

NAICS code referenced for this solicitation), as of the date of this offer, and are incorporated in this offer by reference (see FAR 4.1201); except for the changes

identified below [*offeror to insert changes, identifying change by provision number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in

this offer and are current, accurate, and complete as of the date of this offer.

FAR/DFARS provision No.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

(End of provision)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

RIN 0750-AH05

Defense Federal Acquisition Regulation Supplement; Passive Radio Frequency Identification (DFARS Case 2010-D014)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements relating to the use of passive radio frequency identification (RFID).

DATES: *Effective Date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Dustin Pitsch, telephone 703-602-0289.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the *Federal Register* at 76 FR 9714 on February 26, 2011, in response to a request of the Office of Logistics and Materiel Readiness of the Office of the Secretary of Defense (Acquisition, Technology, and Logistics) to update requirements relating to the use of passive radio frequency identification (RFID).

II. Discussion and Analysis

DoD received comments from two respondents in response to the proposed rule. One respondent expressed general support for the rule.

Comment: A respondent stated that RFID tags will play an expanded role in inventory management and asset

protection for the DoD and expanded use should occur soon.

Response: DoD agrees that RFID use in inventory management is expanding and will continue to expand.

Comment: A respondent stated that RFID tracking is not the current industry standard for inventory management of pharmaceuticals and that adding this requirement would cost the suppliers and DoD a significant amount of time and money to implement. This respondent believes that the current use of 2D barcodes is sufficient for tracking pharmaceuticals and that the DoD should not require the use of passive RFID.

Response: DoD agrees and the final rule does not include a requirement for passive RFID use for pharmaceuticals.

III. 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.

IV. Regulatory Flexibility Act

DoD has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows.

The DFARS previously listed approximately 20 specific DoD activity addresses and provides the authority for using other ship-to locations “outside the contiguous United States” under certain circumstances. However, the Defense Logistics Agency and the Navy proposed adding more than 200 additional sites, making it impracticable to list all DoD passive RFID addresses in

the DFARS text or its associated clause. Instead, this rule adds a Web site for contractors to find the RFID Identifier for each specific DoD ship-to address that uses RFID technology. Including the Web site in the DFARS has the added benefit of enabling the addition of new ship-to addresses in the future as necessary without the need to revise the DFARS in each case. This final rule amends the revised, shortened list of ship-to addresses at DFARS 211.275-2(a)(2) to allow contracting officers to add tagging requirements to contract deliverables shipping to DoDAACs not specifically included in the list as they deem necessary.

The current OMB information collection justification for the clause associated with the current DFARS, 252.211-7006, entitled “Radio Frequency Identification,” lists the number of contractors impacted by the RFID requirement as 25,500. While each contractor has multiple submissions (one for each shipment), it takes only 1.12 seconds per response. The rule changes impact, if any, should decrease the response time and not increase it.

V. Paperwork Reduction Act

There are information collection requirements associated with the use of RFIDs. However, there will be no substantive change to the existing information collection requirements currently approved under OMB Information Control Number 0704-0434, DFARS; Radio Frequency Identification Advance Shipment Notices. Therefore, DoD has determined that the final rule has no material impact on the approved collection.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are amended as follows:

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

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

- 2. The section heading for section 211.275 is revised to read as follows:

211.275 Passive radio frequency identification.**211.275–1 [Amended]**

- 3. Section 211.275–1 is amended to add the word “Passive” before the phrase “Radio Frequency Identification”.
- 4. Section 211.275–2 is amended to—
- a. Revise paragraph (a) introductory text; and
- b. Revise paragraph (a)(2).
- The revisions read as follows:

211.275–2 Policy.

(a) Except as provided in paragraph (b) of this section, radio frequency identification (RFID), in the form of a passive RFID tag, is required for cases and palletized unit loads packaging levels and any additional consolidation level(s) deemed necessary by the requiring activity for shipments of items that—

* * * * *

(2) Will be shipped to one of the locations listed at <http://www.acq.osd.mil/log/rfid/> or to—

(i) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1; or

(ii) Any additional location(s) deemed necessary by the requiring activity.

* * * * *

- 5. Section 211.275–3 is revised to read as follows:

211.275–3 Contract clause.

Use the clause at 252.211–7006, Passive Radio Frequency Identification, in solicitations and contracts that will require shipment of items meeting the criteria at 211.275–2, and complete paragraph (b)(1)(ii) of the clause at 252.211–7006 as appropriate.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 6. Section 252.211–7006 is revised to read as follows:

252.211–7006 Passive Radio Frequency Identification.

As prescribed in 211.275–3, use the following clause:

Passive Radio Frequency Identification (SEP 2011)

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

Advance shipment notice means an electronic notification used to list the contents of a shipment of goods as well as additional information relating to the shipment, such as passive radio frequency identification (RFID) or item unique identification (IUID) information, order information, product description, physical characteristics, type of packaging, marking, carrier information, and configuration of goods within the transportation equipment.

Bulk commodities means the following commodities, when shipped in rail tank cars, tanker trucks, trailers, other bulk wheeled conveyances, or pipelines:

- (1) Sand.
- (2) Gravel.
- (3) Bulk liquids (water, chemicals, or petroleum products).
- (4) Ready-mix concrete or similar construction materials.
- (5) Coal or combustibles such as firewood.
- (6) Agricultural products such as seeds, grains, or animal feed.

Case means either a MIL–STD–129 defined exterior container within a palletized unit load or a MIL–STD–129 defined individual shipping container.

Electronic Product Code™ (EPC®) means an identification scheme for universally identifying physical objects via RFID tags and other means. The standardized EPC™ data consists of an EPC™ (or EPC™ identifier) that uniquely identifies an individual object, as well as an optional filter value when judged to be necessary to enable effective and efficient reading of the EPC™ tags. In addition to this standardized data, certain classes of EPC™ tags will allow user-defined data. The EPC™ Tag Data Standards will define the length and position of this data, without defining its content.

EPCglobal® means a subscriber-driven organization comprised of industry leaders and organizations focused on creating global standards for the adoption of passive RFID technology.

Exterior container means a MIL–STD–129 defined container, bundle, or assembly that is sufficient by reason of material, design, and construction to protect unit packs and intermediate containers and their contents during shipment and storage. It can be a unit pack or a container with a combination of unit packs or intermediate containers. An exterior container may or may not be used as a shipping container.

Palletized unit load means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized or skidded load is not considered to be a shipping container. A loaded 463L System pallet is not considered to be a palletized

unit load. Refer to the Defense Transportation Regulation, DoD 4500.9–R, Part II, Chapter 203, for marking of 463L System pallets.

Passive RFID tag means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. The only acceptable tags are EPC Class 1 passive RFID tags that meet the EPCglobal™ Class 1 Generation 2 standard.

Radio frequency identification (RFID) means an automatic identification and data capture technology comprising one or more reader/interrogators and one or more radio frequency transponders in which data transfer is achieved by means of suitably modulated inductive or radiating electromagnetic carriers.

Shipping container means a MIL–STD–129 defined exterior container that meets carrier regulations and is of sufficient strength, by reason of material, design, and construction, to be shipped safely without further packing (e.g., wooden boxes or crates, fiber and metal drums, and corrugated and solid fiberboard boxes).

(b)(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall affix passive RFID tags, at the case- and palletized-unit-load packaging levels, for shipments of items that—

(i) Are in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(A) Subclass of Class I—Packaged operational rations.

(B) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(C) Class IIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(D) Class IV—Construction and barrier materials.

(E) Class VI—Personal demand items (non-military sales items).

(F) Subclass of Class VIII—Medical materials (excluding pharmaceuticals, biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(G) Class IX—Repair parts and components including kits, assemblies and subassemblies, repairable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(ii) Are being shipped to one of the locations listed at <http://www.acq.osd.mil/log/rfid/> or to—

(A) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1, or to—

(B) The following location(s) deemed necessary by the requiring activity:

Contract line, subline, or exhibit line item number	Location name	City	State	DoDAAC

(2) The following are excluded from the requirements of paragraph (b)(1) of this clause:

(i) Shipments of bulk commodities.
(ii) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

(c) The Contractor shall—

(1) Ensure that the data encoded on each passive RFID tag are globally unique (*i.e.*, the tag ID is never repeated across two or more RFID tags) and conforms to the requirements in paragraph (d) of this clause;

(2) Use passive tags that are readable; and

(3) Ensure that the passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129 (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall encode an approved RFID tag using the instructions provided in the EPC™ Tag Data Standards in effect at the time of contract award. The EPC™ Tag Data Standards are available at <http://www.epcglobalinc.org/standards/>.

(1) If the Contractor is an EPCglobal™ subscriber and possesses a unique EPC™ company prefix, the Contractor may use any of the identifiers and encoding instructions described in the most recent EPC™ Tag Data Standards document to encode tags.

(2) If the Contractor chooses to employ the DoD identifier, the Contractor shall use its previously assigned Commercial and Government Entity (CAGE) code and shall encode the tags in accordance with the tag identifier details located at http://www.acq.osd.mil/log/rfid/tag_data.htm. If the Contractor uses a third-party packaging house to encode its tags, the CAGE code of the third-party packaging house is acceptable.

(3) Regardless of the selected encoding scheme, the Contractor with which the Department holds the contract is responsible for ensuring that the tag ID encoded on each passive RFID tag is globally unique, per the requirements in paragraph (c)(1) of this clause.

(e) *Advance shipment notice.* The Contractor shall use Wide Area Workflow (WAWF), as required by DFARS 252.232–7003, Electronic Submission of Payment Requests, to electronically submit advance shipment notice(s) with the RFID tag ID(s) (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at <https://wawf.eb.mil/>.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 227, and 252

RIN 0750–AF84

Defense Federal Acquisition Regulation Supplement; Presumption of Development Exclusively at Private Expense (DFARS Case 2007–D003)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement to implement sections of the Fiscal Year (FY) 2007 and 2008 National Defense Authorization Act, including special requirements and procedures related to the validation of a contractor's or subcontractor's asserted restrictions on technical data and computer software.

DATES: *Effective date:* September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, 703–602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 802(b) of the FY 2007 National Defense Authorization Act (NDAA) (Pub. L. 109–364) and section 815 of the FY 2008 NDAA (Pub. L. 110–181). Section 802(b) modified 10 U.S.C. 2321(f)(2) with regard to the presumption of development at private expense for major systems. Section 815 revised 10 U.S.C. 2321(f)(2) to exempt commercially available off-the-shelf items from the requirements that section 802(b) established for major systems.

This final 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 final rule affects these validation procedures in the context of two special categories of items: Commercial items (including commercially available off-the-shelf

items), which may be referred to as the “Commercial Rule;” and major systems (including subsystems and components of major systems), which may be referred to as the “Major Systems Rule.”

DoD published a proposed rule with a request for comments in the **Federal Register** on May 7, 2010 (75 FR 25161). Two respondents provided comments.

II. Discussion and Analysis of the Public Comments

A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows.

A. Prescribing a Noncommercial Clause for Technical Data Related to a Commercial Item

Comment: Two respondents described the prescriptions at DFARS 227.7102–3(b) and 227.7103–6(a) as new requirements that exceed the changes necessary to implement the statute.

Response: The operative elements of the clause prescription at DFARS 227.7102–3(b) were a part of the last major revision of Part 227 in 1995. The substance of the prescription has not changed in the proposed rule; the requirement was redesignated as DFARS 227.7102–(4)(b) and revised to cross-reference the prescription added to DFARS 227.7103–6(a). This follows DFARS drafting principles to use only a single prescription for each clause, using cross-references when necessary. As such, the prescription at DFARS 227.7103–6(a) serves as the primary source for prescribing all uses of the clause at DFARS 252.227–7013, with a cross-reference at 227.7102–(4)(b).

Comment: A respondent recommended that the criteria “or will pay any portion of the development costs” should be eliminated because the Government should not receive the benefit of something it may or may not pay for in the future outside of the contract.

Response: The “will pay” criterion has been used since 1995. The term “will” is used to denote an anticipated future action or result, and there is no evidence that this criterion has been or should be interpreted as seeking to be used in a contract when the criteria used to invoke the clause has not, and is not, expected to occur during the contract.