A commentor suggests changing the phrase ''correction or cancel'' in 252.227–7013(h)(1) to ''correct or strike''. That suggestion is adopted. The commentor's suggestion to modify that paragraph by providing the Government the unilateral right to correct or strike nonconforming markings when it is impracticable to return technical data to the contractor is not adopted. The Government has that right under (h)(1) for unjustified markings and (h)(2) for nonconforming markings.

A commentor suggests modifying 227.7103–12(a)(2) to require contracting officers to go through the validation process before striking a nonconforming markings. The suggestion is not adopted. The validation procedures in 252.227–7037 are intended to resolve questions concerning asserted restrictions. The nonconforming marking procedures address only the proper format for a marking.

A commentor's suggested editorial changes to 227.7103–10(b)(2) and 227.7203–10(b) are considered unnecessary.

5. Competition

Sixteen comments addressed competition. Most did not comment on specific portions of the regulations. One commentor recommended retaining the 1988 interim rule. That recommendation is not adopted. One commentor suggests that 227.7103–1(e) conflicts with 227.7103–2(b)(1) and the Competition in contracting Act (CICA). The suggestion is not adopted. The policy in 227.7103–1(e) expresses requirements under 10 U.S.C. 2305 for major weapon systems and generally protects private expense development. It does not conflict with either 227.7103–2(b)(1) or CICA.

6. License Rights

Fifteen comments addressed license rights generally. A commentor suggests including ''release'' or ''disclose'' in 227.7102–2 is confusing because those terms were traditionally used in connection with persons outside the government. The context in which the terms are used is clear and changes are not necessary.

A commentor suggests requiring a written justification requiring approval at a level above the contracting officer if the Government wants to acquire rights not conveyed under licenses customarily provided to the public. The suggestion is not adopted. Existing procedures for determining the Government's needs are adequate.

A commentor suggests all technical data and computer software should be delivered under a license that provides government purpose rights for 5 years after which the data or software would be available with unlimited, government purpose, limited, or restricted rights as applicable. The suggestion is inconsistent with statutory requirements and not adopted.

A commentor suggests the provisions permitting negotiated licenses might preclude award without discussions, reduce opportunities to use sealed bidding procedures, and extend acquisition lead times. The comments are not adopted. If the Government knows it will require nonstandard license rights it might not be in a position to use sealed bidding procedures. When using other contracting methods, award without discussions is not precluded if the Government's requirements are articulated in the solicitation and responsive offers are received from responsible offerors.

A commentor suggests the basis for allocating data rights is acceptable if it is clear that government rights are conveyed by a license granted by the data creator. No change is required.

A commentor suggests that, although not improper, permitting third parties to have access to and modify noncommercial computer software will act as a disincentive to the private development of software intended only for the Government. The comment is not adopted. The clause at 252.227–7014 permits the Government, in a narrow range of circumstances and subject to considerable constraints, to have support service contractors modify computer software delivered with restricted rights. Two of the permitted circumstances deal with military exigencies. The other two circumstances reflect maintenance needs when the Government's rights are restricted in only a portion of the deliverable software.

A commentor suggests two changes to 227.7103–5(d)(1) that are intended to clarify the role of subcontractors when special license rights are negotiated and a change to 227.7103–5(d)(2) to identify the negotiation of long term reprocurement spare parts pricing agreements as an alternative to negotiating for additional rights in limited rights data. The clarifications are not necessary. The term ''contractor'' is defined to include subcontractors and suppliers at any tier and 227.7103–5 and the clause at 252.227–7013 make it clear that the prime contractor might not be the data owner or licensor. The suggested change to 227.7103–5(d)(2) is inconsistent with the circumstances under which negotiations for additional rights are permitted. The commentor also suggests modifying 252.227–7013(b)(4) to clarify the role of subcontractors when negotiating special license rights. For the reasons discussed above, the comment is not adopted.

A commentor suggests modifying 227.7103–4(a)(1) to include the full listing of government rights. The modification is not necessary. The commentor also suggests expanding 227.7103–4(a)(2) to match the scope of 252.227–7013(b)(1)(ii) and (iii). The suggestion is not adopted. The situation covered in 252.227–7013(b)(1)(ii) is addressed in 227.7103–4(a)(1). The example in 227.7103–4(a)(2) applies to 252.227–7013(b)(1)(iii) only.

7. Elimination of the ''Required for Performance Criterion''

Fourteen comments addressed elimination of the required for performance criterion. DoD's 1988 regulations grant the Government unlimited rights in technical data pertaining to items, components, or processes developed at private expense if development was required for the performance of a government contract or subcontract. Seven commentors, submitted essentially identical comments suggesting that data resulting from development of a defense end product should not be the property of an original equipment manufacturer. Two commentors suggest eliminating the required for performance criterion will result in less data available without restrictions. In a similar comment, a commentor suggests that eliminating the ''required for performance'' criterion will reduce competition. Four comments were received from the American Bar Association, the Council of Government Relations, the Integrated Dual-Use Commercial companies, and a large manufacturer supporting the policies contained in the proposed rule. The suggestions to retain the criterion are not adopted. DoD believes that the criterion should be eliminated to protect private expense development, encourage developers of new technologies or products, many of whom are small businesses, to offer their products to the Government, encourage dual use development, and balance the interests of data users and data developers.

8. Computer Software

Thirteen comments addressed computer software. Three commentors suggest the definition of ''commercial computer software'' is too broad. One also suggests that the definition's broad scope will make it difficult to understand and interpret and contractors will be able to restrict the