

Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1–1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP, amending the section listing the localities that comprise the Northern Virginia ozone nonattainment area, is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule revising the section listing the localities that comprise the Northern Virginia ozone nonattainment area, does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 8, 2021.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

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**BILLING CODE 6560–50–P**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### 48 CFR Parts 727, 742, and 752

RIN 0412–AA90

### USAID Acquisition Regulation: United States Agency for International Development (USAID) Acquisition Regulation (AIDAR): Planning, Collection, and Submission of Digital Information as Well as Submission of Activity Monitoring, Evaluation, and Learning Plans to USAID

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Agency for International Development (USAID) seeks public comment on a proposed rule that implements USAID requirements for managing digital information data as a strategic asset to inform the planning, design, implementation, monitoring, and evaluation of the Agency’s foreign assistance programs. This proposed rule incorporates a new policy on Digital Information Planning, Collection, and Submission Requirements and the corresponding clause, as well as a new clause entitled “Activity Monitoring, Evaluation, and Learning Plan Requirements” into the (AIDAR). This proposed rule is intended to reduce the burden on contractors, increase efficiency, and improve the use of data and other forms of digital information across the Agency’s programs and operations.

**DATES:** Comments must be received no later than February 14, 2022.

**ADDRESSES:** Submit comments, identified by the title of the action and Regulatory Information Number (RIN) through the Federal eRulemaking Portal at <https://www.regulations.gov> by following the instructions for submitting comments. Please include your name, company name (if any), and “0412–AA90” on any attachments. If your comment cannot be submitted using <https://www.regulations.gov>, please email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Marcelle Wijesinghe, USAID M/OAA/P, at 202–916–2606 or [policymailbox@usaid.gov](mailto:policymailbox@usaid.gov).

### SUPPLEMENTARY INFORMATION:

#### A. Instructions

All comments must be in writing and submitted through the method specified in the **ADDRESSES** section above. All

submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

All comments will be made available at <https://www.regulations.gov> for public review without change, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address substantive comments on the rule. USAID may not consider comments that are insubstantial or outside the scope of the proposed rule.

## B. Request for Comments

USAID requests public comment on all aspects of this proposal, including specific questions outlined elsewhere in this notice.

## C. Background

### I. Planning, Collection, and Submission of Digital Information to USAID

USAID is proposing to amend its Acquisition Regulation (AIDAR) to implement policy and procedures to clarify and streamline contractor reporting requirements related to digital information planning, collection, and submission to USAID. Under current protocols, USAID contractors are required to submit information to USAID under multiple award requirements using several different information management portals. For example, contractors have historically submitted monitoring and indicator data to locally-maintained information systems in overseas missions; provided periodic reports in PDF format to the Development Experience Clearinghouse (see AIDAR 752.7005); and submitted baseline, survey, and research-related datasets to the Development Data Library (see USAID internal policy at Automated Directives System (ADS) chapter 302 available at <https://www.usaid.gov/ads/policy/300/302>). The maintenance of these separate portals has made it challenging for USAID to integrate this information strategically to render a more holistic and detailed view of its global portfolio. In addition, navigating a variety of submission formats, websites, and business processes generates workload that can be streamlined via modernized technologies and techniques. With the centralization and standardization of digital information that USAID

contractors provide to the Agency, USAID anticipates that gathering key evidence to support evaluations and other performance management efforts will be greatly facilitated.

Existing contractual requirements are also silent on or insufficiently address important and emerging issues related to digital information management, such as data management planning and digital information collection standards. USAID contractors may be aware, for example, that the Agency is piloting the use of a new technology called the Development Information Solution (DIS) across multiple missions. Award changes related to this pilot address only a part of the digital information lifecycle (e.g., indicator submission), are limited in scope, and apply exclusively to DIS. This rule is broader in scope, intended to apply not only to DIS but to encapsulate the Agency's enterprise-wide approach to the digital information lifecycle in the years to come. Therefore, this rule provides agency policy on the entire lifecycle of digital information management, which encompasses digital information Governance, Planning, Collection, Processing, Analysis, Curation, Sharing, and Publication. This also includes addressing crosscutting issues such as data standards, information quality, licensing, and consent to ensure future re-use of USAID-funded digital information. It is intended to help USAID systematically strengthen the evidence base required to implement efficient and effective foreign assistance programs and to comply with mandates such as:

- (i) OMB Circular A-130
- (ii) Foundations for Evidence-Based Policymaking Act ("Evidence Act") of 2018
- (iii) 21st Century Integrated Digital Experience Act (21st Century IDEA Act)
- (iv) Foreign Aid Transparency and Accountability (FATAA) Act of 2016
- (v) Digital Accountability and Transparency (DATA) Act of 2014
- (vi) Geospatial Data Act of 2018

USAID expects that this rule will reduce the total number of web-based portals through which contractors submit digital deliverables under the terms of their awards to USAID, with the preponderance of those submissions directed through a single portal called the USAID Digital Front Door (DFD). Rather than citing a multiplicity of systems within USAID awards, USAID intends to consistently reference the DFD as a centralized location which seamlessly guides contractors through a

standardized process to provide their information to USAID. By implementing these changes, USAID intends to reduce administrative burden on contractors and USG staff. As contractors collect and submit digital information in adherence to standards as defined in this rule, USAID also anticipates improvements to data quality, data interoperability, and the Agency's ability to integrate data across various disciplines and geographies in a way that will greatly increase insight into programmatic performance and future scenario planning. USAID appreciates the comments and questions it has received during the DIS pilot. USAID plans to address these at the same time it responds to the comments and questions received during this broader rulemaking effort.

### II. Specific CFR Changes Related to Digital Information Planning, Collection, and Submission Requirements

Per USAID internal agency guidance located in Automated Directives Chapter (ADS) 579—USAID Development Data, available at <https://www.usaid.gov/ads/policy/500/579>, it is the policy of USAID to manage data as a strategic asset to inform the planning, design, implementation, monitoring, and evaluation of the Agency's foreign assistance programs. To achieve this, it is also USAID's policy to manage data and digital information across a full lifecycle. This life cycle includes the following stages: Governance, Planning, Collection, Processing, Analysis, Curation, Sharing, and Publication. Given that USAID contractors play an important role in implementing this lifecycle, USAID is adding a new AIDAR subpart 727.70 titled Digital Information Planning, Collection, and Submission Requirements to implement these policies. In furtherance of these policies, the new AIDAR clause 752.227-7x entitled Planning, Collection, and Submission of Digital Information to USAID requires that contractors:

- (1) Engage in digital information planning including creating a Data Management Plan (DMP) (ADS 579) to identify data assets that will be created and used in a USAID-funded activity.
  - (2) To the extent practicable, use only digital methods to produce, furnish, acquire, or collect information necessary to implement the contract requirements.
  - (3) Submit digital information produced, furnished, acquired, or collected in performance of a USAID contract at the finest level of granularity.
- The creation of DMPs is a practice long observed by academic and research

communities. Experience at USAID has also shown that without structured data management planning, USAID staff, contractors, and third parties can face major impediments to data usage that may surface at any point after the conclusion of an award.

To foster computer-based analysis, interoperability, and information reuse by a variety of stakeholders, the rule requires contractors to use only digital methods and USAID-approved standards, to the extent practicable, to produce, furnish, acquire, or collect information necessary to implement the contract requirements.

In addition, the rule requires contractors to submit to USAID digital information produced, furnished, acquired, or collected in performance of a USAID contract at the finest level of granularity employed during contract implementation. While the level of granularity (or detail) of digital information gathered during a USAID-funded activity may vary, it is essential that USAID have access to the greatest level of detail available to maximize future analytical potential at the global level.

Finally, the rule is intended to prioritize the responsible use of digital information, balancing its potential with the privacy and security of individuals. As such, the rule requires contractors to remove personally identifying information (PII), to flag security concerns for USAID staff, and to provide documentation of informed consent the contractor receives when obtaining information on individuals.

### *III. Activity Monitoring, Evaluation, and Learning Plan (AMELP) Requirements*

USAID is proposing to amend the AIDAR to include a requirement for contractors to develop Activity Monitoring, Evaluation, and Learning Plans (AMELPs) as more fully described below. Managing U.S. Foreign Assistance effectively requires planning in advance to implement reliable and useful program monitoring, evaluation, and learning efforts. USAID's Program Cycle Operational Policy (See ADS Chapter 201 available at <https://www.usaid.gov/ads/policy/200/201>) provides agency policy on how to plan for monitoring, evaluation, and learning when developing Country Development Cooperation Strategies, projects, and activities. At the award level, the foundation for monitoring, evaluation, and learning is a well-documented plan describing how program progress and results will be measured and assessed and how the contractor will work with USAID and others to support learning and adaptive management.

Per Sec.3(c)(2)(B) of the Foreign Aid Transparency and Accountability Act of 2016 and OMB M-18-04, monitoring and evaluation plans should be developed for programs, projects, and activities. In recent years, Congress has also appended requirements to Appropriations Acts that seek to ensure that contractors that receive development assistance funds regularly and systematically collect and respond to feedback obtained directly from beneficiaries to enhance the relevance and quality of such assistance.

In support of these laws and regulations, USAID's Program Cycle Operational Policy (ADS 201) requires development activities to have an approved AMELP. A development "activity" generally refers to an implementing mechanism that carries out an intervention or set of interventions to advance identified development result(s). Activities range from contracts or cooperative agreements with international or local organizations to direct agreements with partner governments, among other options. For this rule, USAID is referring to activities carried out under contracts to achieve a development result.

This rule is proposing to update the AIDAR to meet the legislative and USAID policy requirements listed above by requiring that each contractor of a development activity produce an AMELP that describes the contractor's monitoring, evaluation, and learning activities, including the collection of beneficiary feedback information. Activity monitoring, evaluation, and learning focuses on whether an activity is achieving programmatic results and generating data to inform learning and the adaptation of activities based on evidence. The USAID Operating Unit's (OU) Program Office, Activity Planners, and/or contracting officer's representative work with contracting officers to ensure that the AMELP clause is included in an award, as applicable, and provide the contractor with any OU-specific requirements related to monitoring, evaluation, collaborating, learning, adapting, and/or collecting or managing data to meet OU information needs, external reporting requirements, and allow for the management and oversight of contracts by USAID.

The development of an AMELP should be a collaborative process between the contractor and the USAID staff involved in management of development assistance activities. Contractors will be expected to propose an appropriate AMELP that meets contractor and USAID needs for information to assess and understand

progress toward the expected activity results, to appropriately manage and oversee the activity, and to ensure data needed for any planned evaluation is collected and shared with USAID. Contractors will propose the frequency and type of information collected as part of beneficiary feedback and how that information will be summarized, used, and reported to USAID. The plan must ensure that contractors collect such feedback regularly and use it to maximize the cost-effectiveness and utility of the assistance provided to beneficiaries.

If the contractor determines that collection of feedback from beneficiaries is not appropriate, the contractor must provide justification for not collecting beneficiary feedback as part of the approval process. For example, a contractor might argue that collection of feedback from the ultimate beneficiaries of a contract is not appropriate due to a non-permissive environment or because the intended beneficiaries will not realize the benefits of the contract until after the contract has ended. If the contractor and the contracting officer's representative agree that collecting beneficiary feedback is not appropriate or feasible for the activity, the AMELP must include an explanation of why collecting beneficiary feedback is not appropriate.

The completed AMELP is provided by the contractor to the contracting officer's representative for review and approval within 90 days of contract award or as otherwise specified in the schedule of the contract. The contracting officer's representative will review and provide comments or approve the proposed AMELP within 30 days. If the plan is not approved, the contractor must revise and resubmit the plan no later than 15 days after receiving comments from the contracting officer's representative. Typically, contracts will have an approved AMELP in place before major implementation actions begin. The AMELP should be updated as needed by the contractor and approved by the contracting officer's representative.

Typically, when the AMELP clause is required, the clause 752.242-70 Periodic Progress is also included in a contract. When this occurs, contractors must include in the periodic progress reports updated information based on the AMELP, such as performance indicator data, summaries of beneficiary feedback and actions taken by the contractor in response, completed evaluation reports, summaries of learning events or activities, and other updates, as required by the contract terms.

*IV. Specific CFR Changes Related to Activity Monitoring, Evaluation, and Learning Plan Requirements*

USAID is proposing to revise AIDAR section 742–1170 to add the requirement for contractors to plan for and collect digital information to inform whether an activity funded by a contract is achieving programmatic results and generating data to inform the learning and adaptation of activities based on evidence. The new clause 752.242–71 entitled Activity Monitoring, Evaluation, and Learning Plan will require contractors to develop and submit a proposed AMELP within 90 days of contract award.

The AMELP is required for awards that generate development results, which typically are contracts for professional or technical services that implement USAID developmental assistance programs. The following types of contracts are generally exempt from the requirements for the AMELP:

- (1) Contracts below the simplified acquisition threshold;
- (2) Purchase of supplies and services that USAID acquires for its own direct use or benefit. Examples below illustrate how USAID will apply this exception and are not meant to be all-inclusive:
  - (i) Purchase of supplies and services necessary to support and maintain USAID’s offices and Missions worldwide;
  - (ii) Monitoring, evaluation, or collaboration, learning and adaptive management;
  - (iii) Country Development Cooperation Strategy (CDCS) Facilitation;
  - (iv) Data collection and analysis services for a specific program or portfolio;
  - (v) Financial audit and professional support services provided directly to USAID;
  - (vi) Gender analysis and assessment for CDCS design and support;
  - (vii) Third-party monitoring for humanitarian programming in a specific country or region.
- (3) Emergency food assistance under the Food for Peace Act or section 491 of the Foreign Assistance Act of 1961, including for the procurement, transportation, storage, handling, and/or distribution of such assistance;
- (4) International disaster assistance under section 491 of the Foreign Assistance Act of 1961 or other authorities administered by the Bureau for Humanitarian Assistance; or

(5) Activities managed by the Bureau for Conflict Prevention and Stabilization’s Office of Transition Initiatives or funded with the Complex Crises Fund.

*V. Removal of the 752.7005 Entitled Submission Requirements for Development Experience Documents*

Following the agency’s efforts to reduce the total number of information portals through which contractors are required to submit information, USAID is proposing to remove the clause 752.7005 entitled Submission Requirements for Development Experience Documents from the AIDAR. The clause currently requires contractors to submit to USAID’s Development Experience Clearinghouse (DEC) one copy each of reports and information products which describe, communicate, or organize program/project development assistance activities, methods, technologies, management, research, results, and experience. Such reports include: Assessments, evaluations, studies, technical and periodic reports, and other contract deliverables. With the removal of this requirement, contractors will be submitting all data to one centralized portal, the USAID Digital Front Door (DFD).

*VI. Other Considerations*

This rule is intended to supplement the requirements in the Federal Acquisition Regulation. With regard to post-award implementation, the contracting officer remains responsible for contract administration as a matter of law, and in partnership with designated contracting officer representatives as a matter of operating policy. Contractor performance reported in the Contractor Performance Assessment Reporting System (CPARS), as described in FAR Part 42, corresponds to and must be consistent with performance reported by contractors for purposes of monitoring and learning or pursuant to an AMELP. References to Agency operating policy in ADS are for informational purposes only and are not to be construed as incorporating by reference or establishing the indicated operating policy as regulation.

*VII. Regulatory Considerations and Determinations*

Executive Orders 12866 and 13563 Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs

and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

*Expected Cost Impact on the Public*

USAID remains committed to reducing the burden on its contractors while maximizing taxpayer value. By launching the USAID Digital Front Door (DFD) as outlined in this clause, USAID intends to reduce the total number of portals through which its contractors must submit information to USAID, thereby reducing time and effort and improving operational efficiency.

The following is a summary of the impact on contractors awarded contracts that include the new AIDAR clause. The cost estimates were developed by subject matter experts based on USAID’s experience collecting reports and information products through the Development Experience Clearinghouse (DEC) (see AIDAR 752.7005) and piloting digital data collection through the Development Data Library (DDL) and the Development Information Solution (DIS).

This rule results in a total annualized (7% discount) public net cost of \$6.5 million. This annual burden takes into account the current baseline that contractors already prepare, maintain, and submit AMELPs, already remove PII from data prior to submission, already collect standard indicator data, and already request embargoes and data submission exemptions from Contracting officer’s Representative on a case-by-case basis. Further, since contractors already submit documents and data to the DEC and DDL, these costs were removed from the overall estimated cost. The following is a summary of the annual public costs over a 20-year time horizon.

Year	Public	Total
1 .....	\$5,504,189	\$5,504,189

Year	Public	Total
2	6,548,487	6,548,487
3	6,601,533	6,601,533
	6,654,581	6,654,581
20	6,654,581	6,654,581
Total undiscounted costs		131,731,340
Present Value (PV) of Costs Discounted at 7%		69,274,510
Annualized Costs Discounted at 7%		6,539,024

This rule has extensive benefits for the public, contractors, the research community, the private sector, and the USG, though many of these benefits are challenging to quantify. Overarchingly, this rule will increase efficiency for contractors, minimize data errors, and improve the privacy and security of data. Further, this rule will help contractors to produce data assets that are trustworthy, high-quality, and usable by the general public and the research community for accountability, research, communication, and learning. For the public, there is an immense richness in the data collected by USAID and its partners around the world, and this data holds the potential to improve the lives of some of the world’s most vulnerable people. When a development project ends, the data can yield new insights for years or decades into the future. It is the responsibility of the Agency and those representing the government to ensure that data is accessible, standardized, and secure.

In addition, under current protocols, USAID contractors are required to submit digital information to USAID under multiple award requirements using several different information management portals. The maintenance of these separate portals has made it challenging for USAID to integrate this information strategically to render a more holistic and detailed view of its global portfolio. By implementing these changes, USAID intends to reduce administrative burden on contractors and USG staff.

1. Regulatory Flexibility Act

USAID does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* USAID has therefore not performed an Initial Regulatory Flexibility Analysis (IRFA).

2. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, USAID has submitted a request for

approval of a new information collection requirement concerning this rule to the Office of Management and Budget.

The outlined information collection is an element of a proposed rule that implements USAID requirements for managing digital information data as a strategic asset to inform the planning, design, implementation, monitoring, and evaluation of the Agency’s foreign assistance programs. The proposed rule will incorporate a new subpart 727.70 Digital Information Planning, Collection, and Submission Requirements, and the corresponding clause, as well as a new clause entitled “Activity Monitoring, Evaluation, and Learning Plan Requirements” into the AIDAR. This rule is intended to reduce burden on contractors, increase efficiency, and improve the use of data and other forms of digital information across the Agency’s programs and operations.

A. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than February 14, 2022 using the method specified in the “Addresses” section above.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the AIDAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement by contacting [policymailbox@usaid.gov](mailto:policymailbox@usaid.gov). Please cite RIN Number 0412-AA90 in all correspondence.

B. Abstract for Collection

The public reporting burden for this collection of information is estimated as follows:

- Respondents:* 679.
- Responses per respondent:* 51.
- Total annual responses:* 34,606.
- Preparation hours per response:* 2.
- Total response burden hours:* 67,995.

List of Subjects in 48 CFR Chapter 7 Parts 727, 742, and 752.

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR Chapter 7 as set forth below:

■ 1. The authority citation for 48 CFR parts 727, 742, and 752 continues to read as follows:

**Authority:** Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 727—PATENTS, DATA, AND COPYRIGHTS

■ 2. Add subpart 727.70 to read as follows:

Subpart 727.70—Digital Information Planning, Collection, and Submission Requirements

- Sec. 727.700 Scope of subpart
- 727.701 Definitions
- 727.702 Policy
- 727.703 Contract clause.

727.700 Scope of subpart.

(a) This part prescribes the policies, procedures, and a contract clause pertaining to data and digital information management. It implements the following requirements:

- (1) Digital Accountability and Transparency (DATA) Act of 2014;
- (2) Foundations for Evidence-Based Policymaking Act (“Evidence Act”) of 2018;
- (3) 21st Century Integrated Digital Experience Act (21st Century IDEA Act);
- (4) Foreign Aid Transparency and Accountability (FATAA) Act of 2016;
- (5) Geospatial Data Act of 2018;

- (6) OMB Circular A–130.  
(b) [Reserved]

#### 727.701 Definitions.

As used in this subpart—

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Data asset* is a collection of data elements or datasets that may be grouped together.

*Data management plan (DMP)* is a tool that guides the identification of anticipated data assets and outlines tasks needed to manage these assets across a full data lifecycle.

*Dataset* is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. A dataset does not include unstructured data, such as email or instant messages, PDF files, PowerPoint presentations, word processing documents, images, audio files, or collaboration software.

*Digital data* means quantitative and qualitative programmatic measurements that are entered directly into a computer. Examples include numeric targets established during activity design or implementation; baseline, mid-line, or final measurements created or obtained via field assessments; surveys or interviews; performance monitoring indicators as specified in the Contractor's approved Activity Monitoring, Evaluation, and Learning (AMELP) (see 752.242–7x, Activity Monitoring, Evaluation, and Learning Plan); evaluation results; or perception metrics collected from beneficiaries on the quality and relevance of International Disaster Assistance and Development Assistance.

*Digital information* is a subset of data and means (a) digital text; (b) digital data; (c) digital objects; and (d) metadata created or obtained with USAID funding supported by this award that are represented, stored, or transmitted in such a way that they are available to a computer program.

*Digital object* includes digital or computer files that are available to a computer program. Examples include digital word processing or PDF documents or forms related to activity design, assessment reports, periodic

progress and performance reports, academic research documents, publication manuscripts, evaluations, technical documentation and reports, and other reports, articles and papers prepared by the contractor, whether published or not. Other examples include datasets, spreadsheets, presentations, publication-quality images, audio and video files, communication materials, information products, extensible mark-up language (XML) files, and software, scripts, source code, and algorithms that can be processed by a computer program.

*Digital text* includes text-based descriptions of programmatic efforts that are entered directly into a computer, rather than submitted as a digital object.

#### 727.702 Policy.

(a) It is the policy of USAID to manage data as a strategic asset to inform the planning, design, implementation, monitoring, and evaluation of the Agency's foreign assistance programs. To achieve this, it is also USAID's policy to manage data and digital information across a full life cycle. This life cycle includes the following stages: Governance, Planning, Collection, Processing, Analysis, Curation, Sharing, and Publication. For more information about the USAID Development Data policy, including the life cycle stages of foreign assistance programs, see ADS Chapter 579 at <https://www.usaid.gov/ads/policy/500/579>.

(b) In furtherance of this policy, USAID requires that contractors:

(1) Engage in digital information planning, including creating a Data Management Plan (DMP) to identify and plan for the management of data assets that will be produced, furnished, acquired, or collected in a USAID-funded activity.

(2) Use only digital methods and USAID-approved standards, to the extent practicable, to produce, furnish, acquire, or collect information necessary to implement the contract requirements.

(3) Provide documentation of informed consent the contractor receives when obtaining information on individuals.

(4) Submit to USAID digital information produced, furnished, acquired, or collected in performance of a USAID contract at the finest level of granularity employed during contract implementation.

(c) As specified in ADS Chapter 579, USAID implements appropriate controls to restrict data access in a way that balances the potential benefits with any underlying risks to its beneficiaries and contractors.

#### 727.703 Contract clause.

Insert the clause 752.227–7x, Planning, Collection, and Submission of Digital Information to USAID in Section H of solicitations and contracts fully or partially funded with program funds exceeding the micro-purchase threshold. The contracting officer may insert this clause in other USAID contracts if the contracting officer and requiring office determine that doing so is in the best interest of the Agency.

### SUBCHAPTER G—CONTRACT MANAGEMENT

#### PART 742—CONTRACT ADMINISTRATION

##### Subpart 742.11—Production, Surveillance, and Reporting

- 3. Amend 742.1170–3, by redesignating paragraph (b)(2) through (7) as (b)(3) through (8) and adding a new paragraph (b)(2) to read as follows:

##### 742.1170–3 Policy.

\* \* \* \* \*

(b) \* \* \*

(2) The contract requirements for an activity monitoring, evaluation, and learning plan, as applicable;

\* \* \* \* \*

- 4. Add 742.1170–5 to read as follows:

##### 742.1170–5 Activity Monitoring, Evaluation, and Learning Plan requirement and contract clause.

(a) When the requiring office needs information on how the contractor expects to monitor implementation performance and context, conduct or collaborate on an evaluation, and generate evidence to inform learning and adaptive management, the contracting officer may require the contractor to submit an Activity Monitoring, Evaluation, and Learning Plan (AMELP) tailored to specific contract requirements. For more information on monitoring, evaluation, and learning during the design and implementation of activities, see ADS Chapter 201 at <https://www.usaid.gov/ads/policy/200/201>.

(b) Unless instructed otherwise in writing by the requiring office, the contracting officer must insert the clause at 752.242–7x, Activity Monitoring, Evaluation, and Learning Plan, in Section F of solicitations and contracts exceeding the simplified acquisition threshold, except as specified in paragraph (c) of this section. The contracting officer may insert this clause in other USAID contracts if the contracting officer, in consultation with the requiring office, determines that an Activity Monitoring,

Evaluation, and Learning Plan is necessary, as provided in paragraph (a) of this section.

(c) The clause is not required to be included in contracts for:

(1) Supplies and services that USAID acquires for its own direct use or benefit. This includes contracts related to monitoring, evaluation, and/or collaboration, learning, and adaptive management (CLA);

(2) Emergency food assistance under the Food for Peace Act or section 491 of the Foreign Assistance Act of 1961, including for the procurement, transportation, storage, handling and/or distribution of such assistance;

(3) International disaster assistance under section 491 of the Foreign Assistance Act of 1961 or other authorities administered by the Bureau for Humanitarian Assistance; or

(4) Activities managed by the Bureau for Conflict Prevention and Stabilization's Office of Transition Initiatives, or fully or partially funded with the Complex Crises Fund.

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Add 752.227–7x to read as follows:

#### 752.227–7x Planning, Collection, and Submission of Digital Information to USAID.

As prescribed in 727–703, insert the following clause in Section H of solicitations and contracts fully or partially funded with program funds exceeding the micro-purchase threshold:

#### Planning, Collection, and Submission of Digital Information to USAID (TBD Date)

(a) Definitions.

As used in this clause—

*Computer* is a fixed or mobile device that accepts digital data and manipulates the information based on a program or sequence of instructions for how data is to be processed.

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Data asset* is a collection of data elements or datasets that may be grouped together.

*Data management plan (DMP)* is a tool that guides the identification of anticipated data assets and outlines

tasks needed to manage these assets across a full data lifecycle.

*Dataset* is an organized collection of structured data, including data contained in spreadsheets, whether presented in tabular or non-tabular form. For example, a dataset may represent a single spreadsheet, an extensible mark-up language (XML) file, a geospatial data file, or an organized collection of these. A dataset does not include unstructured data, such as email or instant messages, PDF files, PowerPoint presentations, word processing documents, images, audio files, or collaboration software.

*Digital data* means quantitative and qualitative programmatic measurements that are entered directly into a computer. Examples include numeric targets established during activity design or implementation; baseline, mid-line, or final measurements created or obtained via field assessments; surveys or interviews; performance monitoring indicators as specified in the Contractor's approved AMELP; evaluation results; or perception metrics collected from beneficiaries on the quality and relevance of International Disaster Assistance and Development Assistance.

*Digital information* is a subset of data and means:

- (1) Digital text;
- (2) Digital data;
- (3) Digital objects; and

(4) Metadata created or obtained with USAID funding regarding international development or humanitarian assistance activities supported by this award that are represented, stored, or transmitted in such a way that they are available to a computer program.

*Digital object* includes digital or computer files that are available to a computer program. Examples include digital word processing or PDF documents or forms related to activity design, assessment reports, periodic progress and performance reports, academic research documents, publication manuscripts, evaluations, technical documentation and reports, and other reports, articles and papers prepared by the Contractor under this contract, whether published or not. Other examples include datasets, spreadsheets, presentations, publication-quality images, audio and video files, communication materials, information products, extensible mark-up language (XML) files, and software, scripts, source code, and algorithms that can be processed by a computer program.

*Digital repository* refers to information systems that ingest, store, manage,

preserve, and provide access to digital content.

*Digital text* includes text-based descriptions of programmatic efforts that are entered directly into a computer, rather than submitted as a digital object.

*Draft digital information* refers to digital information that, in the professional opinion of the Contractor, does not adhere to the information quality standards such that it presents preliminary, unverified, incomplete, or deliberative findings, claims, analysis, or results that may lead the consumer of such material to draw erroneous conclusions.

*Granularity* refers to the extent to which digital content or objects provide access to detailed, distinct data points. Coarse granularity generally means that distinct data points reflect larger, representational units or have been joined together or aggregated, thus providing less detail. A fine level of granularity generally means that distinct data points reflect smaller, individualized units that have not been aggregated, thus providing a higher level of detail. For example, a dataset containing a list of every activity conducted by week would generally exhibit a finer level of granularity than a dataset listing the various categories of activities conducted by month. The degree of granularity can be relative to the contents of a specific dataset and can be geographic, temporal, or across other dimensions.

*Information quality standards* means the elements of utility, objectivity, and integrity collectively.

*Integrity* is an element of the information quality standards that means information has been protected from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

*Machine readable* means data in a format that can be easily processed by a computer without human intervention while ensuring that no semantic meaning is lost.

*Metadata* includes structural or descriptive information about digital data or digital objects such as content, format, source, rights, accuracy, provenance, frequency, periodicity, granularity, publisher or responsible party, contact information, method of collection, and other descriptions.

*Objectivity* is an element of the information quality standards that means whether information is accurate, reliable, and unbiased as a matter of presentation and substance.

*Personally identifiable information (PII)* means information that can be used

to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. [See Office of Management and Budget (OMB) Circular No. A-130, Managing Federal Information as a Strategic Resource.] PII can include both direct identifiers (such as name, health identification numbers, etc.), and indirect identifiers (geographic location, age) that when linked with other information can result in the identification of an individual.

*Publication object* is a digital object that has been accepted for publication prior to the end date of this contract and whose content is based on or includes any other digital information created or obtained in performance of this contract. In the research community, a publication object is often synonymous with a quality research manuscript that has been accepted by an academic journal for publication. However, publication objects can also consist of other digital objects (e.g., photos, videos, etc.) published via news media, the internet, or other venues.

*Quality digital information* means digital information that, in the professional opinion of the Contractor, adheres to the information quality standards and presents reasonably sound and substantiated findings, claims, analysis, or results regarding activities.

*Registered with the USAID Digital Front Door (DFD)* means:

(1) The Contractor entered all mandatory information required to obtain access to the DFD and agreed to abide by the DFD terms and conditions of use.

(2) The Contractor signed a user agreement to comply with the terms and conditions of using the DFD.

(3) The Government has validated the Contractor's registration by providing access to the DFD.

*USAID Digital Front Door (DFD)*, located at [dfd.usaid.gov](http://dfd.usaid.gov) is a website where the Contractor transacts business with USAID, such as submitting digital information.

*Utility* is an element of the information quality standards that means whether information is useful to its intended users, including the general public, and for its intended purpose.

(b) *Digital information planning requirements*.

The Contractor must engage in digital information planning to ensure compliance with the collection and submission of all digital information, as required under this award.

(c) *Data Management Plan (DMP)*. (1) *What is required*. The Contractor must

prepare and maintain a Data Management Plan (DMP) that reflects the digital information planning requirements outlined in paragraph (b) of this clause.

(2) *What to submit*. The DMP must be appropriate to the programmatic scope and context of the contract, and to the nature and complexity of the data to be collected or acquired in the course of the contract. The DMP must address, at a minimum, the following:

(i) Data inventory.

(ii) Protocols for data collection, management and storage.

(iii) Protocols for maintaining adequate safeguards that may include the privacy and security of digital information collected under the award.

(iv) Documentation that ensures other users can understand and use the data.

(v) Protocols for preserving digital information and facilitating access by other stakeholders.

(vi) Terms of use on data usage, publication, curation, or other dissemination plans.

(3) *When to submit*. The Contractor must develop and submit, at a minimum, the data inventory component of the DMP to the contracting officer's representative (COR) within ninety (90) days after contract award, unless the contracting officer establishes a different time period. The Contractor must submit the remaining components of the DMP to the contracting officer's representative for approval, as soon as they become available. The contractor must not begin digital information collection prior to submission of the remaining components of the DMP unless authorized in writing by the contracting officer.

(4) *When to revise*. The Contractor must revise the DMP as necessary throughout the period of performance of this contract. Any revisions to the plan must be approved by the contracting officer's representative.

(d) Digital information production and collection requirements. (1) *The Contractor must*:

(i) Use only digital methods to the extent practicable to produce, furnish, acquire, or collect information in performance of this contract. If the Contractor is unable to consistently collect data using digital methods, the Contractor must obtain the contracting officer's representative's approval for any alternative collection.

(ii) Collect digital information at the finest level of granularity that enables the Contractor to comply with the terms of this contract.

(2) To the extent practicable, the Contractor must limit the collection of

PII to only that which is necessary to comply with the requirements of the contract.

(e) *Registration requirements*. The Contractor must:

(1) Be registered with the USAID Digital Front Door (DFD) within ninety (90) days after award of this contract; and

(2) Maintain access to the DFD during the period of performance of this contract.

(f) *Submission requirements*. (1) *What to submit*. Unless an exemption in paragraph (f)(4) of this section applies, the Contractor must:

(i) Submit digital information created or obtained in performance of this contract to USAID at the finest level of granularity at which it was collected.

(ii) Submit digital information in machine readable, nonproprietary formats. The Contractor may also submit proprietary formats in addition to a nonproprietary format.

(iii) Submit a copy of any usage license agreement that the Contractor obtained from any third party who granted usage rights for the digital information.

(iv) Submit a copy of any photo or media release template that the Contractor used to obtain permission from any third party for the use of the photo or media.

(v) If applicable, provide a blank copy of the form, document, instructions, or other instruments used to obtain informed consent from persons whose individual information is contained in the original version of the digital object, as required in the AIDAR clause at 752.7012, Protection of the Individual as a Research Subject.

(vi) If applicable, provide additional details or metadata regarding:

(A) Where and how to access digital information that the Contractor submits to a USAID-approved digital repository or via alternate technology as approved by USAID's Chief Information Officer;

(B) The quality of submissions of draft digital information;

(C) Known sensitivities within digital information that may jeopardize the personal safety of any individual or group, whether the Contractor has submitted the information or has received a submission exemption.

(D) Digital information for which the Contractor was unable to obtain third party usage rights, a media release, or informed consent or which has other proprietary restrictions.

(2) *Where to submit*. The Contractor must submit digital information through the DFD, unless specifically authorized by the contracting officer's representative in writing to submit to a



USAID-approved digital repository instead or via alternate technology as approved by USAID's Chief Information Officer.

(3) *When to submit.* (i) The Contractor must submit digital information required under the schedule of this contract to USAID once it meets the requirements of quality digital information. Unless otherwise approved by the contracting officer, within thirty (30) calendar days after the contract completion date, the Contractor must submit all digital information not previously submitted, including both draft digital information and quality digital information required under this contract.

(ii) Upon written approval of the contracting officer's representative, the Contractor must submit draft digital information to USAID when the "best available" information is required in order to meet time constraints or other programmatic or operational exigencies.

(4) *Exemptions.* (i) The Contractor must not submit digital information through the DFD that contains:

(A) Classified information.

(B) Personally identifiable information. The Contractor must, to the maximum extent possible, remove the association between the set of identifying data and the individual to which it applies unless retaining such information is essential to comply with the terms of this contract and upon written approval from the contracting officer's representative to submit this information.

(ii) If the Contractor believes there is a compelling reason not to submit specific digital information that does not fall under an exemption in this section, including circumstances where submission may jeopardize the personal safety of any individual or group, the Contractor must obtain written approval not to submit the digital information from the contracting officer.

(5) *Approval requirements.* Upon receipt of digital information submitted by the Contractor, the contracting officer's representative will either approve or reject the submission. When a submission is rejected, the Contractor must make corrections and resubmit the required information. USAID does not consider the submission accepted until the contracting officer's representative provides written approval to the Contractor.

(g) *Publication Considerations.* (1) If the Contractor produces a publication object, the Contractor must submit via the DFD a copy of the publication object, the publication acceptance notification, along with a link at which

the final published object may be accessed.

(2) For any digital object the Contractor submits in compliance with the terms of this contract, the Contractor may request from the contracting officer's representative an embargo on the public release of the digital object. The contracting officer's representative may approve an embargo that lasts no more than 12 months at a time after the contract's completion date.

(3) If the Contractor used a digital object previously submitted via the DFD to generate the publication object, and that digital object is governed by a pre-existing embargo, that embargo will expire on the day the publication object is scheduled for publication. USAID may elect to publish digital information on which the publication object is based as early as the date the publication object is scheduled for publication.

(h) *USAID Digital Information Technical Guidelines.* The Contractor must comply with the version of USAID's Digital Collection and Submission Guidelines in effect on the date of award as outlined at [data.usaid.gov/guidelines](https://data.usaid.gov/guidelines).

(i) *Access to the digital information.* USAID will conduct a rigorous risk assessment of digital information that the Contractor submits to USAID to determine the appropriate permissions and restrictions on access to the digital information. USAID may release the data publicly in full, redact or otherwise protect aspects of the information prior to public release, or hold the information in a non-public status.

(j) *Obligations regarding subcontractors.* (1) The Contractor must furnish, acquire, or collect information and submit to USAID, in accordance with paragraph (f) of this clause, all digital information produced, furnished, acquired or collected in performance of this contract by its subcontractors at any tier.

(2) The Contractor must insert the terms of this clause, except paragraph (e) of this clause, in all subcontracts.

(End of clause)

■ 6. Add 752.242-7x to read as follows:

**752.242-7x Activity Monitoring, Evaluation, and Learning Plan.**

As prescribed in (48 CFR) AIDAR 742.1170-5, insert the following clause in Section F of solicitations and contracts.

**Activity Monitoring, Evaluation, and Learning Plan (TBD Date)**

(a) *Definitions.* As used in this clause—

*Activity Monitoring, Evaluation, and Learning Plan (AMELP)* means a plan for

monitoring, evaluating, and collaborating, learning, and adapting during implementation of a USAID contract.

*Contract* will be interpreted as "task order" or "delivery order" when this clause is used in an indefinite-delivery contract.

*Evaluation* means the systematic collection and analysis of data and information about the characteristics and outcomes of a contract, conducted as a basis for judgements, to understand and improve effectiveness and efficiency, and timed to inform decisions about current and future programming.

*Feedback from beneficiaries* means perceptions or reactions voluntarily communicated by a beneficiary of USAID assistance about the USAID assistance received.

*Indicator* means a quantifiable measure of a characteristic or condition of people, institutions, systems, or processes that might change over time.

*Learning activity* means efforts for the purpose of generating, synthesizing, sharing, and applying evidence and knowledge.

*Monitoring context* means the systematic collection of information about conditions and external factors relevant to implementation and performance of the contract.

*Output* means the tangible, immediate, and intended products or consequences of contract implementation within the Contractor's control or influence.

*Outcome* means the conditions of people, systems, or institutions that indicate progress or lack of progress toward the achievement of the goals and objectives of the contract.

*Performance indicator* means an indicator that measures expected outputs and/or outcomes of the contract implementation.

*Target* means a specific, planned level of results to achieve within a specific timeframe with a given level of resources.

(b) *Requirements.* (1) Unless otherwise specified in the schedule of the contract, the Contractor must develop and submit a proposed AMELP to the contracting officer's representative within ninety (90) days of contract award. The contracting officer's representative will review and provide comments within thirty (30) days after receiving the proposed AMELP. The Contractor must submit a final AMELP for contracting officer's representative approval no later than 15 days after receiving comments from the contracting officer's representative.

(2) The Contractor must revise the AMELP as necessary during the period of performance of this contract. Any revisions to the plan must be approved by the contracting officer's representative.

(c) *Content.* (1) The Contractor's proposed AMELP must include, at a minimum, the following:

(i) The Contractor's plan for monitoring, including any existing systems or processes for monitoring progress, any Standard Foreign Assistance Indicators as agreed upon by the contracting officer's representative, any other USAID required indicators, and other relevant performance indicators of the contract's outputs and

outcomes, their baseline (or plan for collecting baseline), and targets; and

(ii) The Contractor's plan for regular and systematic collection of feedback from beneficiaries, responding to feedback received, and reporting to USAID a summary of feedback and actions taken in response to the feedback received, or a rationale for why collecting feedback from beneficiaries is not applicable for this contract.

(2) The Contractor's proposed AMELP must be appropriate to the size and complexity of the contract and address the following, as applicable:

(i) Plans for monitoring context and emerging risks that could affect the achievement of the contract's results;

(ii) Plans for any evaluations to be conducted by the contractor, sub-

contractor or third-party, including collaboration with an external evaluator;

(iii) Learning activities, including plans for capturing knowledge at the close-out of the contract;

(iv) Estimated resources for the AMELP tasks that are a part of the contract's budget; and

(v) Roles and responsibilities for all proposed AMELP tasks.

[End of clause]

**752.7005 [Removed and Reserved]**

■ 7. Remove and Reserve 752.7005.

**Mark A. Walther,**

*Chief Acquisition Officer.*

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