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DEPARTMENT OF DEFENSE

[OMB Control Number 0704-0369]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Rights in Technical Data and Computer Software

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2003. DoD proposes that OMB extend its approval for use through November 30, 2006.

DATES: DoD will consider all comments received by September 29, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite OMB Control Number 0704-0369 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite OMB Control Number 0704-0369.

At the end of the comment period, interested parties may view public

comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602-0296. The information collection requirements addressed in this notice are available electronically via the Internet at: <http://www.acq.osd.mil/dp/dars/dfars.html>. Paper copies are available from Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704-0369.

Needs and Uses: DFARS Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,235,970.

Number of Respondents: 54,925.

Responses Per Respondent: 26.

Annual Responses: 1,403,170.

Average Burden Per Response: .9 hours.

Frequency: On occasion.

Summary of Information Collection

DoD uses the following DFARS provisions and clauses in solicitations and contracts to require offerors and contractors to identify and mark data or software requiring protection from unauthorized release or disclosure in accordance with 10 U.S.C. 2320:

252.227-7013, Rights in Technical Data'Noncommercial Items.

252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions.

252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

In accordance with 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, requires the contractor to identify and mark data or software that it provides with limited rights.

In accordance with 10 U.S.C. 2321(b), contractors and subcontractors at any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The following DFARS clauses require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions:

252.227-7019, Validation of Asserted Restrictions—Computer Software.

252.227-7037, Validation of Restrictive Markings on Technical Data.

In accordance with 10 U.S.C. 2320, DoD must protect the rights of contractors that have developed items, components, or processes at private expense. Therefore, the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, requires a contractor or subcontractor to submit a use and non-disclosure agreement when it obtains data from the Government to which the Government has only limited rights.

The provision at DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government, requires an offeror to identify any technical data or computer software that it previously delivered, or will deliver, under any Government contract. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

In accordance with 10 U.S.C. 2320(b)(7), a contractor that delivers or makes technical data available to the Government must furnish written assurance that the technical data is complete and accurate and satisfies contract requirements. The clause at DFARS 252.227-7036, Declaration of