

# EDAR PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

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## **PART 3424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

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**Authority:** 5 U.S.C. 301.

**Source:** 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

### **Subpart 3424.1—Protection of Individual Privacy**

#### **3424.103 Procedures.**

(a) If the Privacy Act of 1974 (Privacy Act) applies to a contract, the contracting officer must specify in the contract the disposition to be made of the system or systems of records upon completion of performance. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to ED, or to keep the records but take certain measures to keep the records confidential and protect the individual's privacy.

(b) If a notice of the system of records has not been published in the Federal Register, the contracting officer may proceed with the acquisition but must not award the contract until the notice is published, unless the contracting officer determines, in writing, that portions of the contract may proceed without maintaining information subject to the Privacy Act. In this case, the contracting officer may—

(1) Award the contract, authorizing performance only of those portions not subject to the Privacy Act; and

(2) After the notice is published and effective, authorize performance of the remainder of the contract.

### **3424.170 Protection of human subjects.**

In this subsection, “Research” means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. (34 CFR 97.102(d)) Research is considered to involve human subjects when a researcher obtains information about a living individual through intervention or interaction with the individual or obtains personally identifiable private information about an individual. Some categories of research are exempt under the regulations, and the exemptions are in 34 CFR part 97.

(a) The contracting officer must insert the provision in [3452.224-71](#) (Notice about research activities involving human subjects) in any solicitation where a resultant contract will include, or is likely to include, research activities involving human subjects covered under 34 CFR part 97.

(b) The contracting officer must insert the clause at [3452.224-72](#) (Research activities involving human subjects) in any solicitation that includes the provision in [3452.224-71](#) (Notice about research activities involving human subjects) and in any resultant contract.

### **Subpart 3424.2—Freedom of Information Act**

#### **3424.201 Authority.**

The Department's regulations implementing the Freedom of Information Act, 5 U.S.C. 552, are in 34 CFR part 5.

#### **3424.203 Policy.**

(a) [Reserved]

(b) The Department's policy is to release all information incorporated into a contract and documents that result from the performance of a contract to the public under the Freedom of Information Act. The release or withholding of documents requested will be made on a case-by-case basis. Contracting officers must advise offerors and prospective contractors of the possibility that their submissions may be released under the Freedom of Information Act, notwithstanding any restrictions that are included at the time of proposal submission. A clause substantially the same as the clause at [3452.224-70](#) (Release of information under the Freedom of Information Act) must be included in all solicitations and contracts.