

## VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VII. References

The following references have been placed on display in the Division of Dockets Management (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter from A. Rulis, Office of Food Additive Safety, to J. Lemker, Bell, Boyd, and Lloyd, LLC, "Agency Response Letter, GRAS Notice No. GRN 000058," October 1, 2001, Internet address: <http://www.cfsan.fda.gov/~rdb/opa-g058.html>.

2. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, "Evaluation of the Health Aspects of Gum Arabic as a Food Ingredient," March, 1973.

3. Memorandum from M. DiNovi, Chemistry Review Branch, to R. Martin, Direct Additives Branch, "GRP 3G0287: Beatrice Foods. Gum Arabic as a Stabilizer in Alcoholic Beverage Mixes," March 7, 1994.

4. Memorandum from J. Modderman, Food Additive Chemistry Review Branch, to L. Mansor, GRAS Review Branch, "GRASP 3G0287—Gum Arabic. Beatrice Foods Co.," November 21, 1983.

5. Memorandum of Conference, Cancer Assessment Committee Meeting, "Gum Arabic," January 6, 1998.

6. "Toxicological Evaluation of Certain Food Additives and Contaminants," WHO Food Additives Series 26, No. 686, 1990.

7. Memorandum from J. Griffiths, Additives Evaluation Branch, to C. Coker, Case and Advisory Branch, "Gum Arabic and Immunogenicity; updated literature survey," March 8, 1988.

8. Memorandum from J. Griffiths, Additives Evaluation Branch, to E. Flamm, Direct Additives Branch, "Gum Arabic and Immunogenicity; literature from Dr. D. M. W. Anderson," November 9, 1988.

9. Memorandum from C. Johnson, Additives Evaluation Branch #1, to R. Martin, Direct Additives Branch, "Gum Arabic in Alcoholic Beverages: Final Toxicology Evaluation," April 8, 1996.

## VIII. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see ADDRESSES) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a

waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

### PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.780 is added to subpart H to read as follows:

#### § 172.780 Acacia (gum arabic).

The food additive may be safely used in food in accordance with the following prescribed conditions:

(a) Acacia (gum arabic) is the dried gummy exudate from stems and branches of trees of various species of the genus *Acacia*, family Leguminosae.

(b) The ingredient meets the specifications of the "Food Chemicals Codex," 5th Ed. (2004), pp. 210 and 211, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the National Academies Press, 500 Fifth St. NW., Washington, DC 20001 (Internet address: <http://www.nap.edu>). Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD

20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(c) The ingredient is used as a thickener, emulsifier, or stabilizer in alcoholic beverages at a use level not to exceed 20 percent in the final beverage.

Dated: November 16, 2004.

**Leslye M. Fraser,**

*Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 05-3026 Filed 2-16-05; 8:45 am]

BILLING CODE 4160-01-S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 98-67, CG Docket No. 03-123; DA 05-141]

### Clarification of Telecommunications Relay Service Marketing and Call Handling Procedures and Video Relay Service Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Policy and procedures; Clarification.

**SUMMARY:** This document clarifies that certain telecommunications relay services (TRS) practices violate the TRS rules, and that video relay services (VRS) may not be used as a video remote interpreting service by persons at the same location. This document also instructs the TRS Fund administrator that, any provider found to be engaging in the improper marketing or call handling practices described herein will be ineligible for compensation from the Interstate TRS Fund (Fund).

**DATES:** Clarification of the TRS rules was effective January 26, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20054.

**FOR FURTHER INFORMATION CONTACT:** Thomas Chandler, Consumer & Governmental Affairs Bureau at (202) 418-1475 (voice), (202) 418-0597 (TTY) or e-mail [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document DA 05-141, released January 26, 2005 in CC Docket No. 98-67 and CG Docket No. 03-123. The complete text of this document may be purchased

from the Commission's duplication contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customer may contact BCPI, Inc. at their Web site: [www.bcpweb.com](http://www.bcpweb.com). 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). This Public Notice can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro>.

### Synopsis

The Commission has become aware that some TRS providers may be engaging in marketing practices that are inconsistent with the TRS statute and regulations. We have also become aware that some TRS providers may not be handling TRS calls in a manner that is consistent with the TRS statute and regulations, e.g., through the use of reservations systems. Finally, we are aware that VRS—a form TRS—is sometimes being used as a substitute for a live interpreter when a person who is deaf or hard of hearing seeks to communicate with a hearing person at the same location. Accordingly, we clarify that certain TRS practices violate the TRS rules, and that VRS may not be used as a video remote interpreting service. A provider found to be engaging in the improper marketing or call handling practices described herein will be ineligible for compensation from the Interstate TRS Fund. In addition, we will also consider appropriate enforcement action against providers that engage in any of the improper practices discussed herein.

### Background

TRS, mandated by Title IV of the Americans with Disabilities Act (ADA) of 1990, enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. Public Law Number 101-336, section 401, 104 statute 327, 336-69 (1990), adding section 225 to the Communications Act of 1934; see 47 U.S.C. 225. 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 using a standard telephone. In a traditional text-based TRS call, for example, a TTY user types the number of the TRS facility and, after reaching the facility, types the number of the

party he or she desires 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 text messages from the caller into voice messages, and voice messages from the called party into text messages for the TTY user.

VRS is a form of TRS that allows people with hearing and speech disabilities to communicate with the CA through sign language, rather than typed text. Video equipment links the VRS user and the CA so that they can see and communicate with each other in signed conversation. Presently, VRS services are accessed through a broadband connection and video equipment connected to a personal computer or a television.

The provision of TRS is "an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses and local and state governments." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 and 98-67, CG Docket No. 03-123, FCC 04-137, 69 FR 53346, September 1, 2004; 19 FCC Rcd 12475 at paragraph 182 n.521 (June 30, 2004) (*2004 TRS Report & Order*). To this end, section 225 is intended to ensure that TRS give[s] persons with hearing or speech disabilities "functionally equivalent" access to the telephone network.

*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 98-90, 63 FR 32798, June 16, 1998; 1998 WL251383 at paragraph 6 (May 20, 1998) (*1998 TRS NPRM*); see generally 47 U.S.C. 225 (a)(3). The statute and regulations provide that eligible TRS providers offering interstate services and certain intrastate services will be compensated for their just and "reasonable" costs of doing so from the Interstate TRS Fund, currently administered by the National Exchange Carrier Association (NECA). See, e.g., 47 CFR 64.604(c)(5)(iii)(E).

Section 225 and the TRS mandatory minimum standards contained in the regulations set forth the operational and technical standards TRS providers must meet. These standards reflect the functional equivalency mandate. We have repeatedly stated that, as a general matter, TRS providers seeking compensation from the Interstate TRS

Fund must meet all non-waived mandatory minimum standards. See, e.g., 47 CFR 64.604(c)(5)(iii)(E) ("The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in section 64.604."); *2004 TRS Report & Order* at paragraph 189. This is true whether the TRS service is a mandatory form of the TRS (like traditional TTY-based TRS) or a non-mandatory form of TRS (like IP Relay and VRS). See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 65 FR 38432, June 21, 2000; 15 FCC Rcd 5140 at paragraph 39 (March 6, 2000) (*2000 Improved TRS Order*) (all relay services either mandated by the Commission or eligible for reimbursement from the interstate TRS Fund must comply with the mandatory minimum standards).

### Improper Marketing Practices

The Commission has received numerous complaints regarding improper marketing practices, particularly with regard to the provision of VRS. First, we understand that some providers install video equipment at a consumer's premise to enable the consumer to make VRS calls. We further understand that in the course of installing the equipment, the provider's installer may tell the consumer that he or she may only have one VRS provider, or that the consumer's broadband connection may be connected to only one piece of video equipment (generally the equipment of that provider). These statements have the effect of requiring the consumer to choose a single VRS provider. We also understand that some installers may adjust the consumer's hardware or software to restrict the consumer to using one VRS provider without the consumer's consent.

The TRS rules do not require a consumer to choose or use only one VRS (or TRS) provider. A consumer may use one of several VRS providers available on the Internet or through VRS service hardware that attaches to a television. Therefore, VRS consumers cannot be placed under any obligation to use only one VRS provider's service, and the fact that they may have accepted VRS equipment from one provider does not mean that they cannot use another VRS provider via other equipment they may have. In addition, a VRS provider (or its installers) should not be adjusting a consumer's hardware or software to restrict access to other

VRS providers without the consumer's informed consent.

Second, we understand that some providers use their customer database to contact prior users of their service and suggest, urge, or tell them to make more VRS calls. This marketing practice constitutes an improper use of information obtained from consumers using the service, is inconsistent with the notion of functional equivalency, and may constitute a fraud on the Interstate TRS Fund because the Fund, and not the consumer, pays for the cost of the VRS call. See 47 CFR

64.604(a)(2)(i). As we have noted, the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Entities electing to offer VRS (or other forms of TRS) should not be contacting users of their service and asking or telling them to make TRS calls. Rather, the provider must be available to handle the calls that consumers choose to make. In this regard, we question whether there are any circumstances in which it is appropriate for a TRS provider to contact or call a prior user of their service. Again, the role of the provider is to make available a service to consumers as an accommodation under the ADA when a consumer may choose to use that service. For this reason as well, VRS providers may not require consumers to make TRS calls, impose on consumers minimum usage requirements, or offer any type of financial incentive for consumers to place TRS calls. See *Telecommunications Relay Services and Speech to Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, CG Docket No. 03-123, DA 05-140 (January 26, 2005).

Finally, we understand that some VRS (or TRS) providers may selectively answer calls from preferred consumers or locations, rather than answer the calls in the order they are received. For example, the VRS provider may monitor a list of incoming callers waiting for a CA and, rather than handling the calls in order, will first handle calls from preferred customers or from a specific location. This practice also constitutes an improper use of information obtained from consumers using the service and is inconsistent with the notion of functional equivalency. Providers must handle incoming calls in the order that they are received. We will continue to carefully monitor the provision of all forms of TRS to the public. To the extent providers offer TRS services in violation of our rules, they will be ineligible for compensation from the Interstate TRS Fund.

### Improper Handling of TRS Calls

We understand that some providers permit TRS consumers (particularly VRS users) to make advance reservations so that the consumer can reach a CA without delay at a specific time to place a call. This practice is inconsistent with the functional equivalency mandate of Section 225 and the TRS regulations. Under the functional equivalency mandate, TRS is intended to permit persons with hearing and speech disabilities to access the telephone system to call persons without such disabilities. As we have frequently noted, "for a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone." See *2000 Improved TRS Order* at paragraph 60. Therefore, TRS is intended to operate so that when a TRS user wants to make a call, a CA is available to handle the call. For this reason, for example, the TRS regulations presently require TRS providers (except in the case of VRS) to answer 85% of all calls within 10 seconds. See 47 CFR 64.604(b)(2). This requirement has presently been waived for VRS, and has been raised in the Further Notice of Proposed Rulemaking (*FNPRM*) in the *2004 TRS Report & Order*. See *2004 TRS Report & Order* at paragraphs 119-123 (extending speed of answer waiver until January 1, 2006, or until such time as the Commission adopts a speed of answer rule for VRS, whichever is sooner); *2004 TRS Report & Order* at paragraph 246 (raising issue in *FNPRM*). See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157 at paragraphs 15-16 (December 31, 2001) (*VRS Waiver Order*) (original VRS waiver order, which waived the speed of answer requirement for VRS to encourage more entrants into the VRS market, stimulate the growth of VRS, and provide more time for technology to develop). This "speed of answer" requirement was adopted so that the experience of a TRS caller in reaching a CA to place his or her call would be functionally equivalent to the experience of an individual without a hearing or speech disability placing a call. See *1998 TRS NPRM* at paragraph 49. The Commission has noted that the "ability of a TRS user to reach a CA prepared to place his or her call \* \* \* is fundamental to the concept of 'functional equivalency.'" (Emphasis added).

As a result, we find that the practice of permitting TRS consumers to reserve in advance a time at which a CA will

handle a call is inconsistent with the nature of TRS and the functional equivalency mandate. TRS providers must have available CAs that can handle the calls as they come in (to, by analogy, provide the "dial tone") consistent with our rules. Handling calls by prior reservation is a different kind of service. For the same reason, calls must be handled in the order in which they are received (as we have also stated above). The fact that VRS is not a mandatory service, or that speed of answer has presently been waived for VRS, does not affect the application of these principles to VRS. In addition, TRS providers may not offer their service in such a way so that when a TRS consumer (including a hearing person) contacts the TRS provider the consumer reaches only a message or recording that asks the caller to leave certain information so that the provider can call the consumer back when the provider is able (or desires) to place the call. This type of "call back" arrangement is impermissible because it relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to ultimately be in control of when a TRS call is placed. As we have noted, the functional equivalency mandate rests in part on the expectation that when a TRS user reaches a CA that is the equivalent of receiving a dial tone. We distinguish this situation from the use of a "call back" service whereby a consumer, who has called the relay center to make a TRS call and reaches the provider but has to wait for an available CA, has the choice of either waiting for an available CA (i.e., without disconnecting) or having the TRS provider call the consumer back when a CA is available to handle the call. Nevertheless, we are concerned that the use of "call back" option in any context is inconsistent with the functional equivalency mandate, and therefore we will closely monitor the use of this feature. We also recognize that, given the speed of answer rule, use of a call back feature will be an issue only for those forms of TRS not subject to such a rule (e.g., VRS). Accordingly, because we interpret section 225 and the implementing regulations to prohibit any practice that undermines the functional equivalency mandate, effective March 1, 2005, any provider offering or utilizing advance call reservations, or a recording that greets all calls to the TRS provider and takes information so that the provider can call the consumer back, will be ineligible for compensation from the Interstate TRS Fund.

**VRS Cannot Be Used as a Substitute for Video Remote Interpreting (VRI)**

We again remind providers (and consumers) that VRS is not the same as Video Remote Interpreting (VRI), even though both services use the Internet and a video connection to permit persons with hearing disabilities to communicate with persons without such disabilities. See generally 2004 TRS Report & Order at paragraphs 162 n.466 & 172 n.490. VRI is a service that is used when an interpreter cannot be physically present to interpret for two persons who are together at the same location (for example, at a meeting or in a doctor's office). In that situation, an interpreter at a remote location may be used via a video connection. A fee is generally charged by companies that offer this service.

By contrast, VRS, like all forms of TRS, is a means of giving access to the telephone system. Therefore, VRS is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or if, in the reverse situation, the hearing person desires to make such a call to a person with a hearing disability). VRS calls are compensated from the Interstate TRS Fund, which is overseen by the Commission. In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an "in-person" interpreter or a VRI service.

We will continue to carefully scrutinize the provision and use of VRS to ensure that it is being used only as a means of accessing the telephone system, not as a substitute for VRI.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-3066 Filed 2-16-05; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AT57

**Endangered and Threatened Wildlife and Plants; Final Rule To Designate Critical Habitat for the Santa Ana Sucker (*Catostomus santaanae*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** On January 4, 2005, we, the U.S. Fish and Wildlife Service, published a final rule to designate critical habitat for the threatened Santa Ana sucker (*Catostomus santaanae*) pursuant to the Endangered Species Act of 1973, as amended. Because we made an error in use of amendatory language, one of the final rule's two regulatory amendments could not be properly reflected in the Code of Federal Regulations. This correction document rectifies that error.

**DATES:** Effective February 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Sara Prigan, Federal Register Liaison, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, at (703) 358-2508.

**Regulation Correction**

■ For reasons set forth in the preamble, we correct the final rule published on January 4, 2005, at 70 FR 426 by correcting amendatory instruction #3 on page 448, column 1, to read as follows:

**PART 17—[CORRECTED]****§ 17.95 [Corrected]**

■ 3. Amend § 17.95(e) by revising critical habitat for the Santa Ana sucker (*Catostomus santaanae*) in the same alphabetical order as this species occurs in § 17.11(h).

Dated: February 11, 2005.

Sara Prigan,

Fish and Wildlife Service Federal Register Liaison.

[FR Doc. 05-3047 Filed 2-16-05; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 050209033-5033-01; I.D. 020405D]

RIN 0648-AS97

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Commercial Trip Limits for Gulf of Mexico Grouper Fishery**

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

**ACTION:** Emergency rule; request for comments.

**SUMMARY:** NMFS issues this emergency rule to establish trip limits for the commercial shallow-water and deep-water grouper fisheries in the exclusive economic zone of the Gulf of Mexico. The intended effect of this emergency rule is to moderate the rate of harvest of the available quotas and, thereby, reduce the adverse social and economic effects of derby fishing, enable more effective quota monitoring, and reduce the probability of overfishing.

**DATES:** This rule is effective March 3, 2005 through August 16, 2005.

Comments on this emergency rule must be received no later than 5 p.m., eastern time, on March 21, 2005.

**ADDRESSES:** You may submit comments on this emergency rule by any of the following methods:

- E-mail: 0648-AS97.Emergency@noaa.gov. Include in the subject line the following document identifier: 0648-AS97.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

- Fax: 727-570-5583, Attention: Phil Steele.

Copies of the documents supporting this emergency rule may be obtained from the NMFS Southeast Regional Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, 727-570-5305; fax: 727-570-5583, e-mail: [Phil.Steele@noaa.gov](mailto:Phil.Steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Gulf of Mexico Fishery Management Council (Council). This FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

**Background**

On June 15, 2004, NMFS published a final rule (69 FR 33315) to end overfishing of red grouper in the Gulf of Mexico and to implement a stock rebuilding plan as provided in Secretarial Amendment 1 to the FMP. That final rule established a red grouper commercial quota; reduced the shallow-water and deep-water grouper commercial quotas; and included a provision to close the entire shallow-water grouper commercial fishery when either the red grouper quota or the shallow-water grouper quota is reached.