

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 27 and 52**

[FAR Case 1998–018]

RIN 9000–AI98

**Federal Acquisition Regulation;
Trademarks for Government Products**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance on the use of names, symbols, and logos that describe Government products, services, systems, and programs.

DATES: Interested parties should submit comments in writing on or before October 9, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1998–018@gsa.gov.

Please submit comments only and cite FAR case 1998–018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 1998–018.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule amends FAR Parts 27 and 52 to add a new Subpart 27.X, Government-Unique Trademarks and Service Marks, and to add a new clause, 52.227–XX, Rights in Government-Unique Marks. The rule provides policy guidance and a contract clause that establishes the process for a contractor seeking to assert rights in Government-unique marks. The rule creates a contractor notification process to allow agencies to consider both the

Government's interests and a contractor's commercial interests in determining how to treat Government-unique marks. The guidance permits either the Government or a contractor to assert rights in a Government-unique mark and to seek trademark or service mark protection.

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 the rule only provides standardized procedures for the Government to preserve trademark and service mark rights to the Government. 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 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 1998–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning 9000–00XX, Trademarks for Government Products, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 75
Responses per respondent: 1
Total annual responses: 75
Preparation hours per response: .25
Total response burden hours: 18.75

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than October 9, 2001 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FAR Case 1998–018, Trademarks for Government Products, in all correspondence.

List of Subjects in 48 CFR parts 27 and 52

Government procurement.

Dated: August 3, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 27 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 27 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 27—PATENTS, DATA,
COPYRIGHTS, TRADEMARKS AND
SERVICE MARKS**

2. Revise the heading of Part 27 as set forth above.

3. Revise section 27.000 to read as follows:

27.000 Scope of part.

This part prescribes policies, procedures, and contract clauses pertaining to patents and trademarks and service marks that are Government-unique, and directs agencies to develop

coverage for rights in data and copyrights.

4. Add subpart 27.X, consisting of sections 27.X01 through 27.X05 to read as follows:

Subpart 27.X—Government-Unique Trademarks and Service Marks

Sec.

27.X01 Definition.

27.X02 General.

27.X03 Policy.

27.X04 Protection of Government-unique marks.

27.X05 Contract clause.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

27.X01 Definition.

As used in this subpart—

Government-unique mark means any mark that identifies and distinguishes goods first developed or manufactured in performance of a Government contract or that identifies and distinguishes services first rendered in performance of a Government contract.

27.X02 General.

(a) Trademarks are generally distinctive symbols, pictures, or words that distinguish and identify the origin of products.

(b) The owner of a trademark has exclusive rights to use it on the product it was intended to identify and often on related products. Service marks receive the same legal protection as trademarks but are meant to distinguish services rather than products.

(c) Trademarks and service marks protect certain economic interests and goodwill. Parties that infringe or dilute trademarks and service marks may be liable under 15 U.S.C. 1114 and 1125.

27.X03 Policy.

(a) The Government has an interest in avoiding restrictions on competition, protecting agency goodwill, and avoiding liability for trademark infringement and dilution. To protect these interests, agencies may elect to register or assert rights in a Government-unique mark. The Government may then use the mark on an exclusive basis or may make the mark available on a nonexclusive basis. When the Government decides not to register or assert rights in a Government-unique mark, the contractor may register or assert rights in the mark.

(b) The clause at 52.227–XX, Rights in Government-Unique Marks, requires the contractor to provide written notification of its intention to assert rights in a Government-unique mark. This notification process will allow the Government to consider both the

Government's interests and a contractor's commercial interests in determining which party will register or assert rights in the mark.

27.X04 Protection of Government-unique marks.

When the clause at 52.227–XX, Rights in Government-Unique Marks, is inserted in the contract, the contractor must notify the Government in writing of its intent to assert rights in, or file an application to register, a Government-unique mark.

(a) The contractor may proceed to assert the rights or file the application if the Government does not object to the contractor's intended action within 120 days of receipt of the notification. Failure of the Government to respond does not waive the Government's right under the Trademark Act to contest the contractor's assertion of rights or application.

(b) The contractor may not proceed to assert the rights or file the application if the Government—

(1) Chooses to assert its rights in the mark; or

(2) Objects to the contractor's intended action. If the Government objects, the parties may negotiate conditions for contractor use of the Government-unique mark that may include, but are not limited to, the contractor agreeing to—

(i) Grant licenses in a nondiscriminatory manner to third parties to use the Government-unique mark for reasonable terms and fees, as long as the third party meets minimum quality standards;

(ii) Avoid use of the Government-unique mark in a manner that disparages the Government including the use of the mark by its licensees;

(iii) Limit the use of the Government-unique mark to specific goods or services;

(iv) Provide copies of any applications for registration, registrations, and renewals and notify the contracting officer prior to any abandonment of the Government-unique mark; and

(v) Not charge for use of the Government-unique mark when used for the benefit of the Government.

27.X05 Contract clause.

Insert the clause at 52.227–XX, Rights in Government-Unique Marks, in solicitations and contracts when either a rights in data clause (52.227–14, Rights in Data-General) or a patent clause (52.227–11, Patent Rights-Retention by the Contractor (Short Form), 52.227–12, Patent Rights-Retention by the Contractor (Long Form), or 52.227–13, Patent Rights-

Acquisition by the Government) is present. The clause may also be used in any contract in which the contracting officer determines that a Government-unique mark may arise.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.227–XX to read as follows:

52.227–XX Rights in Government-Unique Marks

As prescribed in 27.X05, insert the following clause:

Rights in Government-Unique Marks (Date)

(a) *Government-unique mark*, as used in this clause, means any mark that identifies and distinguishes goods first developed or manufactured in performance of a Government contract or that identifies and distinguishes services first rendered in performance of a Government contract.

(b) The Government has the right to assert rights in or register Government-unique marks and preclude others, including the Contractor, from using any Government-unique mark.

(c) The Contractor must notify the Government in writing of its intent to assert rights in, or file an application to register, a Government-unique mark. The Contractor's notification shall be in writing and shall identify the Government-unique mark (including the word, name, symbol, or design), provide a statement as to its intended use(s) in commerce, and list the particular classes of goods or services in which registration will be sought.

(d) The Contractor may proceed to assert rights in or file the application to register if the Government does not object to the Contractor's intended action within 120 days of receipt of the notification. Failure of the Government to respond does not waive the Government's right under the Trademark Act to contest the Contractor's assertion of rights or application.

(e) The Contractor may not proceed to assert the rights or file the application if the Government—

(1) Chooses to assert its rights in or register the mark; or

(2) Objects to the Contractor's intended action. If the Government objects, the parties may negotiate conditions for Contractor use of the Government-unique mark.

(f) Nothing contained in this clause—

(1) Affects the Contractor's or the Government's rights in any marks other than Government-unique marks; or

(2) Provides authorization or consent, express or implied, by the Government regarding the Contractor's use of any mark, including a Government-unique mark.

(End of clause)

[FR Doc. 01–19928 Filed 8–8–01; 8:45 am]

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