

## EPA-APPROVED MICHIGAN REGULATIONS—Continued

| Michigan citation   | Title  | State effective date | EPA approval date   | Comments |
|---|--|----------------------|---|----------|
| *   | *  | *                    | *   | *        |
| <b>Part 19. New Source Review for Major Sources Impacting Nonattainment Areas</b> |  |                      |   |          |
| R 336.2901  | Definitions  | 6/20/2008            | 12/16/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. |          |
| R 336.2901a   | Adoption by reference  | 6/20/2008            | 12/16/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. |          |
| R 336.2902  | Applicability  | 6/20/2008            | 12/16/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. |          |
| R 336.2903  | Additional permit requirements for sources impacting non-attainment areas.           | 6/20/2008            | 12/16/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. |          |
| R 336.2907  | Plantwide applicability limits or PALs.  | 6/20/2008            | 12/16/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. |          |
| R 336.2908  | Conditions for approval of a major new source review permit in a nonattainment area. | 6/20/2008            | 12/16/2013, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]. |          |

[FR Doc. 2013–29555 Filed 12–13–13; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

48 CFR Parts 211, 212, 218, 246, 252, and Appendix F to Chapter 2

RIN 0750–AH64

#### Defense Federal Acquisition Regulation Supplement: Item Unique Identifier Update (DFARS Case 2011–D055)

**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 and clarify requirements for unique identification and valuation of items delivered under DoD contracts.

**DATES:** Effective December 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dustin Pitsch, telephone 571–372–6090.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

DoD published a proposed rule in the *Federal Register* at 77 FR 35921 on June 15, 2012. The comment period closed on August 14, 2012. This rule proposed to revise the prescription and the clause at DFARS 252.211–7003 to update and clarify instructions for the identification and valuation processes. Five respondents submitted public comments in response to the proposed rule.

#### II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows.

##### A. Summary of Significant Changes

The final rule incorporates the following significant changes from the proposed rule:

- Paragraphs 211.274–2(a)(2) and (3) are revised to consolidate requirements.
- The definition of “data matrix” within the clause at 252.211–7003 is modified from the proposed rule to clarify the specification with which contractors must comply.
- The words “at its own expense” at 252.211–7003(c)(1)(v) are removed as a result of a public comment.
- The statement “or registered in the DoD Item Unique Identification

Registry” is added at 252.211–7003(c)(2).

- The phrase “ECC200 data matrix specification” is added at 252.211–7003(c)(3) to note the exact specification within the listed standard.

- 252.211–7003(c)(5)(D) is revised to read “Verify that the marks on items and labels on shipments, storage containers, and packages are machine readable and conform to the applicable standards. The contractor shall use an automatic identification technology device for this verification that has been programmed to the requirements of Appendix A, MIL–STD–130, latest version.”

- 252.211–7003(f)(1) is revised to include the sentence “If WAWF is not required by this contract, and the contractor is not using WAWF, follow the procedure at <http://dodprocurementtoolbox.com/site/uidregistry/>.”

- 252.211–7003(f)(2)(ii) is revised to clarify that a fill-in is necessary when this circumstance applies.

- Changes previously proposed to update the Web site at 252.225–7039(b)(1)(ii)(B) are no longer required as DFARS final rule 2013–D037 published November 18, 2013 deleted this clause as coverage is now located in the FAR.

- In Appendix F–103(e)(1), the last sentence is revised to read “WAWF

shall be used to report Unique Item Identifiers (UIIs) at the line item level, unless an exception to WAWF applies, and can also be used to report UIIs embedded at the line item level.”

• In Appendix F paragraph F–301(b)(18)(i), the fifth sentence in this paragraph is revised to read: “However, if the contract has Item Unique Identification (IUID) requirements and the receiving report is being processed in WAWF the unit price must represent the acquisition cost that will be recorded in the IUID registry.” This change is being made to ensure the instructions in Appendix F conform to the coverage in the clause.

#### B. Analysis of Public Comments

##### 1. Commercial Provision/Clause List

*Comment:* One respondent noted that DFARS clause 252.211–7003 is in the commercial provision/clause list at DFARS 212.301(f)(iv), and recommended that clause 252.211–7007 be added.

*Response:* Clause 252.211–7007 was added on August 29, 2012, to the commercial provision/clause list at 212.301(f) as the result of DFARS final rule 2012–D001, Reporting of Government-Furnished Property.

##### 2. Burden Added by New Reporting

*Comment:* One respondent stated that the rule adds new reporting requirements that will add to the burden of reporting. The respondent noted that the reporting requirements for special tooling, special test equipment, warranty items and type designation of items are all new with this rule.

*Response:* Reporting of items of special tooling or special test equipment for a major defense acquisition program, which is designated for preservation and storage in accordance with the requirements of section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), is required to register and track these items. The special tooling, special test equipment, and warranty requirements have already been accounted for under final rule 2012–D001, Reporting of Government-Furnished Property. Reporting of warranty serialized items is required to identify and track warranted items so that DoD can obtain warranty benefits. Reporting of type designation is required to properly account for end items of DoD equipment and is a burden on the Government to ensure that it is added to line item structure. This is critical for auditability of property accountability.

##### 3. Benefits/Outcome

*Comment:* One respondent commented that the benefits listed at DFARS 211.274–1 in the proposed rule would only occur with proper implementation and suggests adding text to clarify that merely tracking items will not automatically achieve desired results.

*Response:* DoD recognizes that item unique identification is a prerequisite to enabling enhancements in DoD logistics, contracting, and financial business transactions.

*Comment:* One respondent commented that the additional funding needed to implement the requirements merely changes where the budget impact hits, on invoices submitted by contractors rather than DoD achieving the necessary line item increases. The respondent also stated that the contractors’ workforce burden is greatly increased by having additional quality inspection requirements, having to UID mark the additional items such as Government-furnished material (GFM), having to enter the items in the UID Registry, having increased physical inventory responsibilities, having additional steps to carry out when transferring contractor-acquired material at no cost to another contract (becomes GFM), subsequent mandatory verifications, and new packaging requirements, and that these additional burdens represent neither increased productivity nor increased efficiency.

*Response:* The cost burden of implementing item unique identification was recognized as an allowable cost in the Director, Defense Procurement and Acquisition Policy, Memorandum, dated July 9, 2004, Subject: “Contract Pricing and Cost Accounting Compliance with DFARS 252.211–7003”, and this case does not change the way DoD is using item unique identification.

*Comment:* One respondent stated that this requirement is passing a nontrivial DoD records responsibility along to the contractor in the immediate time frame, with no concurrent change in contract dollars to pay for the activity (unless through billing under a cost type contract), and suggested deleting the revision to 211.274–2(a)(4)(v), which makes item unique identification required for any, “DoD serially managed item (reparable or nonreparable).”

*Response:* The intent is not to pass the records responsibility to the contractors, since the change applies to contracts, which include this clause; therefore the mechanism for paying the contractor to perform the activity can be included in the contract price. Note that in the final

rule this criterion is now located at 211.274–2(a)(3)(i).

##### 4. Policy Is Unreasonable

*Comment:* One respondent commented that the marking requirements implemented by this rule are impracticable and would put contractors at risk of charging the Government for unallowable unreasonable costs, noting that a reasonable cost is described in FAR 31.201–3(a): “A cost is reasonable if in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business . . .” The respondent also noted that the implementing marking requirements in this rule would constitute abuse as defined in the Government Accountability Office Yellow Book: “Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary business practice given the facts and circumstances . . .”

*Response:* This case is not changing existing policy for reporting IUID; it is clarifying the categories of items subject to item unique identification and the methods for reporting items to the DoD Item Unique Identification Registry.

##### 5. Warranty Cost

*Comment:* One respondent suggested that warranted serialized items that require IUID be identified in the contract due to the significant administrative cost that would be incurred if IUID is required on all warranted serialized items. The suggested change would modify the text at 211.274–2(a)(4)(iii) to read: “Warranted serialized item as identified in the contract.”

*Response:* The DFARS 211.274–2(a)(4)(iii) reference, which the respondent proposed revising, reflects long-standing DoD policy that DoD unique item identification, or DoD recognized unique identification equivalent, is required for any warranted serialized item. See DFARS final rule 2009–D018 (76 33166 published June 8, 2011).

##### 6. Special Test Equipment

*Comment:* One respondent recommended against requiring IUID for special test equipment because special test equipment becomes obsolete too quickly.

*Response:* DFARS 211.274–2(3)(iv) implements the policy of Public Law 110–417, which requires that major defense acquisition programs designate items of special tooling and special test

equipment for preservation and storage upon the termination of production. Any issues concerning obsolescence of special test equipment at the termination of production would be mitigated by the program manager by following the guidance in SD-22, Diminishing Manufacturing Sources and Material Shortages: A Guidebook of Best Practices for Implementing a Robust DMSMS Management Program, dated August 2012.

#### 7. New Requirements

*Comment:* One respondent pointed out that the requirements at 211.274-2(a)(4)(v) and (vi) are both new requirements and contradict the rule's statement that no new requirements are being added. The respondent recommends modifying the text at 211.274-2(a)(4)(vi) to add "as defined in the contract" to the end of the sentence.

*Response:* These requirements are not considered to be new requirements as they are clarifying and formalizing existing practices, and they are not anticipated to add any additional burden to the information collection required by the rule. In the final rule these criteria are located within 211.274-2(a)(3).

#### 8. Marking

*Comment:* One respondent suggested that the required determination and findings conclusions stated in 211.274-2(b)(2) are three separate exceptions and should be listed exclusively.

*Response:* There are only two conditions for the 211.274-2(b)(2) exceptions. They are: (1) it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery for an item acquired from a small business concern, and (2) it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery for a commercial item acquired under FAR part 8 or part 12.

*Comment:* One respondent commented that the marking requirement at 252.211-7003(c)(1)(v) would not benefit the Government or the contractor and will ultimately lead to additional cost to the Government. The respondent suggested removing this requirement from the clause.

*Response:* DFARS 252.211-7003(c)(1)(v) only addresses items for which the contractor elects to create and mark a unique item identifier with a data matrix for its own purposes of traceability, even though the item is delivered to DoD and does not require DoD unique identification. This provision is included to ensure that any

items marked under it and subsequently delivered to DoD will be reported to the DoD Item Unique Identification Registry by the contractor to avoid having DoD items with unique identification markings that are not registered.

*Comment:* One respondent opined that the requirement added at 252.211-7003(c)(5)(i)(D) to verify that IUID markings are readable and that they conform with the applicable standards is too broad of a requirement that adds unnecessary redundancy to the marking process and would serve only to increase cost that would be passed on to the Government.

*Response:* DFARS 252.211-7003(c)(5)(i)(B) requires that unique item identifier marking comply with the criteria of MIL STD 130, Identification Marking of U.S. Military Property, latest version. Paragraph 252.211-7003(c)(5)(i)(C) requires that shipments, storage containers, and packages that contain uniquely identified items be labeled in accordance with the requirements of MIL STD 129, latest version. The 252.211-7003(c)(5)(i)(D) provision to verify that unique item identifier markings are readable and that they conform with the applicable standards is a prudent requirement to assure compliance with paragraphs (B) and (C).

*Comment:* One respondent recommended deleting "or when item unique identification is provided under paragraph (c)(1)(v)" and instead adding "either as part of, or associated with" at 252.211-7003(d) in order to enable reporting IUID-related data elements to the Registry for occasional use of paper material inspection and receiving reports.

*Response:* The purpose of the 252.211-7003(d) and (e) clause language is to require reporting of the item unique identification data to the DoD Item Unique Identification Registry for end items and embedded items, respectively, marked with a unique item identifier. Paragraph (f) of 252.211-7003 specifies the various methods for reporting these data.

#### 9. Tracking Buildings or Property

*Comment:* One respondent suggested editing the prescription for clause 252.211-7003 to specify that it applies to "tangible durable personal property" supplies to clarify that it does not apply to real property.

*Response:* The inclusion of the term "item", which is defined in 252.211-7003(a) as a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts, is a sufficient

distinction to avoid confusion with real property.

#### 10. Definitions

*Comment:* One respondent commented that the definition for "data matrix" is not true all of the time as in some circumstances the modules in the matrix can be round.

*Response:* As specified in 252.211-7003(c)(3), DoD will only accept a data matrix symbol that complies with ISO/IEC International Standard 16022, Information Technology—International Symbol Specification—Data Matrix. This standard defines a module as a single cell in a matrix symbology used to encode one bit of data. In data matrix, the module is nominally a square shape.

*Comment:* One respondent suggested modifying the definition for "type designation" because the explanation of a complete "item" is inconsistent with other instances within the regulations, standards, and guides.

*Response:* To be consistent with other instances of "type designation" usage, the words "a complete item, such as" are not included in the final rule.

#### 11. Unit

*Comment:* One respondents suggested modifying 252.211-7003(c)(1)(i) because the use of the term "unit" is inconsistent with other instances within the regulations, standards, and guides.

*Response:* 252.211-7003(c)(1)(i) uses the term "unit acquisition cost", which is the actual cost at the time of purchase and is the proper measure of value.

#### 12. Internal Use Items

*Comment:* One respondent suggested editing 252.211-7003(c)(3) to include an exemption on marking items that are for internal use only.

*Response:* The DoD requirement is to have the contractor mark items that are delivered to DoD under the terms of a contract and to allow the collection of data where contractors voluntarily mark items.

#### 13. MIL STD 130 and MIL STD 129

*Comment:* One respondent noted that requiring adherence to a military standard (e.g., MIL STD 130 and MIL STD 129) creates an open ended standard that would not be possible to price at the time of award and requests the deletion of 252.211-7003(c)(5)(i)(D) language: "Verify that the marks on items, shipments and storage containers and packages are machine readable and conform to the applicable standards." The respondent also suggested clarifying that the requirement corresponds to the standard in place at

the time of award and should be cited in the contract.

*Response:* This is a function of compliance with the requirements of MIL-STD-130 and MIL-STD-129, which are accomplished as a matter of course prior to the delivery of marked items. Clause 252.211-7003 requires compliance with the latest versions of MIL STD 130 and MIL STD 129 as of the time of award.

*Comment:* One respondent requested adding language that states the MIL STD 129 requirement should only apply to shipping.

*Response:* The requirement at 252.211-7003(c)(5)(i)(C) reinforces the requirements in paragraph 4.4 of MIL STD 129 that "For shipments of UII items, the 2D (PDF417) symbol shall be used for listing the concatenated UIIs (DI 25S) and the data normally included in the linear (Code 39) identification bar codes (see 4.4.2.3 and 4.4.3.3.1)." MIL-STD-129 requirements only apply to markings on labels and containers of items being shipped or stored, as specified in the contract.

#### 14. Text Clarification

*Comment:* One respondent suggested editing the new text at 252.211-7003(d)(12) to read "Type designation of the item when specified in the contract specifications." The respondent noted that this change would clarify that this information is only required when it has been provided in the contract.

*Response:* 252.211-7003(d)(12) is modified in the final rule to read: "Type designation of the item as specified in the contract schedule, if any." Use of the term "specifications" is not appropriate in this instance.

*Comment:* One respondent suggested editing the new text at 252.211-7003(d)(14) to read: "Whether the item was sold with a limited warranty." The respondent opined that tracking if items were sold with a warranty makes more sense than tracking if the item is covered by a warranty because most warranties expire and there is no current process for updating this information.

*Response:* The DoD requirement is to determine if the item is covered by a warranty at the time it is delivered to the DoD. If the contractor acquires an item under warranty and subsequently delivers it to DoD, then DoD wants to gain the benefits of that warranty. DFARS subpart 246.7 provides procedures for capturing warranty details, including duration.

#### 15. Wide Area WorkFlow (WAWF)

*Comment:* One respondent recommended editing 252.211-

7003(f)(1) to allow contractors the option of submitting item information directly to the registry without the stipulation "If WAWF is not required by this contract".

*Response:* If the WAWF clause 252.232-7003 is in the contract, then WAWF shall be used to deliver the item unique identification data to the DoD Item Unique Identification Registry. If the WAWF clause is not in the contract, then direct submission will have to be used. This ensures that the data about the item is reviewed as part of inspection and acceptance of the item.

#### 16. Registration/Reporting

*Comment:* One respondent suggested removing the words "DoD serially managed reparable" from the requirement at 252.211-7003(c)(1)(iii).

*Response:* DoD serially managed reparable may be for new acquisition or be furnished to a contractor for repair. In either case, they shall be subject to item unique identification marking.

*Comment:* One respondent suggested adding notes to the new requirements at 252.211-7003(c)(1)(iii) and (iv) to clarify which category of items these refer to out of the categories "ACQ" or "GFP".

*Response:* The comment applies to the registration process. Links to instructions for reporting item unique identification data to the DoD Item Unique Identification Registry are found in 252.211-7003(f).

*Comment:* One respondent suggested removing "at its own expense" from 252.211-7003(c)(1)(v).

*Response:* The phrase "at its own expense" is deleted from 252.211-7003(c)(1)(v).

*Comment:* One respondent suggested adding a line at 252.211-7003(c)(vi), which would state: "DoD serially managed reparable as specified in Attachment Number \_\_\_\_." (Note: Corresponds to UIID Registry Category "LEG")."

*Response:* DoD serially managed reparable may be for new acquisitions or be furnished to a contractor for repair. In either case they would be subject to item unique identification marking.

*Comment:* One respondent suggested revising 252.211-7003(c)(2), to state: "The unique item identifier assignment and the component data element combination shall not be duplicated on any other item marked and/or registered in the UIID Registry by the contractor (because STE (GFP) may have a UII assigned and registered, but not marked)."

*Response:* DFARS 252.211-7003(c)(2) is revised to read: "The unique item identifier assignment and component

data element combination shall not be duplicated on any other item marked or registered in the DoD Item Unique Identification Registry by the contractor."

*Comment:* One respondent suggested adding a nine-item list of pieces of information to be submitted directly to the UIID Registry for legacy items at 252.211-7003(f), similar to the list in the proposed rule at 252.211-7003(e).

*Response:* Instructions for reporting item unique identification data on reparable items furnished to a contractor for repair are included under 252.211-7003(d).

*Comment:* One respondent suggested adding a new 252.211-7003(f)(3), which would state: "reparable items shall be reported by direct data submission to the UIID Registry following the procedures and formats at: [http://www.acq.osd.mil/dpap/pdi/uid/data\\_submission\\_information.html](http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html)."

*Response:* The reparable furnished to a contractor for repair would be reported as either end items or embedded items under (f)(1) or (f)(2), as appropriate.

#### 17. Government-Furnished Property (GFP) Policy Changes

*Comment:* One respondent disagrees with changing 211.274-4 to address GFP instead of Government-furnished equipment and noted that not all of the exceptions to GFP would have been considered GFP anyhow. This respondent stated that the changes made to this section, to include the removal of exceptions for items valued at less than \$5,000 and Government-furnished material, will be extremely burdensome to large contractors and will add tens of thousands of items that will need to be marked and tracked with UIID and recommended that the policy changes not be made.

*Response:* The text at 211.274-4 was modified on August 29th, 2012, by final rule 2012-D001 and is not further modified by this rule. The five exceptions in the proposed rule were incorporated into the DFARS by the final rule 2012-D001 as well as two other exceptions: "Property released as work in process" and "Nonserial managed items (reporting is limited to receipt transactions only)."

#### 18. Business Systems Rule

*Comment:* One respondent disagrees with limiting this rule to small businesses involved in manufacturing. This respondent stated that the business systems rule came to pass because major contractors' business systems were assessed as poor, so a control environment argument is unwarranted.

The respondent also stated that the exposure is greater at major contractors, and major contractors are more likely to use SAP AG software, which abrogates the loan/payback transaction.

*Response:* This comment is outside the scope of this case. The scope is limited to clarifying the categories of items subject to item unique identification and the methods for reporting items to the DoD Item Unique Identification Registry.

### 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 not a significant regulatory action and, therefore, was not 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.

### III. Regulatory Flexibility Act

DoD does not expect this final 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 the changes being made do not increase the burden of the item unique identification requirements, nor do they cause the requirement to be applicable to any additional small businesses. However, a final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

The changes are being made to refine the language of the regulations and update the clause and prescription to comply with existing item unique identification policy. This DFARS final rule also clarifies the reporting requirements for special tooling and special test equipment, warranty, and type designation, updates text to describe the reason for the policy, clears up language that has been confusing in practice, and adds an alternative method of data submission using either hard copy or a wide-area-workflow attachment. The rule also eliminates Alternate I of DFARS 252.211-7003, which cited reporting requirements covered by other mechanisms.

This rule will apply to small businesses involved in manufacturing. There are currently 1,495 small businesses registered in the Item Unique Identification Registry, out of 2,431 total companies registered. The changes made by this rule will not affect the number of businesses that are required to be registered in the Item Unique Identification Registry.

There were no comments in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments.

This rule does not add any new information collection requirements as it only clarifies existing requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were determined that will accomplish the objectives of the rule.

### IV. Paperwork Reduction Act

This rule does not add any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) beyond those already covered by OMB Control Numbers 0704-0246 and 0704-0248. OMB Control Number 0704-0246, titled "Defense Federal Acquisition Regulations Supplement (DFARS) Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253," includes information collection requirements for DFARS subpart 211.274. OMB Control Number 0704-0248, titled "Defense Federal Acquisition Regulations Supplement (DFARS) Appendix F, Material Inspection and Receiving Report and related forms," covers all information submitted through the Wide Area WorkFlow system.

#### List of Subjects in 48 CFR Parts 211, 212, 218, 246, 252, and Appendix F to Chapter 2

Government procurement.

**Manuel Quinones,**  
*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 211, 212, 218, 246, 252, and Appendix F to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211, 212, 218, 246, 252, and Appendix F to chapter 2 continues to read as follows:

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

### PART 211—DESCRIBING AGENCY NEEDS

■ 2. Section 211.274-1 is revised to read as follows:

#### 211.274-1 General.

Item unique identification and valuation is a system of marking, valuing, and tracking items delivered to DoD that enhances logistics, contracting, and financial business transactions supporting the United States and coalition troops. Through item unique identification policy, which capitalizes on leading practices and embraces open standards, DoD—

- (a) Achieves lower life-cycle cost of item management and improves life-cycle property management;
- (b) Improves operational readiness;
- (c) Provides reliable accountability of property and asset visibility throughout the life cycle;
- (d) Reduces the burden on the workforce through increased productivity and efficiency; and
- (e) Ensures item level traceability throughout lifecycle to strengthen supply chain integrity, enhance cyber security, and combat counterfeiting.

■ 3. Section 211.274-2 is amended by—

- a. Revising the section heading;
- b. Revising paragraph (a);
- c. Revising paragraph (b) introductory text; and
- d. Revising paragraph (b)(2).

The revisions read as follows:

#### 211.274-2 Policy for item unique identification.

(a) It is DoD policy that DoD item unique identification, or a DoD recognized unique identification equivalent, is required for all delivered items, including items of contractor-acquired property delivered on contract line items (see PGI 245.402-71 for guidance when delivery of contractor acquired property is required)—

(1) For which the Government's unit acquisition cost is \$5,000 or more;

(2) For which the Government's unit acquisition cost is less than \$5,000 when the requiring activity determines that item unique identification is required for mission essential or controlled inventory items; or

(3) Regardless of value for any—

(i) DoD serially managed item (reparable or nonreparable) or subassembly, component, or part embedded within a subassembly, component, or part;

(ii) Parent item (as defined in 252.211-7003(a)) that contains the embedded subassembly, component, or part;

(iii) Warranted serialized item;

(iv) Item of special tooling or special test equipment, as defined at FAR 2.101, for a major defense acquisition program that is designated for preservation and storage in accordance with the requirements of section 815 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417); and

(v) High risk item identified by the requiring activity as vulnerable to supply chain threat, a target of cyber threats, or counterfeiting.

(b) *Exceptions.* The contractor will not be required to provide DoD item unique identification if—

(2) A determination and findings has been executed concluding that it is more cost effective for the Government requiring activity to assign, mark, and register the unique item identifier after delivery, and the item is either acquired from a small business concern, or is a commercial item acquired under FAR part 12 or part 8.

- 4. Section 211.274-3 is amended by—
- a. Revising paragraph (a); and
- b. Amending paragraph (c) by removing the word “need” and adding in its place “shall”.

The revision reads as follows:

**211.274-3 Policy for valuation.**

(a) It is DoD policy that contractors shall be required to identify the Government’s unit acquisition cost for all deliverable end items to which item unique identification applies.

- 5. Section 211.274-6 is amended by—
- a. Revising paragraph (a); and
- b. Amending paragraph (c)(1) by removing the clause title “Item Identification and Valuation” and adding in its place “Item Unique Identification and Valuation”.

The revision reads as follows:

**211.274-6 Contract clauses.**

(a)(1) Use the clause at 252.211-7003, Item Unique Identification and Valuation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require item identification or valuation, or both, in accordance with 211.274-2 and 211.274-3.

(2) Identify in paragraph (c)(1)(ii) of the clause the contract line, subtitle, or exhibit line item number and description of any item(s) below \$5,000 in unit acquisition cost for which DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2(a)(2).

(3) Identify in paragraph (c)(1)(iii) of the clause the applicable attachment number, when DoD item unique identification or a DoD recognized unique identification equivalent is required in accordance with 211.274-2(a)(3)(i) through (v).

**PART 212—ACQUISITION OF COMMERCIAL ITEMS**

**212.301 [Amended]**

- 6. Section 212.301 is amended in paragraph (f)(ix) by removing the clause title “Item Identification and Valuation” and adding in its place “Item Unique Identification and Valuation”.

**PART 218—EMERGENCY ACQUISITIONS**

- 7. Section 218.201(2) is revised to read as follows:

**218.201 Contingency operation.**

(2) *Policy for item unique identification.* Contractors will not be required to provide DoD item unique identification if the items, as determined by the head of the agency, are to be used to support a contingency operation. See 211.274-2(b).

**PART 246—QUALITY ASSURANCE**

**246.710 [Amended]**

- 8. Section 246.710 is amended in paragraph (5)(i) introductory text by removing the clause title “Item Identification and Valuation” and adding in its place “Item Unique Identification and Valuation”.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 9. Amend section 252.211-7003 by—
- a. Revising the section heading;
- b. Revising the clause heading and the clause date;
- c. Amending paragraph (a) by removing the definition title “DoD unique item identification” and adding in its place “DoD item unique identification”;
- d. Adding to paragraph (a), in alphabetical order, definitions for “Data matrix” and “Type designation”;
- e. Revising paragraph (c);
- f. Revising paragraph (d) introductory text;
- g. Adding paragraphs (d)(12) through (14);
- h. Revising paragraph (e) introductory text;
- i. Revising paragraph (f);

- j. Revising paragraph (g); and
- k. Removing Alternate I.

**252.211-7003 Item unique identification and valuation.**

**ITEM UNIQUE IDENTIFICATION AND VALUATION (DEC 2013)**

(a) *Data matrix* means a two-dimensional matrix symbology, which is made up of square or, in some cases, round modules arranged within a perimeter finder pattern and uses the Error Checking and Correction 200 (ECC200) specification found within International Standards Organization (ISO)/International Electrotechnical Commission (IEC) 16022.

*Type designation* means a combination of letters and numerals assigned by the Government to a major end item, assembly or subassembly, as appropriate, to provide a convenient means of differentiating between items having the same basic name and to indicate modifications and changes thereto.

(c) *Unique item identifier.* (1) The Contractor shall provide a unique item identifier for the following:

(i) Delivered items for which the Government’s unit acquisition cost is \$5,000 or more, except for the following line items:

| Contract line, subtitle,<br>or exhibit line item<br>No. | Item description |
|---|------------------|
|---|------------------|

(ii) Items for which the Government’s unit acquisition cost is less than \$5,000 that are identified in the Schedule or the following table:

| Contract line, subtitle,<br>or exhibit line item<br>No. | Item description |
|---|------------------|
|---|------------------|

*(If items are identified in the Schedule, insert “See Schedule” in this table.)*

(iii) Subassemblies, components, and parts embedded within delivered items, items with warranty requirements, DoD serially managed repairables and DoD serially managed nonrepairables as specified in Attachment Number \_\_\_\_.

(iv) Any item of special tooling or special test equipment as defined in FAR 2.101 that have been designated for preservation and storage for a Major Defense Acquisition Program as specified in Attachment Number \_\_\_\_.

(v) Any item not included in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this clause for which the contractor creates and marks a unique item identifier for traceability.

(2) The unique item identifier assignment and its component data element combination shall not be duplicated on any other item marked or registered in the DoD Item Unique Identification Registry by the contractor.

(3) The unique item identifier component data elements shall be marked on an item using two dimensional data matrix symbology that complies with ISO/IEC International Standard 16022, Information technology—International symbology specification—Data matrix; ECC200 data matrix specification.

(4) *Data syntax and semantics of unique item identifiers.* The Contractor shall ensure that—

(i) The data elements (except issuing agency code) of the unique item identifier are encoded within the data matrix symbol that is marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology-Transfer Syntax for High Capacity Automatic Data Capture Media.

(5) *Unique item identifier.*

(i) The Contractor shall—

(A) Determine whether to—

(1) Serialize within the enterprise identifier;

(2) Serialize within the part, lot, or batch number; or

(3) Use a DoD recognized unique identification equivalent (e.g. Vehicle Identification Number); and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: Original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in MIL-STD-130, Identification Marking of U.S. Military Property, latest version;

(C) Label shipments, storage containers and packages that contain uniquely identified items in accordance with the requirements of MIL-STD-129, Military Marking for Shipment and Storage, latest version; and

(D) Verify that the marks on items and labels on shipments, storage containers, and packages are machine readable and conform to the applicable standards. The contractor shall use an automatic identification technology device for this verification that has been programmed to the requirements of Appendix A, MIL-STD-130, latest version.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires item unique identification under paragraph (c)(1)(i), (ii), or (iv) of this clause or when item unique identification is provided under paragraph (c)(1)(v), in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report, the following information:

(1) \* \* \*

(12) Type designation of the item as specified in the contract schedule, if any.

(13) Whether the item is an item of Special Tooling or Special Test Equipment.

(14) Whether the item is covered by a warranty.

(e) For embedded subassemblies, components, and parts that require DoD item unique identification under paragraph (c)(1)(iii) of this clause or when item unique identification is provided under paragraph (c)(1)(v), the Contractor shall report as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

\* \* \* \* \*

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause as follows:

(1) End items shall be reported using the receiving report capability in Wide Area WorkFlow (WAWF) in accordance with the clause at 252.232-7003. If WAWF is not required by this contract, and the contractor is not using WAWF, follow the procedures at <http://dodprocurementtoolbox.com/site/uidregistry/>.

(2) Embedded items shall be reported by one of the following methods—

(i) Use of the embedded items capability in WAWF;

(ii) Direct data submission to the IUID Registry following the procedures and formats at <http://dodprocurementtoolbox.com/site/uidregistry/>; or

(iii) Via WAWF as a deliverable attachment for exhibit line item number (fill in) \_\_\_\_\_, Unique Item Identifier Report for Embedded Items, Contract Data Requirements List, DD Form 1423.

(g) *Subcontracts.* If the Contractor acquires by contract any items for which item unique identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items.

■ 11. Amend Appendix F to Chapter 2 by—

■ a. Revising section F-103(e)(1);

■ b. Revising paragraph section F-301(b)(18) introductory text; and

■ c. Revising paragraph F-301(b)(18)(i).

The revisions read as follows:

#### APPENDIX F TO CHAPTER 2— MATERIAL INSPECTION AND RECEIVING REPORT

\* \* \* \* \*

##### F-103 Use.

\* \* \* \* \*

(e) \* \* \*

(1) Item Unique Identification (IUID), when the clause at DFARS 252.211-7003, Item Unique Identification and Valuation is used in the contract, reporting of IUID data is required. WAWF captures the IUID data and forwards the data to the IUID registry after acceptance. WAWF shall be used to report Unique Item Identifiers (UIIs) at the line item level, unless an exception to WAWF applies, and can also be used to report UIIs embedded at the line item level.

\* \* \* \* \*

##### F-301 Preparation instructions.

\* \* \* \* \*

(b) \* \* \*

(18) Unit price. The contractor shall enter unit prices on all WAWF RR copies.

(i) The contractor shall enter unit prices for each item of property fabricated or acquired for the Government and delivered to a

contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items cost the Government. When the price is estimated, enter "Estimated Unit Price" in the description field. However, if the contract has Item Unique Identification (IUID) requirements and the receiving report is being processed in WAWF, the unit price must represent the acquisition cost that will be recorded in the IUID registry. Therefore, the unit price is required (see the clause at DFARS 252.211-7003, Item Unique Identification and Valuation). When delivering GFP via WAWF to another contractor, WAWF will initiate a property transfer if the vendor who is initiating the WAWF RR is also registered as a vendor property shipper in WAWF and the vendor receiving the property is also a vendor property receiver in WAWF.

\* \* \* \* \*

[FR Doc. 2013-29771 Filed 12-13-13; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF STATE

### 48 CFR Parts 645 and 652

[Public Notice 8546]

RIN 1400-AC33

#### Department of State Acquisition Regulation

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This rule adopts as final certain changes proposed to the Department of State Acquisition Regulation (DOSAR) to conform to Federal Acquisition Regulation (FAR) changes. It adds a new DOSAR clause and provision regarding reporting certain categories of Government-furnished and contractor-acquired property.

**DATES:** This rule is effective on January 15, 2014.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Ella Ramirez, Senior Procurement Analyst, Policy Division, Department of State, Office of the Procurement Executive, 2201 C Street NW., Suite 1060, State Annex Number 15, Washington, DC 20522-0602; email address: [RamirezIM2@state.gov](mailto:RamirezIM2@state.gov).

**SUPPLEMENTARY INFORMATION:** This rule was published as a Notice of Proposed Rulemaking (NPRM) on July 29, 2013 (78 FR 45490), with a provision of 60 days for public comment. A summary of the proposed changes and the reasons therefor were included in the NPRM. The Department of State (Department) received two comments in response to the NPRM.

The first commenter recommended that requirements for accountability for Government-provided software be deleted because FAR Part 27 covers software and FAR Part 45 does not. While it is true that software is expressly excluded from the FAR 45.101 definition of "Government property," tracking of software provided by the Department to its contractors is required information for the Department's financial statement. Prescribing separate reporting of this information in a DOSAR supplement to FAR 27 would be burdensome and inefficient. Accordingly, that recommendation is not accepted.

The first commenter also recommended that "Accounting" be changed to "Accountability" in the proposed DOSAR §§ 652.245-70(a)(3) and 652.245-71, on the theory that Part 45 governs the management and accountability of Government-owned property, not "accounting," which is a financial function. The Department accepts this recommendation insofar as the language in the provision, and has changed the title of the clause to "Special Reports of Government Property."

The first commenter pointed out duplicate provisions in proposed § 652.245-71(d)(2)(iv) and (d)(2)(xiv). The Department agrees that these provisions are duplicative, and will delete subsection (d)(2)(xiv), renumber subsequent provisions, and move the parenthetical comment ("If from another DOS contract, or government agency, please specify") to subsection (d)(2)(iv).

The first commenter recommended that the words "or their delegated representatives" be added to the end of the chapeau to § 652.245-71(f). The Department does not agree that delegating this responsibility would be appropriate, and does not accept this recommendation.

The second commenter advances several broad arguments involving the Department's authority to enact rules and to make findings with respect to various administrative laws and executive orders that apply to rulemaking. The Department disagrees with the comments.

The authority of agencies to regulate is well-established. The absolute "non-delegation" concept has been virtually abandoned since 1948. See *Mistretta v. United States*, 488 U.S. 361 (1989), and the cases cited therein. "The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Morton v. Ruiz*, 415 U.S. 199, 231 (1974).

"If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 843-844 (1984) (footnote omitted).

In the case of the FAR and DOSAR, Congress explicitly delegated rulemaking authority to certain agencies, resulting in the FAR. 41 U.S.C. 1303. FAR 1.301 provides authority to agencies to supplement the FAR: "[A]n agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors." 48 CFR § 1.301. The Secretary of State has the general authority to issue regulations to carry out the functions of the Department; specifically, in this case, regulations to implement procurement statutes and the FAR. 22 U.S.C. 2651a. The Department of State's implementing regulations are the DOSAR, codified at 48 CFR parts 600-699.

The commenter further challenged the ability of a Department official to make findings with respect to compliance with applicable statutes and executive orders (contained in the "Regulatory Findings" section of the NPRM and in this Final Rule, below). Except for the Administrative Procedure Act (APA), the statutes or executive orders cited in this section require agencies to consider certain factors prior to publishing a rule. (With respect to the APA, the Department's assertion was (and is) a simple statement of fact regarding how it has complied with that law.)

If a member of the public has information contrary to the assertion of the Department official (for example, proof that annual impact on the U.S. economy from the rulemaking would in fact exceed \$100,000,000; or proof that the rule would have a significant impact