

- 945.570-5 [Removed]
86. Subsection 945.570-5 is removed.
- 945.570-6 [Removed]
87. Subsection 945.570-6 is removed.
- 945.570-9 [Removed]
88. Subsection 945.570-9 is removed.

PART 947—TRANSPORTATION

- 947.1 [Removed]
89. Subpart 947.1 is removed.

PART 949—TERMINATION OF CONTRACTS

- 949.108-4 [Removed]
90. Subsection 949.108-4 is removed.
- 949.108-8 [Removed]
91. Subsection 949.108-8 is removed.
- 949.112-1 [Removed]
92. Subsection 949.112-1 is removed.
- 949.2 [Removed]
93. Subpart 949.2 is removed.
- 949.3 [Removed]
94. Subpart 949.3 is removed.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

- 951.2 [Removed]
95. Subpart 951.2 is removed.
- 951.7000 [Removed]
96. Section 951.7000 is removed.
- 951.7001 [Removed]
97. Section 951.7001 is removed.

PART 971—REVIEW AND APPROVAL OF CONTRACT ACTIONS

- 971.2 [Removed]
98. Subpart 971.2 is removed.
- 971.3 [Removed]
99. Subpart 971.3 is removed.

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DEPARTMENT OF COMMERCE

48 CFR Parts 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1314, 1315, 1316, 1317, 1319, 1322, 1324, 1325, 1331, 1332, 1333, 1334, 1336, 1337, 1342, and 1345

[Docket No. 950602146-5146-01]

RIN 0690-AA24

Commerce Acquisition Regulation; Removal of Provisions

AGENCY: Commerce.
ACTION: Final rule.

SUMMARY: The Department of Commerce hereby removes certain parts, subparts, and sections of the Commerce Acquisition Regulation concerning internal management. This action is taken in keeping with the goals of the National Performance Review and in order to comply with recent Executive Orders that address regulatory reforms.

EFFECTIVE DATE: September 12, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce Cavallini, 202-482-0202.

SUPPLEMENTARY INFORMATION: On March 4, 1995, as part of the President's Regulatory Reinvention Initiative, the President directed agencies to conduct a page-by-page review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform. After conducting a review of the Commerce Acquisition Regulation (CAR), it was determined that the intended goal of certain portions of the CAR could be achieved in more efficient, less intrusive ways. The portions of the CAR being removed were internal management regulations that are not required by law and are not deemed to be regulatory in nature.

List of Subjects in 48 CFR Parts 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1314, 1315, 1316, 1317, 1319, 1322, 1324, 1325, 1331, 1332, 1333, 1334, 1336, 1337, 1342, and 1345

Government procurement.
Shirl G. Kinney,
Procurement Executive.

For the reasons set forth in the preamble, Chapter 13 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for parts 1301, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1314, 1315, 1316, 1317, 1319, 1322, 1324, 1325, 1331, 1332, 1333, 1334, 1336, 1337, 1342, and 1345 continues to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10-5 and Department Administrative Order 208-2.

PART 1301—[AMENDED]

2. Part 1301 is amended by removing and reserving subparts 1301.2, 1301.3, 1301.4, and 1301.5.

3. Part 1301 is further amended by removing §§ 1301.601, 1301.601-70, 1301.601-71, 1301.603, and 1301.603-71, and 1301.603-70(a) (2) and (3) and redesignating paragraph (a)(4) as (a)(2).

PARTS 1302, 1304, 1305, 1306, 1307, and 1308—[REMOVED AND RESERVED]

4. Parts 1302, 1304, 1305, 1306, 1307, and 1308 are removed and reserved.

PART 1309—[AMENDED]

5. Part 1309 is amended by revising subpart 1309.4 to read as follows:

Subpart 1309.4—Debarment, Suspension and Ineligibility

1309.470-4 Procedures on debarment.

Decision making process. Upon receipt of a debarment recommendation, the Procurement Executive shall review all available evidence and shall promptly determine whether or not to proceed with debarment. The Procurement Executive may refer the matter to the Office of Inspector General for further investigation. After completion of any additional review or investigations, the Procurement Executive shall make a written determination. A copy of this determination shall be promptly sent to the initiating contracting office. (See FAR 9.406-3(b).)

1309.470-7 Procedures on suspension.

Decision making process. Procedures for the decision making process of suspensions are the same as those contained in 1309.470-4 except that an initial decision for suspension results in immediate suspension. (See FAR 9.407-3(b).)

PART 1314—[REMOVED AND RESERVED]

6. Part 1314 is removed and reserved.

PART 1315—[AMENDED]

7. Part 1315 is amended by removing § 1315.501; removing § 1315.504(a) and redesignating § 1315.504 (b) and (c) as (a) and (b), respectively; removing § 1315.506 (a), (b), and (c) and redesignating paragraphs (d), (e), (f), and (g) as (a), (b), (c), and (d) respectively; removing and reserving subpart § 1315.6; removing § 1315.804-3; and removing § 1315.805-70 (a) and (b) and redesignating paragraph (c) as (a).

PART 1316—[AMENDED]

8. Part 1316 is amended by removing and reserving subparts 1316.3 and 1316.6.

PART 1317—[AMENDED]

9. Part 1317 is amended by removing and reserving subparts 1317.4 and 1317.5.

PART 1319—[AMENDED]

10. Part 1319 is amended by removing §§ 1319.201, 1319.705-5, 1319.7001 and 1319.7002(b).

PARTS 1322, 1324, 1325, AND 1331—[REMOVED AND RESERVED]

11. Parts 1322, 1324, 1325, and 1331 are removed and reserved.

PART 1332—[AMENDED]

12. Part 1332 is amended by removing and reserving subparts 1332.4 and 1332.6.

PART 1333—[AMENDED]

13. Part 1333 is amended by removing §§ 1333.102, 1333.104(a) (3) and (4), 1333.104(f), 1333.105(a)(2), 1333.105(b), 1333.105(d), and 1333.209.

PART 1334—[REMOVED AND RESERVED]

14. Part 1334 is removed and reserved.

PART 1336—[AMENDED]

15. Part 1336 is amended by removing §§ 1336.602-4 and 1336.603.

PART 1337—[REMOVED AND RESERVED]

16. Part 1337 is removed and reserved.

PART 1342—[AMENDED]

17. Part 1342 is amended by removing § 1342.102-70 (c) and (d).

PART 1345—[REMOVED AND RESERVED]

18. Part 1345 is removed and reserved.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827 and 1852

[NFS Case 940013]

RIN 2700-AB72

NASA FAR Supplement; Assignment of Copyright in Software

AGENCY: Office of Procurement, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a revision of the NASA FAR Supplement to allow the

Contracting Officer to direct the contractor to claim copyright in computer software and assign the copyright to the Government or another party. Assignment to the Government can only be directed when the Contractor has not previously been granted permission to claim copyright on its own behalf. This is needed because existing contract clauses do not provide this authority for some types of contracts.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Nina Lawrence, (202) 358-2424, or Tom Deback, (202) 358-0431.

SUPPLEMENTARY INFORMATION:

A. Background

NASA published a Proposed Rule on October 13, 1994 (59 FR 51936), amending the NASA FAR Supplement (NFS) to allow the Contracting Officer to direct the contractor to claim the copyright in computer software and assign the copyright to the Government or another party. Assignment to the Government can only be directed when the contractor has not previously been granted permission to claim copyright on its own behalf. NASA is publishing this Final Rule with some changes in the provisions set forth in the Proposed Rule, which reflect some of the comments received.

FAR clause 52.227-14, Rights in Data—General, as modified by the NFS, currently provides that a contractor may establish (assert) claim to copyright in software developed under the contract provided the contractor obtains the Contracting Officer's prior written permission. This revision will not restrict this right. However, if a contractor is not interested in claiming copyright, or developing the software, and is unwilling to assign the copyright to NASA or its designee, no copyright can be claimed for the software. In many, if not most, cases this does not matter. However, in some situations where further development of software is needed before the software can be marketed, the U.S. private sector may be unwilling to invest in developing and marketing the software without the availability of copyright protection. This revision will provide authority to acquire assignments of copyright in such situations.

It is NASA's intent to announce to the public the availability of licensable software and the criteria which will be utilized in selecting licensees. Exclusive and partially exclusive licenses will be granted only after public notice and opportunity to file written objections.

FAR 27.404(g)(3) authorizes agencies to include contractual requirements to assign copyright to the Government or another party. The FAR further directs that any such requirements established by agencies should be added to clause 52.227-14, Rights in Data—General. This authority is the same as is presently contained in FAR clause 52.227-17, Rights in Data—Special Works. That clause is specifically tailored for acquisitions where data is the main deliverable; it lacks many elements necessary in contracts involving a mix of deliverables. The proposed revision will result in a clause that more appropriately addresses NASA's needs in acquisitions involving mixed deliverables. Further, with the increased emphasis in recent years on promoting U.S. competitiveness and the commercialization of Government-generated technology, it is important that steps be taken to protect computer software that has a significant technology transfer value. The availability of copyright protection will enable NASA to enhance U.S. competitiveness and more effectively transfer valuable computer software technology.

This revision does not apply to or affect contracts for basic or applied research with a university or college (see NFS 1827.404(e)(1) or 1827.409(e)).

Comments on the Proposed Rule were received from four organizations, and a number of comments were duplicative in subject matter. Several comments related to the rights of contractors. One organization commented that the contractor assigning the copyright would not retain a copyright license, and that to avoid potentially becoming an infringer, the contractor would be motivated to seek the Contracting Officer's permission to claim the copyright. The authority to direct assignment of copyright is presently contained in FAR clause 52.227-17, Rights in Data—Special Works, which has been in use for many years. Contractors have not been motivated to request permission to claim copyright in order to avoid potential infringement, even though the clause provides that the contractor may use the data first produced only for the performance of the contract. Rather, contractors have requested permission to claim copyright for the purpose of further developing and/or commercializing the software.

Some commenters expressed concern that a contractor would not be given the opportunity to copyright software, or NASA would arbitrarily refuse to grant the contractor permission to copyright. The purpose of the revision proposed by NASA is to effect the further