraph (a) of § 79.103 of our rules to be more consistent with the statute; and (3) exempting through waiver certain narrow classes of apparatus that are primarily designed for activities unrelated to receiving or playing back video programming [2] transmitted simultaneously with sound.

6. *Meaning of ''designed to.''* We affirm the Commission's decision in the *Report and Order* that the determination of whether an apparatus was ''*designed to* receive or play back video programming transmitted simultaneously with sound'' and therefore covered by section 203 of the CVAA, should turn on the capabilities of the apparatus, not the manufacturer's intent. CEA argues that the statutory phrase ''designed to'' suggests that the closed captioning apparatus rules may only reach apparatus that the manufacturer intends to receive, play back, or record video programming.[3] We disagree. Nowhere does the statute reference the ''intent'' underlying the design and manufacture of an apparatus.

7. We disagree with CEA that Congress meant its use of the word ''designed'' to impose a consideration of the manufacturer's intent. Instead, we reiterate our finding in the *Report and Order* that we should look to the device's functionality, *i.e.,* whether it is capable of receiving or playing back video programming, to determine what the device was designed to accomplish. CEA's proposed approach of considering the manufacturer's intent would allow the manufacturer unilaterally to dictate whether an apparatus falls within the scope of the rules, which could harm consumers by making compliance with the apparatus closed captioning requirements effectively voluntary. Such an approach would not be consistent with Congress's intent to ''ensure[] that devices consumers use to view video programming are able to display closed captions,'' because devices that consumers actually use to view video programming might not have closed captioning capability if manufacturers could evade our requirements by claiming that they did not intend such use. CEA has not raised any new arguments that persuade us that the Commission's reasoning in the *Report and Order* was incorrect. Accordingly, we affirm our findings in the *Report and Order* and deny CEA's petition for reconsideration on this issue.

8. *Definition of video player.* We revise our definition of ''apparatus'' to make clear that the ''video players'' it includes are those capable of displaying video programming transmitted simultaneously with sound. The note to paragraph (a) of § 79.103 of our rules currently reads: ''Apparatus includes the physical device and the video players that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players that manufacturers direct consumers to install after sale.'' CEA argues that the Commission should revise the note to § 79.103(a) of our rules to replace the term ''video player'' with ''video programming player,'' and that we should define a ''video programming player'' as ''a component, application, or system that is specifically intended by the manufacturer to enable access to video programming, not video in general.'' CEA claims that its approach would be consistent with Congress's intent to limit the application of the apparatus closed captioning rules to apparatus containing a subset of video players, not all video players, and that the Commission's approach in the *Report and Order* exceeded its statutory authority by going beyond this intent. Consumer Groups indicate their broad opposition to CEA's arguments, but they do not make more specific assertions regarding the definition of ''video players'' subject to our rules.

9. To address CEA's argument that our rules should only reach a subset of video players, and to make the language in our rule more consistent with the statute, we revise the note to § 79.103(a) of our rules to replace references to ''video players'' with ''video player(s) capable of displaying video programming transmitted simultaneously with sound.'' Here, as elsewhere in the rules adopted in the *Report and Order,* we intend the term ''video programming'' to have the same meaning it was given in the CVAA. Accordingly, a video player that is not capable of displaying programming provided by, or generally considered comparable to programming provided by, a television broadcast station, excluding consumer-generated media, is not subject to the rules. For example, a video player that is only capable of displaying home videos that a consumer recorded on the device is not ''capable of displaying *video programming* transmitted simultaneously with sound.'' We believe that by clarifying the language of our rules to specify video players that are capable of displaying ''video programming transmitted simultaneously with sound,'' we will address CEA's fundamental concern that our definition of ''apparatus'' should be consistent with the CVAA.

10. We decline to replace the term ''video player'' with ''video programming player'' in the note to § 79.103(a). CEA's proposed definition of ''video programming player'' relies upon a consideration of the manufacturer's intent, by defining a ''video programming player'' as ''a component, application, or system that is specifically intended by the

[2] Herein we use the phrase ''video programming'' as the CVAA defines the term, which is ''programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media. . . .'' 47 U.S.C. 613(h)(2).

[3] Consumer Groups point out that CEA fails to add any substance to its argument on this issue from what it argued during the rulemaking proceeding, and argue that the Commission should reject the argument again. CEA disagrees, citing to specific new facts and arguments that it presented in its petition, and arguing that reconsideration is warranted to serve the public interest.

manufacturer to enable access to video programming.'' As discussed above, we disagree with CEA that we should look to manufacturer intent. In any event, such a change is unnecessary because the revised definition we adopt in this *Order on Reconsideration* accomplishes CEA's goal of making the definition no broader than Congress intended.

11. *Narrow class waivers for certain apparatus.* Even with the clarification above that our closed captioning apparatus rules cover video players capable of displaying video programming transmitted simultaneously with sound, we find a waiver to be appropriate for certain narrow classes of apparatus. For example, digital still cameras may be covered by our apparatus rules because they may enable consumers to use a memory card to view video programming via the apparatus's video player. Accordingly, in response to CEA's petition for reconsideration, we now exempt through waiver certain narrow classes of apparatus that are ''primarily designed'' for activities unrelated to receiving or playing back video programming transmitted simultaneously with sound. The CVAA provides the Commission with authority, on its own motion or in response to a petition, to waive the apparatus closed captioning requirements for any apparatus or class of apparatus ''primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound.'' The *Report and Order* stated that such waivers will be addressed on a case-by-case basis and rejected overly broad waiver requests made by several commenters. CEA argues that certain apparatus, such as digital still cameras and consumer video cameras, should not be subject to our rules because their manufacturers did not intend these apparatus to be used for receiving or playing back video programming. Although, for the reasons stated above, we do not agree that our analysis turns on the manufacturer's intent, we agree with CEA that these types of devices should not be subject to our rules and, as described below, we grant waivers to those devices that meet the statutory criteria for waiver as described below.

12. We grant a waiver pursuant to section 303(u)(2)(C)(i) for two classes of apparatus that we find, based on the standard described below, are ''primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound.'' Upon consideration of that standard, we conclude that the following two classes of apparatus qualify for waiver: (i) devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and our rules, and that have limited capability to display video programming transmitted simultaneously with sound;[4] and (ii) devices that are primarily designed to display still images and that have limited capability to display video programming transmitted simultaneously with sound.[5] In determining whether an apparatus or class of apparatus falls within the scope of the ''primarily designed'' waiver, we look at the various functions and capabilities of the apparatus or class of apparatus. Where the apparatus's ability to display video programming, as that term is defined in the CVAA and our rules, is only incidental, then we will determine that such apparatus is ''primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound.'' In determining whether an apparatus's ability to display video programming is incidental, we objectively look at the activities for which consumers use the apparatus, based on the apparatus's functions and capabilities and the ease with which consumers can use the apparatus to receive or play back video programming.[6] Again, the manufacturer's subjective intent is not considered in this analysis.

13. For example, applying this analysis to digital cameras, we find that it would be difficult for consumers to view video programming on digital cameras with no ability to receive content from the Internet because doing so would require transferring video programming to a memory card on another device, and then inserting the memory card into the camera. The inconvenience of taking these steps in order to view video programming on the camera screen, including the fact that a camera lacks the full panoply of playback controls typically used to view video programming, leads us to conclude that the device's ability to display video programming is incidental. Accordingly, digital cameras are an example of a device that is subject to the waiver as part of the first class of apparatus described above: devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and our rules, and that have limited capability to display video programming transmitted simultaneously with sound. In contrast, if a digital camera includes a general purpose operating system such as Android, and it can receive content from the Internet and easily display video programming transmitted simultaneously with sound in that manner, then its ability to display video programming will be considered to be more than incidental because it includes more video playback controls (via its Internet connectivity) and the ability to receive content from the Internet suggests that consumers use the apparatus to view video programming available online.

14. As stated above, under the test described herein, we find the following two classes of devices will qualify for waiver: (i) devices that are primarily designed to capture and display still and/or moving images consisting of consumer-generated media, or of other images that are not video programming as defined under the CVAA and our rules, and that have limited capability to display video programming transmitted simultaneously with sound; and (ii)

[4] This category includes, for example, digital still cameras, digital video cameras, baby monitors, security cameras, digital video camera microscopes, digital playback binoculars (which act as a combination of a binocular and a digital camera), and digital probes for viewing and playing video of enclosed spaces (which capture still and/or moving images of spaces that are difficult to reach). One factor critical to our waiver analysis is that for the listed devices, consumers use the video playback feature or function to play back the consumer-generated images (still or moving) taken by the device; but it would take additional effort by the consumer to adapt the device to access video programming. By contrast, this category does not include devices such as cell phones that capture images but that consumers use for other purposes, including receiving or playing back video programming transmitted simultaneously with sound, as evidenced, for example, by the inclusion of Internet capability on such devices. Finally, we emphasize that the list of devices identified above is intended to be merely illustrative, and not exhaustive, of the types of devices that qualify under this waiver class.

[5] This category includes, for example, digital picture frames. It does not include digital picture frames that are primarily designed to display still photographs *and* video, because consumers could use such frames to display video programming, and thus the frames could operate much like a television screen.

[6] We find that in general, the devices about which CEA expressed specific concerns (digital still cameras, digital video cameras, baby monitors, security cameras, digital video camera microscopes, digital playback binoculars, digital picture frames that display photos, and digital probes for viewing and playing video of enclosed spaces) have only an incidental ability to view video programming, if there is any such capability, because consumers purchase the devices for activities unrelated to receiving or playing back video programming (for example, in the case of digital still cameras, for taking photographs), and consumers cannot easily use the devices to receive or play back video programming.

devices that are primarily designed to display still images and that have limited capability to display video programming transmitted simultaneously with sound. We find that identifying the classes of apparatus that qualify for waiver rather than identifying a finite set of specific devices will provide industry with adequate certainty and will alleviate the need for manufacturers to seek individual waivers for each and every device that meets the specified criteria for the waiver class.[7] If it is unclear whether a particular apparatus qualifies for the waiver described herein, or if the manufacturer seeks a waiver pursuant to a separate provision of the CVAA that authorizes waivers for multi-purpose devices, then the device manufacturer may file a waiver request, which we will consider on a case-by-case basis.

15. Although CEA would have preferred that the Commission amend its rules so that they do not encompass certain devices,[8] we find that our approach of defining narrow class waivers serves the objectives of, and is most consistent with, the CVAA, which specifically grants us authority to waive the closed captioning requirements for specific classes of apparatus.[9] As explained above, we thus exercise our discretion to proceed by waiver consistent with the statute. We expect that the class waivers granted herein will provide manufacturers with certainty as to the status of the devices subject to the waivers, and thus, will not stifle innovation.

2. Application of the Apparatus Rules to Removable Media Players

16. CEA requests that the Commission reconsider its legal analysis that concludes that removable media players are apparatus covered by § 79.103 of the Commission's rules, and thus must be equipped with capability to display closed-captioned programming. Although we deny CEA's petition for reconsideration on this issue, we find that some DVD players currently satisfy the closed captioning requirements of the CVAA. With regard to other DVD players as well as Blu-ray players, we temporarily extend the deadline for compliance with our apparatus closed captioning rules pending resolution of the *FNPRM* on this issue.[10]

17. As an initial matter, we reject two statutory arguments CEA makes in support of its request to exempt removable media players from the scope of the apparatus closed captioning rules. First, we reject CEA's argument that the phrase ''transmitted simultaneously with sound'' appearing in section 203 requires transmission by wire or radio, and not merely the act of a user playing back video programming. CEA has reiterated its previous arguments regarding this issue, arguing again that ''transmitted'' means sent across a distance by wire or radio. The Commission has already considered, addressed, and rejected these arguments in the *Report and Order.* We reaffirm the Commission's prior analysis that the phrase ''transmitted simultaneously with sound'' describes how video programming is conveyed from the device to the end user, and not how the video programming arrives at the device.[11]

18. Second, we reject CEA's claim that Congress did not intend to reach removable media players within the scope of the closed captioning requirements, and that their inclusion thus exceeds Commission authority. CEA has reiterated its previous arguments regarding this issue, arguing that ''Congress meant to extend coverage to devices that play back content that was sent to the device by means (*e.g.,* via IP) other than traditional broadcasting or cable service,'' and not to ''extend[] captioning requirements to removable media players.'' The Commission has already considered, addressed, and rejected these arguments in the *Report and Order.* We reaffirm the Commission's prior analysis in this proceeding, finding that Congress indicated that section 203 of the CVAA applies to ''apparatus designed to receive or play back video programming,'' and it did not limit the scope of covered apparatus from reaching apparatus that only play back video programming as CEA claims.

19. *DVD players.* Having rejected CEA's statutory arguments, we find that some DVD players currently satisfy the closed captioning requirements of the CVAA. For other DVD players we temporarily extend the deadline for compliance with our apparatus closed captioning rules pending resolution of the *FNPRM* on this issue. The apparatus closed captioning rules and the CVAA itself require apparatus to ''be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming.'' To the extent that any DVD players render closed captions, they are not subject to the extension granted herein because they comply with the CVAA and our implementing rules since they are ''equipped with built-in closed caption decoder circuitry . . . designed to display closed-captioned video programming'' on a television. Other DVD players use their analog output to pass through closed captions to the television, which then renders the captions. We find that DVD players with pass through capability

[7] We find that there is good cause to grant the waivers. Specifically, the waivers would serve the public interest by avoiding imposing captioning compliance costs on apparatus where there is no evidence that consumers purchase such apparatus to receive or play back video programming transmitted simultaneously with sound. Additionally, the waivers are narrow and consistent with the CVAA: they apply only to apparatus primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound, where any ability to display video programming is only incidental.

[8] CEA also argues that the presence of a waiver mechanism cannot save or justify an irrational rule.

[9] Manufacturers are free to file additional requests for waiver with respect to other apparatus or classes of apparatus and we will rule on those requests based upon the facts presented. The CVAA provides the Commission with the authority to waive the apparatus closed captioning requirements based on the apparatus's primary purpose either in response to a petition by a manufacturer or on its own motion. 47 U.S.C. 303(u)(2)(C). Thus, we reject Consumer Groups' claims that we should decline to act on CEA's request in this *Order on Reconsideration* and instead should require manufacturers to file individual requests for waiver. We find that addressing the waivers herein is the most administratively efficient approach, and we note that Consumer Groups have not objected on the merits to the grant of the waivers for these narrow classes of apparatus.

[10] Although DVD players generally are single-purpose devices, manufacturers often include Blu-ray players in multi-purpose devices. The extension granted herein applies only to the removable media playback function of a DVD or Blu-ray player, and it does not apply to any other function of a device that contains a DVD or Blu-ray player. For example, if a Blu-ray player also records video programming or receives or plays back IP-delivered video programming, then the extension does not apply with respect to the non-removable media playback function.

[11] Section 203 of the CVAA expressly applies to ''apparatus designed to receive *or play back* video programming transmitted simultaneously with sound.'' 47 U.S.C. 303(u)(1) (emphasis added). Accordingly, we reject CEA's claim that the Commission's interpretation of ''transmitted simultaneously with sound'' as describing how the video programming is conveyed from the device to the end user is inconsistent with section 2(a) of the Communications Act of 1934, as amended (the ''Act''), which generally limits the Commission's jurisdiction to ''interstate and foreign communication by wire or radio'' and ''does not extend to the playback function of a consumer electronics device designed to play back content that is outside the scope of the Commission's authority.'' Rather, the plain language of the CVAA states that the Commission's apparatus closed captioning rules apply to apparatus that play back video programming transmitted simultaneously with sound, and this specific grant of jurisdiction is not limited by the authority granted in section 2(a) of the Act. *See Morales* v. *Trans World Airlines, Inc.,* 504 U.S. 374, 384–85 (1992) (''it is a commonplace of statutory construction that the specific governs the general''). Nonetheless, industry members have provided new factual evidence regarding DVD and Blu-ray players, which persuades us to grant the extension discussed below.

also comply with the CVAA because a DVD player that passes through closed captions to the television is ''equipped with built-in . . . capability designed to display closed-captioned video programming.'' In this scenario, because a DVD player does not itself contain a screen, the closed captions contained in the video programming that is being accessed through the DVD player are rendered by the television and displayed on the television screen, just as the video programming itself is being displayed. Thus, DVD players equipped with an analog output that passes through closed captioning satisfy the closed captioning requirement set forth in section 303(u)(1)(A) of the Act and our rules because they are equipped with a capability designed to display closed-captioned video programming, *i.e.,* they enable closed captions to be viewed by consumers on their television sets.[12] At the same time, we recognize that DVD players that have multiple outputs, only one of which is an analog output that passes through closed captions to the television, may not comply with the Commission's interconnection mechanism rule, which requires that ''[a]ll video outputs of covered apparatus shall be capable of conveying from the source device to the consumer equipment the information necessary to permit or render the display of closed captions.'' We find good cause, however, to waive this requirement because requiring compliance with this rule would impose increased costs on otherwise low-cost devices that have been in the marketplace for a long time and for which the market is declining, as discussed below, and because there is already some capability for consumers to view closed captions through the compliant analog output. Accordingly, in the instant case, the public interest benefits of requiring complete compliance with the Commission's interconnection mechanism rule are outweighed by the additional costs on manufacturers.

20. Regarding DVD players that do not either render or pass through closed captions, policy considerations justify an extension of the compliance deadline[13] pending resolution of the *FNPRM* on this issue. Manufacturers have expressed concerns about the costs of modifying DVD players to render the closed captioning themselves. Specifically, the record shows that DVD players generally have been in the marketplace for a long time and tend to be low-cost, and that adding captioning functionality may have a significant impact on manufacturing costs that would not be supported by consumers in the general public, potentially curtailing the continued availability of such devices in the U.S. market. Because the record demonstrates that this is a declining market, we are sensitive to imposing additional costs at this time without an adequate record. However, the current record does not identify the specific costs to manufacturers of including in DVD players an analog output that passes through closed captions to the television. Nor does it address the benefits to consumers who are deaf or hard of hearing were we to require this pass through obligation, or conversely, the harm to such consumers were we to eliminate all closed captioning obligations for DVD players. Given the above concerns, we temporarily extend the deadline for compliance with the apparatus closed captioning requirements for DVD players that do not either render or pass through closed captions, pending resolution of the *FNPRM* on this issue. We find that any hardship on consumers resulting from a temporary extension of the compliance deadline will be minimized because there are certain models of DVD players currently available that pass through closed captions to the television, which will provide a means for some individuals who are deaf or hard of hearing to view closed captions contained on DVDs.

21. *Blu-ray players.* For Blu-ray players, we temporarily extend the deadline for compliance with our apparatus closed captioning rules pending resolution of the *FNPRM* on this issue. There is no evidence in the record to suggest that any Blu-ray players today either render closed captioning themselves or pass through closed captions via the type of analog output used by DVD players. And, we have little information on the record as to what the costs would be for Blu-ray players to render or pass though captions. Moreover, we note that many, if not all, Blu-ray players are capable of playing DVDs (in addition to Blu-ray discs) but the record currently contains insufficient information regarding the technical changes required for manufacturers to ensure that these players can render or pass through captions from DVDs. These issues are further complicated by the fact that Blu-ray discs today do not contain closed captions,[14] and no industry-wide standard currently exists for closed captioning on Blu-ray discs. Given that there is no closed captioning standard for Blu-ray discs, Blu-ray players could not, as a technical matter, render closed captions on Blu-ray discs in the short term because manufacturers of the players would not know what standards to comply with. Moreover, as the Commission has previously recognized, manufacturers require some period of time to design, develop, test, manufacture, and make available for sale new products, which likely could extend beyond the compliance deadline. Thus, requiring Blu-ray players to comply with the apparatus closed captioning requirements by the January 1, 2014 compliance deadline would raise special difficulties for manufacturers. Accordingly we temporarily extend the compliance deadline with respect to Blu-ray players, pending resolution of the *FNPRM* where we seek more information on these issues. We find that any hardship on consumers resulting from a temporary extension of the compliance deadline will be minimized because Blu-ray discs currently include subtitles, which will provide a means for some individuals who are deaf or hard of hearing to access dialogue. A temporary extension will provide the Commission with an opportunity to develop a complete record with respect to Blu-ray players so that we can develop a long-term policy with respect to such devices.

22. *Other removable media players.* The temporary extensions granted herein do not apply to all ''removable media players''; rather they are expressly limited to DVD players that do not render or pass through closed captions and Blu-ray players. We decline to apply this extension more broadly because, although DVD and Blu-ray players are the current types of removable media players in the marketplace, if new types of ''removable media players'' are developed in the future, we would expect those devices to be designed with closed captioning

[12] To the extent that video technologies evolve resulting in consumers viewing video programming from DVD players on apparatus that are not capable of rendering and displaying closed captions, we will revisit this issue to ensure that consumers are not deprived of access to closed captioning of video programming. *See, e.g.,* 47 CFR 79.103(b)(1) (display-only monitors with no playback capability are exempt from our apparatus closed caption requirements).

[13] The compliance deadline for apparatus closed captioning otherwise is January 1, 2014. *See* 47 CFR 79.103(a).

[14] Subtitles for the deaf and hard of hearing (''SDH'') make some video programming accessible to consumers who are deaf or hard of hearing via existing Blu-ray and DVD players. The Commission explained in the *Report and Order* that SDH does not provide all of the features available with closed captions.

capability in mind, as required under the CVAA.

3. Application of the January 1, 2014 Deadline Only to the Date of Manufacture

23. We grant CEA's request that we specify that the January 1, 2014 apparatus compliance deadline refers only to the date of manufacture, and not to the date of importation, shipment, or sale of apparatus manufactured before that date. In the *Report and Order,* the Commission adopted a compliance deadline of January 1, 2014 for the apparatus covered by our rules. The rules that the Commission adopted to implement this deadline arguably create some ambiguity as to whether it applies to the date of importation, manufacture, or shipment of apparatus. CEA explains that, while the phrase ''manufactured in the United States or imported for use in the United States'' mirrors provisions of section 203 of the CVAA,[15] the Commission should clarify that the rules apply only to devices manufactured on or after the deadline, as it has done in other equipment compliance rules by including explanatory notes. We agree with CEA that this clarification would serve the public interest because manufacturers can identify and control the date of manufacture, but the date of importation is affected by variables outside of the manufacturer's control, and thus a deadline triggered by the date of importation may be unworkable in many situations for manufacturers. CEA also explains that its proposal will have little effect on the availability of new compliant products because of the normally brief interval between a product's manufacture and its importation. Accordingly, we add explanatory notes to §§ 79.101(a)(2), 79.102(a)(3), 79.103(a), and 79.104(a) of our rules, to clarify that the new obligations in the rules apply only to apparatus *manufactured* on or after January 1, 2014. We note that this approach is consistent with the Commission's past practices regarding similar equipment deadlines.[16]

24. Consumer Groups claim that consumer confusion may result from CEA's proposal because consumers expect that any apparatus for sale after the January 1, 2014 deadline will be compliant. Consumer Groups overlook the fact that nothing in the current apparatus rules expressly ties the compliance deadline to the date of sale. Instead, while the current rules are ambiguous with respect to the triggering event for the January 1, 2014 compliance deadline, nothing in the rules references the date of sale. Additionally, as CEA explains, while manufacturers can identify and control the date of manufacture, the date of sale is affected by variables outside of the manufacturer's control. Further, we expect that a compliance deadline based on the date of sale would create complications for retail vendors with noncompliant apparatus in their inventory after the deadline. For all of these reasons, we conclude that tying the compliance deadline to date of manufacture would best serve the public interest.

25. Further, we agree with CEA that Consumer Groups' proposal that we require manufacturers to label products to indicate which devices are compliant or noncompliant after January 1, 2014 should be dismissed as a late-filed petition for reconsideration of the *Report and Order.* Consumer Groups raised this issue in an opposition but not in a petition for reconsideration.[17] Similarly, we also agree with CEA that Consumer Groups' proposed compliance deadline based on the date of a product's sale should be dismissed as a late-filed petition for reconsideration of the *Report and Order.* Again, Consumer Groups raised this issue in an opposition but not in a petition for reconsideration.[18]

B. Petition for Reconsideration of TVGuardian, LLC

26. We deny TVGuardian's petition requesting that the Commission reconsider its decision to allow video programming providers and distributors to enable the rendering *or* pass through of captions to end users and instead require video programming providers and distributors, and digital source devices, to pass through closed caption data to consumer equipment.[19] In the *Report and Order,* the Commission required video programming providers and distributors to convey all required captions to the end user, but it allowed the provider or distributor to select whether to render the captions or pass them through. Pursuant to this requirement, the Commission stated that ''[w]hen a [video programming provider or distributor] initially receives a program with required captions for IP delivery, we will require the [video programming provider or distributor] to include those captions at the time it makes the program file available to end users.'' The Commission also implemented the interconnection mechanism provision of the CVAA, which directs the Commission to require that ''interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions.'' Consistent with that provision, the Commission required all video outputs of covered apparatus to be capable of conveying from the source device (such as an MVPD set-top box) to the consumer equipment (such as a television) the information necessary to permit or render the display of closed captions. As a result, a digital source device (such as a set-top box) is permitted to use a video output such as HDMI, which does not pass through captions in a closed manner (*i.e.,* HDMI does not transmit the closed captions to the receiving device as data alongside the video stream), provided the source device renders the closed captioning (*i.e.,* decodes and mixes the closed captions into the video stream).

27. TVGuardian asks the Commission to reconsider its finding that video programming providers and distributors may enable the rendering (instead of the pass through) of all required captions to the end user, and that video outputs of covered apparatus may convey from the source device to the consumer equipment the information necessary to render the display of closed captions (instead of passing through the closed

[15] The CVAA does not, however, impose the January 1, 2014 deadline that the Commission adopted in the *Report and Order,* nor does it specify whether the deadline must apply to the date of manufacture, the date of importation, or both.

[16] *See, e.g.,* Notes to 47 CFR 15.120(a), 79.101(a)(1), 79.102(a)(1), (2). We clarify that our application of the apparatus compliance deadline only to the date of manufacture applies only to the rules and requirements at issue in this proceeding and not to any other compliance rules, which may have deadlines that are not based solely on the date of manufacture.

[17] Additionally, from a practical standpoint, we note that a labeling requirement would impose additional compliance costs on manufacturers with little practical benefit to consumers. Specifically, labels could provide confusing and misleading information about the capabilities of apparatus. Apparatus manufactured prior to January 1, 2014 would not bear the label, even if such apparatus supported closed captions. Further, a labeling requirement would extend indefinitely, imposing costs and burdens on manufacturers despite our expectation that few, if any, noncompliant apparatus will be on store shelves within a few months of the compliance deadline.

[18] Additionally, we note that Consumer Groups misconstrue a reference in the *Report and Order* to ''mak[ing] available for sale new products'' as applying the compliance deadline based upon the date of sale. This reference was part of a sentence explaining that it generally takes two years to bring a new product to market, and it did not apply the compliance deadline to a product's date of sale.

[19] Because we reject TVGuardian's argument on substantive grounds, we find it unnecessary to address the procedural arguments raised in various oppositions filed in this proceeding.

caption data). TVGuardian claims that Congress intended to permit the rendering of captions only if passing them through would be technically infeasible. We reject TVGuardian's proposed interpretation because such an approach would effectively read the term ''or'' out of the statutory language, which permits the rendering *or* the pass through of closed captions by video programming providers, distributors, and interconnection mechanisms, thus indicating an intent by Congress to permit alternative means by which a video programming provider or distributor and an interconnection device may satisfy the statute. Not only is TVGuardian's proposed interpretation inconsistent with the statute, but also nothing in the legislative history supports TVGuardian's claim that Congress only intended to permit the rendering of closed captions if passing them through would be technically infeasible. Had Congress intended to permit rendering only if pass through is technically infeasible, it would have included language to this effect. Instead, the statute contains no such limitation.

28. The consumer electronics industry has coalesced around the use of HDMI,[20] which permits the use of rendered captions but does not pass through closed captions, meaning that it only conveys captions when they have been decoded and mixed into the video stream. The Commission found in the *Report and Order* that HDMI complies with the interconnection mechanism requirements, and TVGuardian has not presented any arguments that persuade us that the Commission should modify this determination. Rather, TVGuardian has reiterated its prior arguments that the Commission should require HDMI to pass through closed caption data. The Commission considered and rejected such arguments in the *Report and Order* when it concluded in implementing the interconnection mechanism provision of the CVAA ''that it is sufficient, for purposes of this provision, if the video output of a digital source device renders the closed captioning in the source device. Accordingly, we find that the manner in which the HDMI connection carries captions satisfies the statutory requirement for interconnection mechanisms.'' We also find persuasive commenters' rebuttal to TVGuardian's claim that it would not be costly to modify HDMI to pass through closed captions and that no additional hardware would be needed. We agree with commenters that the costs of any required compliance with a pass through requirement, including both hardware changes and standard revisions, would outweigh the benefits, as we find that any particular benefit to consumers who are deaf or hard of hearing is unclear. We note that TVGuardian's petition fails to identify any resulting benefits to individuals who are deaf or hard of hearing arising from its proposed interpretation. Rather, TVGuardian's request appears to be focused solely on enabling the use of its foul language filter, which operates through the pass through of closed caption data.[21] TVGuardian's foul language filter will not operate with rendered closed captions in the video stream because the foul language filter can only read data passed through as closed captions. Significantly, Consumer Groups did not file any comments in support of TVGuardian's petition for reconsideration.

29. We also reject TVGuardian's claims that the provisions of the CVAA on recording devices and interconnection mechanisms must be read together, which TVGuardian argues would require the pass through of closed caption data to consumer equipment. TVGuardian claims that its proposed approach is necessary to ensure that recording devices enable viewers to activate and deactivate closed captions, as required by the CVAA. We instead agree with HDMI Licensing that nothing about the Commission's interpretation of these two provisions is incompatible, because a pass through mandate on HDMI is not needed to enable recording devices to activate and deactivate closed captions on recorded programming, as explained below. Commenters persuasively express several problems with TVGuardian's claims that the Commission's interpretation of the recording device provision and the interconnection mechanism provision are inconsistent. Specifically, commenters explain that the Commission does not need to change its interpretation of these provisions because most recording devices already comply with the requirement that they enable viewers to activate and deactivate closed captions, and they explain that most consumer recording devices such as DVRs do not use interconnection mechanisms to receive content in any event so revisions to the implementation of the interconnection mechanism provision would have no effect on those recording devices.[22] In other words, few, if any, recording devices acquire video programming via an HDMI connection. Rather, the overwhelming majority of DVRs acquire programming via a built-in cable or over-the-air tuner or via a built-in IP connection. Thus, recording devices are merely required to record the closed captioning stream in addition to the video stream for consumers to be able to turn captioning on and off during playback. Even if a recording device utilizes HDMI to connect to additional consumer electronics devices, it may render closed captions instead of passing them through, and the consumer viewing programming on a recording device may activate and deactivate the closed captions.

C. Petition for Reconsideration of Consumer Groups

1. Application of the IP Closed Captioning Rules to Video Clips

30. At this time, we defer a final decision on whether to reconsider the issue of whether ''video clips'' [23] should

[20] TVGuardian asserts that HDMI violates the existing television closed captioning rules, seemingly based on the erroneous assumption that those rules include an interconnection obligation between the set-top box and the consumer display device. The television closed captioning rules are unrelated to the Commission's implementation of the CVAA in the *Report and Order.* In any event, we agree with commenters that HDMI in fact complies with the television closed captioning rules, and that TVGuardian has improperly raised the issue of HDMI's compliance with the television closed captioning rules through a petition for reconsideration of the *Report and Order,* which did not revise or address the television closed captioning rules.

[21] We note that nothing in our IP closed captioning rules prevents TVGuardian from negotiating with video programming distributors or equipment manufacturers to obtain access to closed caption data.

[22] We also reject TVGuardian's assertion that the word ''permit'' in the interconnection mechanism provision (''interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions'') is meant to require recording devices and other consumer equipment to enable the viewer to activate and deactivate the closed captions, which it claims requires the pass through of closed caption data. Rather, as explained above, the CVAA permits either the rendering or the pass through of closed captions. The rendering of closed captions prior to transmission of video over HDMI does not preclude the viewer from activating and deactivating the captions, when that function is present in the source device. In other words, even when HDMI renders closed captions instead of passing them through, the viewer may activate and deactivate the captions. Separately, because as explained above we are not persuaded by TVGuardian's central argument that we should require video programming providers and distributors and digital video source devices to pass through closed caption data to consumer equipment, we need not consider its claims that we should make other related rule revisions that would be necessitated by the grant of its petition. We note that apparatus synchronization requirements, which TVGuardian references, are discussed further below.

[23] The Commission has defined ''video clips'' as ''[e]xcerpts of full-length video programming.'' 47 CFR 79.4(a)(12). It has defined ''full-length video

Continued

be covered by the IP closed captioning rules, and we will keep the record open pending the development of additional information regarding the availability of captioned video clips.[24] To ensure that the Commission obtains updated information on this issue, we direct the Media Bureau to issue a Public Notice within six months of the date of release of this *Order on Reconsideration,* seeking information on the industry's progress in captioning IP-delivered video clips. Consumer Groups argue that the Commission should undertake a reconsideration of this issue at this time and should find that IP-delivered ''video clips'' must be captioned.[25] Consumers have expressed particular concern about availability of captioned news clips, which tend to be live or near-live. We note that live or near-live programming only recently became subject to the IP closed captioning requirements on March 30, 2013. Now that this implementation deadline has passed, we expect that entities subject to the IP closed captioning rules will have developed more efficient processes to handle captioning of live and near-live programming, including news clips that are posted on Web sites. Thus we expect that these entities voluntarily will caption an increased volume of video clips, particularly news clips, even though the Commission's IP closed captioning requirements apply to full-length programming and not video clips. In the *Report and Order,* the Commission ''encourage[d] the industry to make captions available on all TV news programming that is made available online, even if it is made available through the use of video clips.'' Accordingly, we will monitor industry actions with respect to captioning of video clips, and within six months we direct the Media Bureau to issue a Public Notice to seek updated information on this topic. If the record developed in response to that Public Notice demonstrates that consumers are denied access to critical areas of video programming due to lack of captioning of IP-delivered video clips, we may reconsider our decision on this issue.

2. Propriety of Synchronization Requirements for Apparatus

31. Consumer Groups argue that the Commission should reconsider its decision not to impose any timing obligations on device manufacturers pursuant to section 203, and that this decision contravened Congress's intent and the VPAAC's consensus. In the *Report and Order,* the Commission considered the timing of the presentation of caption text with respect to the video in the context of apparatus requirements, and it concluded that ''it is inappropriate to . . . address[] the timing of captions with video, here,'' concluding instead that ''ensuring that timing data is properly encoded and maintained through the captioning interchange and delivery system is an obligation of [s]ection 202 [video programming distributors and providers] and not of device manufacturers.'' Consumer Groups argue that the Commission should reconsider this conclusion and instead should impose on manufacturers obligations related to the synchronization of caption text and the corresponding video. We find that we need more information before we resolve this issue, because commenters disagree as to whether apparatus may cause captions to appear out of synch with the video, whether existing standards would enable manufacturers to address the timing of captions, and whether video programming owners, providers, and distributors are better suited than manufacturers to ensure proper captioning synchronization. Accordingly, in the *FNPRM* we consider whether we should impose closed captioning synchronization requirements on apparatus, and if so, what those requirements should entail.

IV. Procedural Matters

A. Regulatory Flexibility Act

32. The Regulatory Flexibility Act of 1980, as amended (''RFA'') requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''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 Small Business Administration (SBA).

33. *Final Regulatory Flexibility Certification.* As required by the RFA, as amended, the Commission has prepared this Final Regulatory Flexibility Certification of the possible impact on small entities of the *Order on Reconsideration.* In this proceeding, the Commission's goal remains to implement Congress's intent to better enable individuals who are deaf or hard of hearing to view video programming. The Commission addresses three petitions for reconsideration of the *IP Closed Captioning Order,* which created rules for the owners, providers, and distributors of IP-delivered video programming and for the apparatus on which consumers view video programming.

34. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated into the *IP Closed Captioning Order.* The instant *Order on Reconsideration* grants certain narrow class waivers of the apparatus requirements, and grants temporary extensions of the compliance deadline to some DVD players and to Blu-ray players, which will have, if anything, a positive impact on small entities subject to the requirements, thereby reducing any potential economic impact. The *Order on Reconsideration* also changes the Commission's rules by: (1) Revising references to ''video programming players'' in a note to § 79.103 of our rules to better conform to the statutory text of the CVAA; and (2) clarifying that the January 1, 2014 deadline refers only to the date of manufacture, and not to the date of importation, shipment, or sale. These rule changes merely serve to better conform the rule language to the language codified by Congress, and to clarify the deadline applicable to apparatus. Therefore, we certify that the requirements of this *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

35. The Commission will send a copy of the *Order on Reconsideration,* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C.

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programming'' as ''[v]ideo programming that appears on television and is distributed to end users, substantially in its entirety, via Internet protocol, excluding video clips or outtakes.'' *Id.* 79.4(a)(2).

[24] Consumer Groups recently submitted a report on the state of closed captioning of IP-delivered video programming in which they address the current lack of captioning of video clips, among other topics. We note that the Consumer Groups May 2013 Report also urges the Commission to impose quality standards on television closed captioning. This issue is properly addressed in the pending proceeding on the quality of closed captioning on television.

[25] Google agrees with Consumer Groups that video clips should be captioned, which would increase accessibility. Some commenters argue that Consumer Groups failed to meet the procedural requirements for petitions for reconsideration. Consumer Groups respond that there is no procedural impropriety because reconsideration would serve the public interest, and in such cases petitions for reconsideration are always appropriate. Because we decline, at this time, to resolve Consumer Groups' request regarding video clips, we need not consider these procedural issues here.

801(a)(1)(A). In addition, the *Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

B. Paperwork Reduction Act

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

C. Ex Parte Rules

37. *Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Additional Information

38. For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* or Maria Mullarkey, *Maria.Mullarkey@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

39. Accordingly, *it is ordered* that pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, this *Order on Reconsideration is adopted,* effective thirty (30) days after the date of publication in the **Federal Register**.

40. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority found in sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617, the Commission's rules *are hereby amended* as set forth below.

41. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order on Reconsideration* in MB Docket No. 11–154, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

42. *It is further ordered* that the Commission *shall send* a copy of the *Order on Reconsideration* in MB Docket No. 11–154 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

43. *It is further ordered* that CEA's Petition for Reconsideration, filed April 30, 2012, is *granted in part* and *denied in part,* to the extent provided herein.

44. *It is further ordered* that TVGuardian's Petition for Reconsideration, filed April 16, 2012, is *denied.*

45. *It is further ordered* that, pursuant to the authority found in section 303(u)(2)(C)(i) of the Communications Act of 1934, as amended, and § 1.3 of the Commission's rules, 47 CFR 1.3, a waiver of the closed captioning requirements for two narrow classes of apparatus *is granted* to the extent provided herein.

46. *It is further ordered* that a temporary extension of the closed captioning compliance deadline for DVD players that do not render or pass through closed captions, and for Blu-ray players, *is granted* to the extent provided herein.

47. *It is further ordered* that, pursuant to the authority found in § 1.3 of the Commission's rules, 47 CFR 1.3, a waiver of the Commission's interconnection mechanism requirement for DVD players that use their analog output to pass through closed captions to the television *is granted* to the extent provided herein.

List of Subjects in 47 CFR Part 79

Cable television operators, Communications equipment, Multichannel video programming distributors (MVPDs), Satellite television service providers, Television broadcasters.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 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 § 79.101 by adding a note to paragraph (a)(2) to read as follows:

§ 79.101 Closed caption decoder requirements for analog television receivers.

(a) * * *

(2) * * *

Note to paragraph (a)(2): This paragraph places no restrictions on the importing, shipping, or sale of television receivers that were manufactured before January 1, 2014.

* * * * *

■ 3. Amend § 79.102 by adding a note to paragraph (a)(3) to read as follows:

§ 79.102 Closed caption decoder requirements for digital television receivers and converter boxes.

(a) * * *

(3) * * *

Note to paragraph (a)(3): This paragraph places no restrictions on the importing, shipping, or sale of digital television receivers and separately sold DTV tuners that were manufactured before January 1, 2014.

* * * * *

■ 4. Amend § 79.103 by revising the note to paragraph (a) to read as follows:

§ 79.103 Closed caption decoder requirements for all apparatus.

(a) * * *

Note 1 to paragraph (a): Apparatus includes the physical device and the video player(s) capable of displaying video programming transmitted simultaneously with sound that manufacturers install into the devices they manufacture before sale, whether in the form of hardware, software, or a combination of both, as well as any video players capable of displaying video programming transmitted simultaneously with sound that manufacturers direct consumers to install after sale.

Note 2 to paragraph (a): This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before January 1, 2014.

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■ 5. Amend § 79.104 by adding a note to paragraph (a) to read as follows:

§ 79.104 Closed caption decoder requirements for recording devices.

(a) * * *

Note to paragraph (a): This paragraph places no restrictions on the importing, shipping, or sale of apparatus that were manufactured before January 1, 2014.

* * * * *

[FR Doc. 2013–15718 Filed 7–1–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0064; 4500030114]

RIN 1018–AZ68

Endangered and Threatened Wildlife and Plants; Critical Habitat Map for the Fountain Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are correcting the critical habitat map for the fountain darter (*Etheostoma fonticola*) in our regulations. We are taking this action to ensure regulated entities and the general public have an accurate critical habitat map for the species. This action does not change the designated critical habitat for the fountain darter.

DATES: This rule is effective July 2, 2013.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0064.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; or facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 17.95 of the regulations in title 50 of the Code of Federal Regulations (CFR) provides critical habitat information, including maps and textual descriptions, for endangered and threatened wildlife.

On July 14, 1980, we published a final rule (45 FR 47355) designating critical habitat for the fountain darter; that critical habitat entry provided both a correct map and correct textual description. However, starting with the 1986 publication, and continuing in the 1989 publication through the current edition, of the CFR, the critical habitat entry for the fountain darter includes an incorrect critical habitat map for that species. Instead of showing the correct map, the fountain darter's entry shows the critical habitat map for the San Marcos gambusia (*Gambusia georgei*). The textual description of the designated critical habitat for the fountain darter has remained correct since its 1980 publication, and the incorrect map does not match the correct textual description of critical habitat.

This final rule removes the incorrect critical habitat map, and adds in its place the correct critical habitat map, for the fountain darter. It does not change the designated critical habitat for the fountain darter, as, according to 50 CFR 17.94(b)(2), for critical habitat designations published and effective on or prior to May 31, 2012, the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the critical habitat. In such cases, the map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat.

This action is administrative in nature. We are providing regulated entities and the general public with an accurate critical habitat map, which is for reference purposes only, for the fountain darter. This is a final rule. In accordance with 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, we may make this rule effective in less than 30 days if we have ''good cause'' to do so. The rule provides an accurate map, and this action will benefit regulated entities and the general public. Therefore, we find that we have ''good cause'' to make this rule effective immediately.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will