

its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

This action does involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) does apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; (b)

provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), whenever possible in lieu of creating proprietary, non-consensus standards.

Today's action is compliant with the spirit and requirements of the NTTAA. Today's action allows for the use of the ASTM International standard known as Standard E1527-13 and entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA submitted 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective on November 13, 2013, unless EPA receives adverse comment by September 16, 2013.

#### List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Dated: August 5, 2013.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out in the preamble, title 40 CFR chapter I is amended as follows:

#### PART 312—[AMENDED]

■ 1. The authority citation for part 312 continues to read as follows:

**Authority:** Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

#### Subpart B—Definitions and References

■ 2. Section 312.11 is amended by adding paragraph (c) to read as follows:

#### § 312.11 References.

\* \* \* \* \*

(c) The procedures of ASTM International Standard E1527-13 entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." This standard is available from ASTM International at [www.astm.org](http://www.astm.org), 1-610-832-9585.

[FR Doc. 2013-19764 Filed 8-14-13; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket Nos. 08-15 and 03-123; FCC 13-101]

#### Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; 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 amends telecommunications relay services (TRS) mandatory minimum standards applicable to Speech-to-Speech (STS) relay service. This action is necessary to ensure that persons with speech disabilities have access to relay services that address their unique needs, in furtherance of the objectives of section 225 of the Communications Act of 1934, as amended (the Act), to provide relay services in a manner that is functionally equivalent to conventional telephone voice services.

**DATES:** Effective October 15, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559-5158 or email [Gregory.Hlibok@fcc.gov](mailto:Gregory.Hlibok@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Services; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order (Order)*, document FCC 13-101, adopted on July 19, 2013, and released on July 19, 2013, in CG Docket Nos. 08-15 and 03-123. In document FCC 13-101, the Commission also seeks comment in an accompanying

Further Notice of Proposed Rulemaking (*Notice*), which is summarized in a separate **Federal Register** Publication. The full text of document FCC 13–101 will be available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS), and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, Internet: [www.bcpweb.com](http://www.bcpweb.com). Document FCC 13–101 can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/encyclopedia/telecommunications-relay-services-trs>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email 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).

### Synopsis

1. Title IV of the Americans with Disabilities Act (ADA) requires the Commission to ensure that TRS is available to all individuals with hearing and speech disabilities in the United States and to increase the utility of the telephone system by enabling these persons to access the telephone system to make calls to, and receive calls from, other individuals. Under Title IV, the Commission must ensure that, “to the extent possible and in the most efficient manner,” relay services are made available that provide access to the telephone system that is “functionally equivalent” to voice telephone services.

2. When Congress first enacted section 225 of the Act, relay calls were placed using a text telephone device (TTY) connected to the public switched telephone network (PSTN). Since then, the Commission has determined that several new forms of relay fall within the definition of TRS and decided to include PSTN-based STS, captioned telephone service (CTS), video relay service (VRS), Internet Protocol Relay (IP Relay), and IP captioned telephone service (IP CTS) as compensable forms of TRS.

3. In March 2000, the Commission mandated that carriers obligated to provide TRS also provide STS so that persons with speech disabilities can access the telephone system. STS utilizes specially trained communications assistants (CAs) who

understand the speech patterns of persons with speech disabilities and can repeat the words spoken by such individuals to the other parties to a relayed call. A person with a speech disability can initiate an STS call by dialing 711 (the nationwide access code for state relay providers) and giving the CA the number of the person he or she wishes to call. The CA then makes the outbound call, and re-voices what the STS user says to the called party. Persons desiring to call a person with a speech disability via STS can also dial 711 to reach a CA who can handle the call. At present, states are responsible for compensating providers for the costs of providing intrastate STS, while the Interstate Telecommunications Relay Services Fund (Fund) compensates providers for the costs of providing interstate STS.

4. On June 26, 2006, Bob Segalman and Rebecca Ladew filed a petition requesting that the Commission amend its rules to require an STS CA to stay with the call for a minimum of 20 minutes, rather than 15 minutes because “STS calls often last much longer than text-to-voice calls[,] changing CAs on these calls prior to 20 minutes can seriously disrupt their flow and impair functionally equivalent telephone service.” Bob Segalman and Rebecca Ladew, *Petition for Amendment to TRS Rule on Speech-to-Speech Relay Service*, CG Docket No. 03–123 (2006 *STS Petition*).

5. On December 21, 2007, Hawk Relay filed a Request for Clarification that IP STS is a form of TRS eligible for compensation from the Fund. Hawk Relay, *Request for Expedited Clarification for the Provision and Cost Recovery of Internet Protocol Speech-to-Speech Relay Service*, CG Docket No. 08–15 (*IP STS Request*). The *IP STS Request* describes IP STS as a type of STS that uses the Internet to connect the consumer to the relay provider. According to the *IP STS Request*, an IP STS call is initiated by the relay user clicking an icon on his or her computer or device. The user is connected to a CA over the Internet and tells the CA the number to be dialed; the CA then connects the IP STS user with the called party and relays the call between the two parties.

6. On June 24, 2008, the Commission released the 2008 *STS NPRM* in response to the 2006 *STS Petition* and the *IP STS Request*. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Speech-to-Speech and Internet Protocol (IP) Speech-to-Speech Telecommunications Relay Service*, CG

Docket Nos. 03–123 and 08–15, Notice of Proposed Rulemaking, published at 73 FR 47120, August 13, 2008 (2008 *STS NPRM*). The Commission sought comment on whether to amend the TRS rules to require STS CAs to stay with a call for a minimum of 20 minutes (rather than 15 minutes), and whether the Commission should more specifically define the point at which the minimum period of time begins to run. The Commission also sought comment on whether to amend the TRS rules to require that STS providers offer the STS user the option of having his or her voice muted so that the other party to the call will hear only the STS CA re-voicing the call, and not the voice of the STS user, as well as on whether there are ways to ensure that STS users calling 711, the nationwide dialing access code for TRS, will promptly reach an STS CA to handle their calls. With respect to IP STS, the 2008 *STS NPRM* sought comment on its tentative conclusions that IP STS is a form of TRS compensable from the Fund, that it should be compensated at the same rate as STS, and that an entity desiring to offer IP STS could become eligible to do so by being accepted into a certified state TRS program, subcontracting with an entity that is part of a certified state program, or by seeking Commission certification.

7. On October 20, 2011, Speech Communications Assistance by Telephone, together with eight other national disability organizations, filed a petition requesting the Commission to open a proceeding on modernizing STS to allow people with speech disabilities to benefit from modern IP technologies through the use of video-assisted STS, or VA–STS. Speech Communications Assistance by Telephone (SCT), *Petition for Rulemaking for Video Assisted STS (VID–STS) to Facilitate Phone Communication for People with Severe Speech Disabilities*, CG Docket No. 03–123 (2011 *VA–STS Petition*). VA–STS connects the caller and the CA via a broadband video link, which allows the CA to see STS users as they are speaking. Petitioners claim that giving the CA the ability to see the STS caller’s mouth movements, facial expressions, and gestures, and possibly even cue cards, can enable the CA to better understand and re-voice for the caller. In this manner, Petitioners assert, VA–STS provides functional equivalence to many individuals with speech disabilities who are not able to utilize traditional STS successfully.

8. As the Commission has recognized in the past, given the nature of the interaction between an STS user and an STS CA, requiring a longer minimum

period of time that an STS CA must stay with a call than is required for other forms of TRS furthers section 225 of the Act's functional equivalency objective. Based upon the record concerning past experience with the preexisting 15 minute period of time that an STS CA must stay with a call, the Commission now concludes that an incremental increase to 20 minutes would better ensure functional equivalency, and the Commission amends its rule accordingly. The record confirms that transferring an ongoing call to a new CA is often disruptive because the new STS CA must adjust to the speech patterns of the STS user. Further, persons with speech disabilities often require a greater amount of time and concentration to perform the tasks of listening to the other party, thinking, forming a response, and then speaking.

9. The Commission concludes that the 20 minute time period should begin when the CA reaches the called party, and amends its rules accordingly. The Commission emphasizes that, for calls initiated by persons with speech disabilities, the CA should initiate an outbound call to the voice telephone user only when he or she is effectively communicating with the STS user. Moreover, especially for STS calls initiated by persons without a speech disability, the Commission concludes that if, once the called party has been reached, the STS user and the CA are at any point unable to communicate effectively, the STS provider may switch the call to a different CA before the 20 minute period has expired without violating the 20 minute in-call replacement rule.

10. The Commission concludes that STS providers must offer STS users the option to have their voices muted so that the other party to the call will hear only the CA, not the user's voice, and it amends its rules accordingly. This option will likely give more persons with speech disabilities the confidence to use STS because many such individuals are hesitant to allow the called party to hear their speech.

11. In 2000, the Commission adopted nationwide 711 dialing access to allow both persons with disabilities and voice telephone users to initiate a TRS call from any telephone, anywhere in the United States, and be connected to the TRS facility serving that calling area. In 2008, the Commission sought comment on a number of 711 issues specific to STS users and noted that the Commission was in receipt of complaints from STS users who reported being disconnected upon dialing 711 during the transfer to an STS CA, indicating perhaps a lack of

proper training on the part of some CAs, or the lack of proper equipment to receive and transfer STS calls to an STS CA. The Commission asked whether there are means by which it could ensure that STS users can reach an STS CA promptly and without disconnection after dialing 711, for example through the use of a prompt or menu.

12. Rather than mandating any particular technical solution, the Commission concludes that STS providers must, at a minimum, employ the same means of enabling their STS users to connect to a CA when dialing 711 that they use for all other forms of TRS. For example, where a provider requires its CAs to directly answer incoming 711 calls (*i.e.*, they do not use an interactive voice response (IVR) menu system for incoming TRS calls), it must ensure that its CAs are trained to discern the specific needs of STS users and promptly transfer these incoming calls to STS CAs, so that these callers have the same timely access to communications that other TRS callers have. Additionally, the provider may not require that the caller hang up and dial a different number (*e.g.*, a toll free number) to reach an STS CA because this, too, would defeat the purpose of requiring easy dialing access as established in the *711 TRS Dialing Order*, and impose a particular hardship on STS users, many of whom have limitations in their motor dexterity due to stroke, cerebral palsy or other muscular limitations that have caused their speech disabilities. *Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Report and Order, published at 65 FR 54799, September 11, 2000 (*711 TRS Dialing Order*).

13. To the extent that a provider uses an IVR menu system that allows a direct connection to a CA for TTY-based and other forms of TRS on the first level of menu prompts, it must allow STS users to connect directly to an STS CA from that first level of prompts. Ensuring that STS users are not required to navigate through extra dialing menus will enable such users to communicate by telephone in a manner that is functionally equivalent to the ability of an individual who does not have a speech disability. The Commission notes, however, that the mandate for 711 dialing does not preclude STS providers from offering a single nationwide toll free number as a supplement to 711 dialing access. However, a dedicated toll-free number for STS calls cannot take the place of 711 STS dialing access, as this would be inconsistent with the intent of the *711 TRS Dialing Order*, which was to ensure

that easy dialing access be available to all persons with hearing and speech disabilities seeking to use TRS across the country, as well as to voice telephone users seeking to call such persons.

14. In the *2008 STS NPRM*, the Commission tentatively concluded that IP STS meets the definition of TRS under section 225(a)(3) of the Act, and thus may be eligible for compensation from the Fund. The Commission now concludes, however, that it needs additional information in order to determine whether an additional form of STS that utilizes Internet-based transmissions is necessary to achieve functional equivalence for Americans with speech disabilities, and, if so, to establish the parameters for such form of STS. It appears that STS users already can obtain the claimed advantages of IP STS, such as the ability to make calls on a mobile or Internet-enabled device, by simply using an interconnected VoIP service to access a state STS relay center. Additionally, the Commission received the *2011 VA-STS Petition*, requesting the Commission to open a proceeding on VA-STS, which employs IP video technologies to enhance relayed communication by people with speech disabilities. Petitioners in the *2011 VA-STS Petition* claim that allowing the CA the ability to see and get cues from "the user's face and any available seen body parts or indicators," such as facial expressions and the orientation and movement of the body, enables the CA to more effectively re-voice what a person with a speech disability says during a call. In the coming months, the Commission will open a proceeding to seek comment on whether an additional form of STS that utilizes Internet-based transmissions is necessary to achieve functional equivalence for Americans with speech disabilities, and, if so, how such service should be structured and provided under the Commission's TRS program.

15. Consumer groups propose other initiatives to further enhance the use and quality of STS. A consumer group asserts that STS providers should be required to inform STS users of the TRS confidentiality rules so that prospective STS users would be reassured that their privacy is being preserved. The Commission declines to adopt this proposal because it is concerned that adding this requirement to the start of every STS call may be unduly burdensome for both the CA and other users, many of whom may already be familiar with this mandatory minimum standard. Instead, the Commission believes that informing potential users of their right to TRS confidentiality is

best incorporated into any outreach efforts that are required by its current or future rules. A second recommendation is to require STS users' profiles to be immediately available to the STS CA each time an STS user places an STS call so that providers can provide a better and more "consistent STS relay experience" for users. The Commission believes that this proposal deserves consideration, but defers its resolution until after the Commission seeks and obtains further input on the proposal's merits in response to the *Notice*.

#### Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13–101 does not contain any new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or revised 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).

#### Final Regulatory Flexibility Certification

1. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

2. STS relay service is a form of TRS that utilizes specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by such individuals to the other parties to a relayed call. In the *Order*, the Commission concludes that requiring an STS CA to stay with the call for a minimum of 20 minutes is best served to ensure the effective and efficient relaying of STS calls. The Commission also finds that requiring that STS providers offer the STS user the option of having her or his voice muted so that the other party to the call would hear

only the STS CA re-voicing the call, and not the voice of the STS user as well, will give potential STS users the confidence necessary to use STS. In document FCC 13–101, the Commission further requires that STS providers must, at a minimum, employ the same means of enabling their STS users to connect to a CA when dialing 711 that they use for all other forms of TRS. For example, when a CA directly answers an incoming 711 call, the CA must transfer the STS user to an STS CA without requiring the STS user to take any additional steps. When an interactive voice response (IVR) system answers an incoming 711 call, the IVR system must allow for an STS user to connect directly to an STS CA using the same level of prompts as the IVR system uses for all other forms of PSTN-based TRS.

3. The Commission concludes that these new requirements are necessary to improve the effectiveness and quality of STS so that individuals with speech disabilities may receive functionally equivalent telephone service, as mandated by Title IV of the Americans with Disabilities Act. The Commission believes that none of these requirements would impose a significant burden on providers, including small businesses. Specifically, each of the three new requirements entail only minor operational changes that can be accomplished at minimal cost to each provider of STS, including small businesses.

4. In analyzing whether a substantial number of small entities will be affected by the requirements adopted in document FCC 13–101, the Commission notes that the SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. Five providers currently receive compensation from the Interstate TRS Fund for providing STS: AT&T Corporation; Hamilton Relay, Inc.; Kansas Relay Service, Inc.; Purple Communications, Inc. and Sprint Nextel Corporation. The Commission notes that only one of these five providers is a small entity under the SBA's small business size standard. Because each of the three new requirements adopted in the *Order* entail only minor operational changes that can be accomplished at minimal cost to each provider of STS, the Commission concludes that the number of small entities affected by its requirements in document FCC 13–101 is not substantial.

5. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of document FCC 13–101 will not have a significant

economic impact on a substantial number of small entities.

#### Congressional Review Act

1. The Commission will send a copy of document FCC 13–101 in a report to be sent to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

#### Ordering Clauses

Pursuant to sections 1, 4(i), (j), and (o), 225, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), and (o), 225, and 403, document FCC 13–101 is adopted.

The *2006 STS Petition* is granted to the extent indicated herein.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 13–101, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

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

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

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

**Authority:** 47 U.S.C. 154, 254(k); 403 (b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (a)(1)(v) and by adding paragraphs (a)(1)(viii) and (b)(7) to read as follows:

#### § 64.604 Mandatory minimum standards.

\* \* \* \* \*  
(a) \* \* \*  
(1) \* \* \*

(v) CAs answering and placing a TTY-based TRS or VRS call shall stay with the call for a minimum of ten minutes. CAs answering and placing an STS call shall stay with the call for a minimum of twenty minutes. The minimum time period shall begin to run when the CA reaches the called party. The obligation of the CA to stay with the call shall terminate upon the earlier of:

(A) The termination of the call by one of the parties to the call; or

(B) The completion of the minimum time period.

\* \* \* \* \*

(viii) STS providers shall offer STS users the option to have their voices muted so that the other party to the call will hear only the CA and will not hear the STS user's voice.

\* \* \* \* \*

(b) \* \* \*

(7) *STS 711 Calls*. An STS provider shall, at a minimum, employ the same means of enabling an STS user to connect to a CA when dialing 711 that the provider uses for all other forms of TRS. When a CA directly answers an incoming 711 call, the CA shall transfer the STS user to an STS CA without requiring the STS user to take any additional steps. When an interactive voice response (IVR) system answers an incoming 711 call, the IVR system shall allow for an STS user to connect directly to an STS CA using the same level of prompts as the IVR system uses for all other forms of TRS.

\* \* \* \* \*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013-19786 Filed 8-14-13; 8:45 am]

**BILLING CODE 6712-01-P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 48 CFR Part 2409

[Docket No FR-5571-F-03]

RIN 2501-AD56

### HUD Acquisition Regulations (HUDAR): Correcting Amendment

**AGENCY:** Office of the Chief Procurement Officer, HUD.

**ACTION:** Final rule; Correcting amendment.

**SUMMARY:** On December 10, 2012, HUD published a final rule that amended the HUDAR to implement miscellaneous changes, which included, for example, removing obsolete and redundant provisions, updating provisions that address the organizational structure of HUD, and adding provisions on contractor record retention. In making the organizational changes specified in the preamble of the December 10, 2012, final rule and the March 16, 2012, proposed rule, HUD inadvertently omitted moving to the new regulatory structure the clause that clarifies that policies and procedures concerning debarment and suspension for

nonprocurement contracts also apply to procurement contracts. This final rule corrects that amendment.

**DATES:** *Effective:* August 15, 2013, and is applicable beginning January 9, 2013.

**FOR FURTHER INFORMATION CONTACT:** For information about this technical correction, please contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202-708-1793 (this is not a toll-free number). Persons with hearing or speech impairments may access Mr. Blocker's telephone number via TTY by calling the toll-free Federal Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The uniform regulation for the procurement of supplies and services by federal departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42102). The FAR is codified in title 48, chapter 1, of the Code of Federal Regulations. HUD promulgated its regulation to implement the FAR on March 1, 1984 (49 FR 7696). The HUDAR (title 48, chapter 24 of the Code of Federal Regulations) is prescribed under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)); section 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 121(c)); and the general authorization in FAR 1.301.

##### II. 2012 HUD Amendments

HUDAR was last revised by final rule published on December 10, 2012 (77 FR 73524). The December 10, 2012, final rule was preceded by a March 16, 2012 (77 FR 15681), proposed rule that announced that the purpose of the 2012 rulemaking was to implement various miscellaneous and nonsubstantive amendments to the HUDAR. The preamble to the March 16, 2012, proposed rule described amendments that would correct the location of various HUDAR provisions through redesignation and corrected citations.

One of the amendments described in the March 16, 2012, proposed rule was to move 48 CFR 2409.7001 to its new location, 48 CFR 2409.470. Section 2409.7001, entitled "HUD's Regulations on Debarment and Suspension, and Ineligibility", read as follows: "HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR parts 180 and 2424 and, notwithstanding 2 CFR 180.220(a)(1), apply to procurement

contracts." The preamble to the March 16, 2012, proposed rule stated that: "The content of current 2409.7001 is proposed to be moved to the new 2409.470 with the same title, to more accurately correspond to the FAR and would be revised to correct the Code of Federal Regulations citation. Current subpart 2409.70 would be accordingly removed, as 2409.7001 was the only section in that subpart." (See 77 FR 15683.) The correction of the citation was to remove the references to 2 CFR part 180, which is now unnecessary as it is included by cross-reference in 2 CFR 2424.10 and elsewhere. Other than relocation and correction of the citation, no substantive change was proposed to section 2409.7001. However, in the published rule text, the portion after the legal citation to 2 CFR part 2424 was inadvertently dropped.

The preamble to the December 10, 2012, final rule advised that it was implementing without change the amendments proposed by the March 16, 2012, rule, and described a few nonsubstantive amendments made that were inadvertently omitted in the March 16, 2012, proposed rule. Unfortunately, the March 16, 2012 proposed rule also inadvertently omitted the full content of prior regulatory section 2409.7001 that was supposed to be moved, without substantive change, to 2409.470, and the December 10, 2012 final rule repeated that error.

##### III. This Correcting Amendment Rule

This final rule corrects this error and restores the full content of § 2409.7001 to new § 2409.470 with a corrected legal citation. The 2012 rulemaking makes clear that no significant substantive changes were being made to the HUDAR. The error did not change the applicability of debarment and suspension rules to procurements. To remove the applicability of HUD's debarment and suspension policies and procedures to procurement contracts, which policies and procedures have been applied to procurement contracts to date and for many years previously, would have made the 2012 rulemaking a highly significant rule, and HUD would have been required to provide advance notice and solicit comment on this change. Additionally, however, and of equal or more importance is that HUD has no authority to exempt procurement contracts from debarment and suspension policies and procedures. The Federal Acquisition Regulation (FAR) requires debarment and suspension policies and procedures to be applied to procurement contracts. In the absence of an agency specifying its own debarment and suspension policies