227.7203-12 Government right to establish conformity of markings.

(a) *Nonconforming markings*.

(1) Authorized markings are identified in the clauses at 252.227-7014, Rights in Other Than Commercial Computer Software and Other Than Commercial Computer Software Documentation, and 252.227-7018, Rights in Other Than Commercial Technical Data and Computer Software—Small Business Innovation Research Program and Small Business Technology Transfer Program. 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 clauses at 252.227-7014 and 252.227-7018 is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227-7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227-7037, Validation of Asserted Restrictions on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed the nonconforming markings on the software or documentation to provide that person an opportunity to correct or strike the nonconforming markings at that person’s expense. If that person fails to correct the nonconformity and return the corrected software or documentation within 60 days following the person’s receipt of the software or documentation, the contracting officer may correct or strike the nonconformity at the person’s expense. When it is impracticable to return computer software or computer software documentation for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the software or documentation 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, or disclosure of the marked computer software or computer software documentation. For example, a restricted rights legend placed on computer software 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 contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the computer software or computer software documentation to the person asserting the restriction for correction at that person's expense. If the software or documentation are returned and that person fails to correct or strike the unjustified restriction and return the corrected software or documentation to the contracting officer within 60 days following receipt of the software or

documentation, the unjustified marking shall be corrected or stricken at that person's expense.

Parent topic: 227.7203 Other than commercial computer software and other than commercial computer software documentation.