

(Billing Code 3810-01-M)

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 227 and 252**

**Department of Defense Federal  
Acquisition Regulation Supplement  
Patents, Data, and Copyrights**

**AGENCY:** Department of Defense (DoD)

**ACTION:** Proposed rule and request for comments.

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**SUMMARY:** The Defense Acquisition Regulatory Council is considering a change to Subpart 227.4 of the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 953 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500).

**DATE:** Comments on the proposed revision should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before (30 days from date of publication), to be considered in the formulation of the final rule. Please cite DAR Case 84-187 in all correspondence related to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202)697-7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background.**

On September 10, 1985, the DAR Council published a proposed rule (50 FR 36887 of September 10, 1985), implementing portions of the Technical Data sections of Pub. L. 98-525, the Defense Procurement Reform Act of 1984. The public comment period was extended to end on January 9, 1986 (50 FR 41180, October 9, 1985). The DAR Council published an interim rule based on a modification of existing DFARS coverage and incorporating specific requirements of Pub. L. 98-525 (50 FR 43158) on October 24, 1985).

Also, the DAR Council distributed a proposed rule regarding validation of restrictive markings on technical data on September 25, 1985. The rule was published for comment jointly by the Department of Defense, General Services Administration and National Aeronautics Space Administration as part of the Federal Acquisition Regulation (50 FR 40416, October 3, 1985).

This proposed rule is based on those changes required by Pub. L. 99-500. The June 1986 Final Report to the President by the President's Blue Ribbon Commission on Defense Management entitled "A Quest for Excellence," and the public comments on the proposed rules of September 10, 1985 and October 3, 1985 were also considered in drafting these rules.

Section 953 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500) directed the Secretary of Defense to prescribe regulations to define the legitimate interest of the

United States, its contractors and subcontractors in technical data pertaining to items and processes. Section 953 also required revisions to the Defense Department's procedures for validation of proprietary data restrictions and definitions for the terms "developed" and "private expense."

Major changes in the proposed rule include the following:

1. The legitimate rights of the Government, its contractors and subcontractors in technical data relating to items and processes developed in part with Federal funds and in part at private expense are defined. In these situations, if the contractor's contribution is significant the Government will generally receive Government purpose license rights, rather than unlimited rights as provided in the current policy. The Government will also receive Government purpose license rights where it would otherwise be entitled to unlimited rights if the contractor is a small business firm or non-profit organization that agrees to commercialize the technology.
2. The terms "developed" and "private expense" are defined.
3. The validation procedures are revised to conform with the requirements in Section 953.
4. The rules have been clarified and simplified. They have also been reorganized to more clearly reflect the

process and sequence to acquire technical data and rights in technical data.

**B. Regulatory Flexibility Act.**

The proposed rule is not expected to impact adversely upon small entities within the meaning of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and preparation of an Initial Regulatory Flexibility Analysis is, therefore, not required. Consistent with the Act and 10 U.S.C. 2320(a)(2)(E), as amended by Pub. L. 99-500, the proposed rule has been drafted in a manner which will enhance competitive opportunities and reduce compliance burdens for small entities. For example, the rule establishes a policy that, in the case of small businesses, the Government will normally take only Government Purpose License Rights in technical data resulting from the development of an item, component or process funded predominantly at Government expense, provided the small business concern agrees to commercialize the technology. This policy is expected to stimulate the competitive posture of small businesses in the commercial sector. Similarly, by providing that the Government will be entitled to technical data rights sufficient for competition procurement when development is funded in whole or in part at Government expense, the ability of small business to participate in breakout, procurement acquisition is enhanced. Comments are invited from small businesses and other interested parties.

by taking rights from the small business organization

**C. Paperwork Reduction Act.**

The proposed rule does not create information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**D. Unrevised Regulatory Coverage.**

1. The following existing sections and subsections within DFARS Subpart 27.4 will not be substantively revised but will be renumbered to reflect reorganization of Subpart 27.4. Minor editorial corrections to these sections may be made prior to publication of a final rule.

Current DFARS

Proposed Renumbering

27.402	27.480
27.404	27.481
27.404-1	27.481-1
27.404-2	27.481-2
27.405	27.476
27.406	27.477
27.407	27.480
27.408	27.478
27.408-1	27.478-1
27.408-2	27.478-2
27.408-3	27.478-3
27.408-4	27.478-4
27.408-5	27.478-5
27.409	27.479
27.410	(Section title deleted)
27.410-1	27.475-2
27.410-4	27.475-3
27.410-5	27.475-4
27.410-6	27.475-1
27.411	27.475-6
27.414	27.473-6
27.415	27.475-7

2. The following existing clauses in DFARS Subpart 52.227 will not be substantively revised or renumbered. However, minor editorial corrections may be made prior to publication of a final rule.

52.227-7016  
52.227-7017  
52.227-7019  
52.227-7020  
52.227-7021  
52.227-7022  
52.227-7023  
52.227-7024  
52.227-7026  
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52.227-7031  
52.227-7032  
52.227-7033  
52.227-7034  
52.227-7036

**E. Announcement of Public Meeting.**

Although the public comment period established by this Notice complies with requirements of Pub. L. 98-577, the DAR Council is concerned that interested parties be afforded maximum opportunity to critically analyze the proposed rule in light of its length and complexity. Therefore, in order to maximize the opportunity for the public and industry to participate in this rulemaking process, while ensuring that the statutory implementation deadline of 16 April 1987 is achieved, the DAR Council will convene a public meeting on 30 January 1987 at 9:00 a.m. in the Main Auditorium of the General Services

Administration Central Office, 18th and F Streets, N.W., Washington, DC. At that time, the Council will respond to questions concerning the nature of revisions contained in the proposed rule and will afford ample time to interested parties to present their initial views concerning the revisions. Members of the public and representatives of industry are encouraged to prepare remarks for oral presentation to attendees. It is believed that the meeting will promote a better understanding of the proposed rule, facilitate preparation of written comments by attendees, and assist the DAR Council in making appropriate changes to the rule prior to the statutory deadline. Questions concerning the meeting agenda should be directed telephonically to Mr. Charles Lloyd, Executive Secretary, DAR Council ((202)697-7266).

**List of Subjects in 48 CFR Parts 227 and 252  
Government procurement.**

**CHARLES W. LLOYD**  
Executive Secretary  
Defense Acquisition  
Regulatory Council

Therefore, it is proposed that 48 CFR Parts 227 and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

**PART 227--PATENTS, DATA, AND COPYRIGHTS**

2. The text of Subpart 227.4 is deleted in its entirety and the following Sections 227.470 through 227.482 are added.

**SUBPART 227.4--TECHNICAL DATA, OTHER DATA, COMPUTER SOFTWARE, AND COPYRIGHTS**

Section

227.470	Scope.
227.471	Definitions.
227.472	Acquisition Policy for Technical Data and Rights in Technical Data
227.472-1	General.
227.472-2	Establishing Minimum Requirements.
227.472-3	Early Identification.
227.472-4	Statutory Prohibition.
227.472-5	Standard Rights in Technical Data.
227.472-6	Obtaining Greater Rights in Technical Data.
227.472-7	Waiving Unlimited Rights in Technical Data.
227.472-8	Subcontracts.
227.473	General Procedures.
227.473-1	Early Identification of Government Rights.
227.473-2	Obtaining Greater Rights in "Private Expense" Data.
227.473-3	Certifications.
227.473-4	Marking and Identification Requirements.
227.473-5	Validation of Restrictive Markings on Technical Data.
227.473-6	Reserved.
227.473-7	Non-Disclosure Agreements.
227.474	Alternative Methods of Obtaining Greater Rights.
227.474-1	Reserved.
227.474-2	Reserved.
227.474-3	Direct Licenses.
227.474-4	Expiration of Restrictive Rights Legends.
227.475	Reserved.
227.476	Reserved.
227.477	Reserved.
227.478	Reserved.
227.479	Contracts Awarded Under Small Business Innovation Research Program (SBIR Program).
227.480	Reserved.
227.481	Reserved.
227.482	Solicitation Provisions and Contract Clauses.