the airplane, and the approval must specifically refer to this AD.

Parts Installation

(n) As of the effective date of this AD, no person may install any Maraging or H–11 steel fasteners in the locations specified in this AD. Where Boeing Alert Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003, specifies to install H–11 bolts (kept fasteners), this AD requires installation of inconel bolts.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs, approved previously per AD 2002–06–02, amendment 39–12678; or AD 2003–13–09, amendment 39–13209; are approved as AMOCs for the corresponding provisions of this AD, for the repaired area only.

Issued in Renton, Washington, on September 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19142 Filed 9–23–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7974–2]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by North Dakota. In the ''Rules'' section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action as not controversial. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: We must receive your comments by October 26, 2005.

ADDRESSES: Submit your comments by one of the following methods: 1. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments. 2. E-mail: *shurr.kris@epa.gov*. 3. Mail: Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St, Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. 4. Hand Delivery or Courier: to Kris Shurr, 8P–HW, U.S. EPA, Region 8, 999 18th St, Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy North Dakota's application at the following addresses: NDDH from 9 a.m. to 4 p.m., 1200 Missouri Ave, Bismarck, ND 58504–5264, contact: Curt Erickson, phone number (701) 328–5166 and EPA Region 8, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, CO 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139, e-mail: *shurr.kris@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules'' section of this **Federal Register**.

Dated: September 19, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–19137 Filed 9–23–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[CG Docket No. 05–231; FCC 05–142]

Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission grants a petition for rulemaking and initiates a proceeding to examine the Commission's closed captioning rules. Specifically, the Commission seeks comment on the current status of the Commission's closed captioning rules in ensuring that video programming is accessible to deaf and hard of hearing Americans and whether any revisions should be made to enhance the effectiveness of those rules; and several compliance and quality issues relating to closed captioning that were raised in a Petition for Rulemaking filed by Telecommunications for the Deaf, Inc., (TDI), the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network.

DATES: Comments are due on or before November 10, 2005. Reply comments are due on or before November 25, 2005. Written comments on the Paperwork Reduction Act (PRA) proposed information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before November 25, 2005.

ADDRESSES: You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.

People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L._LaLonde@omb.eop.gov*, or via fax at (202) 395–5167.

FOR FURTHER INFORMATION CONTACT: Amelia Brown, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2799 (voice), (202) 418–0597 (TTY), or e-mail at *Amelia.Brown@fcc.gov*. For additional information concerning the Paperwork Reduction Act information collection requirements contained in the document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking (*NPRM*), *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking*, CG Docket No. 05–231, FCC 05–142, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this proceeding. This is a summary of the Commission's *NPRM*, FCC 05–142, adopted July 14, 2005, and released July 21, 2005, in CG Docket No. 05–231.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this instance is CG Docket No. 05–231. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption in this proceeding, filers must submit two additional copies of each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the *NPRM*. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. The Commission strongly encourages that parties track the organization set forth in this *NPRM* in order to facilitate the Commission's internal review process. Comments and reply comments must otherwise comply with § 1.48 of the Commission's rules and all other applicable sections of the Commission's rules. (*See* 47 CFR 1.48).

Pursuant to § 1.1200 of the Commission's rules, 47 CFR 1.1200, this matter shall be treated as a ''permit-but-disclose'' proceeding in which *ex parte* communications are subject to disclosure. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206 (b) of the Commission's rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

The *NPRM* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comment are due November 25, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the

respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission we seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0761.

Title: Section 79.1 Closed Captioning of Video Programming.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Number of Respondents: 12,500 respondents—(11,500 Video Programming Providers and 1,000 complainants)

Number of Responses: 50,950 responses.

Respondents: Individuals or households; business and other for-profit entities; and not-for-profit institutions.

Estimated Time per response: 30 minutes (0.50 hours) to 10 hours.

Frequency of Response: On occasion reporting requirement; recordkeeping; third party disclosure.

Total Annual Burden: 202,215 hours.

Total Annual Costs: $500,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: On July 21, 2005, the Commission released a Notice of Proposed Rulemaking (*NPRM*), CG Docket No. 05–231, which initiates a rulemaking to examine the current status of the Commission's closed captioning rules (47 CFR 79.1) with the goal of ensuring that video programming is accessible to deaf and hard of hearing Americans. The *NPRM* seeks to determine whether any revisions should be made to enhance the effectiveness of those rules. The *NPRM* seeks comment on establishing standards for the non-technical quality of closed captioning, the potential costs of such standards for programmers and distributors, the availability of competent captioners to meet a non-technical quality standard mandate, and establishing different non-technical quality standards for pre-produced versus live programming. In addition, the *NPRM* seeks comment on whether additional mechanisms and procedures, beyond those already in the Commission's rules, are necessary to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise. The *NPRM* also seeks comment on video programming distributors' responsibility to monitor and maintain their equipment and signal transmissions, and whether specific mechanisms should be established for monitoring and maintenance. Additionally, the *NPRM* seeks comment on whether to revise the current rule to allow for shorter complaint and response times, what those time frames should be, and whether complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. Further, the *NPRM* seeks comment on requiring video programming distributors to file compliance reports as to the amount of closed captioning they provide, and any alternative methods available to verify compliance. The information collection requirements include the proposed requirements contained in the *NPRM.*

Synopsis

The *NPRM* grants a Petition for Rulemaking that was filed by TDI and several organizations representing deaf and hard of hearing consumers and seeks comment on several issues pertaining to closed captioning. The Commission first adopted rules for closed captioning of video programming in 1997. (*See 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, 13 FCC Rcd 3272 (August 22, 1997), published at 62 FR 48487, September 16, 1997), (*Closed Captioning Report and Order*).

The closed captioning rules are found at 47 CFR 79.1, and apply to any television broadcast station licensed by the Commission, any multi-channel video programming distributor (MVPD), 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. Examples of MVPDs include cable operators, multi-channel multipoint distribution services, direct broadcast satellite services, television receive-only satellite program distributors, and satellite master antenna television system operators. We note that telephone companies providing video programming to the home are subject to § 79.1 of the Commission's rules.

Non-technical Quality Standards for Closed Captioning. Currently there are no standards for non-technical quality aspects of closed captioning, such as accuracy of transcription, spelling, grammar, punctuation, placement, identification of nonverbal sounds, pop-on or roll-up style, verbatim or edited for reading speed, and type font. The *NPRM* seeks comment on certain aspects of non-technical quality issues, including whether the Commission should establish standards for the non-technical quality of closed captioning; are there non-technical quality issues other than those noted above that the Commission should consider; are there reasons not to set standards for non-technical quality aspects of closed captioning; what would the costs be to programmers and distributors of mandating non-technical quality standards; and does the captioning pool consist of an adequate number of competent captioners to meet a non-technical quality standard mandate. The *NPRM* also seeks comment on whether any non-technical quality standards should be different for pre-produced programs versus live programs. The *NPRM* seeks comment on what would constitute an ''error,'' whether specific allowable error rates should be adopted and, if so, what error rates would be appropriate.

Technical Quality Standards. In the *Closed Captioning Report and Order*, the Commission adopted a ''pass through'' rule to ensure that programming with closed captions is delivered in a complete manner with the belief that the enforcement of this rule, the captioning requirements, and §§ 15.119 and 73.682 of the Commission's rules would ensure the technical quality of captioning. Section 15.119 of the Commission's rules sets forth the closed caption decoder requirements for analog television receivers, and § 73.682 of the Commission's rules sets forth television transmission standards. The ''pass through'' rule requires video programming providers to ''pass through any captioning they receive that is included with the video programming they distribute as long as the captions do not need to be reformatted.'' The *NPRM* seeks comment on the need for additional mechanisms and procedures in addition to the ''pass through'' rule to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise. Are such mechanisms and procedures warranted? If so, what form should they take? The *NPRM* seeks comment on the kinds of technical problems experienced by consumers as well as distributors.

Monitoring of Captioning. In the *Closed Captioning Report and Order*, the Commission did not establish specific rules or steps that video programming distributors would be required to follow to ensure the delivery of captions and to make sure that the equipment used is working properly. The *NPRM* seeks comment on video programming distributors' responsibility

to monitor and maintain their equipment and signal transmissions. Should distributors have specific mechanisms in place for monitoring and maintenance of captioning? If so, what should these mechanisms consist of? What impact would such mechanisms have on distributors? The *NPRM* also seeks comment on alternate ways to ensure that captioning is delivered intact to consumers. Lastly, the *NPRM* seeks comment on whether distributors are monitoring their programming and advertising materials to ensure that a program advertised to be closed captioned is indeed closed captioned.

Complaint Procedures. The *NPRM* seeks comment on whether the Commission should revise the current rule to allow for shorter complaint and complaint response times. The *NPRM* seeks comment on what those time frames should be, and seeks comment on whether complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. If the Commission decides to retain the current complaint process, the *NPRM* seeks comment on whether the filing and response deadlines should be revised.

Accessibility of Contact Information. The *NPRM* seeks comment on whether video programming distributors should be required to post complete contact information on their Web sites, update this information on a routine basis, and provide the information to the FCC for posting on its Web site. The *NPRM* seeks comment on the experiences that deaf and hard of hearing people have had when contacting video programming distributors to complain or ask questions, and seeks comment from distributors regarding their experiences in this area.

Standardized Captioning Complaint Form. The *NPRM* seeks comment on whether a standardized captioning complaint form would be useful.

Fines and Penalties for Failure to Caption. The Commission's *Forfeiture Guidelines* do not contain any specific guidelines regarding forfeitures for violations of the closed captioning rules. The *NPRM* seeks 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. The *NPRM* directs commenters to § 1.80(b) of the Commission's rules for guidance on existing forfeitures for violations of other Commission rules.

Compliance Reports. In the *Closed Captioning Report and Order*, the Commission did not adopt reporting requirements for distributors or require the filing of periodic reports showing compliance with the closed captioning rules. The *NPRM* seeks comment on requiring video programming distributors to file compliance reports as to the amount of closed captioning they provide. The *NPRM* asks if the Commission should require such reports to be filed, and if so, how often should they be filed; how they should be filed; whether the reports should include information relating to new non-exempt programming or only information pertaining to pre-rule non-exempt and Spanish-language programming; and how a reporting requirement would be implemented. In the event the Commission were to impose a reporting requirement for closed captioning, we seek comment on whether distributors would be able to rely on certifications from programmers that the programming contains closed captioning. Are there alternative methods to verify compliance? If a reporting requirement is not imposed, the *NPRM* seeks comment on whether the Commission's rules should be amended to place a greater burden on video programming distributors to ensure that the programming they carry is captioned, regardless of the assurances they receive from programmers.

Use of Electronic Newsroom Technique. The Commission's rules prohibit the major national broadcast 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 multi-channel video programming services, from counting electronic newsroom-captioned programming towards compliance with the closed captioning rules. The *NPRM* seeks comment on whether to extend the prohibition of counting ENT generated captions to markets beyond the top 25 DMAs. The *NPRM* also seeks comment on whether the rationale that led to the Commission permitting the use of ENT by some distributors, due to ENT's lower cost, is still relevant. Have captioning costs decreased such that little hardship would result if the Commission were to further limit the circumstances under which captions created using electronic newsroom technique would be allowed to count as captioned programming?

Availability of Captioners. The *NPRM* seeks comment on the supply of captioners available for real-time and pre-recorded captioning. The *NPRM* also seeks comment on the number of companies providing closed captioning services, and on the impact that imposing a quality standard, if adopted, will have on the supply of captioners.

Electronic Filing of Exemption Requests. Currently, § 79.1 of the Commission's rules requires that a petition for a full or partial exemption from the closed captioning requirements based on an undue burden must be filed with the Commission in writing, placed on public notice, and permit interested persons to file comments or oppositions to the petition. Due to the nature of this process, the petition itself is generally not available electronically, unless a disk containing an electronic version of the petition is submitted. The *NPRM* seeks comment on requiring electronic filing for petitions for exemption from the Commission's closed captioning rules under the undue burden standard of § 79.1(f) of the Commission's rules. What impact would such a requirement have on entities filing such petitions, as well as on parties, including consumers, wishing to file comments or oppositions to the petition? The *NPRM* seeks comment on whether electronic filing should be mandated or merely allowed, and on whether an electronic filing requirement would reduce the perceived delay in processing such petitions.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on this IRFA. (*See* 5 U.S.C. 603). The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, Title II, 110 Statute 857 (1996). Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in the item. The Commission will send a copy of this entire *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a)). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**. (*See* 5 U.S.C. 603(a)).

A. Need For, and Objectives of, the Proposed Rules

We initiate this review relating to closed captioning in response to several compliance and quality issues raised in

a Petition for Rulemaking filed by Telecommunications for the Deaf, Inc., the National Association of the Deaf, Self Help for Hard of Hearing People, Inc., the Association for Late Deafened Adults, and the Deaf and Hard of Hearing Consumer Advocacy Network. This rulemaking proceeding will examine the current status of the Commission's closed captioning rules with the goal of ensuring that video programming is accessible to deaf and hard of hearing Americans. This *NPRM* also serves as a follow-up to the Commission's prior assurances at the time the closed captioning rules were adopted that certain captioning provisions would be reviewed and evaluated at a future date. As described more fully below, this *NPRM* seeks to determine whether any revisions should be made to enhance the effectiveness of those rules. In particular, the *NPRM* seeks comment on establishing standards for the non-technical quality of closed captioning, the potential costs of such standards for programmers and distributors, the availability of competent captioners to meet a non-technical quality standard mandate, and establishing different non-technical quality standards for pre-produced versus live programming. In addition, the *NPRM* seeks comment on whether additional mechanisms and procedures, beyond those already in the Commission's rules, are necessary to prevent technical problems from occurring and to expeditiously remedy any technical problems that do arise. The *NPRM* also seeks comment on video programming distributors' responsibility to monitor and maintain their equipment and signal transmissions, and whether specific mechanisms should be established for monitoring and maintenance. Additionally, the *NPRM* seeks comment on whether to revise the current rule to allow for shorter complaint and response times, what those time frames should be, and whether complainants should be permitted to complain directly to the Commission without complaining to the video programming distributor first. Further, the *NPRM* seeks comment on requiring video programming distributors to file compliance reports as to the amount of closed captioning they provide, and any alternative methods available to verify compliance.

B. Legal Basis

The authority for this *NPRM* is 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 713.

C. Description and Estimate of the Number of Small Entities Impacted

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. (5 U.S.C. 603(b)(3)). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' (5 U.S.C. 601(6)). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. (5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**''). 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. (15 U.S.C. 632).

Cable and Other Program Distribution. This category includes among others, cable systems operators, closed circuit television services, direct broadcast satellite services, home satellite dish services, multipoint distribution systems, multichannel multipoint distribution service, satellite master antenna television systems, and subscription television services. The SBA has developed a small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. (13 CFR 121.201, NAICS code 513220; changed to 517510 in October 2002). According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year. (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513220 (issued October 2000)). Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies involved herein.

Cable and Other Subscription Programming. Entities in this category ''primarily engag[e] in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.*, limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.'' (U.S. Census Bureau, ''2002 NAICS Definitions: 515210 Cable and Other Subscription Programming'' (online, July 2005, at *http://www.census.gov*)). The SBA has developed a small business size standard for this category; that size standard is $12.5 million or less in average annual receipts. (13 CFR 121.201, NAICS code 515210; changed from 513210 in October 2002). According to Census Bureau data for 1997, there were 234 firms in this category that operated for the entire year. (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513210 (issued October 2000)). Of these, 188 had annual receipts of under $10 million, and an additional 16 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of Cable and Other Subscription Programming entities increased approximately 44.5 percent from 1997 to 2002. *See* U.S. Census Bureau, 2002 Economic Census, Industry Series: ''Information,'' Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513210 (issued December 2004). The preliminary data indicate that the total number of ''establishments'' increased from 494 to 714. Data related to thenumber of ''firms,'' which takes into account the concept of common ownership or control, and includes employment and receipts numbers, will be issued in late 2005.

Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. (47 CFR 76.901(e)). The Commission developed this definition based on its

determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, published at 60 FR 10534, February 27, 1995. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. (Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996; based on figures for December 30, 1995). Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies involved herein.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also 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. (47 U.S.C. 543(m)(2)). The Commission has determined that there are 67,700,000 subscribers in the United States. *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, DA 01–158 (released January 24, 2001). Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. (47 CFR 76.901(f)). Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice, DA 01–158 (released January 24, 2001). The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934. The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 CFR 909(b).

Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million. (13 CFR 121.201, NAICS code 517510). According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year. (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4 (issued October 2000)). Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million. (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4 (issued October 2000)). Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies involved herein.

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. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. (13 CFR 121.201, NAICS code 517510). This definition provides that a small entity is one with $12.5 million or less in annual receipts. (13 CFR 121.201, NAICS code 517510). Currently, only four operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All four currently offer subscription services. Two of these four DBS operators, DirecTV, and EchoStar Communications Corporation (EchoStar), report annual revenues that are in excess of the threshold for a small business. DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide. *See* Annual Assessment of Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report, FCC 05–13, paragraph 55 (released February 4, 2005) (2005 Cable Competition Report). EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide. A third operator, Rainbow DBS, is a subsidiary of Cablevision's Rainbow Network, which also reports annual revenues in excess of $12.5 million, and thus does not qualify as a small business. (Rainbow DBS, which provides service under the brand name VOOM, reported an estimated 25,000 subscribers).

The fourth DBS operator, Dominion Video Satellite, Inc. (Dominion), offers religious (Christian) programming and does not report its annual receipts. (Dominion, which provides service under the brand name Sky Angel, does not publicly disclose its subscribership numbers on an annualized basis). The Commission does not know of any source that provides this information and, thus, we the Commission has no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. (*See* Rulemaking to Amend parts 1, 2, 21, and 25 of the Commission's rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, FCC 97–82, 12 FCC Rcd 12545, 12689 through 12690, paragraph 348 (1997), published at 62 FR 23148, April 29, 1997). The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million

in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.

The SBA has approved these small business size standards in the context of LMDS auctions. (*See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (January 6, 1998)). There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). (Amendment of parts 21 and 74 of the Commission's rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, FCC 95–230, 10 FCC Rcd 9589 and 9593, paragraph 7 (1995), published at 60 FR 36524, July 17, 1995 (MDS Auction R&O)). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. (47 CFR 21.961(b)(1)). The SBA has approved of this standard. (See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction)). The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). (Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See MDS Auction R&O, 10 FCC Rcd 9608, paragraph 34). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. (47 U.S.C. 309(j)). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). See 13 CFR 121.201, NAICS code 517910).

Concerning ITFS, the Commission notes that educational institutions are included in this analysis as small entities.

The term ''small entity'' under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). The Commission does not collect annual revenue data on ITFS licensees. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission tentatively concludes that at least 1,932 ITFS licensees are small businesses.

Open Video Services. Open Video Service (OVS) systems provide subscription services. (*See* 47 U.S.C. 573). The SBA has created a small business size standard for Cable and Other Program Distribution. (13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002)). This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 100 OVS operators to serve 75 areas, and some of these are currently providing service. (*See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of June 2004)). Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that those OVS operators remaining might qualify as small businesses that may be affected by the rules and policies proposed herein.

Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than $12 million in annual receipts. (*See* 13 CFR 121.201, NAICS Code 515120 (adopted October 2002)). Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' (NAICS Code 515120). This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. (*See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199). According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of June 26, 2004, about 860 of the 1,270 commercial television stations in the United States have revenues of $12 million or less. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has power to control both.'' 13 CFR 121.103(a)(1). The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). (FCC News Release, ''Broadcast Station Totals as of September 30, 2002''). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

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 does 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 our estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rules may impose additional reporting or recordkeeping requirements on a number of different entities. For example, the *NPRM* discusses whether video programming distributors should be required to submit reports to the Commission certifying that they are complying with monitoring and maintenance of equipment and signal transmissions. In addition the *NPRM* asks whether video programming distributors should be required to file compliance reports as to the amount of closed captioning they provide. These proposals may impose additional reporting or recordkeeping requirements on entities. The Commission seeks comment on the possible burden these requirements would place on small entities. Also, the Commission seeks comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

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

The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. (5 U.S.C. 603(b)). The Commission seeks comment on whether it should indeed be the responsibility of the video programming distributor to monitor and maintain equipment and signal transmissions and asks if specific mechanisms should be in place and what would be the impact of such mechanisms on distributors. The *NPRM* notes that, alternatively, the National Cable and Telecommunications Association (NCTA) points out that a distributor's responsibilities should not be unduly burdensome and invites comment on this matter. The *NPRM* also proposes providing a standardized captioning complaint form for consumers, which may be a useful tool to those filing complaints. In addition, the *NPRM* discusses allowing consumers to complain to video programming distributors via e-mail, phone or fax, which is aimed at providing easier options for consumers who have concerns regarding captioning problems and seek more immediate redress. The *NPRM* also points out that effective January 1, 2006, all nonexempt new English language programming must be captioned. Video programming distributors and providers will have to caption their programming. Generally, 100% compliance is required; however, particular entities, and under certain circumstances small entities, may be exempt from the captioning requirements if they qualify for an exemption pursuant to § 79.1(d) of the Commission rules, which provides for exempt programs and providers meeting the particular qualifications cited in the rule, and/or if captioning presents an undue burden pursuant to § 79.1(f) of the Commission's rule, which allows parties to file a petition with the Commission requesting an exemption from captioning upon a sufficient showing that captioning would pose significant difficulty or expense.

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

None.

Ordering Clauses

Pursuant to sections 4(i), 303(r) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 713, this Notice of Proposed Rulemaking is hereby adopted.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19161 Filed 9–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050915240–5240–01; I.D. 090905A]

RIN 0648–AS66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Essential Fish Habitat Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Generic Amendment 3 to the Fishery Management Plans (FMPs) of the Gulf of Mexico (EFH Amendment 3) prepared by the Gulf of Mexico Fishery Management Council (Council). EFH Amendment 3 would amend each of the seven Council FMPs -shrimp, red drum, reef fish, coastal migratory pelagic resources, coral and coral reefs, stone crab, and spiny lobster- to describe and identify essential fish habitat (EFH); minimize to the extent practicable the adverse effects of fishing on EFH; and encourage conservation and management of EFH. This proposed rule would establish additional habitat areas of particular concern (HAPCs), restrict fishing activities within HAPCs to protect EFH, and require a weak link in bottom trawl gear to protect EFH. The intended effect of this proposed rule is to facilitate long-term protection of EFH and, thus, better conserve and manage fishery resources in the Gulf of Mexico.

DATES: Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on November 10, 2005.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

• E-mail: *0648–AS66.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AS66.