

requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to

ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate

matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 20, 2008.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E8–27301 Filed 11–17–08; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 2, 4, 12, 39, and 52**

**[FAR Case 2008–019; Docket 2008–0001; Sequence 1]**

**RIN 9000–AL11**

#### **Federal Acquisition Regulation; FAR Case 2008–019, Authentic Information Technology Products**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Advance notice of proposed rulemaking and public meeting.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking comments from both Government and industry on whether the Federal Acquisition Regulation (FAR) should be revised to include a requirement that contractors selling information technology (IT) products (including computer hardware and software) represent that such products are authentic. The Councils are also interested in comments regarding contractor liability if IT products sold to the Government, by contractors, are not authentic. Additionally, the Councils are seeking comments on whether contractors who are resellers or distributors of computer hardware and software should represent to the Government that they are authorized by the original equipment manufacturer (OEM) to sell the information technology products to the Government. Finally, the Councils invite comments on (1) whether the measures contemplated above should be extended to other items purchased by the Government; and (2) whether the rule should apply when information technology is a component of a system or assembled product.

**DATES: Public Meeting:** A public meeting will be held on December 11, 2008, from 9:00 a.m. to 3 p.m. EST, in the National Aeronautics and Space Administration James E. Webb Memorial Auditorium, 300 E Street SW, Washington, DC 20546. The visitors' entrance is on the west end of the building at the corner of 4th and E Streets SW. Attendees are encouraged to arrive at least thirty minutes early to accommodate security procedures.

If you wish to make a presentation on this topic, please contact and submit a copy of your presentation by December 1, 2008, to General Services Administration, Contract Policy Division (VPC), 1800 F Street, NW, Room 4040, Attn: Edward N. Chambers, Washington, DC 20405. Telephone: 202-501-3221.

Submit electronic materials via e-mail to [Chambers.Edward@gsa.gov](mailto:Chambers.Edward@gsa.gov). Please submit presentations only and cite Public Meeting 2008-019 in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment in the formulation of the proposed rule, the presentation must be submitted separately as a written comment as instructed below.

**Special Accommodations:** The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Edward N. Chambers, at 202-501-3221, at least 5 working days prior to the meeting date.

**Comments:** Interested parties should submit written comments to the FAR Secretariat on or before January 20, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2008-019 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-019" under the heading "Comment or Submission". Select the link "Send a Comment or Submission" that corresponds with FAR Case 2008-019. Follow the instructions provided to complete the "Public Comment and Submission Form". Please include your name, company name (if any), and "FAR Case 2008-019" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR case 2008-019 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT** Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2008-019.

**SUPPLEMENTARY INFORMATION:** The widespread availability of counterfeit Information Technology (IT) products presents a multidimensional threat to our nation. While it is estimated that our nation's industries and governments lose millions of dollars each year to counterfeiters, the trade in counterfeit IT products also presents serious threats to our national security and consumer safety.

Today, IT products, such as computer network hardware, (the infrastructure of business, healthcare, education, and communication and information networks) and integrated circuits (IC), are used in a wide range of applications; including automobiles, aircraft, computers, telecommunications, medical devices, and consumer electronics. These IT products are also essential to our national infrastructure systems; such as air traffic control, financial and telecommunication networks, and government and military communications, information, and operating systems.

Counterfeit network hardware and ICs pose a risk in that they frequently do not meet the quality standards of genuine equipment. Various information indicates that these products have a higher failure rate than genuine equipment, and often fail upon installation, or weeks or months after installation. Thus, these counterfeit IT products pose a threat to the national security and consumer safety because when they fail, the entire systems in which they are embedded may also fail.

The Councils believe requiring contractors to represent that the IT products they sell to the Government are authentic, will aid in efforts to combat counterfeit IT products. In addition to commenting on the Government proposal, the public and industry are invited to offer suggestions on other ways to limit the risk to the Government from acquiring counterfeit IT products.

To facilitate public comment, the Councils have attached provisional FAR text.

While the focus of this notice is IT products, comments are invited on (1) whether the measures proposed herein should be expanded to include other items sold to the Government and (2) whether the rule should apply when information technology is a component of a system or assembled product. Further, the provisional text places the OEM in the role of "gatekeeper" as to who is an authorized distributor or reseller. Is there another party or process which would be more appropriate to this role? Also, through what means should authorized status be substantiated? By a letter from the OEM, or a reference on an OEM website?

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### List of Subjects in 48 CFR Parts 2, 4, 12, 39, and 52

Government procurement.

Dated: November 12, 2008.

**Al Matera,**

*Director, Office of Acquisition Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 12, 39, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 12, 39, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) in the definition "Information technology" by revising paragraph (2) to read as follows:

##### 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

*Information technology* \* \* \*

(2) The term "information technology" includes—

- (i) Computers;
- (ii) Ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance);
- (iii) Peripheral equipment designed to be controlled by the central processing unit of a computer;
- (iv) Software, firmware and similar products;
- (v) Services (including support services); and

(vi) Related resources.

\* \* \* \* \*

#### PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.1202 by adding paragraph (cc) to read as follows:

##### 4.1202 Solicitation provisions and contract clauses.

\* \* \* \* \*

(cc) 52.239–XX, Authentic Information Technology Products—Representation.

#### PART 12—ACQUISITION OF COMMERCIAL ITEMS

4. Amend section 12.301 by adding paragraphs (d)(3) and (d)(4) to read as follows:

##### 12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

(d) \* \* \*

(3) Insert the provision at 52.239–XX, Authentic Information Technology Products—Representation, as prescribed at 39.107(b)(1).

(4) Insert the clause at 52.239–YY, Authentic Information Technology Products, as prescribed at 39.107(b)(2).

\* \* \* \* \*

#### PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

5. Amend section 39.002 by adding, in alphabetical order, the definition “Counterfeit information technology product” to read as follows:

##### 39.002 Definitions.

\* \* \* \* \*

*Counterfeit information technology product* means any item of information technology (IT), including hardware and software, that is an unauthorized copy, replica, or substitute.

\* \* \* \* \*

6. Amend section 39.101 by adding paragraph (e) to read as follows:

##### 39.101 Policy.

\* \* \* \* \*

(e) To protect the Government from procuring counterfeit IT products, agencies shall ensure that all acquisitions for IT products are procured from the original equipment manufacturer (OEM), software developer, or authorized distributor or reseller. Agencies shall ensure that all solicitations and contracts for the acquisition of IT products include a requirement for the offeror or contractor to represent that the IT products being sold under its contract to the Government are not counterfeit.

##### 39.102 [Amended]

7. Amend section 39.102 by removing from paragraph (b) “availability,” and adding “availability, counterfeit IT products, performance, security,” in its place.

8. Amend section 39.107 by designating the undesignated paragraph as paragraph (a); and adding paragraph (b) to read as follows:

##### 39.107 Contract clause.

\* \* \* \* \*

(b)(1) The contracting officer shall insert the provision at 52.239–XX, Authentic Information Technology Products—Representation, in all solicitations for the acquisition of IT products.

(2) The contracting officer shall insert the clause at 52.239–YY, Authentic Information Technology Products, in all contracts for the acquisition of IT products.

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 52.239–1 [Amended]

9. Amend section 52.239–1 by removing from the introductory paragraph “39.107” and adding “39.107(a)” in its place.

10. Add sections 52.239–XX and 52.239–YY to read as follows:

##### 52.239–XX Authentic Information Technology Products—Representation.

As prescribed in 39.107(b)(1), insert the following provision:

AUTHENTIC INFORMATION TECHNOLOGY PRODUCTS—REPRESENTATION (DATE)

(a) *Definition. Counterfeit information technology product* means any item of information technology (IT), including hardware and software, that is an unauthorized copy, replica, or substitute.

(b) To be eligible for award of the proposed contract, an offeror must—

(1) Be either the original equipment manufacturer (OEM); or

(2) Have written authorization from the OEM or software developer to function as a distributor or reseller of the subject products.

(c) By submission of this offer, the offeror represents that—

(1) The IT products to be sold or leased to the Government under the proposed contract are authentic and not counterfeit; and

(2) It is the original equipment manufacturer or software developer, or an authorized distributor or reseller for the IT products.

(End of provision)

##### 52.239–YY Authentic Information Technology Products.

As prescribed in 39.107(b)(2), insert the following clause:

AUTHENTIC INFORMATION TECHNOLOGY PRODUCTS (DATE)

(a) *Definition. Counterfeit information technology product* means any item of information technology (IT), including hardware and software, that is an unauthorized copy, replica, or substitute.

(b) The Contractor shall sell to the Government only IT products that are authentic and not counterfeit. In the event that such IT products are determined to be counterfeit, there is no limitation to the Contractor’s liability.

(End of clause)

[FR Doc. E8–27275 Filed 11–17–08; 8:45 am]

BILLING CODE 6820–EP–S

#### DEPARTMENT OF TRANSPORTATION

##### Federal Transit Administration

##### 49 CFR Part 605

[Docket No. FTA–2008–0044]

RIN 2132–AB00

##### School Bus Operations

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Through this notice, the Federal Transit Administration (FTA) proposes to amend its school bus operations regulations. Most notably, FTA proposes to clarify several definitions, amend the school bus operations complaint procedures, and implement Section 3023(f) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). FTA seeks comment on this notice from interested parties.

**DATES:** Comments must be received by February 17, 2009. FTA will consider late filed comments to the extent practicable.

**ADDRESSES:** You may submit comments by one of the following methods.

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

- *Fax:* 1–202–493–2251.

- *U.S. Post or Express Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* The West Building of the U.S. Department of