

**List of Subjects in 42 CFR Part 484**

Health facilities, Health Professions, Medicare, Reporting and Recordkeeping Requirements.

■ For reasons set forth in the preamble, CMS amends 42 CFR part 484 as follows:

**PART 484—HOME HEALTH SERVICES**

■ 1. The authority citation for part 484 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

**Subpart B—Administration**

■ 2. Section 484.20 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 484.20 Condition of participation: Reporting OASIS information.**

\* \* \* \* \*

(a) *Standard: Encoding and transmitting OASIS data.* An HHA must encode and electronically transmit each completed OASIS assessment to the State agency or the CMS OASIS contractor, regarding each beneficiary with respect to which such information is required to be transmitted (as determined by the Secretary), within 30 days of completing the assessment of the beneficiary.

\* \* \* \* \*

(c) *Standard: Transmittal of OASIS data.* An HHA must—

(1) For all completed assessments, transmit OASIS data in a format that meets the requirements of paragraph (d) of this section.

(2) Successfully transmit test data to the State agency or CMS OASIS contractor.

(3) Transmit data using electronics communications software that provides a direct telephone connection from the HHA to the State agency or CMS OASIS contractor.

(4) Transmit data that includes the CMS-assigned branch identification number, as applicable.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: May 20, 2005.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: September 12, 2005.

**Michael O. Leavitt,**

*Secretary.*

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**BILLING CODE 4121–01–P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 64**

[CG Docket No. 03–123; FCC 05–203]

**Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission concludes that its current rules regarding eligibility criteria for compensation from the Interstate Telecommunications Relay Services (TRS) Fund do not reflect advances in the way that TRS is offered, particularly with respect to the two Internet-based forms of TRS, Video Relay Service (VRS) and Internet-Protocol (IP) Relay. Therefore, the Commission amends its rules to permit common carriers desiring to offer VRS and IP Relay service and receive compensation from the Interstate TRS Fund (Fund) to seek certification from the Commission. In doing so, the Commission largely adopts the proposal set forth in the *Second Improved TRS Order's NPRM*. Through this action, the certification procedure will permit common carriers desiring to offer only VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund without having to meet one of the existing three eligibility criteria set forth in the Commission's rules. Also in this document, the Commission addresses a related issue raised in Hands On Video Relay Services, Inc.'s (Hands On) petition for reconsideration of the *2004 TRS Report and Order*, which challenges the Commission's dismissal of Hands On application for certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS, the Commission concludes this issue is moot. Also, in this document, the Commission seeks approval from the Office of Management and Budget (OMB) for any Paperwork Reduction Act (PRA) burdens contained in this document that will modify OMB Control No. 3060–1047. The revised PRA burdens are related to new rules permitting common carriers seeking to offer VRS or IP Relay service, that are not part of a certified state program or have not contracted with an entity that

is, to qualify for compensation from the Fund through a Commission-level certification process.

**DATES:** Effective January 23, 2006, except for § 47 CFR 64.605 (a)(2), (c)(2), (e)(2), (f)(2), and (g), which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the Paperwork Reduction Act (PRA) information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before January 23, 2006.

**ADDRESSES:** You may submit PRA comments identified by [CG Docket Number 03–123 and/or OMB Control Number 3060–1047], 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.
- E-mail: Parties who choose to file by e-mail should submit their comments to Leslie Smith at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov) and to Kristy L. LaLonde at [Kristy\\_L.LaLonde@omb.eop.gov](mailto:Kristy_L.LaLonde@omb.eop.gov). Please include the CG Docket Number 03–123 and/or OMB Control Number 3060–1047 in the subject line of the message.
- Mail: Parties who choose to file by paper should submit their comments to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone (202) 418–0539 or TTY: (202) 418–0432.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov). For additional information concerning the PRA information collection requirements contained in the document, contact Leslie Smith at (202) 418–0217, or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov). If you would like to obtain or view a copy of this revised information collection, you may do so

by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pra>.

**SUPPLEMENTARY INFORMATION:** This document contains modified information collection requirements subject to the PRA of 1995, Public Law 104-13. These will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection(s) contained in this proceeding. This is a summary of the Commission's document FCC 05-203, adopted December 8, 2005, and released December 12, 2005, in CG Docket 03-123. This *Report and Order and Order on Reconsideration* addresses issues arising from the Notice of Proposed Rulemaking (NPRM) in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order, Order on Reconsideration, and NPRM (Second Improved TRS Order), CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112; published at 68 FR 50973, August 25, 2003 and 68 FR 50993, August 25, 2003; and from the Further Notice of Proposed Rulemaking (FNPRM), in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and FNPRM (2004 TRS Report and Order), CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, FCC 04-137; published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004. Also, this *Report and Order and Order on Reconsideration* addresses issues raised in the Hands On October 1, 2004, petition for reconsideration of the 2004 TRS Report and Order. The full text of document FCC 05-203 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Report and Order and Order on Reconsideration* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site <http://www.bcpweb.com> or by calling 1-800-378-3160. 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](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Document FCC 05-203 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

### Paperwork Reduction Act

This document contains modified information collection requirements. The Commission, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, and as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on the information collection requirements contained in the *Report and Order and Order on Reconsideration*. Public and agency comments are due January 23, 2006. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this document, the Commission has assessed the effects of a new TRS eligibility that will allow more entities to become VRS and IP Relay providers. The Commission finds that some entities that may seek to become providers eligible for compensation from the Fund may be business entities with fewer than 25 employees.

### Synopsis

In this *Report and Order, and Order on Reconsideration*, the Commission addresses the issue of the certification and oversight of telecommunications relay service (TRS) providers seeking compensation from the Fund, raised in the NPRM of the *Second Improved TRS Order* and the FNPRM of the *2004 TRS Report and Order*. TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. See generally 47 U.S.C. 225(a)(3). This document also addresses the related issue raised in Hands On Video Relay Services, Inc.'s (Hands On) petition for reconsideration of the *2004 TRS Report and Order*, which dismissed Hands On's

application for certification as a VRS provider eligible for compensation from the Fund. See Hands On, Petition for Partial Reconsideration, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123 (October 1, 2004) (Hands On Petition). The Commission amends the TRS regulations to permit common carriers seeking to offer VRS and IP Relay and receive compensation from the Fund to apply to the Commission for certification as an entity providing these services in compliance with the TRS rules, and therefore eligible for compensation from the Fund. See generally 47 CFR 64.601 *et seq.* (the TRS regulations). This certification procedure will permit common carriers desiring to offer VRS or IP Relay, and not the other forms of TRS, to do so without having to meet one of the existing eligibility criteria set forth in the rules. See 47 CFR 64.604(c)(5)(iii)(F) (setting forth three eligibility categories for receiving compensation from the Fund). Because the Commission adopts a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS program, the Commission concludes that the issue raised in Hands On's Petition is moot.

### Background

#### *Telecommunications Relay Service*

Title IV of the Americans with Disabilities Act of 1990 (ADA), Public Law Number 101-336, section 401, 104 Statute 227, 336-69 (1990), adding Section 225 to the Communications Act of 1934 (Act), as amended, 47 U.S.C. 225; implementing regulations at 47 CFR 64.601 *et seq.*, requires the Commission to ensure that TRS is available to persons in the United States with hearing and speech disabilities. TRS enables a person with a hearing or speech disability to communicate through the telephone system. The statute requires that TRS offer persons with hearing or speech disabilities telephone transmission services that are "functionally equivalent" to voice telephone services. 47 U.S.C. 225(a)(3). In adopting Title IV of the ADA, Congress recognized that persons with hearing or speech disabilities have long experienced barriers to their ability to access, utilize, and benefit from telecommunications services. See generally *2004 TRS Report and Order*, 19 FCC Rcd at 12479-12480, paragraph 3 (discussing legislative history of Title IV of the ADA). The intent of Title IV is to further the Act's goal of universal service by ensuring that individuals with hearing or speech disabilities have

access to the nation's telephone system. *See, e.g.*, 47 U.S.C. 225(a)(3). *See also* H.R. Report Number 485, Part 2, 101st Congress, 2nd Session at 129 (1990) (House Report).

Section 225 of the Communications Act requires certain common carriers to offer TRS throughout the areas in which they offer service. 47 U.S.C. 225(c). When TRS was implemented, TRS calls were placed using a TTY connected to the Public Switched Telephone Network (PSTN). In a "traditional" TTY text-based TRS call, the user dials the telephone number for a TRS provider using a TTY. This first step for the TRS user, the completion of the outbound call to the TRS provider, is equivalent to reaching a "dial tone." The caller then types the number of the person he or she wishes to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the "link" in the conversation, converting all TTY messages typed by the caller into voice messages, and all voice messages from the called party into typed text messages for the TTY user. The process is performed in reverse when a voice telephone user initiates a traditional TRS call to a TTY user. *See generally* 2004 TRS Report and Order, 19 FCC Rcd at 12480, paragraph 3, note 18. States have primary jurisdiction over the provision of intrastate TRS through certified state TRS programs, *see* 47 CFR 64.605 ("State Certification"); *see also* 2004 TRS Report and Order, 19 FCC Rcd at 12517–12518, paragraph 103, and are responsible for compensating the TRS providers for the costs of intrastate service. *See* 47 U.S.C. 225(c)(3)(B). When TRS providers handle interstate calls, those calls are billed to, and compensated by, the Fund. *See also* 47 CFR 64.604(c)(5)(iii)(E) and (F).

The Fund is funded by contributions from all common carriers providing interstate telecommunications services, and is administered by the TRS Fund administrator, currently the National Exchange Carrier Association, Inc. (NECA). The amount of each carrier's contribution is the product of the carrier's interstate end-user telecommunications revenue and a contribution factor determined annually by the Commission. *See* 47 CFR 64.604(c)(5)(iii)(A) and (B). The fund administrator uses these funds to compensate TRS providers for the costs of providing the various forms of TRS.

Under the TRS regulations, providers "eligible for receiving payments from the [Interstate] TRS Fund," *see* 47 CFR 64.604(c)(5)(iii)(F), must fall under one of three categories: (1) TRS facilities operated under contract with and/or by certified state TRS programs, *see* 47 CFR

64.604(c)(5)(iii)(F)(1); (2) TRS facilities owned by or operated under contract with a common carrier providing interstate services, *see* 47 CFR 64.604(c)(5)(iii)(F)(2); or (3) interstate common carriers offering TRS, *see* 47 CFR 64.604(c)(5)(iii)(F)(3). These three categories reflect the statutory regime that requires common carriers offering voice telephone service to also provide TRS, *see* 47 U.S.C. 225(c). Common carriers may offer TRS "individually, through designees, through a competitively selected vendor, or in concert with other carriers." Therefore, every common carrier required to offer TRS need not necessarily do so individually. *See* 2004 TRS Report and Order, 19 FCC Rcd at 12480, paragraph 3, note 19 (distinguishing between interstate and intrastate TRS, and giving states the option to have "certified" state TRS programs). Currently all 50 states, Puerto Rico, and the District of Columbia have certified state programs. The legislative history of Section 225 makes clear that Congress "hope[d] and expect[ed] that all states would promptly adopt a certified state program." House Report at 130.

Fund payments are made at per-minute compensation rates proposed each year by the fund administrator, and then approved or modified by the Commission in accordance with the Commission's rules. 47 CFR 64.604(c)(5)(iii). The regulations provide that "TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. \* \* \* Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval." 47 CFR 64.604(c)(5)(iii)(E). The per-minute compensation rates are presently based on the projected average cost per minute for providing each service. *See, e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, CG Docket No. 03–123, FCC 05–135, Order; published at 70 FR 38134, July 1, 2005.

In March 2000, the Commission recognized VRS as a form of TRS. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, at 5152–5154, paragraphs 21–27 (March 6, 2000); published at 65 FR 38432, June 21, 2000 and 65 FR 38490, June 21, 2000, (*Improved TRS Order and FNPRM*); *see also* 47 CFR 64.601(17) (defining VRS). VRS requires

the use of a broadband Internet connection between the VRS user and the CA, which allows the user to communicate in sign language via a video link. The CA, in turn, places an outbound telephone call to a hearing person. During the call, the CA communicates in American Sign Language (ASL) with the deaf person and by voice with the hearing person. As a result, the conversation between the two end users, deaf and hearing, flows in near real time. VRS therefore provides a degree of "functional equivalency" that is not attainable with text-based TRS, by allowing those persons whose primary language is ASL to communicate in ASL, just as a hearing person does with, *e.g.*, spoken English. As a result, VRS has quickly become a very popular service.

In April 2002, the Commission recognized a second Internet-based form of TRS—IP Relay. *See Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (April 22, 2002); published at 67 FR 39863, June 11, 2002 and 67 FR 39929, June 11, 2002, (*IP Relay Declaratory Ruling and FNPRM*). IP Relay calls are text-based calls, but the user connects to the TRS facility via a computer (or other similar device) and the Internet, rather than via a TTY and the PSTN. A user establishes a local connection to an Internet service provider using a computer, web phone, personal digital assistant, or other IP-enabled device, selects the Internet address of an IP Relay provider, and is connected to a CA who handles the call in the same way that TTY-based calls are handled. IP Relay, like VRS, has become a popular service because the user can make a relay call with any computer (or similar device) connected to the Internet, rather than with a dedicated TTY. *See Improved TRS Order and FNPRM*, 15 FCC Rcd at 5149, paragraph 15 (VRS); *IP Relay Declaratory Ruling and FNPRM*, 17 FCC Rcd 7779, at 7786, paragraph 20 (IP Relay).

#### *The Provision of VRS and IP Relay and Eligibility for Compensation From the Interstate TRS Fund*

Because the two Internet based forms of TRS—VRS and IP Relay—use the Internet for one leg of the call, it is currently not possible to determine the geographic location of the party using the service, and therefore to determine whether a particular call is interstate or intrastate. As a result, on an interim

basis, the costs of providing both *intrastate* and *interstate* VRS and IP Relay are compensated from the Fund. In addition, because VRS and IP Relay are services that are not tied to the PSTN or the provision of voice telephony, it became possible for entities that are not traditional voice telephone companies to offer these services. In particular, some entities sought to provide only VRS service under the third category of eligible TRS providers—"Interstate common carriers offering TRS"—even though they were not traditional common carriers (*i.e.*, voice telephone companies) under the statute. Such entities could provide VRS and receive compensation from the Fund either by becoming part of a certified state program (first eligibility category) or subcontracting with an entity offering TRS and eligible for compensation from the Fund (second eligibility category).

As a result, in the *NPRM* accompanying the June 2003 *Second Improved TRS Order*, the Commission sought comment on "whether, and if so, how, the Commission should amend its rules to address the provision of TRS in circumstances not presently covered by the regulations, including a provider's eligibility for cost recovery for services currently reimbursed solely from the Fund." *Second Improved TRS Order*, 18 FCC Rcd at 12444, paragraph 136. The Commission noted the absence of a Commission-level certification process for TRS providers, leaving TRS providers not participating in a certified state program without a method for qualifying for compensation for interstate TRS. The Commission therefore sought comment on whether it should establish a federal certification process, either generally or specifically for IP Relay, VRS, and "any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate." *Second Improved TRS Order*, 18 FCC Rcd at 12445, para. 139; *see also*, 18 FCC Rcd at 12444, paragraph 137.

The Commission tentatively concluded that under such a process TRS providers would apply to the Commission for certification as an interstate TRS provider, "providing evidence that they are in compliance with the mandatory minimum standards found in 47 CFR 64.604 of its rules." *Second Improved TRS Order*, 18 FCC Rcd at 12444, paragraph 137. In addition, the Commission proposed requiring such TRS providers to keep a log of any complaints received and their disposition of those complaints, detailing compliance with the mandatory minimum standards and

listing the resolution of each complaint filed against the provider. *Second Improved TRS Order*, 18 FCC Rcd at 12444, paragraph 137. The Commission included proposed rules of such a certification process, adding a fourth prong to the eligibility criteria for interstate TRS providers "certified by the Commission" pursuant to new certification rules. *Second Improved TRS Order*, 18 FCC Rcd at 12467–12468, Appendix E (setting forth proposed rules).

The commenters generally agreed that a federal certification requirement is appropriate if a TRS provider does not participate in a state TRS program, is not a traditional common carrier, and is providing Internet-based TRS, such as IP Relay and VRS. In this regard, several providers asserted that a federal certification process should be an alternative to participating in a state TRS program, and not an additional regulatory requirement for new or existing TRS providers. All supporting commenters agreed that the Commission-certified providers should also be required to submit annual complaint logs and waiver reports presently required of the existing VRS and IP Relay providers.

#### *The 2004 TRS Report and Order*

In the *2004 TRS Report and Order*, the Commission deferred a decision on this issue but invited further comment in the accompanying *FNPRM*. *2004 TRS Report and Order*, 19 FCC Rcd at 12517–12518, paragraph 103. The Commission characterized the underlying issue as two-fold: "(1) How to define those entities providing TRS that are eligible for compensation from the Fund for providing eligible services; and (2) how to ensure that such entities are providing TRS in compliance with the TRS mandatory minimum standards." *2004 TRS Report and Order*, 19 FCC Rcd at 12517–12518, paragraph 103. The Commission sought additional comment on whether it should separately "certify" and/or oversee providers of IP Relay and VRS. *2004 TRS Report and Order*, 19 FCC Rcd at 12570, paragraph 250. The Commission noted that "because for both of these services there are presently only a handful of national providers, which consumers can access via computer without regard to geographic location, it may be either unnecessary or unworkable to have all 50 states oversee these providers."

In response to the *FNPRM*, four TRS providers filed comments. Comments were filed by Hamilton (October 18, 2004), Hands On (October 15, 2004), Sorenson (October 18, 2004), and Sprint

(October 18, 2004). Hands On, Hamilton, and Sorenson support a federal certification process as a way to promote competition and innovation while decreasing administrative costs by allowing providers actually providing the service to bill the Fund directly. Hamilton asserts that a certification system would assure provider compliance with minimum TRS standards." Sorenson asserts that the state certification process is slow and costly, and that most states will certify only one provider. Comments filed by the National Association for State Relay Administration (NASRA) noted that most states would opt for one VRS provider, which would eliminate the benefits of a competitive, multi-vendor environment for VRS. Sorenson also asserts that to ensure the integrity of the Fund, new entrants should be required to file financial reports demonstrating financial stability, and that all certified providers should be required to file detailed complaint logs, annual waiver reports, and annual detailed call audit reports for all calls submitted for payment. Sorenson and Hands On also assert that existing providers should either be "grandfathered" into certification or presumed to meet the certification requirements. Sprint, however, opposes Commission certification of providers, stating that the Commission should make the provision of VRS and IP Relay mandatory and make the states responsible for compensating intrastate minutes, therefore also making the states responsible for ensuring compliance with the mandatory minimum standards. Sprint also asserts that the current complaint procedures are sufficient to keep the Commission informed about service problems, making the federal certification program an unnecessary use of Commission resources.

#### *Hands On's Application for "Certification" as a VRS Provider*

On August 30, 2002, Hands On filed an application for "certification" as a VRS provider eligible for compensation from the Fund. The application indicated that Hands On sought to provide only VRS, and not any of the mandatory relay services traditional common carriers are required to provide. Further, Hands On sought to provide VRS neither as part of a certified state program nor as a service operated in contract with a common carrier providing interstate TRS. *See* 47 CFR 64.604(c)(5)(iii)(F). Hands On argued eligibility under the third prong; *i.e.*, as an Interstate common carrier offering TRS pursuant to 47 CFR 64.604.

See 47 CFR 64.604(c)(5)(iii)(F)(3). Hands On also acknowledged that the regulations do not specify any requirement for "certification" of TRS providers as eligible for compensation from the Fund. In the *2004 TRS Report and Order*, the Commission dismissed Hands On's application without prejudice, based on the lack of a Commission certification process. *2004 TRS Report and Order*, 19 FCC Rcd at 12531, paragraph 148 (citing, in part, 47 CFR 64.605) (footnote omitted).

#### *Hands On's Petition for Reconsideration*

On October 1, 2004, Hands On filed a petition for reconsideration of, *inter alia*, the Commission's dismissal of its application for certification. See *Communication Services for the Deaf, Inc., Hands On Video Relay Service, Inc., National Video Relay Service Coalition, and Hamilton Relay, Inc., File Petitions for Reconsideration of Telecommunications Relay Service Requirements from the Report and Order, and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, DA 04–3266, Public Notice, 19 FCC Rcd 19929 (October 15, 2004); published at 69 FR 65401, November 12, 2004. Hands On seeks a ruling that it is entitled to receive compensation from the Fund without either providing its service as part of a certified state program or operating under contract with a common carrier providing interstate TRS and eligible for compensation from the Fund. Hands On asserts that it falls under the third eligibility prong of 47 CFR 64.604(c)(5)(iii)(F)(3)—"Interstate common carriers offering TRS pursuant to § 64.604 of the Commission's rules"—and that under that prong it is entitled to compensation for its service from the Fund upon giving notice, whether or not the Commission has a separate certification process. MCI, the only commenter responding to the Hands On Petition, asserts that only compliance with mandatory minimum standards is necessary for reimbursement, and no Commission-wide certification is needed.

#### **Discussion**

The Commission concludes that the present eligibility criteria for compensation from the Fund set forth in the Commission's rules do not reflect advances in the way that TRS is offered, particularly with respect to VRS and IP Relay. Therefore, the Commission amends its rules to permit common carriers desiring to offer VRS and IP Relay and receive compensation from the Fund to seek certification from the

Commission. In so doing, the Commission largely adopts the proposal set forth in *Second Improved TRS Order's NPRM*. See *Second Improved TRS Order*, 18 FCC Rcd at 12443–12445, paragraphs 134–140. This certification procedure will permit common carriers desiring to offer only VRS and/or IP Relay, and not the other forms of TRS, to receive compensation from the Fund without having to meet one of the existing three eligibility criteria set forth in the rules.

The present three categories for eligibility for compensation from the Fund were adopted at a time when *all* TRS calls were carried over telephone lines, and therefore all calls could be categorized as either interstate or intrastate. See *Telecommunications Relay Services, and the Americans With Disabilities Act of 1990*, CC Docket No. 90–571, FCC 93–357, Third Report and Order, 8 FCC Rcd 5300 (July 20, 1993), published at 58 FR 39671, July 26, 1993, (adopting TRS cost recovery rules). As a result, the states were given the primary role of regulating, and compensating, the provision of intrastate TRS through the state certification process. See generally *2004 TRS Report and Order*, 19 FCC Rcd at 12480–12483, paragraphs 4–8; see also House Report at 131. The third eligibility category—"Interstate common carriers offering TRS pursuant to § 64.604 of the Commission's rules"—has been the means by which some entities that are not voice telephone service providers have sought to offer VRS. 47 CFR 64.604(c)(5)(iii)(F)(3). The Commission previously construed the third eligibility prong, however, as applying to common carriers obligated to provide TRS in a state that does not have a certified program. In the *2004 TRS Report and Order*, the Commission noted that, as a general matter, the Commission has construed the eligibility requirements to require eligible providers to be either part of a state program or to provide service under contract with another provider obligated to provide TRS services. *2004 TRS Report and Order*, 19 FCC Rcd at 12517–12518, paragraph 103, note 304. The Commission noted that the three eligibility categories were modeled upon the ways in which common carriers may be deemed to be in compliance with their underlying obligation under sections 225(c)(1)–(2) of the Communications Act. It also noted that presently every state has a certified state TRS program, although they are not required to do so. See generally *2004 TRS Report and Order*, 19 FCC Rcd at 12481, paragraph 6, note

25. The Commission now adopts a fourth eligibility criterion, which will allow common carriers seeking to offer VRS or IP Relay and receive compensation to do so without being part of a certified state program or contracting with an entity that is. Therefore, the Commission need not revisit its prior construction of the third eligibility category. Moreover, in the event that in the future a state either declines to seek recertification or fails to qualify for recertification, common carriers in that state may need to rely on the third eligibility category to receive compensation from the Fund for eligible TRS services.

In the *Report and Order and Order on Reconsideration*, the Commission specifically allows common carriers seeking to offer VRS or IP Relay, that are not part of a certified state program or have not contracted with an entity that is, to qualify for compensation from the Fund through a Commission-level certification process. The Commission recognizes that, with the advent of Internet-based forms of TRS, and particularly with the required expertise of sign language interpreters necessary for the provision of VRS, entities that have not offered voice telephony service or traditional TRS may desire to offer VRS or IP Relay. The Commission further recognizes that requiring such entities to either contract with a state or with another provider—opportunities over which, as a practical matter, a new provider has little control—both elevates form over substance and artificially precludes new providers from offering service, thereby depriving consumers of additional choices. The record reflects that many states have been reluctant to accept VRS providers into their certified state programs. Presently, three VRS providers qualify for compensation from the Fund because they are part of a certified state program: Hands On (Washington); Sorenson (Utah); and Communication Access Center (CAC) (Michigan). The record reflects that other entities that desire to offer VRS have been unable to join a certified state program. See, e.g., *Ex Parte* Submission of Daryl Crouse, President, Snap Telecommunications, Inc. (Snap) (July 1, 2005) (submitted by counsel) (*Snap Ex Parte*) (asserting that Snap, which desires to offer VRS and receive compensation from the Fund, sought state certification but no state expressed an interest); see also NASRA Comments at 3–4 (noting that most states would opt for one VRS provider). States have little incentive to assume oversight responsibility for these services, which are offered on a

nationwide basis, particularly because states are not currently paying for the services. In addition, contracting with a provider that already offers TRS as part of a state program has made it uneconomical for some new providers to offer service. As Hands On has asserted, a “direct certification by the Commission of VRS providers is likely to decrease the cost of service by allowing providers actually delivering the service to bill the Fund directly, rather than contracting with a state agency or existing telephone carrier (that would demand a substantial share of the compensation).” The Commission concludes that common carriers seeking to provide VRS or IP Relay, and only those services, should not be precluded from doing so simply because they cannot contract with a State or another eligible TRS provider. According to Snap, the first eligibility category “is no longer a viable option for new entrants because states are either completely uninformed about TRS Fund eligibility for VRS providers (since VRS is a *non-mandatory* service under the FCC’s rules), or they are reluctant to certify and vouch for a new VRS provider due to the additional costs and burdens that might entail in terms of the state’s oversight and audit responsibilities.”

Moreover, as Hamilton, Sorenson, and the TDI Coalition have suggested, a federal certification program for VRS and IP Relay will allow the Commission to ensure that consumers receive high quality service without unduly burdening IP Relay and VRS providers. Sorenson, for example, states that “a federal certification process—if properly administered—will encourage additional TRS providers to enter the market, ensuring the widespread availability of TRS services.”

Permitting common carriers to provide VRS and IP Relay and receive compensation from the Fund through certification by the Commission furthers the goals of section 225 of the Communications Act. First, Commission certification will allow providers to offer service without contracting with a State or another TRS provider, possibly reducing the cost of providing service. Second, this *Report and Order and Order on Reconsideration* will enhance competition in the provision of VRS and IP Relay by permitting new entities to offer service, thereby giving consumers greater choice. In addition, the Commission anticipates that new providers will bring innovation to the provision of VRS and IP Relay, both with new equipment and new service features. Finally, and more broadly, because VRS requires broadband Internet service, new VRS providers

may stimulate greater broadband deployment. *See 2004 TRS Report and Order*, 19 FCC Rcd at 12568, paragraph 243.

As a result, the Commission concludes that common carriers seeking to offer VRS or IP Relay and receive compensation from the Fund independent of a certified state program or a common carrier offering TRS, may seek certification from the Commission to do so by providing documentation to the Commission as outlined below (and in amended 47 CFR 64.605). *See Rule Changes* at the end of this document. This documentation shall include, in narrative form: (1) A description of the forms of TRS to be provided; (2) a description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered, *see generally 2004 TRS Report and Order*, 19 FCC Rcd at 12594, Appendix E (summarizing waivers of TRS mandatory minimum standards for VRS and IP Relay); (3) a description of the provider’s procedures for ensuring ongoing compliance with all applicable TRS rules; (4) a description of the provider’s complaint procedures; (5) a narrative describing any areas in which the provider’s service will differ from the applicable mandatory minimum standards; (6) a narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards; (7) demonstration of status as common carrier; and (8) a statement that the provider will file annual compliance reports demonstrating continued compliance with these rules. *Non-common carriers* seeking to offer VRS or IP Relay may continue to do so by joining a certified state program or subcontracting with an entity offering TRS and eligible for compensation from the Fund. However, the Commission requires providers to be common carriers under the Commission certification procedure adopted in this *Report and Order and Order on Reconsideration*, because section 225 of the Communications Act is expressly directed at common carriers providing TRS. *See 47 U.S.C. 225(c)*; *see also 47 U.S.C. 225(a)(1)* (defining “common carrier” for purposes of Section 225 of the Communications Act). These procedures largely mirror those proposed in the *NPRM in the Second Improved TRS Order*. *See Second Improved TRS Order*, 18 FCC Rcd at 12443–12445, paragraphs 134–140.

After review of this documentation, the Commission shall certify that the provider is eligible for compensation from the Fund if the Commission finds

that: (1) The provision of VRS or IP Relay will meet or exceed all non-waived operational, technical, and functional mandatory minimum standards; (2) the VRS or IP Relay provider makes available adequate procedures and remedies for ensuring ongoing compliance with the Commission’s rules, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and (3) where the VRS or IP Relay provider’s service differs from the mandatory minimum standards, the TRS provider establishes that its service does not violate applicable mandatory minimum standards. The Commission will issue a Public Notice certifying that a VRS or IP Relay provider is eligible for compensation from the Fund under this new provision. A provider seeking eligibility must also comply with all applicable TRS regulations, including 47 CFR 64.604(c)(5)(iii)(C), (D), (E), and (G). After a VRS or IP Relay provider obtains certification under the fourth eligibility prong, the provider need only submit a letter of intent to the fund administrator in order to become eligible to receive compensation. *See 47 CFR 64.604(c)(5)(iii)(G)* (requiring an eligible provider to notify the TRS Fund administrator of its intent to participate in the Fund at least 30 days prior to seeking compensation from the Fund).

The Commission further amends 47 CFR 64.605 to provide that the certification granted under new 47 CFR 64.604(c)(5)(iii)(F)(4) shall remain in effect for five years, and that a certified provider must file for renewal at least 90 days prior to the expiration of certification by filing the documentation required for certification. Although the Commission proposed a one year certification period, the record reflects that a five year period is preferable for administrative reasons and for consistency with the certification of state programs. *See 47 CFR 64.605(c)*. In addition, the Commission amends 47 CFR 64.605 to provide that it may suspend or revoke certification if the Commission determines that certification is no longer warranted, and may require certified VRS or IP Relay providers to submit documentation demonstrating ongoing compliance with Commission rules and all applicable TRS mandatory minimum standards. These provisions largely mirror the existing certification requirements for state TRS programs.

The Commission also amends 47 CFR 64.605 to require VRS or IP Relay TRS providers certified under the fourth prong to notify the Commission of

substantive changes in their TRS programs, services, and features within 60 days of when such changes may occur, and to certify that they continue to meet federal mandatory minimum standards after implementing the substantive change. Finally, the Commission amends 47 CFR 64.605 to require these certified VRS or IP Relay providers to file with the Commission, on an annual basis, a detailed report providing evidence of ongoing compliance with all applicable TRS mandatory minimum standards. Among other TRS mandatory minimum standards, the Commission notes that certified VRS or IP Relay providers must comply with 47 CFR 64.604(c)(1), addressing consumer complaint logs and the filing of complaint log summaries with the Commission. Certified VRS and IP Relay providers must also file any annual reports required by the Commission's waiver of applicable mandatory minimum standards. See generally *2004 TRS Report and Order*, 19 FCC Rcd at 12520-12521, paragraph 111. The Commission believes that these requirements, taken together, will be sufficient to ensure that providers certified under this new provision will offer service in compliance with its rules, and will also provide a means by which the Commission can monitor compliance and service quality. The Commission therefore declines to require the filing of financial statements indicating financial stability. The Commission believes that a provider meeting the requirements adopted herein will be sufficiently qualified to offer VRS or IP Relay without a showing of its financial standing.

In sum, the Commission has adopted a new eligibility category for VRS and IP Relay providers seeking compensation from the Fund to reflect the present reality that the provision of TRS is migrating to these Internet-based services, and that VRS and IP Relay are presently operated as national services without regard to the provision of traditional PSTN-based telephony or the physical location of the users and the relay facilities. Persons with hearing and speech disabilities, entitled by section 225 of the Communications Act to functionally equivalent telephone services, will benefit by having a greater choice of VRS and IP Relay providers. The Commission anticipates that the addition of new providers will not only enhance competition, but advance technological development, increase quality of service, and reduce costs. In this way, the Commission further fulfills two statutory mandates under section

225 of the Communications Act: ensuring that TRS is available "to the extent possible and in the most efficient manner" to persons with hearing and speech disabilities, 47 U.S.C. 225(b)(1), and "encourage[ing] \* \* \* the use of existing technology and \* \* \* not discourage[ing] or impair[ing] the development of improved technology." 47 U.S.C. 225(d)(2).

#### Order on Reconsideration

Hands On seeks reconsideration of the Commission's dismissal in the *2004 TRS Report and Order* of its application for certification as a VRS provider eligible for compensation from the Fund. *2004 TRS Report and Order*, 19 FCC Rcd at 12531, paragraphs 147-148. Because the Commission adopts a new eligibility rule that permits Hands On to seek certification as a VRS provider eligible for compensation from the Fund without being part of a certified state TRS program, the Commission concludes that this issue is moot.

#### Final Regulatory Flexibility Certification

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." 5 U.S.C. 605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 605(b). 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). 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**."

This *Report and Order and Order on Reconsideration* addresses a petition for reconsideration of the Commission's prior conclusion not to certify common carriers providing TRS as eligible to receive compensation from the Fund. The *Report and Order and Order on Reconsideration* reverses the Commission's prior determination in this regard and concludes that the Commission will certify common carriers desiring to offer Video Relay Service (VRS) as TRS service providers

eligible for compensation from the Fund. The Commission concludes that the public interest is best served by Commission certification of common carriers providing VRS and IP Relay service as eligible for Interstate TRS funding. The Commission finds that by so certifying common carriers providing VRS and IP Relay services, it will enhance competition in the provision of VRS and IP Relay by permitting new entities to offer service, thereby giving consumers greater choice. In addition, the Commission anticipates that new providers will bring innovation to the provision of VRS and IP Relay, both with new equipment and new features. Moreover, the Commission does not believe that the certification of additional VRS or IP Relay service providers will have an appreciable impact on the required size of the Fund. Indeed, the Commission expects that Federal certification is likely to reduce the costs of entry of new service providers (by eliminating the need to seek State certification or contracting with a State or another TRS provider), and that additional competition will help to lower the cost of VRS and IP Relay services. Therefore, given the lack of a significant economic impact, the Commission certifies that the requirements of the *Report and Order and Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities.

The Commission also notes that, arguably, there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002). According to Census Bureau data for 1997, there were 2,225 firms in this category which 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 5, NAICS code 513310 (issued October 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.") Currently, only

eight providers are providing VRS and being compensated from the Fund: AT&T, Communication Access Center for the Deaf and Hard of Hearing, Hamilton, Hands On, MCI, Nordia, Sorenson, and Sprint. The Commission expects that only one of the providers noted above is a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of VRS and IP Relay services the costs of providing interstate service. The Commission will send a copy of this *Report and Order and Order on Reconsideration*, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. 5 U.S.C. 605(b).

### Congressional Review Act

The Commission will send a copy of this *Report and Order and Order on Reconsideration* 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).

### Ordering Clauses

Pursuant to the authority contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this *Report and Order, and Order on Reconsideration* is hereby adopted.

The Petition for Partial Reconsideration filed by Hands On *Is moot*, as provided herein, to the extent it addresses Hands On's application for certification as a VRS provider.

This *Report and Order, and Order on Reconsideration* and the amendments to §§ 64.604 and 64.605 of the Commission's rules in the Rule Changes shall be effective January 23, 2006, except for §§ 64.605(a)(2), (c)(2), (e)(2), (f)(2), and (g), which contains information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order, and Order on Reconsideration*, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

### List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch**,  
*Secretary*.

### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.604 is amended by removing the period at the end of paragraph (c)(5)(iii)(F)(3) and adding “;or” in its place, and by adding paragraph (c)(5)(iii)(F)(4) to read as follows:

#### § 64.604 Mandatory minimum standards.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(F) \* \* \*

(4) Video Relay Service (VRS) and Internet Protocol (IP) Relay providers certified by the Commission pursuant to § 64.605.

\* \* \* \* \*

■ 3. Section 64.605 is revised to read as follows:

#### § 64.605 VRS and IP Relay Provider and TRS program certification.

(a) *Documentation.* (1) *Certified state program.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned “TRS State Certification Application.” All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

(2) *VRS and IP Relay provider.* Any entity desiring to provide VRS or IP Relay services, independent from any

certified state TRS program or any TRS provider otherwise eligible for compensation from the Interstate TRS Fund, and to receive compensation from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, TRS Certification Program, Washington, DC 20554, and captioned “VRS and IP Relay Certification Application.” The documentation shall include, in narrative form:

(i) A description of the forms of TRS to be provided (*i.e.*, VRS and/or IP Relay);

(ii) A description of how the provider will meet all non-waived mandatory minimum standards applicable to each form of TRS offered;

(iii) A description of the provider's procedures for ensuring compliance with all applicable TRS rules;

(iv) A description of the provider's complaint procedures;

(v) A narrative describing any areas in which the provider's service will differ from the applicable mandatory minimum standards;

(vi) A narrative establishing that services that differ from the mandatory minimum standards do not violate applicable mandatory minimum standards;

(vii) Demonstration of status as a common carrier; and

(viii) A statement that the provider will file annual compliance reports demonstrating continued compliance with these rules.

(b) (1) *Requirements for state certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(i) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(2) Requirements for VRS and IP Relay Provider FCC Certification. After review of certification documentation,

the Commission shall certify, by Public Notice, that the VRS or IP Relay provider is eligible for compensation from the Interstate TRS Fund if the Commission determines that the certification documentation:

(i) Establishes that the provision of VRS and/or IP Relay will meet or exceed all non-waived operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the VRS and/or IP Relay provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including that it makes available for TRS users informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(iii) Where the TRS service differs from the mandatory minimum standards contained in § 64.604, the VRS and/or IP Relay provider establishes that its service does not violate applicable mandatory minimum standards.

(c)(1) *State certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) *VRS and IP Relay Provider FCC certification period.* Certification granted under this section shall remain in effect for five years. A VRS or IP Relay provider may apply for renewal of its certification by filing documentation with the Commission, at least 90 days prior to expiration of certification, containing the information described in paragraph (a)(2) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e)(1) *Suspension or revocation of state certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on its own motion, require a certified state program to

submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the minimum standards.

(2) *Suspension or revocation of VRS and IP Relay Provider FCC certification.* The Commission may suspend or revoke the certification of a VRS or IP Relay provider if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. The Commission may, on its own motion, require a certified VRS or IP Relay provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified VRS or IP Relay provider may not be in compliance with the minimum standards.

(f) *Notification of substantive change.*

(1) States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) VRS and IP Relay providers certified under this section must notify the Commission of substantive changes in their TRS programs, services, and features within 60 days of when such changes occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

(g) VRS and IP Relay providers certified under this section shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604.

[FR Doc. 05-24419 Filed 12-22-05; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 050915240-5332-02; 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:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Generic Amendment 3 to the Fishery Management Plans (FMPs) of the Gulf of Mexico (EFH Amendment 3), which was prepared by the Gulf of Mexico Fishery Management Council (Council). EFH Amendment 3 amends 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 final rule establishes additional habitat areas of particular concern (HAPCs), restricts fishing activities within HAPCs to protect EFH, and requires a weak link in bottom trawl gear to protect EFH. The intended effect of this final rule is to facilitate long-term protection of EFH and, thus, better conserve and manage fishery resources in the Gulf of Mexico.

**DATES:** This final rule is effective January 23, 2006, except for § 622.34(q), which is effective January 24, 2006.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) are available from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305; fax: 727-824-5308; e-mail:

*Peter.Hood@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:**

Peter Hood, telephone: 727-551-5728; fax: 727-824-5308; e-mail:

*Peter.Hood@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** EFH Amendment 3 addresses fisheries under the FMPs for coral and coral reef resources, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. The FMPs were prepared by the Council, except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. All of these FMPs, except the spiny lobster and stone crab FMPs, are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic is implemented by regulations at 50 CFR part 640. The Fishery Management Plan for the Stone Crab