

JUSTIFICATION FOR 9000-0090
RIGHTS IN DATA AND COPYRIGHTS

A. Justification.

1. **Administrative requirements.** Rights in data regulations concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in the regulations fall into the following four categories:

(a) A provision which is to be included in solicitations where the offeror would identify any proprietary data he/she would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract clauses, which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be

\$500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

The Rights in Data-General clause (FAR 52.227-14(d)), outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

2. Uses of information. Under the procedures established for development of the Federal Acquisition Regulation (FAR), agency and public comments were solicited and each comment was addressed before finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for 3 years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions where the value was \$500,000 or less. The \$500,000 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that an average R&D contract was \$250,000 to \$300,000; commensurate with other clause thresholds (e.g., small business subcontracting), the \$500,000 threshold was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

3. Consideration of information technology. We use improved information technology to the maximum extent practicable. Where both the Government agency and contractors are capable of electronic interchange, the contractors may submit this information collection requirement electronically. Nothing in the FAR precludes the use of electronic interchange.

4. Efforts to identify duplication. This requirement is being issued under the Federal Acquisition Regulation (FAR) which has been developed to standardize Federal procurement practices and eliminate unnecessary duplication.

5. If the collection of information impacts small businesses or other entities, describe methods used to minimize burden. The burden applied to small businesses is the minimum consistent with applicable laws, Executive Orders, regulations, and prudent business practices.

6. Describe consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently. Similar information is not already available to the contracting officer or buyer.

7. Special circumstances for collection. Collection of information on a basis other than solicitation-by-solicitation is not practical. Collection is consistent with guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency. Under the procedures established for development of the FAR, agency and public comments must be solicited and each comment received addressed before finalization of the text. A notice in the March 7, 2007, Federal Register made this requirement available to the public and requested comments. No comments were received and no major problems regarding this requirement were reported.

9. Explanation of any decision to provide any payment or gift to respondents, other than reenumeration of contractors or guarantees. Not applicable.

10. Describe assurance of confidentiality provided to respondents. This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. **Additional justification for questions of a sensitive nature.** No sensitive questions are involved.

12 & 13 **Estimated total annual public hour and cost burden.** Time required to read and prepare information is estimated at .15 hour per completion.

Annual Recordkeeping Burden and Cost

Estimated respondents/yr.....	1,100
Responses annually.....	<u>1</u>
Total annual responses.....	1,100
Estimated hrs/response.....	<u>x .95</u>
Estimated total burden/hrs.....	1,045
Number of recordkeepers.....	9000
Number of hours per recordkeeper.....	<u>x 2</u>
Total recordkeeping burden hours.....	18,000
Total response and recordkeeping burden hours.....	19,040
Average wages + overhead (\$24/hr + 75% OH).....	<u>x \$42</u>
Estimated cost to the public.....	\$799,680

14. **Estimated cost to the Government.** Time required for Governmentwide review is estimated at 15 minutes per response.

Annual Reporting Burden and Cost

Total annual responses.....	1,100
Review time per response.....	<u>x .25</u>
Total burden hours.....	275
Average wages/yr + overhead (\$20/hr. + 100% OH).....	<u>\$40</u>
Total Government cost.....	\$11,000

15. **Explain reasons for program changes or adjustments reported in Item 13 or 14.** This submission requests an extension of OMB approval of an information collection

requirement in the FAR. The information collection requirement in the FAR remains unchanged.

16. Outline plans for published results of information collections. Results will not be tabulated or published.

17. Approval not to display expiration date. Not applicable.

18. Explanation of exception to certification statement. Not applicable.

B. Collections of Information Employing Statistical Methods. Statistical methods are not used in this information collection.