

SUMMARY: The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed January 9, 2024, by VPM Media Corporation (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) television channel *12 to Waynesboro, Virginia (Waynesboro), as the community's first local television service and its first NCE television service.

DATES: Comments must be filed on or before February 20, 2024 and reply comments on or before March 4, 2024.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Ari Meltzer, Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, at (202) 418-1665; or Emily Harrison, Media Bureau, at Emily.Harrison@fcc.gov.

SUPPLEMENTARY INFORMATION: The Petitioner states that Waynesboro qualifies as a community for allotment purposes. In support, it states that Waynesboro is an independent and principal city of the Staunton-Waynesboro Metropolitan Statistical Area. As of the 2020 Census, Waynesboro had a population of 22,196 and the Staunton-Waynesboro Statistical Area had a population of 125,654. In addition, Waynesboro has its own ZIP Code, two post offices, city council, public school system, police department, and library. The Petitioner states its intention to file an application for channel *12 if allotted, and take all necessary steps to obtain a construction permit.

We find the proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Waynesboro under the second priority of the Commission's television allotment priority standard. The Petitioner demonstrates, and a Bureau staff engineering analysis confirms, that channel *12 can be allotted to Waynesboro, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (Rules), at 37°38'24" N and 78°27'11" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the Rules as the entire community of Waynesboro is encompassed by the proposed 43 dBμ contour.

This is a synopsis of the Commission's *Notice of Proposed*

Rulemaking, MB Docket No. 24-4; RM-11974; DA 24-30, adopted January 11, 2024, and released January 11, 2024. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to FCC504@fcc.gov or call the Consumer & Government Affairs Bureau at (202) 418-0530 (VOICE), (202) 418-0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed 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). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking is available at <https://www.fcc.gov/proposed-rulemakings>.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under Virginia, add an entry for Waynesboro to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * *	*
Virginia	
* * *	*
Waynesboro	* 12
* * *	*

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DEPARTMENT OF STATE

48 CFR Parts 625 and 652

[Public Notice: 12058]

RIN 1400-AF65

Department of State Acquisition Regulation: Nondiscrimination in Foreign Assistance

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Foreign Assistance Act of 1961 (FAA) and other related statutes, such as the FREEDOM Support Act, the Migration and Refugee Assistance Act of 1962, and the SEED Act of 1989, authorize the U.S. Department of State (Department of State, State, or Department) to provide foreign assistance that seeks to support efforts that would have the effect of protecting and promoting U.S. security, prosperity, and democratic values and shape an international environment to improve the lives of people around the world. To implement the Department's expectation of nondiscrimination against beneficiaries of Department-funded foreign assistance activities, the Department is proposing to amend its Department of State Acquisition Regulation (DOSAR) to include a new

contract clause entitled “Nondiscrimination in Foreign Assistance.” The proposed clause expressly states that contractors and subcontractors receiving Department-funded foreign assistance funds must not discriminate on specified bases against end-users of supplies or services (also referred to in this rule as beneficiaries and potential beneficiaries) or in certain employment decisions involving persons employed in the performance of this contract and funded in whole or in part with foreign assistance funds except where target populations are specified in the relevant statement of work (SOW) or as otherwise required by U.S. law.

DATES: The Department of State will accept comments until March 19, 2024.

ADDRESSES: Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

- Through the Federal eRulemaking Portal at <https://www.regulations.gov> and search for docket DOS–2023–0014 or RIN 1400–AF65.
- By Email: Submit electronic comments to acquisitionpolicy@state.gov and/or schroederhr@state.gov.
- The summary of this rule can be found at www.regulations.gov/DOS-2023-0014.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding this notice to Hilary Schroeder, who may be reached at (202) 890–9798 or at schroederhr@state.gov.

SUPPLEMENTARY INFORMATION: The inclusion and equitable treatment of all individuals, organizations, and communities relevant to Department foreign assistance programs is critical to achieving effective, comprehensive, and sustainable foreign assistance results because it enhances the participation, contributions, and access of the target population. As such, the Department seeks to ensure access for all eligible beneficiaries of the target population within the scope of its foreign assistance contracts without discrimination. Because of this premise, which underpins all of the Department’s programs, the Department is embedding equity across its foreign affairs work and raising the visibility of inequities globally by providing equal opportunities for all eligible individuals, including members of minority groups and members of other underserved communities, through its foreign assistance programs. The Department seeks to improve the lives of people around the world by being inclusive and equitable in its foreign

assistance efforts, including its evaluation of responses to requests for proposal, solicitations, etc.

The Department is committed to a nondiscrimination policy in its projects and activities and welcomes proposals irrespective of an offeror’s race, ethnicity, color, religion, sex, gender, sexual orientation, gender identity or expression, sex characteristics, pregnancy, national origin, disability, age, genetic information, indigeneity, marital status, parental status, political affiliation, or veteran’s status. The Department seeks to ensure that foreign assistance proposals that demonstrate that the recipients would not, in implementation of a potential contract, discriminate against any beneficiaries of foreign assistance funds based on any of the factors listed above—unless otherwise expressly authorized in the contract or otherwise required by U.S. law in implementation of a potential contract. Discrimination in implementation of an award could include adversely impacting, or denying equitable access to the benefits provided through the contract.

Establishing clear and meaningful nondiscrimination protections in Department of State foreign assistance awards advances U.S. foreign policy by ensuring that U.S. foreign assistance is inclusive and equitable by reaching all intended beneficiaries, and efficiently accomplishing its intended objectives. U.S. foreign assistance funding is less effective and efficient when discrimination prevents assistance from reaching those who might most benefit from such assistance—which hinders U.S. foreign policy by excluding individuals that the United States intended to receive such assistance.

Nondiscrimination protections require a tangible incentive for organizations to take affirmative steps to commit to nondiscrimination and extend protection to employees and beneficiaries of foreign assistance. Nondiscrimination protections send a strong signal to people around the world that equity and inclusion are values that the United States takes seriously. They complement and affirm other commitments to equality in U.S. foreign policy, maximizing their coherence and effectiveness.

Nondiscrimination principles and protections are essential in protecting and advancing the human rights of all persons and ensuring equitable access to foreign assistance programs. Contractors must adhere to this requirement by performing the activities as outlined in the contract SOWs.

In recent years, the U.S. government has issued multiple policy

pronouncements emphasizing equity, fairness, and human dignity. Effective nondiscrimination protections for beneficiaries of foreign assistance are a means toward achieving these objectives. For example, in 2021, the President issued Executive Order (E.O.) 13985 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” which mandates embedding equity in government programming and decision-making processes of every department and agency in the Executive Branch”; and in 2023, the President issued E.O. 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Furthermore, in 2011, the President issued E.O. 13563, “Improving Regulation and Regulatory Review,” which, in addition to quantitative factors, advised that the qualitative values of equity, fairness, and human dignity are important considerations in agencies’ rulemaking.

This rulemaking proposes to revise (48 CFR) DOSAR Part 625 to add new requirements, at 625.7101, 625.7102, and 625.7103 outlining the policy against nondiscrimination in Department of State foreign assistance contracts. In addition, the rulemaking proposes to add a clause at 652.225–72, entitled “*Nondiscrimination in Foreign Assistance*.” The clause, applicable to all solicitations, contracts, and subcontracts awarded with Department of State foreign assistance funds at any tier, prohibits contractors and subcontractors from discriminating against beneficiaries or potential beneficiaries (*i.e.*, those individuals intended to receive the benefits of the award, whether goods or services) or persons employed in the performance of the award on the basis of any listed characteristics not expressly stated in the award.

The purpose of this proposed rulemaking is to ensure effective implementation of foreign assistance programs consistent with U.S. foreign policy and the purposes of the FAA. Section 101 of the FAA provides that: “[T]he Congress reaffirms the traditional humanitarian ideals of the American people and renews its commitment to assist people in developing countries to eliminate hunger, poverty, illness, and ignorance.” 22 U.S.C. 2151(a).

The main effect of the proposed clause is to ensure that contractors adhere to State’s policy and practice of nondiscrimination in planning foreign assistance projects and activities, and State’s policy and practice of nondiscrimination is followed through to completion by the contractors that

implement them. The impact of the clause on contractors and offerors is to require them to refrain from the discrimination described in the clause.

Under the statutory regime governing foreign assistance, and consistent with his responsibilities regarding the conduct of U.S. foreign affairs, the President has broad discretion to set the terms and conditions on which the United States provides such assistance. Many of the authorities provided under the Foreign Assistance Act of 1961, and similar statutes, explicitly allow for the provision of assistance “on such terms and conditions as [the President] may determine.” See, e.g., section 104(c)(1) of the FAA (22 U.S.C. 2151b(c)(1)) (health assistance); section 481(a)(4) of the FAA (22 U.S.C. 2291(a)(4)) (counternarcotics and anti-crime assistance); section 531 of the FAA (22 U.S.C. 2346) (assistance to promote economic or political stability); section 541(a) of the FAA (22 U.S.C. 2347) (International Military Education and Training assistance); section 551 of the FAA (22 U.S.C. 2348) (Peacekeeping Operations); section 571 of the FAA (22 U.S.C. 2349aa) (anti-terrorism assistance); see also section 2(c)(1) of the MRAA; section 201 of the SEED Act of 1989 (amending the FAA by inserting, *inter alia*, section 498b(i)).

The FAA provides that “[t]he President may exercise any functions conferred upon him by this Act through such agency or officer of the United States Government as he shall direct. The head of any such agency or such officer may from time to time promulgate such rules and regulations as may be necessary to carry out such functions. . . .” 22 U.S.C. 2381(a). The Secretary of State exercises authorities under the FAA as delegated by the President in Executive Order 12163, dated September 29, 1979, as amended. That includes the President’s authority to “issue and enforce regulations determining the eligibility of any person to receive funds made available under” the FAA. 22 U.S.C. 2381(b).

These proposed rules fall within the Department’s authority, delegated to it by the President, to set conditions on the provision of foreign assistance, including on the implementers of such assistance. Courts have repeatedly recognized that the President has extremely broad discretion in the conduct of foreign affairs to allocate foreign assistance funding for particular programs and to set the conditions on U.S. funding to implementers of those programs. See, e.g., *DKT Memorial Fund v. USAID*, 887 F.2d 275, 282 (D.C. Cir.1989); *Planned Parenthood Federation of America v. USAID*, 915

F.2d 59 (2d Cir. 1990); *Center for Reproductive Law and Policy v. Bush*, 304 F.3d 183 (2d Cir. 2002). These courts recognized the President’s broad discretion to allocate assistance funding for particular programs and to set the conditions on U.S. funding to non-governmental implementers of those programs. See, e.g., *Planned Parenthood v. USAID*, 838 F.2d 649, 654 (2d Cir. 1988) (in carrying out the policies under the Foreign Assistance Act, “AID has ‘broad discretionary power’ to decide which, among numerous competing projects, will be given family planning funds”); *DKT*, 887 F.2d at 282 (“President acted under a congressional grant of discretion as broadly worded as any we are likely to see. . . .”).

Consistent with this broad authority, the Department and other agencies have imposed a range of requirements on foreign assistance awards. For example, the Department utilizes contract-specific terms and conditions from time to time when necessitated by policy and priorities, such as restrictions on allowed activities and implementation areas/countries.

Moreover, the Secretary has the authority to promulgate such rules and regulations as may be necessary to carry out his functions and the functions of the Department of State. See 22 U.S.C. 2651a(a)(4). This rule provides a contractual requirement for contractors to refrain from undermining the objectives, terms, and conditions of foreign assistance-funded activities by engaging in conduct that interferes with its delivery to intended recipients. In addition to the Department’s authority to promulgate regulations under the FAA, the Federal Acquisition Regulation (FAR) also expressly authorizes the Secretary to issue “agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.” (FAR 1.301(a)(1)). Under its acquisition authority, the Department awards contracts in the execution of foreign assistance. Prudent and responsible exercise of the Department’s foreign assistance and acquisition authority under the FAR require that contract terms ensure that foreign assistance reaches its intended recipients and is not thwarted by discrimination on the bases covered in this rule. Establishing terms and conditions for foreign assistance

contracts is a function the Department’s broad authority both to set the terms, conditions, and scope of foreign assistance and, under the FAR, to ensure that the terms and conditions of contracts implementing such activities are consistent with the objectives of the foreign assistance.

Finally, in the event that any portion of the proposed rule as finalized is declared invalid, the Department intends that the various aspects be severable. The Department would intend the remaining features of the policy to stand.

Regulatory Analyses

Administrative Procedure Act

This proposed rule is published for public comment pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 1707). The Department is publishing this proposed rulemaking for a comment period of 60 days.

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

Executive Orders (E.O.s) 12866, 13563, and 14094 direct agencies to assess the costs and benefits of the intended regulation. E.O. 13563 allows that in making this assessment, an agency “may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.” The Department has submitted this rulemaking to the Office of Information and Regulatory Affairs (OIRA) for review. OIRA has designated this rulemaking a “significant regulatory action” under E.O. 12866, as amended.

This rule provides a benefit by promoting nondiscrimination in Department of State foreign assistance, which itself promotes programmatic efficiency, with minimal administrative burden anticipated for the affected entities, Department contractors and subcontractors. It does not require them to carry out activities beyond those in their contract SOWs and terms and conditions. The Department anticipates that the benefits of the proposed rule are realized by (1) ensuring that contract solicitations and resulting contracts clearly notify that discrimination on bases in the rule will not excuse the contractor from performing the foreign assistance funded work; (2) by avoiding proposal evaluation costs arising from contractors who are unwilling to provide supplies and services to all intended recipients; (3) by helping to

ensure that foreign assistance funded activities reach intended recipients and are not undermined by discriminatory exclusion on the bases identified in the rule. If, for example, a contract specified the provision of food parcels in a certain community, the contractor could not, on its own, decide that only certain members of that community should receive the food parcels or that certain members should be excluded. This rule makes it clear at the inception of a contract solicitation and any resulting contract the contractor is obligated to provide services and supplies without excluding recipients on the bases stated in the rule.

Potential costs the Department identifies for contractors and subcontractors are for implementation guidance, to the extent that contractors do not already proscribe discrimination as part of the normal conduct of their business, and potential changes in hiring practices for certain employees supporting performance of the contract. Potential costs could include creation of policies and procedures, initial training on implementation guidelines, and training on working with Department contracting officer representatives and/or contracting officers to ensure compliance. The Department requests comment on the costs of compliance with the provisions of this proposed rule, including estimates of hourly burdens and wages of employees that may be required to implement the rule, should it be finalized.

The Department awards approximately 100 new contracts with foreign assistance funds annually. Including this clause in all new contracts funded by Department of State foreign assistance funds and all new subcontracts thereunder provides an explicit requirement that the Department's contractors not discriminate against any designated group or individual (except as provided in the award or as required under U.S. law) and is particularly important in countries where stigma and discrimination toward certain groups is tolerated or officially endorsed by the government. The benefits of the rule would include expressly reinforcing notions of equity, fairness, and human dignity under Federal Government contracts internationally.

Contractors responding to a solicitation (e.g. request for proposal (RFP) or invitation for bid (IFB)) would further be on notice not to include any discriminatory criteria in their responses to a solicitation, absent specific programmatic justification in the SOW to do so.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. It requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

In fiscal year 2022, 14 unique domestic small businesses received Department foreign assistance funds under 29 individual awards. In fiscal years 2018, 2019, 2020, and 2021, three, one, four, and six unique small businesses received Department foreign assistance funds, respectively. The requirement this rule would impose on small businesses is no different than the requirement imposed on other entities: contracts or subcontracts awarded to them will include a clause prohibiting discrimination in the employment of persons engaged directly in the performance of Department foreign assistance contracts and grants and not to discriminate with respect to the intended beneficiaries of U.S. foreign assistance, except as provided in the award. As with all contractors, the employees of small businesses will be expected to be mindful of the principles of equity, fairness, and human dignity when performing the work under their contracts; as they have always been. The Department anticipates that the additional effort required by small businesses as a result of this proposed rule is *de minimis* and will not impose more than a negligible cost. However, the Department is requesting comment on this assumption.

In light of the above analysis, the Department of State certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of \$100 million or more in State, local, or Indian Tribal governments or the private sector. Since this final rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

Executive Orders 12372 and 13132—Federalism

This regulation will not have substantial direct effects on the states,

on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175—Consultation With Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of E.O. 13175 do not apply to this proposed rule.

Paperwork Reduction Act

The Department believes that the number of respondents submitting reports pursuant to this rulemaking will be low, possibly close to the 10 respondents per year that would trigger the Paperwork Reduction Act. The Department anticipates that the burden per response would be one hour, yielding a total burden of 10 hours for this rulemaking. The Department invites public comment on these figures. The number of respondents and the burden hours will be added to the existing OMB Control Number that covers information collections mandated by the DOSAR. Therefore, the Department submits the following information:

Title of Information Collection: Department of State Acquisition Regulation (DOSAR).

OMB Control Number: 1405–0050.

Type of Request: Revision of a currently approved collection.

Originating Office: Department of State, A/OPE.

Form Number: No form.

Respondents: Offerors and awardees of Department of State solicitations and contracts.

Estimated Number of Respondents: 2,897, plus 10 for this rulemaking = 2,907.

Estimated Number of Responses: 3,095, plus 10 for this rulemaking = 3,105.

Average Time per Response: 82 hours, plus one hour for this rulemaking = 83 hours.

Total Estimated Burden Time: 253,416, plus 10 for these rulemaking = 253,426 hours.

Frequency: On occasion.

Obligation to Respond: Mandatory.

List of Subjects in 48 CFR Parts 625 and 652

Government procurement.

For the reasons discussed in the preamble, the Department of State proposes to amend 48 CFR Chapter 6 as set forth below:

PART 625—FOREIGN ACQUISITION

- 1. The Authority citation for Part 625 is revised to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2651a, 2656.

- 2. Add subpart 625.71 to read as follows:

Subpart 625.71—Nondiscrimination in Foreign Assistance

Sec.
626.7101 Policy.
625.7102 Waivers.
625.7013 Contract clause.

Subpart 625.71—Nondiscrimination in Foreign Assistance

625.7101 Policy.

Contractors receiving Department of State foreign assistance awards shall not discriminate on the basis of race, ethnicity, color, religion, sex, gender, sexual orientation, gender identity or expression, sex characteristics, pregnancy, national origin, disability, age, genetic information, indigeneity, marital status, parental status, political affiliation, or veteran's status within the target population of the foreign assistance award (*i.e.*, the beneficiary of the contract).

625.7102 Waivers.

(a) Pursuant to the procedures in this section, the head of the contracting activity may waive the application of the requirements at paragraph (a)(2) of clause 652.225–72, Nondiscrimination in Foreign Assistance, if it is determined to be in the best interest of the U.S. government. Such determinations will take into account the totality of the circumstances, including, but not limited to, whether the waiver is requested as an accommodation to comply with applicable foreign laws, edicts, or decrees, or to allow a religious corporation, association, educational institution, or society to employ individuals of a particular religion to carry out the activities under the award in a manner consistent with its religious beliefs.

(b) The contractor shall submit any request for a waiver of the requirements of the paragraph at 652.225–72(a)(2) in

writing to the contracting officer, and with sufficient justification for a determination, prior to award or thereafter by mutual agreement between the parties.

(c) Upon review of information submitted by the contractor, any determination to waive the requirements at 652.225–72(a)(2) shall be executed jointly, in writing, by the head of the contracting activity and the requesting Bureau's Assistant Secretary or the post Chief of Mission, or their designee.

(d) If a waiver is approved pursuant to this section, the contracting officer shall specifically denote the inapplicability of the paragraph at 652.225–72(a)(2) in the contract award.

(e) Upon making a determination to waive the requirements at 652.225–72(a)(2) pursuant to this section, the head of the contracting activity shall notify the Assistant Secretary of the Bureau for Democracy, Human Rights, and Labor, or their designee in writing within 30 days.

(f) Nothing in any such waiver approved pursuant to this section shall negate any of the other requirements of clause 652.225–72.

625.7103 Contract clause.

The contracting officer shall insert the clause at 652.225–72, Nondiscrimination in Foreign Assistance, in full text in all solicitations and contracts using foreign assistance funds, including solicitations and contracts using FAR Part 12 procedures for the acquisition of commercial products and commercial services.

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 3. The authority citation for Part 652 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

- 4. Add Section 652.225–72 to read as follows:

652.225–72 Nondiscrimination in Foreign Assistance.

As prescribed in 625.7103, insert the following clause:

Nondiscrimination in Foreign Assistance (Date)

(a) Unless expressly stated in the award, no contractor or subcontractor receiving a foreign assistance award shall discriminate on the basis of race, ethnicity, color, religion, sex, gender, sexual orientation, gender identity or expression, sex characteristics, pregnancy, national origin, disability, age, genetic information, indigeneity, marital

status, parental status, political affiliation, or veteran's status against:

(1) Any end user, prospective end user, or beneficiary of the contract supplies or services, such as, but not limited to, discrimination by withholding, denying, or adversely impacting equitable access to the supplies or services; or

(2) Any employee, agent, or candidate for a position, who is or will be engaged directly in the performance of this contract and whose work will be funded in whole or in part by funds provided under this contract, unless expressly permitted by applicable U.S. law.

(b) Nothing in this clause is intended to limit the ability of a contractor to target activities toward the assistance needs of certain populations as defined in the contract or to otherwise comply with anti-discrimination programs.

(c) The Contractor shall inform its workforce and end users, in their predominant language(s), of the nondiscrimination notices required by paragraphs (d) and (f) of this clause. The Contractor shall display the notices in prominent and accessible places commonly available to its employees and end users.

(d) The Contractor shall notify end users and prospective end users that the Contractor is prohibited from discriminating on the basis of race, ethnicity, color, religion, sex, gender, sexual orientation, gender identity or expression, sex characteristics, pregnancy, national origin, disability, age, genetic information, indigeneity, marital status, parental status, political affiliation, or veteran's status within the target population of a foreign assistance award. The notice shall include the telephone number, email address, and mailing address of the Department of State Inspector General to report potential violations of this clause.

(e) The Contractor is responsible for compliance by its subcontractors with the terms and conditions of this clause, including sanctions for noncompliance, and shall take action to enforce them as the Contracting Officer may direct.

(f) The Contractor shall:

(1) Notify its employees and agents of:

(i) The prohibition on discrimination described in paragraph (a) of this clause;

(ii) The contact information of the Department of State Inspector General and the U.S. Government's Fraud, Waste, and Abuse hotline to report violations or suspected violations of this clause; and

(iii) The actions that will be taken against employees or agents for violations of this clause, which may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the nondiscrimination requirement in paragraph (a).

(g) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the Department of State's Inspector General immediately of:

(i) Any credible information it receives from any source (including host country law

enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates paragraph (a) of this clause; and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the Contracting Officer for the contract with the highest dollar value.

(h) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of

this clause may result in any, or a combination of, the following:

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor noncompliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(i) The Contractor shall insert this clause, including this paragraph, in all subcontracts under this contract.

(End of clause)

Kevin E. Bryant,

*Deputy Director, Office of Directives
Management, Department of State.*

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