the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation will not impose any costs on local governments, the requirements of E.O. 13132 are not applicable.

B. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

C. Alternatives Considered

We could have chosen to continue to operate under the constraints of our current regulations. This option would require that we periodically undertake notice and comment rulemaking to update the regulations with the names of new contactors. We have provided additional discussion in the preamble describing why we believe this is not the optimal solution. We believe our decision to make modest changes to our regulations will offer us greater flexibility in contracting with DMERCs and allow us to be more responsive to the needs of all key stakeholders.

In accordance with the provisions of E.O. 12866, this regulation was reviewed by the Office of Management and Budget.

List of Sections in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 421 as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

■ 1. The authority citation for part 421 continues to read as follows:

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

Subpart C—Carriers

■ 2. Section 421.210 is amended as follows:

■ A. Revise paragraph (a).
■ B. Revise paragraph (c).
■ C. Revise the introductory text of paragraph (d).
■ D. Revise paragraph (e).

The revisions read as follows:

§ 421.210 Designations of regional carriers to process claims for durable medical equipment, prosthetics, orthotics, and supplies.

(a) *Basis.* This section is based on sections 1834(a)(12) and 1834(h) of the Act, which authorize the Secretary to designate one carrier for one or more entire regions to process claims for durable medical equipment, prosthetic devices, prosthetics, orthotics, and other supplies (DMEPOS). This authority has been delegated to CMS.

* * * * *

(c) *Region designation.* (1) The boundaries of the initial four regions for processing claims described in paragraph (b) of this section contain the following States and territories:

(i) Region A: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, and Delaware.

(ii) Region B: Maryland, the District of Columbia, Virginia, West Virginia, Ohio, Michigan, Indiana, Illinois, Wisconsin, and Minnesota.

(iii) Region C: North Carolina, South Carolina, Kentucky, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, New Mexico, Colorado, Puerto Rico, and the Virgin Islands.

(iv) Region D: Alaska, Hawaii, American Samoa, Guam, the Northern Mariana Islands, California, Nevada, Arizona, Washington, Oregon, Montana, Idaho, Utah, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri.

(2) CMS has the option to modify the number and boundaries of the regions established in paragraph (c)(1) of this section based on appropriate criteria and considerations, including the effect of the change on beneficiaries and DMEPOS suppliers. To announce changes, CMS publishes a notice in the **Federal Register** that delineates the regional boundary or boundaries changed, the States and territories affected, and supporting criteria or considerations.

(d) *Criteria for designating regional carriers.* CMS designates regional carriers to achieve a greater degree of effectiveness and efficiency in the administration of the Medicare program. In making this designation, CMS will award regional carrier contracts in accordance with applicable law and will consider some or all of the following criteria—

* * * * *

(e) *Carrier designation.* (1) Each carrier designated a regional carrier must process claims for items listed in paragraph (b) of this section for beneficiaries whose permanent residence is within that carrier's region as designated under paragraph (c) of this section. When processing the claims, the carrier must use the payment rates applicable for the State of residence of the beneficiary, including a qualified Railroad Retirement beneficiary. A beneficiary's permanent residence is the address at which he or she intends to spend 6 months or more of the calendar year.

(2) CMS notifies affected Medicare beneficiaries and suppliers when it designates a regional carrier (in accordance with paragraph (d) of this section) to process DMEPOS claims (as defined in paragraph (b) of this section) for all Medicare beneficiaries residing in their respective regions (as designated under paragraph (c) of this section).

(3) CMS may contract for the performance of National Supplier Clearinghouse functions through a contract amendment to one of the DME regional carrier contracts or through a contract amendment to any Medicare carrier contract under § 421.200.

(4) CMS periodically recompetes the contracts for the DME regional carriers. CMS also periodically recompetes the National Supplier Clearinghouse function.

* * * * *

Dated: December 23, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 22, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–3728 Filed 2–24–05; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 98–67 and CG Docket No. 03–123; DA 05–140]

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

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: In this document, the Commission addresses a *Petition for Declaratory Ruling* filed by Petitioner Hands On Video Relay Services, Inc. (Hands On) on December 29, 2004. Hands On requests a *Declaratory Ruling* that is ''Brown Bag Rewards Program,'' offered in connection with its provision of video relay service (VRS), a form of telecommunications relay service (TRS), does not violate any section of the Communications Act or any Commission rule. The Commission concludes that any program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS call, including the ''Brown Bag Rewards Program,'' is inconsistent with section 225 of the Communications Act of 1934 and the TRS regulations.

DATES: The *Declaratory Ruling* is effective January 26, 2005. Effective March 1, 2005, TRS providers offering such incentives or rewards for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05–140, adopted January 24, 2005, released January 26, 2005, in CC Docket No. 98–67 and CG Docket No. 03–123. This document does not contain new or modified information collections 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 107–198, *see* 44 U.S.C. 3506 (c)(4). 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. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *http://www.bcpiweb.com* or call 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* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro*.

Synopsis

Hands On requests a *Declaratory Ruling* that its ''Brown Bag Rewards Program,'' offered in connection with its provision of VRS, a form of TRS, does not violate any section of the Communications Act or any Commission rule. Hands On explains its ''Brown Bag Rewards Program'' is a customer loyalty program that offers Hands On's [VRS] customers the opportunity to have their DSL or cable modem bill reimbursed by Hands On. Under the program, [c]ustomers receive five points for every minute of video relay calls placed through Hands On, and the customers may redeem points by sending in their DSL or cable bills to Hands On. Hands On then reimburses those customers five cents per point up to the amount of the DSL or cable modem bill; no other cash payments are made and the ''program is strictly limited to reimbursement for access costs to high speed Internet service. Hands On asserts that its program is intended to eliminate an existing barrier that is discriminatory to deaf, hard of hearing and speech disabled persons who need higher bandwidth to communicate in their natural visual language, American Sign Language. Finally, Hands On notes that [n]o one is forced to use the ''Brown Bag Program,'' there is no minimum usage requirement, and the points accumulate until they are used. Therefore, Hands On believes, the program is not an incentive to use VRS merely to obtain a reward. Hands on also states that the program does not encourage fraudulent VRS calls, and that it is unaware of any VRS calls that were made solely to generate Brown Bag points.

Hands On's central argument is that this program is permissible because there is nothing in section 225, the Commission's TRS rules, or any other provisions of the Communications Act that prohibit such a program. Hands On further asserts that it is in the public interest to offer this program because persons with hearing or speech disabilities using VRS bear DSL or cable modem subscription costs that are greater than the costs for conventional telephone service used by hearing persons. In addition, Hands On asserts that its program is not the same as supplying equipment to customers conditioned on the use of a minimum number of TRS minutes, which it suggests would be improper. Finally, Hands On notes that there have apparently been no consumer complaints concerning the ''Brown Bag program,'' and that the Commission should not be protecting other providers from competition.

We conclude that the ''Brown Bag Rewards Program'' and any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates section 225 of the Communications Act. 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 with 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 using a standard telephone.

First, we do not believe that Hands On accurately describes the nature and effect of its rewards program in view of the intent of Congress in enacting the TRS program and the TRS cost recovery regime. Section 225 requires common carriers offering telephone voice transmission services to also provide TRS throughout the area in which they offer telephone transmission service to ensure that persons with hearing and speech disabilities have access to the telephone system. As we have explained, the provision of TRS is an accommodation for persons with certain disabilities—Congress, in enacting Title IV of the ADA, place[d] the obligation on carriers providing voice telephone services to *also* offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities. In other words, 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. To this end, section 225 is intended to ensure that individuals with hearing or speech disabilities have access to telephone services that are ''functionally equivalent'' to those available to individuals without such disabilities. Because the provision of TRS is an accommodation for persons with certain disabilities, the cost of the TRS service is not paid by the TRS user. 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 NECA.

Congress chose to adopt a mechanism for compensation of TRS providers that allows them to be paid by all subscribers for interstate services through contributions paid into the Fund. Under this mechanism, TRS providers that provide TRS services that are eligible for compensation from the Interstate TRS Fund submit to NECA on a monthly basis the number of minutes of service they provided of the various forms of TRS, and NECA compensates them based on per-minute compensation rates calculated on an annual basis. *See, e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98–67, DA 04–1999, 19 FCC Rcd 12224 (June 30, 2004) (order setting initial 2004–2005 TRS compensation rates and describing process). In addition, VRS consumers presently do not pay any long distance charges in connection with a VRS call. *See 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 & 98–67, CG Docket No. 03–123, FCC 04–137, 69 FR 53346, September 1, 2004; 19 FCC Rcd 124755 at paragraphs 127–129 & n.364 (June 30, 2004) (*2004 TRS Report & Order*). VRS providers cannot bill the user for any long distance charges if they do not offer carrier of choice; conversely, waiver of the carrier of choice requirement is conditioned on providers offering free long distance calls to consumers. Therefore, there is no cost of any kind to the consumer for placing a VRS call.

In this light, we do not believe that it is accurate to compare, as Hands On does, its ''Brown Bag Rewards Program,'' or any other TRS incentive or rewards program, to reward programs offered by airlines or telephone long distance companies. Nor do we believe that it is correct to say that there is no incentive to make VRS calls merely to acquire a reward. With airline tickets and long distance calls, for example, the consumer who buys the ticket or makes the call *has to pay for* the ticket or the call; therefore, any financial ''reward'' for doing so is really a discount or a refund on monies the consumer is obligated to pay because the consumer elected to use that particular service. By contrast, with TRS, the consumer does not pay for the cost of the TRS call and has no involvement with the provider billing and receiving payment from NECA; the TRS provider bills NECA directly for the call based on the length of the call. Therefore, the TRS consumer does not have to pay anything to obtain a financial reward; the consumer merely needs to use a service (*i.e.*, place a call) that someone else will pay for, and the more calls that are made, the greater the financial reward (again, at no cost to the consumer). In this circumstance, any financial reward that inures to the consumer because the consumer placed a TRS call is in fact an incentive for the consumer to place TRS calls, including calls the consumer might not otherwise make but for the opportunity to earn a reward. As a practical matter, the TRS provider is enticing the consumer to make TRS calls that will artificially raise costs to the Interstate TRS Fund, and the provider is doing so by in effect ''paying'' the consumer to make more calls. *See generally 2004 TRS Report & Order* at paragraph 97 (noting our duty to ''safeguard the integrity of the fund'').

The fact that any TRS reward or incentive program has the effect of enticing TRS consumers to make TRS calls that they would not otherwise make, which allows the provider to receive additional payments from the Fund, and results in ''payments'' to consumers for using the service, puts such programs in violation of section 225. More particularly, such marketing practices ''*e.g.*, usage-based reward or incentive programs, or programs that tie the receipt of equipment to minimum usage requirements ''violate the functional equivalency requirement. *See* 47 U.S.C. 225 (a)(3) & (c). As we have noted, the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Therefore, the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them. As we have frequently noted, for example, when a TRS user places an outbound call and reaches a CA, that is the equivalent to receiving a ''dial tone.'' *See*, *e.g.*, *2004 TRS Report & Order* at paragraph 3 n.18. It follows that TRS providers cannot be encouraging TRS calls with financial incentives or rewards. Because the Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make. In addition, in these circumstances TRS is no longer simply an accommodation for persons with certain disabilities, but an opportunity for their financial gain. In other words, offering financial incentives or rewards to TRS users also violates the functional equivalency mandate because it gives TRS consumers more than free access to TRS, and therefore to the telephone system; it gives them an additional financial reward for using a service that is provided as an accommodation under the ADA.

Hands On's assertions that no one is forced to use its program, that it is in the public interest to offer reward programs because of the cost of high speed Internet service, and that there have been no complaints about its program are beside the point. The mere fact that a financial incentive or reward program is offered has the effect of enticing consumers to make calls they would not otherwise make, regardless of whether participation in the program is mandatory. Further, as we frequently note, Title IV of the ADA requires that certain entities offer TRS as an accommodation for persons with certain disabilities; it does not address associated issues such as the cost of bringing high speed Internet service to the home (or elsewhere) or the cost of the equipment necessary to make the various types of TRS calls. Finally, it is not surprising that no consumer may have complained about Hands On's program, since it obviously would not be in any consumer's financial interest to do so.

In sum, in view of the intent and nature of section 225, and the obligation placed on entities providing voice telephone services to also offer TRS as an accommodation to persons who, because of a disability, cannot meaningfully use the voice telephone system, we interpret section 225 and the implementing regulations to prohibit a TRS provider's use of any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, directed at a consumer's use of their TRS service. As a result, we will instruct the Interstate TRS Fund administrator (NECA) that, effective March 1, 2005, any TRS provider offering such incentives for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund. Nothing in this *Declaratory Ruling* is intended to affect the obligation of TRS providers to engage in outreach efforts, consistent with this *Declaratory Ruling*, to ensure that the public is aware of the availability and use of all forms of TRS. *See*, *e.g.*, 47 CFR 64.604(c)(3).

Report to Congress

The Commission will not send a copy of the *Declaratory Ruling* 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

Accordingly, pursuant to the authority contained in section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and §§ 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.1.41, 0.361, 1.3 this *Declaratory Ruling is adopted*.

Hands On's *Petition for Declaratory Ruling is denied*.

TRS provider offering any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, *shall*, effective March 1, 2005, be ineligible for compensation from the Interstate TRS Fund.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 05–3703 Filed 2–24–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 050216042–5042–01; I.D. 021105E]

RIN 0648–AT06

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule; annual management measures for Pacific halibut fisheries.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures governing the Pacific Halibut fishery which are approved by the Secretary of State. This action is intended to provide public notice of the effectiveness of these IPHC annual management measures and to inform persons subject to them of their restrictions and requirements.

DATES: Effective February 27, 2005.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting either the International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145–2009, or Sustainable Fisheries Division, Alaska Region, NMFS P.O. Box 21668, Juneau, AK 99802–1668. This final rule also is accessible via the Internet at the Government Printing Office's Web site at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bubba Cook, 907–586–7425 or e-mail at *bubba.cook@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2005 under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2005 IPHC annual management measures are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements. These management measures are effective until superceded by the 2006 management measures, which NMFS will publish in the **Federal Register**.

The IPHC held its annual meeting in Victoria, British Columbia, January 18–21, 2005, and adopted regulations for 2005. The substantive changes to the previous IPHC regulations (69 FR 9230, February 27, 2004) include:

1. New commercial fishery opening date of February 27 in IPHC areas other than Area 2A;

2. Opening dates for the Area 2A commercial directed halibut fishery;

3. Season dates for the Area 2A tribal fishery;

4. Revising the regulations to specify that the total amount of halibut that may be harvested in Area 4D commercial halibut fisheries is equal to the combined annual catch limit specified for Area 4C and Area 4D. This change will allow NMFS to promulgate a rule authorizing Area 4C Individual Fishing Quota (IFQ)/Community Development Quota (CDQ) to be harvested in Area 4D as described below. NMFS is considering such a rule for the 2005 halibut fishery; and

5. Revising the regulations prohibiting the retention of fillets on board a commercial vessel.

The IPHC recommended catch limits for 2005 to the governments of Canada and the United States totaling 73,820,000 lbs. The IPHC staff reported on the assessment of the Pacific halibut stock in 2004. The assessment indicated healthy halibut stocks in Areas 3A through 2A, but indicated declines in Areas 3B and throughout Area 4 requiring lower catch rates. Recruitment of 1994 and 1995 year classes appeared relatively strong in all areas except Area 4B, which showed lower recruitment levels for the same year classes. IPHC staff also reported that estimates of exploitable biomass resulting from mark-recapture analysis based on PIT-tagged halibut conducted in 2003 are available, but are not yet sufficient to determine mixing rates among and exploitable biomass within regulatory areas. Based on recommendations by the IPHC staff, the IPHC adopted a harvest rate of 22.5 percent as the baseline harvest rate for Areas 3A, 2C, 2B, and 2A. The IPHC maintained a 20 percent harvest rate in Areas 3B and 4A due to concern that the long term productivity of these areas may be less than Areas 3A, 2C, 2B, and 2A.

Catch Sharing Plan (CSP) for Area 2A

The Pacific Fishery Management Council (PFMC) develops the Area 2A CSP under authority of the Halibut Act, although the IPHC ultimately approves the CSP and any modifications to it. Section 5 of the Halibut Act (16 U.S.C. 773c) provides the Secretary of Commerce (Secretary) with general responsibility to carry out the Convention and to adopt such regulations as may be necessary to implement the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the Assistant Administrator for Fisheries, NOAA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in United States Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested that the PFMC allocate halibut catches should such allocation be necessary. The PFMC's Area 2A CSP allocates the halibut catch limit for Area 2A among treaty Indian, non-treaty commercial, and non-treaty sport fisheries in and off Washington, Oregon, and California.