



BROADCASTING BOARD OF GOVERNORS

22 CFR Part 531

RIN 3112-AA03

Firewall and Highest Standards of Professional Journalism

AGENCY: Broadcasting Board of Governors

ACTION: Final rule.

SUMMARY: The Broadcasting Board of Governors is revising its regulations to clarify the practical meaning and impact of the statutory firewall contained within the United States International Broadcasting Act of 1994, as amended, upon Agency operations. Consistent with this action, this rule makes appropriate conforming changes.

DATES: This rule is effective as of June 11, 2020.

FOR FURTHER INFORMATION CONTACT: Armanda Mathews, Staff Assistant, email at: Rule_Comments@usagm.gov or (202) phone 202-920-2005.

SUPPLEMENTARY INFORMATION:

Background

The United States Agency for Global Media (USAGM), identified in the International Broadcasting Act of 1994, as amended, as the Broadcasting Board of Governors (BBG), is an independent establishment of the federal government that exercises authority over non-military United States government broadcasting.¹ USAGM currently operates five networks—Voice of

¹ Under Section 1288 of the NDAA, the CEO was authorized to change the name of the Agency. On August 22, 2018, the CEO exercised this power and renamed the BBG the United States

America (VOA), the Office of Cuba Broadcasting (OCB), Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia (RFA) and the Middle East Broadcasting Networks (MBN)—that reach a cumulative weekly worldwide audience of approximately 400 million people.

Before reaching the end of its tenure, the Governing Board of the Agency wanted to codify and memorialize definitions and practices associated with the firewall. In 2016, the Board created a firewall working group to investigate the firewall and its sources. This rule was developed by that working group and subsequently passed unanimously by the Governing Board. (This supplementary information was added by the Agency to provide additional background as to impetus for the rule). The impetus was to demystify the firewall, including by making clear what the firewall is not.

The firewall is essential to ensuring the continued credibility and therefore effectiveness of the journalism provided by USAGM funded networks. The firewall protects the editorial independence of the networks journalists. It does not prevent oversight of the journalism consistent with the highest standards of professional journalism and editorial independence; nor does it prevent VOA or any of the networks carrying out all enumerated elements of their mission, including that of VOA to “tell America’s Story”. H.R. Conf. Rep. No. 432, 104-6 Cong., 2nd Sess. 127 (1998).

Overview of the Rule

Pursuant to the background above, and in light of the Board’s desire to codify a common-sense definition of the firewall, consistent with the law, the highest standards of professional journalism, and longstanding practice, USAGM has promulgated this regulation.

This regulation clarifies the practical meaning of the statutory firewall and its basis and

Agency for Global Media. This and subsequent CEOs retain the authority to rename the Agency.

its impact on Agency operations

Effective Date

Having been passed by the Board, these regulations are already effective upon the Agency. Publication will codify them into the Federal Register. Those provisions pertaining to non-supervisory employees deemed subject to collective bargaining requirements set forth under the Federal Service Labor-Management Relations Statute and the Agency's negotiated labor-management agreements would only become effective subject to the terms and conditions within those bargaining agreements.

Rulemaking Requirements

1. This final rule has been determined to be exempt from review for purposes of Executive Order 12866.
2. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. In addition, at the time of passage, the Agency is governed by a bipartisan Board.
3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132. 4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be

given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) are not applicable.

Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis. Comments should be submitted to Armanda Mathews, Staff Assistant, , Broadcasting Board of Governors, 330 Independence Avenue SW, Washington DC 20237 (email at: Rule_Comments@usagm.gov).

List of Subjects

22 CFR Part 531

Scope and Purposes of the Statutory Firewall, Editorial Independence, Requirement to Adhere Highest Professional Standards of Journalism.

For the foregoing reasons, the Broadcasting Board of Governors amends 22 CFR, Chapter V, by adding part 531, as follows:

PART 531— STATUTORY FIREWALL AND HIGHEST STANDARDS OF PROFESSIONAL JOURNALISM

Sec.

531.1 Overview.

531.2 Independence and best practices.

531.3 Firewall.

531.4 Definitions.

Authority: 22 U.S.C. 6201 et seq; 22 U.S.C. 1465 et seq; 1465aa et seq.

§ 531.1 Overview.

The Broadcasting Board of Governors, referred to as the U.S. Agency for Global Media (USAGM), per section 305(a)(22) of the IBA, currently provides public funds to five news media networks: the Voice of America (VOA), Radio Free Europe, Radio Liberty (RFE/RL), Radio Free Asia (RFA), the Middle East Broadcasting Networks (MBN), and the Office of Cuba Broadcasting (OCB). Pursuant to International Broadcasting Act of 1994, as amended (22 U.S.C. 6201 et seq.) (“the IBA” or “the Act”), and other applicable authorities:

- (a) All USAGM-funded Networks must adhere to the highest professional standards of journalism, pursuant to section 303(a)(5) of the IBA, in order to produce news which is consistently reliable and authoritative, accurate, objective, and comprehensive, per section 303(b) of IBA. Accordingly, USAGM networks necessarily enjoy full editorial independence in order to maintain their “professional independence and integrity,” per section 305(b) of the IBA. This statutorily mandated firewall protects the independence of the networks by insulating their editorial decisions from interference from those outside of the network, or from impermissible considerations, as set forth herein.
- (b) The existence of a firewall does not mean the absence of oversight. This firewall shall not be construed to limit USAGM oversight conducted in a manner consistent with that conducted by other media organizations which operate editorially independent news divisions that adhere to the highest standards of journalism; nor does it prevent federal officials from treating the networks like any other news organization: e.g., they may seek a correction; provide an interview; serve as a source; or otherwise interact in the same manner as they do with any other news organization.

(c) Editorial independence and adherence to the highest standards of professional journalism do not prevent VOA from adhering fully to each of the elements of its Charter. The VOA Charter, currently codified at section 303(c) of the IBA, states that VOA will serve as a consistently reliable and authoritative source of news, which itself will be accurate, objective, and comprehensive; represent America as a whole, and thereby present a balanced and comprehensive projection of significant American thought and institutions; and present the policies of the United States clearly and effectively, as well as responsible discussions and opinion on such policies. Editorial independence and adherence to the highest standards of professional journalism, as described herein, allow for audiences to rely on VOA to be truthful and accurate. Accordingly, these principles are considered essential to meeting the Charter's mandate that "to be effective, the Voice of America must win the attention and respect of listeners" per section 303(c) of the IBA; S. Rep. No. 703, 94 Cong., 2nd Sess. 15 (1976), reprinted in 1976 U.S.C.C.A.N. 1555, 1569; and H.R. Conf. Rep. No. 432, 105 Cong., 2nd Sess. 127 (1998).

(d) Editorial independence and adherence to the highest standards of professional journalism do not preclude any news organization from publishing editorials or opinion pieces, clearly marked as such; as described in paragraph (d)(5) of this section, VOA is required to carry editorials which present the views of the U.S. Government.

§ 531.2 Independence and best practices.

(a) USAGM-funded networks each enjoy full editorial independence, as that term is defined and understood by best practices of journalism.

(b) Editorial independence includes, but is not limited to the fact that only individuals within the network may make any decisions with respect to newsgathering or reporting.

USAGM networks and their employees, including the heads of each network, are fully insulated from any political or other external pressures or processes that would be inconsistent with the highest standards of professional journalism.

- (c) The heads of each network, and everyone else therein, are required at all times to adhere to the highest professional standards of journalism, and must take that into account when carrying out all their responsibilities. The highest professional standards of journalism also require that all elements of newsgathering, editing, and reporting are carried out by professional journalists trained in and held to the highest industry standards.
- (d) Each network is required to establish and maintain written rules setting forth the journalistic best practices for their organization, based upon the highest professional standards of professional journalism. These best practices also preclude any journalist or other covered individuals at a network, including the heads of the networks, from engaging in any activity that would call into question their neutrality or impartiality.

§ 531.3 Firewall.

- (a) A statutory ‘firewall,’ provided for in section 305(b) of the IBA, and incident to adherence to the highest professional standards of broadcast journalism, exists around USAGM-funded networks, their products, and staff in order to protect their professional independence and integrity.
- (b) Within any credible news organization, a firewall exists between anybody involved with any aspect of journalism (e.g., the creation, editing, reporting, distributing, etc., of content) and everyone else in the organization. For purposes of USAGM, firewalls exist

between the newsroom of a USAGM-network; everyone else in the organization; and the Executive Branch of the U.S. Government, as described herein.

(c) This “firewall” is understood to be violated when any person within the Executive Branch or a Network, but outside the newsroom, attempts to direct, pressure, coerce, threaten, interfere with, or otherwise impermissibly influence any of the USAGM networks, including their leadership, officers, employees, or staff, in the performance of their journalistic and broadcasting duties and activities. It is also violated when someone inside the newsroom acts in furtherance of or pursuant to such impermissible influence. Such impermissible influence would undermine the journalistic and editorial independence, and thus the credibility, of that USAGM network, and their reporters, editors, or other journalists.

(d) The firewall is critical to ensuring that the editors, reporters, and other journalists of the USAGM network make the decisions on what stories to cover and how they are covered, and that those decisions are ultimately governed by the highest standards of professional journalism.

(e) The following are not firewall violations:

(1) The firewall is not meant to discourage journalists from interviewing U.S. Government officials or to discourage such officials from appearing on USAGM-funded programs.

(2) The firewall does not prevent officers or employees within the Executive Branch, including the State Department, from engaging with or speaking about USAGM

networks as they might with any other news organization. Such interaction could include but is not limited to:

(i) Publicly or privately commenting on USAGM stories;

(ii) Publicly or privately reaching out to journalists in the same manner that they would do with any other journalist;

(iii) Publicly or privately reaching out to network staff in the same manner that they would do with any other network staff; and

(iv) Otherwise interacting with journalists and other network staff in the same manner that they would do with such staffs' private sector counterparts.

(3) The firewall does not prevent a USAGM CEO or Board from undertaking the same type of direction and oversight that those in equivalent leadership positions in an organization overseeing other reputable news organizations may provide, in a manner consistent with the highest standards of professional journalism.

(4) In determining which languages to broadcast, the Agency has prioritized certain countries and audiences, such as those under authoritarian rule. The firewall does not prevent the USAGM CEO or Board from otherwise prioritizing certain audiences or languages, consistent with the statutory language service review that is carried out per section 305(a)(4) of the IBA to determine whether the continued broadcasting in various languages are furthering the mission of the networks, and per section 303(a)(1) of the IBA, are thus consistent with the broad foreign policy objectives of the United States.

(5) Per section 303(b)(3) of the IBA, the firewall does not prohibit the publication of editorials and other opinion pieces by U.S. Government officials, marked clearly as such, on VOA, expressing policy positions of the U.S. Government.

§ 531.4 Definitions.

- (a) *Audience* or *audiences* refers to foreign audiences overseas, the only audiences to which USAGM is authorized to seek to reach; USAGM or its networks are not authorized to target audiences in the United States, and must take steps set forth in law and regulation to avoid these audiences.
- (b) *Board* refers to the Board of a Network; or the Advisory Board.
- (c) *Everyone else in the organization* in describing a USAGM Network, refers to anyone within a Network who, pursuant to the structure of that Network or the highest standards of professional journalism, would be considered to not be part of the newsroom, i.e., involved with carrying out any aspect of journalism (e.g., the creation, editing, reporting, distributing, etc., of content), and thus outside the firewall. By definition the USAGM CEO is not within a Network.
- (d) *Network, USAGM-funded Network, or USAGM Network*: refers to the Voice of America (VOA), Radio Free Europe, Radio Liberty (RFE/RL), Radio Free Asia (RFA), the Middle East Broadcasting Networks (MBN), and the Office of Cuba Broadcasting (OCB); or any other network, broadcaster, or grantee which falls under the Act, or is overseen by USAGM or a USAGM network. It does not include any officer or employee of USAGM not within VOA or OCB, including the Advisory Board or the Chief Executive Officer.
- (e) *Newsroom* refers to the news division of a USAGM-Network. The scope of the news division depends on the structure of the Network. Depending how a Network is

organized the head of that Network may or may not be considered to be within the news division. The Board of a Network is considered to be outside the news division. Those within the news division must adhere to the highest professional standards of journalism in carrying out their responsibilities. Even if outside the newsroom, as set forth herein, the head of a network is still required to act in accordance with the highest standards of professional journalism in carrying out their roles with respect to the journalism, and thus ensuring the professional “independence and integrity” of the network.

(f) *Highest professional standards of journalism* means the highest professional standards in the field of journalism. Each network is required to promulgate, maintain, and abide by a code of journalistic ethics and best practices that fully comports with the highest professional standards in the field of journalism, a violation of which is required to be reported to the Congress, per a recurring provision of the Agency’s annual appropriation act.

(g) *Highest standards* means unless otherwise indicated, refers to “highest professional standards of journalism”

(h) *Other applicable authorities* includes the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 et seq.); the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa et seq.); the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.).

(i) *Reputable news organization* means a news organization that adheres to the highest professional standards of journalism and has a firewall which insulates the news side of the operation, to ensure that editorial decisions are not influenced in a manner or by factors inconsistent with the highest standards of professional journalism.

(j) *USAGM CEO* or *CEO* refers to the CEO authorized under section 304 of the IBA. Until such time as the first Presidentially nominated, senate confirmed CEO is appointed, USAGM CEO shall also refer to the Federal Board.

Chelsea Milko,
Special Assistant.

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