

While this looks like a substantial revision, it really only involves moving different paragraphs to places that fit the designated restructure. In new paragraph (c)(3), a distinction of different types of patent applications had to be made, *i.e.*, between provisional and nonprovisional patent applications, to accurately reflect current practices at the United States Patent and Trademark Office. As discussed previously, new paragraph (i) was substantially rewritten to eliminate the entire section on march-in rights, leaving only a reference to the provision of the Bayh-Dole Act that requires these rights. It was felt that this is sufficient because the rights of the Government stem directly from the statute and need not be reiterated in the clauses.

Similarly, in the new paragraph (d)(2) of the clause at 52.227–13, much of the procedures to review a decision to revoke a license have been removed and the prescriptive language has been cited.

- Any changes to the clause at 52.227–14 conform to the prescriptive text changes at FAR Subpart 27.4, Rights in Data and Copyrights.

- Only “plain language” changes were made to the remaining clauses at 52.227–15, 52.227–17, 52.227–19, 52.227–20, and 52.227–21.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because while we have made changes in accordance with plain language guidelines, we have only made minimal substantive changes to the policies, procedures, and contract clauses pertaining to patents or the directions to agencies to develop coverage for rights in data and copyrights. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 19, 27, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–402), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. The current paperwork burden associated with FAR Subpart 27.3 (under OMB Control Number 9000–0095) will be modified to account for the reduction of burden associated with the removal of the clause at 52.227–12 from the FAR. We estimate a burden reduction of 13,689 hours (30 percent of the 45,630 total burden) associated with this clause. The burden hours associated with this clause will be added to OMB Control Number 0704–0369 under a separate case.

List of Subjects in 48 CFR Parts 2, 19, 27, and 52

Government procurement.

Dated: May 16, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 19, 27, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 19, 27, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions “Commercial computer software” and “Small business concern”, and by revising the definition “United States” to read as follows:

2.101 Definitions.

* * * * *

Commercial computer software means any computer program, computer data base, or documentation that has been sold, leased, or licensed to the general public.

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Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all

appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

* * * * *

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in subpart 22.8, see the definition at 22.801.

(2) For use in subpart 22.10, see the definition at 22.1001.

(3) For use in part 25, see the definition at 25.003.

(4) For use in part 27, see the definition at 27.001.

(5) For use in subpart 47.4, see the definition at 47.401.

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PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

3. Amend section 19.001 by removing the definition “Small business concern.”

4. Revise part 27 to read as follows:

PART 27—PATENTS, DATA, AND COPYRIGHTS

Sec.

27.000 Scope of part.

27.001 Definition.

Subpart 27.1—General

27.101 Applicability.

27.102 General guidance.

Subpart 27.2—Patents

27.200 Scope of subpart.

27.201 Patent and copyright infringement liability.

27.201–1 General.

27.201–2 Contract clauses.

27.202 Royalties.

27.202–1 Reporting of royalties.

27.202–2 Notice of Government as a licensee.

27.202–3 Adjustment of royalties.

27.202–4 Refund of royalties.

27.202–5 Solicitation provisions and contract clause.

27.203 Security requirements for patent applications containing classified subject matter.

27.203–1 General.

27.203–2 Contract clause.

27.204 Patented technology under trade agreements.

27.204–1 Use of patented technology under the North American Free Trade Agreement.

27.204–2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).