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.

[FR Doc. 95–22559 Filed 9–11–95; 8:45 am]
BILLING CODE 3510–17–M

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

development and/or commercialization of the software, and if the contractor has a plan for accomplishing such further development and/or commercialization, permission to copyright will be granted. NFS 1827.404(e)(2) sets forth guidelines covering when the Contracting Officer may, in consultation with the installation's patent or intellectual property counsel, grant the contractor permission to copyright, publish, or release to others computer software first produced in the performance of the contract. For example, permission to copyright will be granted if (i) the contractor has identified an existing commercial computer software product line, or proposes a new one, and states a positive intention of incorporating the computer software first produced under the contract into that line, either directly itself or through a licensee; or (ii) the contractor has made, or will be required to make, significant contributions to the development of the computer software by co-funding or by cost sharing, or by contributing resources.

Another group of comments related to the question of when copyright arises and use of the word ''establish'' in the proposed revision. There is no question that under 17 U.S.C. 102(a) ''copyright protection subsists * * * in original works of authorship fixed in any tangible medium of expression * * *'' and that under 17 U.S.C. 201, ownership of the copyright vest initially in the author or authors. However, it is also clear from the legislative history of the Copyright Act of 1976 that contract provisions can determine whether a contractor can claim copyright protection in data first produced under the contract. See the discussion of Section 105, U.S. Government works, in the legislative history of the Copyright Act of 1976, i.e., H.R. Report 94–1476, 94th Congress Second Session, pages 58–59 and S. Report 94–473, 94th Congress, First Session, pages 56–57. Both reports state: ''As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee to secure copyright in works prepared in whole or in part with the use of Government funds.''

NASA is aware that use of the word ''establish'' presents difficulties, and, for the purpose of conformity with the copyright statute, has construed the word ''establish'' to mean ''assert''. NASA is taking this opportunity to revise the NFS so that if reflects copyright law by using ''assert'' in the Final Rule in lieu of ''establish,'' and by requiring in the NFS that a provision be added to the FAR Rights in Data—General and Special Works clauses which states that the word ''establish'' in those clauses shall be construed as meaning ''assert''.

Some comments related to the necessity for the revision, e.g., lack of evidence that the U.S. private sector is unwilling to invest in the software without copyright protection; vagueness of Proposed Rule's goals; and the availability of copyright protection for derivative works based on public domain software. NASA's goal is to more effectively transfer valuable computer software technology to the private sector thereby enhancing commercialization of Government-generated technology and U.S. competitiveness. Disseminating software to the public without restriction works well for many computer software products. However, it has been the experience of Federal agencies that in situations where further development of software is needed before the software can be marketed, the U.S. private sector is unwilling to invest in developing and marketing the software without copyright protection. The GAO in its June 1992 report, entitled ''Technology Transfer: Copyright Law Constrains Commercialization of Some Federal Software'', concluded that although many factors affect a company's decision whether to invest in Federal software, lack of copyright protection for that software is a consideration. The principle is well established with respect to the U.S. general public that technology which is freely available to everyone is often not of interest to anyone where considerable risk capital is required to achieve commercialization.

The Final Rule will provide the flexibility needed to ensure the transfer and commercialization of valuable computer software in situations where the contractor is not interested in further development and commercialization of the software.

B. Executive Order 12866

The Office of Information and Regulatory Affairs has determined that this rule is significant under E.O. 12866. This regulation is needed on an urgent and compelling basis because valuable computer software developed under NASA contracts may become part of the public domain, and thereby lose its value, if the software is not copyrighted. Current regulations grant the contractor the right to request permission to claim copyright, but there is no procedure to force the contractor to exercise that right or to transfer the copyright to the Government. The regulation meets the need, i.e., provides protection for the software's value, by allowing NASA to direct the contractor to claim copyright and assign the copyright to NASA or another party. The potential costs for this regulatory action are limited to the nominal costs involved in claiming and transferring copyright. These costs may vary, but are estimated to be less than $100 per copyright, and it is anticipated that less than 10 contractors annually would each be required to incur this expense one time. Because the contracts under which valuable software is likely to be developed are usually cost-reimbursable research and development contracts, the costs for copyright and transfer would normally be charged to the Government. The potential benefits are the value of the protected software. This value cannot be measured, as it depends on future discoveries and developments. This value cannot be considered to be taken away from contractors, because it never belonged to them.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the NASA FAR Supplement do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1827 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827 and 1852 are amended as follows.

1. The authority citation for 48 CFR Parts 1827 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. In section 1827.404, paragraphs (d)(1) and (e)(1) are revised and paragraphs (e)(4) and (e)(5) are added to read as follows:

1827.404 Basic rights in data clause.

* * * * *

(d) * * *

(1) The Contracting Officer shall consult with the installation's Patent or Intellectual Property Counsel before granting in accordance with FAR 27.404(f)(1)(ii) permission for a contractor to claim copyright subsisting in data, other than computer software, first produced under the contract. For copyright of computer software first produced under the contract, see paragraph (e) of this section.

(e) * * *

(1) Paragraph (3) (see 1827.409(e) and 1852.227–14) is to be added to paragraph (d) of the clause at FAR 52.227–14, Rights in Data—General, whenever that clause is used in any contract other than one for basic or applied research with a university or college. Paragraph (d)(3)(i) of the clause provides that the contractor may not assert claim to copyright, publish, or release to others computer software first produced in the performance of a contract without the contracting officer's prior written permission. This is in accordance with NASA policy and procedures for the distribution of computer software developed by NASA and its contractors.

* * * * *

(4) If the contractor has not been granted permission to copyright in accordance with paragraphs (e)(1) and (e)(2) of this section, paragraph (d)(3)(ii) of the clause at FAR 52.227–14, Rights in Data—General (as modified by 1852.227–14), enables NASA to direct the contractor to assert claim to copyright in computer software first produced under the contract and to assign, or obtain the assignment of, such copyright to the Government or its designee. The Contracting Officer may, in consultation with the installation patent or intellectual property counsel, so direct the contractor in situations where copyright protection is considered necessary in furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements.

(5) In order to insure consistency with copyright law, paragraph (d)(3)(iii) clarifies that the word ''establish'' in FAR 52.227–14, Rights in Data—General shall be construed as ''assert'' when used with reference to a claim to copyright.

* * * * *

3. In section 1827.405, paragraph (c) is added to read as follows:

1827.405 Other data rights provisions.

* * * * *

(c) *Production of special works.* Paragraph (f) of the clause at 1852.227–15 is to be added to the clause at FAR 52.227–17, Rights in Data—Special Works, whenever that clause is used in any NASA contract.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. In section 1852.227–14, paragraph (3) of the addition to the FAR clause is redesignated as paragraph (3)(i) and new paragraphs (3)(ii) and (iii) are added as follows:

1852.227–14 Rights in Data—General.

* * * * *

(3)(i) * * *

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word ''establish'' is used in this clause, with reference to a claim to copyright, it shall be construed to mean ''assert''.

(End of addition)

5. Section 1852.227–15 is added to Part 1852 to read as follows:

1852.227–15 Rights in Data—Special Works

As prescribed in 1827.405(c), add the following paragraph (f) to the basic clause at FAR 52.227–17:

(f) Whenever the words ''establish'' and ''establishment'' are used in this clause, with reference to a claim to copyright, they shall be construed to mean ''assert'' and ''assertion'', respectively.

(End of addition)

[FR Doc. 95–22573 Filed 9–11–95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, 676, and 677

[Docket No. 950508130–5171–02; I.D. 050195A]

RIN 0648–AH62

Limited Access Management of Federal Fisheries In and Off Alaska; Groundfish and Crab Fisheries Moratorium; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (I.D. 050195A) that was published Thursday, August 10, 1995 (60 FR 40763). The rule imposes a temporary moratorium on the entry of new vessels into the groundfish fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands (BSAI) management area, the crab fisheries under Federal jurisdiction in the BSAI Area, and the groundfish fisheries under Federal jurisdiction in the Gulf of Alaska (GOA).

EFFECTIVE DATES: Effective September 11, 1995, through December 31, 1998, except for the amendments to §§ 671.4, 672.4, and 675.4, and §§ 676.3 and 676.4, which will become effective on January 1, 1996, through December 31, 1998; and the amendments to Figure 1 to part 677, § 677.4, and §§ 671.2, and 671.3, which are effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, 301-713-2341.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections addresses fishery management problems caused by excess harvesting capacity or overcapitalization by establishing temporary entry controls until more permanent controls on harvesting capacity can be implemented. As published, the final rule contains typographical and editorial errors which are misleading and in need of correction. This document corrects those errors.

Correction of Publication

Accordingly, the publication on August 10, 1995 (60 FR 40763), of the final regulations (I.D. 050195A) that were the subject of FR Doc. 95–19344, is corrected as follows:

1. On page 40767, middle column, second full paragraph, line 22, is revised to read ''1988 through February 9, 1992, or a''.

2. On page 40771, third column, amendatory instruction number 6., line two is revised to read ''through December 31, 1998, § 672.3,''.

3. On page 40772, first column, amendatory instruction number 9., line two is revised to read ''through December 31, 1998, § 675.3,''.

4. On page 40773, first column, the term ''*Reconstruction*'' in the definitions is italicized.