

practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the technical data pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such data, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in the clause at 252.227-7013; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7103-11 Contractor procedures and records.

(a) The clause at 252.227-7013, Rights in Technical Data—Noncommercial Items, requires a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

(b) The clause at 252.227-7037, Validation of Restrictive Markings on Technical Data requires contractors and their subcontractors at any tier to maintain records sufficient to justify the validity of restrictive markings on technical data delivered or to be delivered under a Government contract.

227.7103-12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227-7013, Rights in Technical Data—Noncommercial Items. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227-7013 is also a nonconforming marking.

(2) The correction of nonconforming markings on technical data is not subject to 252.227-7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return technical data bearing nonconforming markings to the person who has placed the nonconforming markings on such data to provide that person an opportunity to correct or strike the nonconforming marking at that person's expense. If that person fails to correct the nonconformity and return the corrected data within 60 days following the person's receipt of the data, the contracting officer may correct or strike the nonconformity at that person's expense. When it is impracticable to return technical data for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the data may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, performance, display, or disclosure of the marked technical data. For example, a limited rights legend placed on technical data pertaining to items, components, or processes that were developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a