

documentation" are substantially different from those previously contained in DFARS Subpart 227.4, and the definition of "computer" is deleted.

**b. Commercial Computer Software and Computer Software Documentation**

The guidance at 227.7202 is intended to replicate commercial practice. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs. In those situations, contracting officers may negotiate licenses of an appropriate scope. However, offerors and contractors are not required to relinquish rights to the Government or provide the Government with rights to use, modify, reproduce, release, or disclose commercial software or documentation that is not customarily provided to the public unless a transfer of such rights is mutually agreed upon. A specific contract clause is not prescribed because the Government's rights will be specified in a license.

**c. Noncommercial Computer Software and Computer Software Documentation**

(1) The guidance at 227.7203 parallels the non-commercial technical data guidance at 227.7103. Any Government rights in software or documentation are license rights. The contractor or licensor retains all rights not granted to the Government. The scope of the Government's software license generally depends upon the source of funds used to develop the software. Standard license rights are unlimited rights (developed exclusively at Government expense), restricted rights (developed exclusively at private expense), and government purpose rights (mixed development). Computer software documentation is defined as manuals, operating instructions, and similar items. The Government's rights in such technical data may not be restricted under 10 U.S.C. 2320 regardless of the source of development funds. Therefore, documentation licenses generally provide unlimited rights. When the standard license rights are not appropriate for a particular procurement, special licenses can be negotiated.

(2) The clause at 252.227-7014 defines "developed" for computer programs, computer software, and computer software documentation; "minor modification"; and "noncommercial computer software." The definition of "restricted rights" is substantially revised. The link between

software and a particular computer is replaced with the common commercial practice of permitting a computer program to be used with one computer at a time. The Government is permitted to modify restricted rights software and, under certain conditions which include tactical situations and emergency repairs or overhauls, have contractors or subcontractors performing service contracts in support of a procurement use or modify the software. The third-party use and modification rights are intended to balance protection for privately developed portions of noncommercial software with the Government's need to use the software as a complete item for its intended purpose, particularly in military situations.

**3. Contracting for Commercial Items**

DFARS Subpart 211.70 is amended for consistency with the technical data requirements in Subparts 227.71 and 227.72.

**4. Solicitation Provisions and Contract Clauses**

New provisions/clauses are added at 252.227-7014, 252.227-7015, 252.227-7016, 252.227-7017, and 252.227-7025. Revisions are made in the provisions/clauses at 252.211-7021, 252.227-7013, 252.227-7018, 252.227-7019, 252.227-7020, 252.227-7028, and 252.227-7037. The following clauses are deleted: 252.211-7015, 252.211-7016, 252.211-7017, 252.227-7029, and 252.227-7031.

**List of Subjects in 48 CFR Parts 211, 227 and 252**

Government procurement.  
**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

**Amendments to 48 CFR Chapter 2 (Defense FAR Supplement)**

48 CFR Chapter 2 (the Defense FAR Supplement) is amended as set forth below.

1. The authority citation for 48 CFR Parts 211, 227, 252 is revised to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

**PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS**

**211.7004-1 [Amended]**

2. Section 211.7004-1 is amended by removing and reserving paragraph (h); and by revising in paragraph (p)(2)(ii) in the title in the clause list under the clause number FAR 52.223-1 the word "Clear" to read "Clean."

**211.7004-6 [Amended]**

3. Section 211.7004-6(a)(3) is amended to revise the word "parts" to read "part."

**211.7005 [Amended]**

4. Section 211.7005 is amended by removing paragraph (a)(29) and by redesignating paragraphs (a)(30) through (a)(33) as paragraphs (a)(29) through (32), respectively; by revising in paragraph (b)(18) the name "Healy" to read "Healey;" by removing paragraphs (b)(34) and (35); by redesignating paragraphs (b)(36) through (51) as paragraphs (b)(34) through (49), respectively; by redesignating paragraphs (b)(52) through (54) as paragraphs (b)(51) through (53), respectively; by adding a new paragraph (b)(50); and by revising in paragraph (c)(6) the name "Healy" to read "Healey;" and by revising in paragraph (c)(10) the word "Clear" to read "Clean" to read as follows:

**211.7005 Contract clauses**

- (a) \* \* \*
- (b) \* \* \*
- (50) 252.227-7015 Technical Data—
- Commercial Items.
- \* \* \* \* \*

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

5. Subpart 227.4 is revised to read as follows:

**Subpart 227.4—Rights in Data and Copyrights**

227.400 Scope of subpart.

DoD activities shall use the guidance in subparts 227.71 and 227.72 instead of the guidance in FAR subpart 27.4.

6. Subpart 227.71 is added to read as follows:

**Subpart 227.71—Rights in Technical Data**

- Sec.
- 227.7100 Scope of subpart.
- 227.7101 Definitions.
- 227.7102 Commercial items, components, or processes.
- 227.7102-1 Policy.
- 227.7102-2 Rights in technical data.
- 227.7102-3 Contract clause.
- 227.7103 Noncommercial items or processes.
- 227.7103-1 Policy.
- 227.7103-2 Acquisition of technical data.
- 227.7103-3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.
- 227.7103-4 License rights.
- 227.7103-5 Government rights.
- 227.7103-6 Contract clauses.
- 227.7103-7 Use and non-disclosure agreement.
- 227.7103-8 Deferred delivery and deferred ordering of technical data.