from the contractor to the Government, or from the inventor to the Gov-
ernment with the consent of the con-
tactor. When the Government's rights
are limited to a license, there should
be a confirmatory instrument to that
effect.
(b) Agencies may, by supplemental
instructions, develop suitable assign-
ments, licenses, and other papers evid-
dencing any rights of the Government
in patents or patents applications.
These instruments should be recorded
in the U.S. Patent and Trademark Of-

fice (see Executive Order 9424, Estab-
lishing in the United States Patent Of-

fice a Register of Government Interests
in Patents and Applications for Pat-
ents, (February 18, 1944).

27.305–4 Protection of invention dis-
closures.
(a) The Government will, to the ex-
tent authorized by 35 U.S.C. 205, with-
hold from disclosure to the public any
invention disclosures reported under
the patent rights clauses of 52.227–11 or
52.227–13 for a reasonable time in order
for patent applications to be filed. The
Government will follow the policy in
27.302(j) regarding protection of con-

fidentiality.
(b) The Government should also use
reasonable efforts to withhold from dis-
closure to the public for a reasonable
time other information disclosing a
subject invention. This information in-
cludes any data delivered pursuant to
contract requirements provided that
the contractor notifies the agency as
to the identity of the data and the sub-
ject invention to which it relates at
the time of delivery of the data. This
notification shall be provided to both
the contracting officer and to any pat-
ent representative to which the inven-
tion is reported, if other than the con-
tacting officer.
(c) For more information on protec-
tion of invention disclosures, also see
37 CFR 401.13.

27.306 Licensing background patent
rights to third parties.
(a) A contract with a small business
concern or nonprofit organization shall
not contain a provision allowing the
Government to require the licensing to
third parties of inventions owned by
the contractor that are not subject in-
novations unless the agency head has
approved and signed a written jus-
tification in accordance with para-
graph (b) of this section. The agency
head may not delegate this authority
and may exercise the authority only if
it is determined that the—
(1) Use of the invention by others is
necessary for the practice of a subject
invention or for the use of a work ob-
ject of the contract; and
(2) Action is necessary to achieve the
practical application of the subject in-
vention or work object.
(b) Any determination will be on the
record after an opportunity for a hear-

ing, and the agency shall notify the
contractor of the determination by cer-
tified or registered mail. The notifica-
tion shall include a statement that the
contractor must bring any action for
judicial review of the determination
within 60 days after the notification.

Subpart 27.4—Rights in Data and
Copyrights

27.400 Scope of subpart.
This subpart sets forth policies and
procedures regarding rights in data and
copyrights, and acquisition of data. The
policy statement in 27.402 applies
to all executive agencies. The remain-
der of the subpart applies to all execu-
tive agencies except the Department of
Defense.

27.401 Definitions.
As used in this subpart—
Data means recorded information, re-
gardless of form or the media on which
it may be recorded. The term includes
technical data and computer software.
The term does not include information
incidental to contract administration,
such as financial, administrative, cost
or pricing, or management informa-
tion.
Form, fit, and function data means
data relating to items, components, or
processes that are sufficient to enable
physical and functional interchange-
ability, and data identifying source,
size, configuration, mating and attach-
ment characteristics, functional char-
acteristics, and performance require-
ments. For computer software it means
data identifying source, functional