

(d) The contracting officer shall cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities under E.O. 12969.

(e) EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the head of the contracting activity that the contract be terminated for convenience. The head of the contracting activity shall consider the EPA recommendation and determine if termination or some other action is appropriate.

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996]

#### **23.907 Solicitation provision and contract clause.**

Except for acquisitions of commercial items as defined in part 2, the contracting officer shall—

(a) Insert the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts, unless it has been determined in accordance with 23.906(b) that to do so is not practicable; and

(b) When the solicitation contains the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, insert the clause at 52.223-14, Toxic Chemical Release Reporting, in the resulting contract, if the contract is expected to exceed \$100,000 (including all options).

[60 FR 55307, Oct. 30, 1995, as amended at 61 FR 41474, Aug. 8, 1996]

### **Subpart 23.10—Federal Compliance With Right-To-Know Laws and Pollution Prevention Requirements**

SOURCE: 62 FR 12697, Mar. 17, 1997, unless otherwise noted.

#### **23.1001 Purpose.**

This subpart implements requirements of Executive Order (E.O.) 12856 of August 3, 1993, Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements.

#### **23.1002 Applicability.**

The requirements of this subpart apply to facilities owned or operated by a Federal agency except those facilities located outside the several states of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

#### **23.1003 Definition.**

*Federal agency*, as used in this subpart, means an executive agency (see 2.101).

#### **23.1004 Requirements.**

(a) E.O. 12856 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(b) Pursuant to Section 1-104 of E.O. 12856, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the emergency planning and toxic release reporting requirements of EPCRA and PPA, and other agency obligations under E.O. 12856.

[62 FR 12697, Mar. 17, 1997, as amended at 63 FR 9051, Feb. 23, 1998]

#### **23.1005 Contract clause.**

The contracting officer shall insert the clause at 52.223-5, Pollution Prevention and Right-to-Know Information, in all solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

## **PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

Sec.

24.000 Scope of part.

### **Subpart 24.1—Protection of Individual Privacy**

24.101 Definitions.

24.102 General.

24.103 Procedures.

24.104 Contract clauses.

**Subpart 24.2—Freedom of Information Act**

- 24.201 Authority.  
 24.202 Prohibitions.  
 24.203 Policy.

AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42277, Sept. 19, 1983, unless otherwise noted.

**24.000 Scope of part.**

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and OMB Circular No. A-130, December 12, 1985, to Government contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended.)

[48 FR 42277, Sept. 19, 1983, as amended at 55 FR 38517, Sept. 18, 1990]

**Subpart 24.1—Protection of Individual Privacy****24.101 Definitions.**

*Agency*, as used in this subpart, means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

*Individual*, as used in this subpart, means a citizen of the United States or an alien lawfully admitted for permanent residence.

*Maintain*, as used in this subpart, means maintain, collect, use, or disseminate.

*Operation of a system of records*, as used in this subpart, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

*Record*, as used in this subpart, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

*System of records on individuals*, as used in this subpart, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

**24.102 General.**

(a) The Act requires that when an agency contracts for the design, development, or operation of a system of records on individuals on behalf of the agency to accomplish an agency function the agency must apply the requirements of the Act to the contractor and its employees working on the contract.

(b) An agency officer or employee may be criminally liable for violations of the Act. When the contract provides for operation of a system of records on individuals, contractors and their employees are considered employees of the agency for purposes of the criminal penalties of the Act.

(c) If a contract specifically provides for the design, development, or operation of a system of records on individuals on behalf of an agency to accomplish an agency function, the agency must apply the requirements of the Act to the contractor and its employees working on the contract. The system of records operated under the contract is deemed to be maintained by the agency and is subject to the Act.

(d) Agencies, which within the limits of their authorities, fail to require that systems of records on individuals operated on their behalf under contracts be operated in conformance with the Act may be civilly liable to individuals injured as a consequence of any subsequent failure to maintain records in conformance with the Act.

**24.103 Procedures.**

(a) The contracting officer shall review requirements to determine whether the contract will involve the design, development, or operation of a system of records on individuals to accomplish an agency function.

(b) If one or more of those tasks will be required, the contracting officer shall—

(1) Ensure that the contract work statement specifically identifies the system of records on individuals and the design, development, or operation work to be performed; and

(2) Make available, in accordance with agency procedures, agency rules and regulation implementing the Act.

#### **24.104 Contract clauses.**

When the design, development, or operation of a system of records on individuals is required to accomplish an agency function, the contracting officer shall insert the following clauses in solicitations and contracts:

(a) The clause at 52.224-1, Privacy Act Notification.

(b) The clause at 52.224-2, Privacy Act.

### **Subpart 24.2—Freedom of Information Act**

#### **24.201 Authority.**

The Freedom of Information Act (5 U.S.C. 552, as amended) provides that information is to be made available to the public either by (a) publication in the FEDERAL REGISTER; (b) providing an opportunity to read and copy records at convenient locations; or (c) upon request, providing a copy of a reasonably described record.

#### **24.202 Prohibitions.**

(a) A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is—

(1) In the possession or control of NASA or the Coast Guard; or

(2) Set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).)

(b) No agency shall disclose any information obtained pursuant to 15.403-3(b) that is exempt from disclosure under the Freedom of Information Act.

(See 10 U.S.C. 2306a(d)(2)(C) and 41 U.S.C. 254b(d)(2)(C).)

[62 FR 257, Jan. 2, 1997, as amended at 62 FR 51270, Sept. 30, 1997]

#### **24.203 Policy.**

(a) The Act specifies, among other things, how agencies shall make their records available upon public request, imposes strict time standards for agency responses, and exempts certain records from public disclosure. Each agency's implementation of these requirements is located in its respective title of the Code of Federal Regulations and referenced in subpart 24.2 of its implementing acquisition regulations.

(b) Contracting officers may receive requests for records that may be exempted from mandatory public disclosure. The exemptions most often applicable are those relating to classified information, to trade secrets and confidential commercial or financial information, to interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual. Since these requests often involve complex issues requiring an in-depth knowledge of a large and increasing body of court rulings and policy guidance, contracting officers are cautioned to comply with the implementing regulations of their agency and to obtain necessary guidance from the agency officials having Freedom of Information Act responsibility. If additional assistance is needed, authorized agency officials may contact the Department of Justice, Office of Information and Privacy.

[48 FR 42277, Sept. 19, 1983, as amended at 51 FR 31426, Sept. 3, 1986. Redesignated at 62 FR 257, Jan. 2, 1997]

## **PART 25—FOREIGN ACQUISITION**

Sec.

25.000 Scope of part.

### **Subpart 25.1—Buy American Act—Supplies**

25.100 Scope of subpart.

25.101 Definitions.

25.102 Policy.

25.103 Agreements with certain foreign governments.

25.104 Acquiring civil aircraft and related articles.