

27.404-5 Unauthorized, omitted, or incorrect markings.

(a)Unauthorized marking of data.

(1)The Government has, in accordance with paragraph (e) of the clause at [52.227-14](#), the right to either return data containing unauthorized markings or to cancel or ignore the markings.

(2)Agencies shall not cancel or ignore markings without making written inquiry of the contractor and affording the contractor at least 60 days to provide a written justification substantiating the propriety of the markings.

(i)If the contractor fails to respond or fails to provide a written justification substantiating the propriety of the markings within the time afforded, the Government may cancel or ignore the markings.

(ii)If the contractor provides a written justification substantiating the propriety of the markings, the contracting officer shall consider the justification.

(A)If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing.

(B)If the contracting officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the contractor will be furnished a written determination which becomes the final agency decision regarding the appropriateness of the markings and the markings will be cancelled or ignored and the data will no longer be made subject to disclosure prohibitions, unless the contractor files suit within 90 days in a court of competent jurisdiction. The markings will not be cancelled or ignored until final resolution of the matter, either by the contracting officer's determination becoming the final agency decision or by final disposition of the matter by court decision if suit is filed.

(3)The foregoing procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act ([5 U. S.C. 552](#)) if necessary to respond to a request. In addition, the contractor may bring a claim, in accordance with the Disputes clause of the contract, that may arise as the result of the Government's action to remove or ignore any markings on data, unless the action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

(b)Omitted or incorrect notices.

(1)Data delivered under a contract containing the clause without a limited rights notice or restricted rights notice, and without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of the data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may, within 6 months (or a longer period approved by the contracting officer for good cause shown), request permission of the contracting officer to have the omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense. The contracting officer may permit adding appropriate notices if the contractor-

(i)Identifies the data for which a notice is to be added;

(ii)Demonstrates that the omission of the proposed notice was inadvertent;

(iii) Establishes that use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also-

(i) Permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

Parent topic: [27.404 Basic rights in data clause.](#)