

appropriate fee to the U.S. Bank, St. Louis, Missouri, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit a copy of the Form 159 and the original application letter to the Secretary of the Commission in lieu of the U.S. Bank.

\* \* \*
\* \* \* \*

Subpart C—General Rules for Nondominant Carriers

■ 29. Section 61.20 is amended by revising the first two sentences of paragraph (b)(1) to read as follows:

§ 61.20 Method of filing publications.

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the U.S. Bank, St. Louis, Missouri at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the U.S. Bank.

\* \* \*
\* \* \* \*

Subpart D—General Tariff Rules for International Dominant Carriers

■ 30. Section 61.32 is amended by revising the first two sentences of paragraph (b) to read as follows:

§ 61.32 Method of filing publications.

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 159, and the appropriate fee to the U.S. Bank, St. Louis, Missouri, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the U.S. Bank.

\* \* \*
\* \* \* \*

Subpart H—Applications for Special Permission

■ 31. Section 61.153 is amended by revising the first two sentences of paragraph (b) to read as follows:

§ 61.153 Method of filing applications.

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all special permission applications requiring fees as set forth in part 1, subpart G of this chapter, the issuing carrier must submit the original of the application letter (without attachments), FCC Form 159, and the appropriate fee to the U.S. Bank, St. Louis, Missouri at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the U.S. Bank.

\* \* \*
\* \* \* \*

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 32. 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), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers; Telephone Operator Services

■ 33. Section 64.709 is amended by revising paragraph (d)(1) to read as follows:

§ 64.709 Informational tariffs.

(d) \* \* \*
(1) The original of the cover letter shall be submitted to the Secretary without attachments, along with FCC Form 159, and the appropriate fee to the U.S. Bank, St. Louis, Missouri.

\* \* \*
\* \* \* \*

PART 80—STATIONS IN THE MARITIME SERVICES

■ 34. The authority citation for part 80 continues to read as follows:

Authority: secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Subpart B—Applications and Licenses

■ 35. Section 80.59 is amended by revising the first sentence of paragraph (c)(2) to read as follows:

§ 80.59 Compulsory ship inspections.

\* \* \* \* \*
(c) \* \* \*
(2) Feeable applications for exemption must be filed with U.S. Bank, P.O. Box 979097, St. Louis, MO 63197-9000 at the address set forth in § 1.1102. \* \* \*

[FR Doc. E8-2940 Filed 2-15-08; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket 03-123; DA 07-5098; DA 08-45]

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

AGENCY: Federal Communications Commission.
ACTION: Final rule; extension of waiver.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau) extends for an additional year waivers of certain Telecommunications Relay Services (TRS) mandatory minimum standards for Video Relay Service (VRS) and Internet Protocol Relay (IP Relay). The waived TRS mandatory minimum standards are: One-line voice carry over (VCO); VCO-to-teletypewriter (TTY); VCO-to-VCO; one-line hearing carry over (HCO); HCO-to-TTY; HCO-to-HCO; call release; speech-to-speech (STS); pay-per-call (900) calls; types of calls; equal access to interexchange carriers; and speed dialing. The Bureau extends the waivers for one year (four months in the case of speed dialing for VRS) because the record demonstrates that it is technologically infeasible for VRS and IP Relay providers to offer these services at this time.

DATES: The Bureau allowed the waivers of three-way calling for VRS and IP Relay to expire on January 1, 2008. The waivers of certain TRS mandatory minimum standards for VRS and IP Relay will expire on January 1, 2009, except the waiver of the speed dialing requirement for VRS, which will expire on April 30, 2008.

ADDRESSES: Parties may submit waiver reports identified by [CG Docket No. 03-

123 and/or DA 07–5098 and DA 08–45] by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instruction for submitting waiver reports.

- *Federal Communications Commission's Web Site*: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting waiver reports.

- *Mail*: Dana Wilson, Consumer and Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C418, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail [Thomas.Chandler@fcc.gov](mailto:Thomas.Chandler@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

On December 31, 2001, the Commission's Common Carrier Bureau released Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, VRS Waiver Order, CC Docket No. 98–67, 17 FCC Rcd 157 (2001), granting VRS providers a waiver until December 31, 2003, of certain TRS mandatory minimum standards as applied to the provision of VRS. In subsequent Orders, the Commission extended these waivers ultimately through January 1, 2008, and applied them also to IP Relay. This is a summary of the Bureau Orders, document DA 07–5098, adopted and released December 26, 2007, and document DA 08–45, adopted and released January 8, 2008, extending certain waivers from TRS mandatory minimum standards to January 1, 2009, and extending waiver of the speed dialing requirement of VRS through April 30, 2008, while allowing waivers of three-way calling for VRS and IP Relay to expire on January 1, 2008.

The full text of documents DA 07–5098 and DA 08–45, and copies of any subsequently filed documents in these matters, 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. Documents DA 07–5098 and DA 08–45, and copies of subsequently filed documents in these matters, 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

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 and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Documents DA 07–5098 and DA 08–45 also can be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb/dro/trs.html>.

**Synopsis**

1. The Commission, in various orders, has waived several TRS mandatory minimum standards for VRS and IP Relay either because, as Internet-based services, it is not technologically feasible to meet the requirement or, in the case of VRS, because VRS is a video-based service and the communication is via sign language and not text. Since 2004, the Commission has conditioned these waivers on the filing of annual reports, due each April 16, addressing whether it is necessary for the waivers to remain in effect. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket Nos. 90–571 and 98–67, CG Docket No. 03–123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475 (2004). Pursuant to this condition, all VRS and IP Relay providers have filed reports detailing their progress in meeting the waived requirements. The Bureau has reviewed these reports in reaching the conclusions below.

2. One-line VCO, VCO-to-TTY, and VCO-to-VCO. One-line VCO is a type of traditional TTY-based TRS that can be used by persons with a hearing disability but who can speak. See 47 CFR 64.601(18); 47 CFR 64.604(a)(3)(v). The Commission waived this requirement for IP Relay providers because the voice leg of a VCO call could not be supported over the Internet. The Commission similarly waived this requirement for VRS. A VCO-to-TTY call allows a relay conversation to take place between a VCO user and a TTY user; a VCO-to-VCO call allows a relay conversation to take place between two VCO users. Consistent with its treatment of the VCO requirement, the Commission waived these requirements for VRS and IP Relay.

3. The Bureau extends the waivers of these requirements for one year. The Bureau notes that the most recent annual waiver reports reflect that VRS and IP Relay providers cannot provide these services because the Internet cannot support the voice leg of a VCO

call with the necessary call quality. These waivers are again conditioned on the filing of reports, due April 16, 2008, addressing whether it is necessary for the waivers to remain in effect.

4. One-line HCO, HCO-to-TTY, and HCO-to-HCO. One-line HCO is a type of traditional TTY-based TRS that can be used by persons with a speech disability but who can hear. See 47 CFR 64.604(8); 47 CFR 64.604(a)(3)(v). For the same reason the Commission waived the VCO requirement for IP Relay, it did so with respect to the HCO requirement. The Commission similarly waived this requirement for VRS. An HCO-to-TTY call allows a relay conversation to take place between an HCO user and a TTY user; an HCO-to-HCO call allows a relay conversation to take place between two HCO users. Consistent with its treatment of the HCO requirement, the Commission waived these requirements for VRS and IP Relay.

5. Consistent with the Bureau's treatment of VCO, and for the same reasons, the Bureau extends the waivers of these requirements for one year. The Bureau also notes that the most recent annual waiver reports reflect that VRS and IP Relay providers cannot provide these services. These waivers are also conditioned on the filing of reports, due April 16, 2008, addressing whether it is necessary for the waivers to remain in effect.

6. Call Release. Call release allows a communications assistant (CA) to set up a TTY-to-TTY call that, once established, does not require the CA to relay the conversation. See 47 CFR 64.604(a)(3)(vi). The Commission waived this requirement for VRS and IP Relay. The Bureau extends the waivers of this requirement for one year due to technological infeasibility. This conclusion is supported by the providers' annual waiver reports, which reflect that the Internet leg of the call (via video or text) cannot support call release functionality. These waivers are also conditioned on the filing of reports, due April 16, 2008, addressing whether it is necessary for the waivers to remain in effect.

7. Pay-Per-Call (900) calls. Pay-per-call (900) calls are calls that the person making the call pays for at a charge greater than the basic cost of the call. See 47 CFR 64.604(a)(3)(iv). The Commission waived this requirement for VRS and IP Relay. The Bureau extends the waivers of this requirement for VRS and IP Relay for one year. The providers' annual waiver reports reflect that there is still no billing mechanism available to handle the charges associated with pay-per-calls. These waivers are also conditioned on the

filing of reports, due April 16, 2008, addressing whether it is necessary for the waivers to remain in effect.

8. Types of Calls (Operated Assisted Calls and Long Distance Calls). Commission rules require TRS providers to handle any type of call normally handled by common carriers. See 47 CFR 64.604(a)(3). The Common Carrier Bureau waived the requirement that VRS providers offer operator-assisted calls and bill certain types of calls to the end user, noting that it was not possible to determine if a VRS call is local or long distance. The providers' annual waiver reports reflect that it remains technologically infeasible for VRS providers to offer operator-assisted calls and to bill for certain types of long distance calls because one leg of the VRS call is transmitted over the Internet. Based on the record, the Bureau therefore extends waivers of this requirement for VRS for one year as long as providers allow calls to be placed using calling cards and/or provide free long distance calls. This waiver is also conditioned on the filing of a report, due April 16, 2008, addressing whether it is necessary for the waiver to remain in effect. Although this issue has not been raised, the Commission understands that IP Relay providers, for the same reasons as VRS providers, cannot provide these services. Therefore, to avoid any future uncertainty or compliance issues, the Commission waives on its own motion this requirement for IP Relay as long as the providers allow calls to be placed using calling cards and/or provide free long distance calls.

9. Equal Access to Interexchange Carriers. The TRS rules require that providers offer TRS users their interexchange carrier of choice to the same extent that such access is provided to voice users. See 47 CFR 64.604(b)(3). The Commission waived this requirement for VRS providers, noting that it was not possible to determine if a call is long distance and, in any event, the providers could not automatically route the calls to the caller's long distance carrier of choice. The Commission also noted that this waiver was contingent on VRS providers providing long distance services free of charge to the caller. The Commission waived this requirement for IP Relay indefinitely.

10. The Bureau extends the waiver of this requirement for VRS for one year. The providers' annual waiver reports reflect that because they cannot determine whether a particular call is local or long distance, they cannot offer carrier of choice but instead do not charge consumers for long distance.

Based on the record, the Bureau therefore extends this waiver for VRS for one year as long as the providers provide free long distance calls. This waiver is also conditioned on the filing of a report, due April 16, 2008, addressing whether it is necessary for the waiver to remain in effect.

11. Speech-to-Speech. In 2000, the Commission recognized STS as a form of TRS and required that it be offered as a mandatory service. The Commission waived this requirement indefinitely for VRS and, until January 1, 2008, for IP Relay. The Commission noted that STS is speech-based service, whereas VRS is a visual service using interpreters to interpret in sign language over a video connection. With respect to IP Relay, the Commission noted the technical difficulties with respect to voice-initiated calls and the Internet. The Bureau extends the waiver of this requirement for IP Relay for one year. Providers continue to report that this service, like the VCO and HCO services, cannot be provided via IP Relay because of erratic voice quality. The waiver is also conditioned on the filing of a report, due April 16, 2008, addressing whether it is necessary for the waiver to remain in effect.

12. Speed Dialing. Speed dialing allows a TRS user to give the CA a "short-hand" name or number (e.g., "call Mom") for the user's most frequently called telephone numbers. See 47 CFR 64.604(a)(3)(vi). This feature permits a person making a TRS call through a CA to place the call without having to remember or locate the number he or she desires to call.

13. In DA 07-5098, the Bureau allowed the waiver of the speed dialing requirement for VRS to expire on January 1, 2008. In response, on December 31, 2007, Snap Telecommunications, Inc. (Snap) and Verizon each filed requests to extend temporarily waiver of the speed dialing requirement for VRS. Upon reviewing Snap's and Verizon's 2007 Annual Reports on their progress towards meeting waived requirements, the Bureau finds that it erroneously concluded in DA 07-5098 that all VRS providers could offer the speed dialing feature by the end of 2007. The Bureau therefore extends the waiver of the speed dialing requirement for VRS providers through April 30, 2008. Because the speed dialing waiver will terminate at the end of April 2008, the Bureau does not require that VRS providers address this feature in their annual waiver reports that are due on April 16, 2008.

14. With respect to IP Relay, because there is conflicting evidence in the

record on whether providers can provide this feature, the Bureau extends the waiver of this requirement for IP Relay for one year. In light of the fact that some providers report that they are offering this service, however, the Bureau anticipates that there will be no further extensions of this waiver. The Bureau believes that this additional one year waiver is adequate to address any remaining technical or implementation concerns. This waiver is also conditioned on the filing of a report, due on April 16, 2008, providing updated information on the status of providing this service.

15. Three-way calling. The three-way calling feature allows more than two parties to be on the telephone line at the same time with the CA. See 47 CFR 64.604(a)(3)(vi). The Commission waived this requirement for VRS and IP Relay.

16. In Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67 and CG Docket No. 03-123, Order, 20 FCC Rcd 3689 (CGB 2005) (Three-way Calling Clarification Order), published at 70 FR 14568, March 23, 2005, the Bureau clarified the manner in which TRS providers could comply with this rule. The Bureau stated that TRS providers will satisfy the three-way calling requirement if they "ensure that the TRS facility or CA facilitates or handles a three-way call, as the CA would handle any TRS call, where and to the extent the three-way call has been arranged by any one of the parties to the call, e.g., using a party's local exchange carrier provided custom calling service (CCS), by bridging two telephone lines via customer terminal equipment, or by some other means." The Bureau further clarified "that TRS providers are not required to be able to arrange, initiate, or set up a three-way call (but they may do so)\* \* \* so long as the provider is able to handle or facilitate a three-way call, in some manner, whether initiated by one of the parties to the call or set up by the provider."

17. VRS and IP Relay providers have reported that they are providing three-way calling in accordance with the Three-way Calling Clarification Order. Because the record therefore demonstrates that it is technically feasible to offer this service, the Bureau concludes that these waivers are no longer necessary and therefore will allow these waivers to expire on January 1, 2008.

#### Ordering Clauses

18. Pursuant to section 225 of the Communications Act of 1934, as

amended, 47 U.S.C. 225, and Sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.141, 0.361, and 1.3, documents DA 07-5098 and DA 08-45 are adopted. For VRS, the waivers of the one-line VCO, VCO-to-TTY, and VCO-to-VCO; one-line HCO, HCO-to-TTY, and HCO-to-HCO; call release; pay-per-call (900) calls, types of calls, and equal access to interexchange carrier requirements are hereby extended for one year, i.e., until January 1, 2009, conditioned on the filing of a report, due April 16, 2008, addressing whether it is necessary for the waivers to remain in effect. The waiver of the speed dialing requirement for VRS is extended through April 30, 2008.

19. For IP Relay, the waivers of the one-line VCO, VCO-to-TTY, and VCO-to-VCO; one-line HCO, HCO-to-TTY, and HCO-to-HCO; call release; pay-per-call (900) calls; STS; and speed dialing requirements are hereby extended for one year, i.e., until January 1, 2009, conditioned on the filing of a report, due April 16, 2008, addressing whether it is necessary for the waivers to remain in effect.

20. The waivers of the three-way calling requirements (for VRS and IP Relay) expired on January 1, 2008.

Federal Communications Commission.

**Nicole McGinnis,**

*Deputy Bureau Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. E8-3024 Filed 2-15-08; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XD68

#### Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closures and openings.

**SUMMARY:** NMFS is announcing the opening and closing dates of the Atka mackerel directed fishery within the harvest limit area (HLA) in Statistical Area 542 for the vessel participating in the Amendment 80 cooperative. This action is necessary to fully use the 2008

A season HLA limit established for the vessel participating in the Amendment 80 cooperative.

**DATES:** Effective 1200 hrs, A.l.t., February 13, 2008, until 1200 hrs, A.l.t., February 27, 2008.

Written comments must be received by February 28, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-XD68, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>;

- Mail: P.O. Box 21668, Juneau, AK 99802;

- Fax: (907) 586-7557; or

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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.

In accordance with the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and revision (72 FR 71802, December 19, 2007), and § 679.20(a)(8)(ii)(C)(1), the HLA limit of the A season allowance of the 2008 Atka mackerel TACs is 2,294 mt in the Central Aleutian District (area 542) for the Amendment 80 cooperative. The HLA directed fishery for the vessel

participating in the Amendment 80 cooperative were previously opened and closed (73 FR 4494, January 25, 2008) based on the HLA apportionments of the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and revision (72 FR 71802, December 19, 2007).

NMFS has determined that approximately 1,139 mt remain in the Atka mackerel A season HLA limit in area 542 for the vessel participating in the Amendment 80 cooperative. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 A season HLA limit in area 542 for the vessel participating in the Amendment 80 cooperative, NMFS is reopening the directed fishery effective 1200 hrs, A.l.t., February 13, 2008.

In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure date of the Atka mackerel directed fishery in the HLA for area 542 based on the amount of the harvest limit and the estimated fishing capacity of the vessel participating in the Amendment 80 cooperative. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of area 542 for the vessel participating in the Amendment 80 cooperative effective 1200 hrs, A.l.t., February 27, 2008.

After the effective dates of these closures, 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 a 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 opening and closing of the fishery for the HLA limit established in area 542 for the vessel participating in the Amendment 80 cooperative. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 8, 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.