

April 23, 1997), because it approves a state rule implementing a Federal Standard.

*National Technology Transfer Advancement Act*

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 62**

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: June 24, 2008.

**Richard C. Karl,**

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 62 is amended as follows:

**PART 62—[AMENDED]**

■ 1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart P—Indiana**

■ 2. Sections 62.3650, 62.3651, and 62.3652 to subpart P are revised to read as follows:

\* \* \* \* \*

**§ 62.3650 Identification of plan.**

(a) On September 30, 1999, Indiana submitted the State Plan for implementing the Federal Large Municipal Waste Combustor (MWC) Emission Guidelines to control emissions from existing MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste. The enforceable mechanism for this plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11–7. The rule was adopted on September 2, 1998, filed with the Secretary of State on January 18, 1999, and became effective on February 17, 1999. The rule was published in the Indiana State Register on March 1, 1999 (22 IR 1967).

(b) On August 24, 2007, Indiana submitted a revised State plan as required by sections 129(a)(5) and 129(b)(2) of the Act. The revised (Phase II) State plan implements amendments to 40 CFR part 60, subpart Cb published in the **Federal Register** on May 10, 2006. The Phase II State plan includes an amendment to State Rule 326 IAC 11–7, that was adopted by Indiana on February 7, 2007.

**§ 62.3651 Identification of sources.**

The plan applies to all existing municipal waste combustors with the capacity to combust greater than 250 tons per day of municipal solid waste, and for which construction, reconstruction, or modification was commenced on or before September 20, 1994, as consistent with 40 CFR part 60, subpart Cb. Subject facilities include the Indianapolis Resource Recovery Facility in Indianapolis, Indiana.

**§ 62.3652 Effective date.**

The effective date of Phase I of the approval of the Indiana State Plan for municipal waste combustors with the capacity to combust greater than 250 tons per day of municipal solid waste was January 18, 2000.

Phase II of the plan revision is effective September 8, 2008.

\* \* \* \* \*

[FR Doc. E8–15349 Filed 7–7–08; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[CG Docket No. 03–123; FCC 08–138]

**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 clarifies its restrictions on the use of consumer or call database information by telecommunications relay service (TRS) providers to contact consumers of interstate TRS. The Commission concludes that TRS providers may use information derived from a consumer or call database to contact TRS users for purposes related to the handling of relay calls, as well as to comply with a federal statute, Commission rule or order, a court order, or other lawful authority.

**DATES:** Effective May 28, 2008.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Lisa Boehley, Consumer and Governmental Affairs Bureau, Consumer Policy Division at (202) 418–7395 (voice), or e-mail at [lisa.boehley@fcc.gov](mailto:lisa.boehley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling (*Consumer Contacts Declaratory Ruling*), FCC 08–138, adopted and released May 28, 2008, in CG Docket No. 03–123. FCC 08–138 addresses issues arising from the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and

Declaratory Ruling (*2007 TRS Cost Recovery Declaratory Ruling*), CG Docket No. 03–123, FCC 07–186, published at 73 FR 3197, January 17, 2008. The full text of FCC 08–138 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. FCC 08–138 also may 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 a copy of FCC 08–138 in an accessible format 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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). FCC 08–138 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html>.

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

FCC 08–138 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 106–198, *see* 44 U.S.C. 3506(c)(4).

#### **Synopsis**

##### *Background*

1. In the *2007 TRS Cost Recovery Declaratory Ruling*, the Commission reiterated that providers seeking compensation from the Interstate TRS Fund “may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls.” *2007 TRS Cost Recovery Declaratory Ruling* at paragraph 92. The Commission also specified in greater detail the nature and types of incentive programs that are impermissible, clarified that “a financial incentive program is not permissible even in circumstances where the benefit goes to a third party,” and stated that providers cannot condition the ongoing use or possession of TRS equipment (or the receipt of upgraded equipment) on a consumer’s call volume. *2007 TRS Cost Recovery Declaratory Ruling* at

paragraphs 92 to 94. In addition, the *2007 TRS Cost Recovery Declaratory Ruling* addressed in greater detail providers’ use of consumer or call databases to contact consumers for lobbying or to attempt to influence their use of relay. *2007 TRS Cost Recovery Declaratory Ruling* at paragraphs 95 and 96. In particular, it prohibited providers from using a consumer or call database to contact TRS users “for lobbying or any other purpose,” and prohibited providers from using a consumer or call database to “contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service.” *2007 TRS Cost Recovery Declaratory Ruling* at paragraphs 95 and 96.

2. Following release of the *2007 TRS Cost Recovery Declaratory Ruling*, several TRS providers, in filings with the Commission, asserted that the restrictions contained in paragraphs 95 and 96 of that ruling violate the First Amendment rights of TRS providers. In January 2008, Sorenson Communications, Inc. (Sorenson), filed a Petition for Review with the United States Court of Appeals for the Tenth Circuit seeking judicial review of this language, and sought a stay from the Commission pending resolution of its Petition for Review. *Sorenson Communications v. FCC*, Petition for Review, Nos. 08–9503 and 08–9507 (10th Circuit January 16, 2008 (08–9503) and January 23, 2008 (08–9507)); Sorenson Communications, Inc., *Request for Stay Pending Judicial Review*, CG Docket No. 03–123 (January 28, 2008) (*Stay Request*). Among other things, Sorenson contended that the restrictions contained in paragraphs 95 and 96 are unconstitutionally vague, violate the First Amendment rights of TRS providers, and are procedurally deficient under the Administrative Procedure Act.

3. In order to give the Commission sufficient time to consider the arguments presented by Sorenson and others, the Commission’s Consumer and Governmental Affairs Bureau (CGB) issued an order on February 7, 2008, granting a 90-day stay of paragraphs 95 and 96. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Request for Stay Pending Judicial Review*, CG Docket No. 03–123, Order, 23 FCC Rcd 1705 (CGB Feb. 7, 2008), published at 73 FR 21843, April 23, 2008. The stay granted by that order was subsequently extended until May 28, 2008. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Request for Stay Pending*

*Judicial Review*, CG Docket No. 03–123, Order, DA 08–1079 (CGB May 6, 2008).

##### *Discussion*

4. In FCC 08–138, the Commission states that reasonable restrictions on the use of consumer information are necessary to prevent improper marketing practices and to ensure that interstate TRS funds are used for their intended purpose. However, to address concerns that the restrictions set forth in paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* may be overly broad and may have the unintended effect of preventing TRS providers from communicating important information, including critical public safety information, to TRS users relating to the handling of relay calls, the Commission clarifies the restrictions in those paragraphs. The Commission also provides examples of the circumstances in which providers may use consumer or call databases to contact relay users.

5. First, the Commission clarifies that the language in paragraphs 95 and 96 restricting the use of consumer information “for any \* \* \* purpose,” does not prohibit contacts by TRS providers with TRS users that are directly related to the handling of TRS calls. Consistent with the Commission’s TRS rules and orders, providers may use information derived from a consumer or call database established in conjunction with Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, to contact users as long as it is for purposes *related to the handling of relay calls*. Therefore, for example, a provider reasonably could directly contact relay users (using such customer information) in order to inform users of a service outage, respond to a consumer’s call for emergency services, assist in the delivery of emergency services, and provide technical support for TRS products or services used by the consumer. Providers also may use customer data, for example, to comply with a federal statute, a Commission rule or order, a court order, or other lawful authority. The Commission emphasizes that any such direct contacts with relay users must be informational in nature and must relate to the provision of, or the consumer’s use of, TRS.

6. On the other hand, providers may not contact consumers and offer financial or other incentives to generate additional or longer calls that can be billed to the Fund because such contacts are not directly related to the purpose of handling relay calls. The Commission may revisit these determinations if

specific facts are brought to its attention suggesting an abuse of this proviso.

7. The Commission declines to address the request that it explicitly allow the disclosure of user-specific information to third parties designated by the user and information to protect TRS users from fraudulent, abusive or unlawful use of TRS. The Commission believes this issue would be better addressed in the context of its consideration of whether, and if so, how to extend customer proprietary network information (CPNI) requirements to TRS providers. See *Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities, E911 Requirements For IP-Enabled Service Providers*, CG 03–123, WC 05–196, Report and Order, 23 FCC Rcd 5255 (Mar. 19, 2008) (*Interim Emergency Call Handling Order*), published at 73 FR 21252, April 21, 2008; *Consumer and Governmental Affairs Bureau Seeks to Refresh Record on Assigning Internet Protocol (IP)-Based Telecommunications Relay Service (TRS) Users Ten-Digit Telephone Numbers Linked to North American Numbering Plan (NANP) and Related Issues*, CG Docket No. 03–123, Public Notice, 23 FCC Rcd 4727 (Mar. 19, 2008) (*IP-Based Relay Numbering PN*), published at 73 FR 16304, March 27, 2008, (seeking to refresh the record on the proposed establishment of a global database of proxy telephone numbers for Internet-based TRS users and on consumer protection issues related to numbering, including the application of CPNI requirements). Although consumer advocates have asked the Commission to ensure that consumers be asked by providers to opt-in to receiving marketing and promotional materials before receiving such information directly from providers, the Commission defers this issue for consideration in the context of whether, and if so, how to extend CPNI requirements to TRS providers. See *Interim Emergency Call Handling Order; IP-Based Relay Numbering PN*.

8. Second, the Commission clarifies that providers may not use customer information obtained through the provision of federally-funded relay services, or use funds obtained from the Interstate TRS Fund, to engage in lobbying or advocacy activities directed at relay users. Evidence in the record shows that at least one service provider has bombarded deaf persons with material seeking to persuade them to support the provider's position on matters pending before the FCC. See, e.g., *Ex parte* letter from Jon Ziev, consumer, to Kevin Martin, FCC (dated

Feb. 4, 2008) (complaining that deaf persons are being subjected to a “virtual bombardment of lobbying material”). The Commission finds that using revenue from the Interstate TRS Fund, or information obtained from end users in the provision of services supported by the Interstate TRS Fund, to engage in that kind of advocacy is inconsistent with the purpose of the fund.

9. The Commission finds that these restrictions do not run afoul of the First Amendment. In the context of a federally subsidized program, like the Interstate TRS Fund, the government “may certainly insist that these ‘public funds be spent for the purposes for which they were authorized.’” *United States v. American Library Ass’n*, 539 U.S. 194, 212 (2003) (quoting *Rust v. Sullivan*, 500 U.S. 173, 196 (1991)). The Interstate TRS Fund is designed to ensure that persons with hearing and speech disabilities have access to the telephone system. It was not intended to finance lobbying by TRS providers directed at end users. The Commission is under no obligation “to fund such activities out of the public fisc.” *Rust*, 500 U.S. at 198. For the same reasons, it is reasonable to restrict the use of customer information acquired in the provision of federally subsidized TRS services. A consumer or call database that a service provider develops and maintains through participation in the TRS program is inextricably tied to that federally funded program. Consequently, it is permissible to prohibit the use of that database for purposes unrelated to the handling of relay calls, such as lobbying end users to support a service provider's position before the Commission.

10. Nothing the Commission does in this document would prevent a provider from using information and funds from other sources to engage in lawful lobbying or advocacy activities. Thus, this is not an “unconstitutional conditions” case in which the government “effectively prohibit[ed] the recipient from engaging in the protected conduct outside the scope of the federally funded program.” *Rust*, 500 U.S. at 197; see also *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 544–46 (1983) (holding that tax exemption for non-profit groups that do not engage in lobbying did not violate First Amendment; and noting that a group could qualify for the tax exemption by adopting a “dual structure,” with one arm for non-lobbying activities and another for lobbying); *DKT Int’l, Inc. v. United States Agency for Int’l Development*, 477 F.3d 758 (D.C. Cir. 2007) (rejecting First Amendment challenge to

requirement that recipients of funds from AIDS/HIV education program adopt policy of opposition to prostitution and sexual trafficking, and noting that recipients could remain neutral by setting up a subsidiary that would receive the funds and adopt the policy). TRS providers are free to use those resources outside the scope of the TRS program to support their positions before the Commission.

11. Finally, the Commission reiterates that a relay provider may not use TRS consumer or call data, or similar, privately obtained information, to contact a relay user in an attempt to increase, directly or indirectly, the number or length of relay calls the user otherwise may choose to make via that provider. In this instance, because the practice itself (*i.e.*, offering users financial or similar incentives to generate additional or longer calls that can be billed to the Fund) is prohibited by the Commission, communications with relay users in furtherance of this practice are likewise prohibited, no matter the source of the consumer or call data. Because the obligation placed on relay providers is to be available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the “dial tone” for a consumer that uses relay to call a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the Americans with Disabilities Act, the Commission finds that these restrictions are necessary to prevent providers from improperly urging consumers to make unnecessary relay calls, and therefore to ensuring that interstate TRS funds are used for their intended purpose. By highlighting examples of both permissible and prohibited uses of consumer or call database information above, the Commission seeks to ensure that Interstate TRS funds are not used for activities that are outside the scope of, or incompatible with the purposes of, the Interstate TRS Fund, as defined by Congress.

12. The restrictions on provider-consumer contacts, as clarified in this document, apply to relay providers in connection with their offering of interstate relay services, including all Internet-based relay calls and any other relay calls that are compensated by the Interstate TRS Fund. As noted above, however, if, in the future, evidence comes to the Commission's attention of the misuse of consumer or call database information by traditional TRS providers, in connection with their offering of intrastate relay services, the Commission may revisit this issue and

consider the adoption of additional restrictions at that time.

#### *Congressional Review Act*

The Commission will not send a copy of FCC 08–138 pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability.

#### **Ordering Clauses**

Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, FCC 08–138 is adopted and became effective on May 28, 2008.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. E8–15446 Filed 7–7–08; 8:45 am]

BILLING CODE 6712–01–P

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 071106671–8010–02]

RIN 0648–X192

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Catcher Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 5, 2008, through 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of

Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA is 1,386 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), and as posted as the 2008 Rockfish Program Allocations at <http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm>.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,386 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central GOA. NMFS was unable to publish a notice providing time for public comment because the most

recent, relevant data only became available as of July 1, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 08–1418 Filed 7–2–08; 2:41 pm]

BILLING CODE 3510–22–S

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 071106671–8010–02]

RIN 0648–X190

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 4, 2008, through 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.