

defense acquisition programs. The DFARS language requires acquisition plans for major weapons systems to include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling unless the Under Secretary of Defense (Acquisition, Technology, and Logistics) waives this requirement in the best interest of DoD.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD 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.*, because this rule affects the internal operating procedures of the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2008–D042) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not contain new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 207

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 207 as follows:

1. The authority citation for 48 CFR part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 207—ACQUISITION PLANNING

Subpart 207.1 Acquisition Plans

2. Add paragraph (S–73) to section 207.106 to read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–73) In accordance with section 815 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and DoD policy requirements, acquisition plans for major weapons systems shall include a plan for the preservation and storage of special tooling associated with the production of hardware for major defense acquisition programs through the end of the service life of the related weapons system. The plan shall include the identification of any contract clauses, facilities, and funding required for the preservation and storage of such tooling. Section 815 also allows USD(AT&L) to waive this requirement if USD(AT&L) determines that it is in the best interest of DoD.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

Defense Federal Acquisition Regulation Supplement; Marking of Government-Furnished Property (DFARS Case 2008–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is issuing a proposed rule to require contractors to tag, label, or mark items of Government-furnished property identified in the contract when the Government-furnished material and Government-furnished property are subject to serialized item management.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 6, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D050, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: dfars@osd.mil. Include DFARS Case 2008–D050 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311.

SUPPLEMENTARY INFORMATION:

A. Background

It is DoD policy to uniquely mark, identify, and track Government property through the use of unique identifiers. Unique identifiers allow DoD to track and trace property items throughout their lifecycle (in acquisition and logistics business processes and systems) in an integrated approach across the Department of Defense, Federal and state agencies, non-governmental organizations, and domestic and foreign persons and organizations to provide national level traceability.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to improve the accountability and control of DoD assets. The proposed clause requires contractors who are provided Government-furnished property to tag, label, or mark the items of Government-furnished property identified in the contract when the requiring activity determines that such items are subject to serialized item management (serially-managed items). At this time, DoD is unable to estimate the number of small entities to which this rule will apply.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2008–D050) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the

rule does not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Ynette R. Shelkin,
Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 211 and 252 as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

211.274–5 [Redesignated as 211.274–6]

2. Redesignate section 211.274–5 as 211.274–6.

3. Add section 211.274–5 to read as follows:

211.274–5 Policy for tagging, labeling, or marking of Government-furnished property.

(a) It is DoD policy that the appropriate tagging, labeling, or permanent marking of Government-furnished property, based on DoD marking standards (MIL Standard 130) or other standards, be required for Government-furnished property items where the requiring activity determines that such items are subject to serialized item management (serially-managed items).

(b) *Exceptions.* The contractor will not be required to tag, label, or mark Government-furnished property if such items were previously tagged, labeled, or marked.

3. In newly redesignated 211.274–6, add paragraph (c) to read as follows:

211.274–6 Contract clauses.

* * * * *

(c) Use the clause at 252.211–70YY, Tagging, Labeling, and Marking of Government-furnished Property, in solicitations and contracts that contain the clause at—

- (1) FAR 52.245–1, Government Property; or
- (2) FAR 52.245–2, Government Property Installation Operation Services.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 252.211–70YY to read as follows:

252.211–70YY Tagging, Labeling, and Marking of Government-furnished Property.

As prescribed in 211.274–6(c), use the following clause:

TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (DATE)

(a) *Definitions.* As used in this clause—
Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract, including performance by subcontractors and at Prime Contractor Alternate locations. Government-furnished property includes reparables, e.g., spares and property furnished for repair, maintenance, overhaul, or modification; and Government-furnished material that is requisitioned from Government supply sources without reimbursement by the contractor.

Serially-managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

(b) The Contractor shall tag, label, or mark Government-furnished property items identified in the contract when the requiring activity determines that such items are subject to serialized item management (serially-managed items).

(c) *Exceptions.* Paragraph (b) of this clause does not apply to—

- (1) Government-furnished property that was previously marked;
- (2) Contractor-acquired property;
- (3) Property under any statutory leasing authority;

(4) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

- (5) Intellectual property or software; or
- (6) Real property.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[DFARS Case 2007–D003]

48 CFR Parts 212, 227, and 252

RIN 0750–AF84

Defense Federal Acquisition Regulation Supplement; Presumption of Development at Private Expense

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD proposes to amend the Defense Federal Acquisition Regulation

Supplement (DFARS) to implement section 802(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 and section 815(a)(2) of the NDAA for FY 2008. This proposed rule implements special requirements and procedures related to the validation of a contractor's or subcontractor's asserted restrictions on technical data and computer software.

DATES: Comments on the proposed rule should be submitted to the address shown below on or before July 6, 2010, to be considered in the formulation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007–D003, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* dfars@osd.mil. Include DFARS Case 2007–D003 in the subject line of the message.

- *Fax:* 703–602–0350.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

All comments received will be posted generally without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

Section 802(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007 (Pub. L. 109–364) modified 10 U.S.C. 2321(f) with regard to the presumption of development at private expense for major systems; and section 815(a)(2) of the NDAA for FY 2008 (Pub. L. 110–181) revised 10 U.S.C. 2321(f)(2) to exempt commercially available off-the-shelf items from the requirements that section 802(b) had established for major systems. This proposed rule implements special requirements and procedures related to the validation of a contractor's or subcontractor's asserted restrictions on technical data and computer software. More specifically, the proposed rule affects these validation procedures in the context of two special categories of items: Commercial items, (including commercially available off-the-shelf items); and major systems (including subsystems and components of major systems).