

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 135**

[Docket No. FAA-2010-1259]

**Interpretation of Rest Requirements****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed interpretation; withdrawal.

**SUMMARY:** On December 23, 2010, FAA published a Notice of Proposed Interpretation seeking public comment on the application of certain rest requirements during on-demand operations. Section 346 of the FAA Modernization and Reform Act of 2012 provided that the Administrator of the Federal Aviation Administration may not finalize the interpretation proposed in Docket No. FAA-2010-1259, relating to rest requirements, and published in the **Federal Register** on December 23, 2010. Consistent with this statute, no further action will be taken with regard to this interpretation.

**DATES:** The notice of proposed interpretation published December 23, 2010, at 75 FR 80746 is withdrawn as of November 7, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert Frenzel, Manager, Operations Law Branch, Regulations Division, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-3073; email: [Robert.Frenzel@faa.gov](mailto:Robert.Frenzel@faa.gov).

Issued in Washington, DC, on October 31, 2013.

**Mark W. Bury,**

*Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200.*

[FR Doc. 2013-26485 Filed 11-6-13; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF EDUCATION****34 CFR Chapter VI**

**Negotiated Rulemaking Committee, Notice of Change to Schedule of Committee Meetings—Title IV Federal Student Aid Programs, Gainful Employment in a Recognized Occupation**

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of intent to establish negotiated rulemaking committee.

**SUMMARY:** On June 12, 2013, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations to establish standards for programs that prepare students for gainful employment in a recognized occupation. We also announced the schedule for committee meetings. Because of the Federal Government shutdown due to a lapse in appropriations, we are rescheduling the second session of committee meetings to November 18–20, 2013. In addition, the last day of the second session will end at 5:00 p.m. instead of at noon.

**DATES:** The dates, times, and locations of the committee meetings are set out in the *Schedule for Negotiations* section under **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** For information about the content of this notice, including information about the negotiated rulemaking process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502-7526 or by email: [wendy.macias@ed.gov](mailto:wendy.macias@ed.gov).

For general information about the negotiated rulemaking process, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at <http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html>.

If you use a telecommunications device for the deaf or text telephone, call the Federal Relay Service, toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On June 12, 2013, we published a notice in the **Federal Register** (78 FR 35179) announcing our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (title IV Federal Student Aid programs) that would establish standards for programs that prepare students for gainful employment in a recognized occupation. In that notice, we set a schedule for the committee meetings and requested nominations for individual negotiators who represent key stakeholder constituencies for the issue to be negotiated to serve on the committee.

Because of the shutdown of the Federal Government due to the recent lapse in appropriations for fiscal year 2014, we announce that we are rescheduling the second session of committee meetings from October 21–23, 2013 to November 18–20, 2013.

In addition, we announce that the meeting on the final day, November 20, 2013, will run from 9:00 a.m. to 5:00 p.m., rather than from 9:00 a.m. to 12:00 p.m. The revised schedule for the second session follows.

**Schedule for Negotiations:** The committee will meet for its second and final session on November 18–20, 2013. The session will run from 9:00 a.m. to 5:00 p.m. each day.

The meetings will be held at the U.S. Department of Education at: 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.

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**Program Authority:** 20 U.S.C. 1098a.

Dated: October 30, 2013.

**Brenda Dann-Messier,**

*Assistant Secretary for Vocational and Adult Education, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.*

[FR Doc. 2013-26492 Filed 11-6-13; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF ENERGY****48 CFR Parts 927, 952 and 970****RIN 1991-AB82**

**Acquisition Regulation: Patents, Data, and Copyrights**

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the

Department of Energy Acquisition Regulation (DEAR) to make changes to conform to the Federal Acquisition Regulation (FAR). This proposed revision will also update, clarify and streamline text in certain DOE intellectual property and technology transfer clauses in order to benefit from several years of experience under the existing clauses, and, where necessary, make these DOE clauses consistent with recent changes to the FAR.

**DATES:** Written comments on the proposed rulemaking must be received on or before close of business December 9, 2013.

**ADDRESSES:** You may submit comments, identified by “DEAR: Patents, Data, and Copyrights and RIN 1991-AB82,” by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email to:* [DEARrulemaking@hq.doe.gov](mailto:DEARrulemaking@hq.doe.gov). Include DEAR: Patents, Data, and Copyrights and RIN 1991-AB82 in the subject line of the message.

- *Mail to:* U.S. Department of Energy, Office of Acquisition and Project Management, MA-611, 1000 Independence Avenue SW., Washington, DC 20585. Comments by email are encouraged.

**FOR FURTHER INFORMATION CONTACT:** Sharon Archer, (202) 287-1739 or [Sharon.Archer@hq.doe.gov](mailto:Sharon.Archer@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Section-by-Section Analysis
- III. Procedural Requirements:
  - A. Review Under Executive Orders 12866 and 13563
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under the National Environmental Policy Act
  - F. Review Under Executive Order 13132
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Review Under the Treasury and General Government Appropriations Act, 1999
  - I. Review Under Executive Order 13211
  - J. Review Under the Treasury and General Government Appropriations Act, 2001
  - K. Approval by the Office of the Secretary of Energy

## I. Background

The purpose of this rulemaking is to update and improve certain DOE intellectual property and technology transfer texts and clauses in order to benefit from several years of experience under the existing clauses; to make, where necessary, said texts and clauses consistent with recent changes to FAR Part 27 (72 FR 63045, November 7,

2007); and to make technical and grammatical changes to these sections as necessary. The proposed changes affect DOE, which includes the National Nuclear Security Administration (NNSA), as well as DOE contractors, which include both DOE and NNSA contractors, as well as DOE and NNSA Management and Operating (M&O) contractors.

Today's proposed rule does not alter substantive rights or obligations under current law. The proposed changes include policy revisions for computer software developed under DOE contracts, and amend guidance regarding technology transfers to foreign entities, trademarks associated with laboratory activities, and background technology rights under DOE contracts as follows:

### 1. Computer Software

DOE's existing Rights in Technical Data-Technology Transfer clause at 970.5227-2 provides mechanisms by which computer software first produced by a DOE contractor may be made available to the public. DOE program officers and contractors have begun utilizing an additional mechanism by which software may be disseminated, a mechanism commonly referred to as open source software licensing. Open source software is software bearing an assertion of copyright (usually a copyright notice), and occasionally, a trademark in the name of the software. DOE has developed internal interim guidance by which open source software licensing may be conducted by DOE contractors. It is the intention of this proposed regulation to recognize the utility of open source software licensing as another tool that may be chosen by DOE contractors to disseminate DOE-sponsored software, and to specify the conditions under which DOE contractors may choose to copyright and license software as open source. These changes are set forth in this rulemaking, primarily at 48 CFR 970.5227-2 (f).

### 2. Trademarks

This proposed rulemaking adds, to 970.5227-3, Technology Transfer Mission, a paragraph (a)(3) set forth below, regarding DOE trademark policy. Paragraph (a)(3) affirms that the Laboratory names and logos are owned by DOE and therefore any Contractor desiring to assert trademark or service mark protection for any word, phrase, symbol, design, or combination thereof that includes or is associated with the Laboratory name, must first notify the DOE Patent Counsel.

### 3. Technology Transfer to Foreign Entities

The existing Technology Transfer Mission clause at 970.5227-3 reflects a policy choice made by DOE to address transactions with organizations owned or controlled by foreign entities. The clause is being modified to make it clear to DOE contractors and the public that consultation of publicly-available United States Trade Representative (USTR) information, such as the information on their Web site rather than direct consultation with the USTR may satisfactorily address requirements under the clause. This modified guidance is set forth in this proposed rulemaking primarily at 970.5227-3 (f)(1)(ii)(C).

### 4. Weapons Related Inventions

DOE believes that the existing definition of “weapons related subject invention”, included in appropriate contracts, needs to be renumbered, and procedures for allocation of rights to such inventions need to be clarified. These changes, and other minor modifications, are reflected in the amended Patent Rights clause of 970.5227-12.

### 5. Background Technology Rights

DOE proposes modifying the DEAR at 927.302 to conform to the standards for inclusion of background rights clauses set forth in 10 CFR 600.325, Copyright Assignment to Government. Additionally, circumstances may arise where DOE would like to take ownership of copyright in data first produced under a DOE contract by a DOE contractor. Although the Rights-in Data—Special Works clause of FAR 52.227-17 provides for this, it does so in limited special circumstances. DOE proposes an amendment to all DOE Rights in Technical Data clauses, including 927.409, 970.5227-1(c)(3) and 970.5227-2(c)(3), to provide for that possibility in other circumstances, as may be needed to support specific DOE programs, or in furtherance of DOE mission requirements.

## II. Section-by-Section Analysis

DOE proposes to amend the DEAR as follows:

### PART 927—PATENTS, DATA, AND COPYRIGHTS

1. Section 927.302 is redesignated as 927.302-70, and is amended by removing language that is not needed for the DEAR and adding language to clarify that in certain rare instances, DOE can acquire rights to background intellectual property and data, with the Program's written approval.

2. Section 927.303(a)(2) is amended by revising the language to reflect updates in patent law such as provisional applications, under FAR 52.227-11.

3. Section 927.303(a)(3) is amended by adding language to allow flexibility in cleanup projects and where smaller facilities are being built or operated on behalf of DOE.

4. Section 927.303(b) is amended to provide contracting officers with guidance on procedures to follow when DOE grants a waiver for specific inventions.

5. Section 927.402-1 has been removed and the language under paragraph (1)(a) has been moved to new section 927.403-70-1 under paragraph (a). The language in 927.402-1(a) is revised by adding, after the last sentence, language setting out DOE's statutory authority to maintain, within the Department, publicly available collections of scientific and technical information resulting from research, development, demonstration and commercial applications that have been supported by the Department.

6. Section 927.402-1 has been removed and the language under paragraph (1)(b) has been moved to new section 927.403-70-1 under paragraph (b). The language in 927.402-1(b) is revised by adding language to include guidance on R&D results.

#### *PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES*

7. Section 952.227-13 is revised by adding Alternate I to provide for a right to require licensing of background inventions to third parties.

#### *PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS*

8. Section 970.2701-1 is revised by adding language to include decontamination and decommissioning activities to the scope of the section.

9. Section 970.2702-1 is redesignated as section 970.2702-1-2. Section 970.2702-4 information is proposed to be incorporated into newly redesignated section 970.2702-1-2.

10. Section 970.2703-2 is redesignated as section 970.2703-70-2.

11. Section 970.2704-1(a), redesignated as 970-2704-70-1(a), is revised by adding language to clarify that the Department's statutory missions include those outlined in Energy Policy Act.

12. Section 970.2704-2(a), redesignated as 970.2704-70-2(a), is revised by adding language to include guidance on R&D results.

13. Section 970.2704-3, redesignated as 970.2704-70-3, paragraphs (a) and (b), are revised to include prescriptive language for adding new Alternate II paragraphs for various types of contracts.

14. Section 970.5227-1(b) is revised by adding language to add a provision for the Office of Scientific and Technical Information (OSTI) statutory reporting requirements.

15. Section 970.5227-1(c) is revised by adding language to include instructions on how the Government may obtain copyright to technical data or computer software.

16. Section 970.5227-1 is revised by adding Alternate II to include language to obtain the right to use the limited rights data in solicitations to continue or complete the project which is the subject of the contract.

17. Section 970.5227-2(a) is revised by adding five new definitions missing from this section.

18. Section 970.5227-2(b)(1)(ii) is revised to update the responsible office name.

19. Section 970.5227-2(b)(1)(iv) is revised to update the section references so that they match the changes made herein.

20. Section 970.5227-2(b)(2)(ii) is revised by adding language to clarify an exception to the clause requirements.

21. Section 970.5227-2(b) is revised by adding paragraph "(4)" to add a provision for OSTI statutory reporting requirements.

22. Section 970.5227-2 is revised to add a new paragraph (c)(3) to clarify that contracting officers may establish and assign permission to copyright data or computer software when such permission was not granted under the contract.

23. Section 970.5227-2(e)(1)(iii) is revised by adding language to provide guidance on Contractor's right to assert copyright in excepted categories of data.

24. Section 970.5227-2(e) is revised by adding paragraph (1)(iv) to clarify the paragraphs of the section that apply when data rights are limited rights data or restricted computer software.

25. Section 970.5227-2(e)(2) is revised by updating the section to identify the appropriate DOE division, to adjust the response time to a more reasonable timeframe and to clarify what is meant by subsequent versions.

26. Section 970.5227-2(e)(3) is revised to read as set forth below to update the language to reflect what is currently needed by OSTI for the contractor to assert copyright.

27. Section 970.5227-2(e)(3) is revised to add new paragraph (ii) to add language to clarify exceptions to the

Government's unlimited rights in technical data and computer software.

28. Section 970.5227-2(e)(3)(iii), redesignated as 970.5227-2(e)(3)(iv), is revised to remove the term period that is not required.

29. Section 970.5227-2(e)(3)(vi), redesignated as 970.5227-2(e)(3)(vii), is revised to remove the term period as that is not required.

30. Section 970.5227-2(e)(3)(viii), redesignated as 970.5227-2(e)(3)(ix), is revised to require the contractor to provide the Department with the latest version of the copyrighted data.

31. Section 970.5227-2(e)(4) is revised by updating the section to identify the responsible office name.

32. Section 970.5227-2 is revised by adding new paragraph "(f)" and redesignating paragraphs "(f)", "(g)", "(h)" and "(i)", respectively, to provide procedures for a contractor requesting to assert copyright in the work of some subcontractors.

33. Section 970.5227-2 is revised to add Alternate II to obtain the right to use the limited rights data in solicitations to continue or complete the project which is the subject of the contract.

34. Section 970.5227-3(a) is revised by adding new paragraph "(3)" to state that DOE owns the trademarks to all laboratory names and logos.

35. Section 970.5227-3(b) is revised by adding two new definitions.

36. Section 970.5227-3(d)(1) is revised by adding language to cover conformance with standards of conduct.

37. Section 970.5227-3(d)(10) is revised by adding language to identify to whom notice should be provided.

38. Section 970.5227-3(f)(1)(ii) is revised by adding paragraphs "(C)" and "(D)" to provide the contracting officer with guidance for handling foreign company control.

39. Section 970.5227-3(h)(1), is revised by removing "75 percent" and replacing it with "15 percent" to reflect the correct percentage of excess amounts of royalties and income received from patent licensing after payment of costs that must be paid to the Treasury of the United States.

40. Section 970.5227-3(h)(3) is revised by adding language to clarify that changes to policy will require contracting officer approval as well.

41. Section 970.5227-3(j)(1) is revised by adding language that clarifies the circumstances under which contractors must obtain approval from Contracting Officers prior to entering into any technology transfer arrangement.

42. Section 970.5227-3(n)(2)(ii) is revised by adding language to provide

further guidance on considerations for CRADAs.

43. Section 970.5227–3(n)(3)(ii) is revised by adding language to provide further guidance to Contractors on what factors to consider when considering giving preference to business units located in the United States that agree that products or processes embodying intellectual property will be substantially manufactured or practiced in the United States.

44. Section 970.5227–3(n)(4)(i) is revised to clarify that CRADA is used when the project is collaborative.

45. Section 970.5227–3 Alternate I paragraph (p) is revised and moved to main clause regarding technology partnership ombudsman responsibilities.

46. Section 970.5227–10(b)(2)(ii) is revised to add language that clarifies and expands upon the exceptional circumstances under 35 U.S.C. 202 when the right to retain title to subject inventions may be restricted.

47. Section 970.5227–10(c)(3) is revised to clarify patent application.

48. Section 970.5227–12(a) is revised by adding a definition for the Department of Energy.

49. Section 970.5227–12(a) is revised by adding language to clarify that the Patent Counsel is the first and primary point of contact for patent rights under management and operating contracts.

50. Section 970.5227–12 is revised in paragraph (b)(5)(ii) to expand the list to include two additional initiatives to the list of exceptional circumstance subject inventions.

51. Section 970.5227–12 is revised in paragraph (b)(5)(iii) to add language to clarify that exceptional circumstances subject inventions are set forth in the applicable class advance waiver.

52. Section 970.5227–12(t) is revised by adding language to provide guidance on delegation.

### III. Procedural Requirements

#### A. Review Under Executive Orders 12866 and 13563

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, January 21, 2011). Executive Order 13563 is supplemental to and explicitly

reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

#### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general

standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

#### C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," (67 FR 53461, August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site at <http://www.gc.doe.gov>.

Today's proposed rule updates and modifies references in the DEAR that apply to public contracts. This rule would not have a significant economic impact on small entities because it imposes no significant burdens. Any costs incurred by DOE contractors complying with the rule would be reimbursed under the contract.

Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore,

no regulatory flexibility analysis is required.

**D. Review Under the Paperwork Reduction Act**

This proposed rule does not impose any new information, collection or recordkeeping requirements. Existing information collections imposed by the Department of Energy Acquisition Regulation are covered by OMB control number 1910-4100 with an expiration date of October 31, 2014.

**E. Review Under the National Environmental Policy Act**

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

**F. Review Under Executive Order 13132**

Executive Order 13132, (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.

On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined the proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

**G. Review Under the Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking proposes changes that do not alter any substantive rights or obligations. This proposed rule does not impose any unfunded mandates.

**H. Review Under the Treasury and General Government Appropriations Act, 1999**

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

**I. Review Under Executive Order 13211**

Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order, (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution and use. Today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

**J. Review Under the Treasury and General Government Appropriations Act, 2001**

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

**K. Approval by the Office of the Secretary of Energy**

Issuance of this proposed rule has been approved by the Office of the Secretary of Energy.

**List of Subjects in 48 CFR Parts 927, 952 and 970 Government Procurement**

Issued in Washington, DC on September 25, 2013.

**Paul Bosco,**

*Director, Office of Acquisition and Project Management, Department of Energy.*

**Barbara H. Stearrett,**

*Acting Director, Office of Acquisition Management, National Nuclear Security Administration.*

For reasons set out in the preamble, the DOE is proposing to amend chapter 9 of title 48 of the Code of Federal Regulations as set forth below.

**PART 927—PATENTS, DATA, AND COPYRIGHTS**

■ 1. The authority citation for part 927 is revised to read as follows:

**Authority:** 42 U.S.C. 2168, 2182, 2201; 42 U.S.C. 5908; 42 U.S.C. 7261a; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 4201 *et seq.*

**Subpart 927.2—Patents and Copyrights**

■ 2. The heading of subpart 927.2 is revised to read as set forth above.

■ 3. The heading of section 927.201 is revised to read as follows:

**927.201 Patent and copyright infringement liability.**

\* \* \* \* \*

**927.201-1 [Amended]**

■ 4. Section 927.201-1 is amended by removing "Authorization and Consent" in the second sentence and adding in its place "Patent and Copyright Infringement Liability".

**927.206 [Redesignated and Amended]**

- 5. Section 927.206 is redesignated as section 927.202, and newly redesignated section 927.202 is amended by revising the heading to read as follows:

**927.202 Royalties.**

\* \* \* \* \*

**927.206-1 [Redesignated and Amended]**

- 6. Section 927.206-1 is redesignated as section 927.202-4, and newly redesignated section 927.202-4 is amended by revising the heading to read as follows:

**927.202-4 Refund of royalties.**

\* \* \* \* \*

**927.206-2 [Redesignated and Amended]**

- 7. Section 927.206-2 is redesignated as section 927.202-5, and newly redesignated section 927.202-5 is amended by revising the heading to read as follows:

**927.202-5 Solicitation provisions and contract clauses.**

\* \* \* \* \*

**927.207 [Redesignated and Amended]**

- 8. Section 927.207 is redesignated as section 927.203, and newly redesignated section 927.203 is amended by revising the heading to read as follows:

**927.203 Security requirements for patent applications containing classified subject matter.**

\* \* \* \* \*

**927.207-1 [Redesignated as 927.203-1]**

- 9. Section 927.207-1 is redesignated as section 927.203-1.

**927.300 [Amended]**

- 10. Section 927.300 is amended in paragraph (b) by:
  - a. Adding “, or successor regulation.” in the second sentence after “10 CFR part 784”; and
  - b. Removing in the third sentence, “that section” and adding “those regulations” in its place.

**927.302 [Redesignated and Amended]**

- 11. Section 927.302 is redesignated as 927.302-70, and newly redesignated 927.302-70 is amended by:
  - a. Revising the heading;
  - b. Revising paragraph (b);
  - c. Removing, in paragraph (c), “paragraph (k)”, in two places, and adding in its place “Alternate I”; and
  - d. Revising paragraph (d)(5)

The addition and revisions read as follows:

**927.302-70 Additional policy.**

\* \* \* \* \*

(b) Normally, a contract will not include a background patent and data

provision. However, under special circumstances, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of third parties to background inventions, limited rights data or restricted computer software, may be included. Inclusion of such a background patent or data provision will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. A contract may include the right to license the Government and third party contractors for special Government purposes when future availability of the technology would also benefit the Government. The scope of any such background patent or data licensing is subject to negotiation.

\* \* \* \* \*

(d) \* \* \*

(5) Represent DOE in patent, technical data, copyright, and other intellectual property matters not specifically reserved to the Head of the Agency or designee under these regulations.

- 12. Add new section 927.302 as follows:

**927.302 Policy.**

- 13. Section 927.303 is amended by:
  - a. Revising paragraph (a), introductory text;
  - b. Removing, in paragraph (a)(1), the word “Acquisition” and adding in its place “Ownership”;
  - c. Revising paragraphs (a)(2), (a)(3), and (b); and
  - d. Removing, in paragraph (c), “*Facilities License*” and adding in its place “*Facilities license*”.

The revisions read as follows:

**927.303 Contract clauses.**

(a) In solicitations and contracts for experimental, research, developmental, or demonstration work, the contracting officer shall include the clause:

\* \* \* \* \*

(2) At 48 CFR 52.227-11, Patent Rights Ownership -by the Contractor, in contracts in which the contractor is a domestic small business or nonprofit organization as defined at 48 CFR 27.301, except where the work of the contract is subject to an Exceptional Circumstances Determination by DOE; and

(3) At 970.5227-10, 970.5227-11, or 970.5227-12, as discussed in 970.27, Patent, Data, and Copyrights, in contracts for the management and operation of DOE laboratories, production facilities, certain decontamination and decommissioning activities, and the building and/or operation of other DOE facilities.

(b) In instances in which DOE grants an advance waiver or waives its rights in an identified invention pursuant to 10 CFR part 784, contracting officers shall consult with patent counsel for the appropriate clause.

\* \* \* \* \*

**927.304 [Amended]**

- 14. Section 927.304 is amended by:
  - a. Removing “952.227-11” and adding in its place “48 CFR 52.227-11”; and
  - b. Removing “(FAR)”.

**Subpart 927.4—Rights in Data and Copyrights**

- 15. The heading of subpart 927.4 is revised to read as set forth above.

- 16. Section 927.402 is revised to read as follows:

**927.402 Policy.**

The technical data policy is directed toward achieving the following objectives—

(a) Making the benefits of the energy research, development and demonstration programs of DOE widely available to the public in the shortest practicable time;

(b) Promoting the commercial utilization of the technology developed under DOE programs;

(c) Encouraging participation by private persons in DOE energy research, development, and demonstration programs; and

(d) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

**927.402-1 [Removed and Reserved]**

- 17. Section 927.402-1 is removed and reserved.

**927.402-2 [Removed and Reserved]**

- 18. Section 927.402-2 is removed and reserved.

- 19. Section 927.403 is revised to read as follows:

**927.403 Data rights—General.**

- 20. Add new sections 927.403-70, 927.403-70-1 and 927.403-70-2 to subpart 927.4 to read as follows:

**927.403-70 Acquisition and use of technical data.****927.403-70-1 General.**

(a) The provisions herein pertain to research, development, demonstration and supply contracts. Special considerations for contracts for the operation, design, or construction of Government-owned facilities are covered by subpart 970.27. Under DOE's

broad charter to perform research, development, and demonstration work, in both nuclear and non-nuclear fields, and to meet the objectives stated in 927.402, DOE has extensive needs for technical data. The satisfaction of these needs and the achievement of DOE's objectives through a sound data policy are found in the balancing of the needs and equities of the Government, its contractors, and the general public. In addition, the Energy Policy Act of 2005 also referred to as Public Law 109-58, Subtitle G-Science, Section 982, provides that the Office of Scientific and Technical Information shall maintain publicly available collections of scientific and technical information resulting from research, development, demonstration, and commercial applications activities supported by the Department.

(b) It is important to keep a clear distinction between contract requirements for the delivery of technical data and rights in technical data. The legal rights which the Government acquires in technical data in DOE contracts, other than management and operating contracts (see 970.2704) and other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, are set forth in Rights in Data—General clause at 48 CFR 52.227-14 as modified in accordance with 927.409 of this subpart. In those contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel the clause at 970.5227-1 shall be used. However, those clauses do not obtain for the Government delivery of any data whatsoever. Rather, known requirements for the technical data to be delivered by the contractor shall be set forth as part of the contract. For Research and Development (R&D) contracting, requirements for R&D results conveyed in scientific and technical information are addressed in 935.010 and should be set forth as part of the contract. The Additional Data Requirements clause at 48 CFR 52.227-16 may be used along with the Rights in Data—General clause to enable the contracting officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which a contractor may be required to deliver under either the contract or the Additional Data Requirements clause. This limitation is found in the

withholding provision of paragraph (g) of the Rights in Data—General clause at 48 CFR 52.227-14, as amended at 927.409(a), which provides that the contractor need not furnish limited rights data or restricted computer software. Unless Alternate II or III to the Rights in Data—General clause is used, it is specifically intended that the contractor may withhold limited rights data or restricted computer software even though a requirement for technical data specified in the contract or called for delivery pursuant to the Additional Data Requirements clause would otherwise require the delivery of such data.

#### **927.403-70-2 Negotiations and deviations.**

Contracting officers shall contact Patent Counsel assisting their contracting activity or the Assistant General Counsel for Technology Transfer and Intellectual Property for assistance in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures set forth in this subpart and 48 CFR subpart 27.4. In particular, contracting officers shall seek the prompt and timely advice of Patent Counsel regarding any situation not in conformance with this subpart and prescribed clauses, including the inclusion or modification of alternate paragraphs of the Rights in Data—General clause at 48 CFR 52.227-14, as amended at 927.409(a), the exclusion of specific items from said clause, the exclusion of the Additional Data Requirements clause at 48 CFR 52.227-16, and the inclusion of any special provisions in a particular contract.

- 21. Revise sections 927.404 and 927.404-70 to read as follows:

#### **927.404 Rights in data.**

#### **927.404-70 Rights in technical data.**

(a) Contractors are required by paragraph (d)(3) of the clause at 48 CFR 52.227-14, as modified pursuant to 927.409(a)(1), to acquire permission from DOE to assert copyright in any computer software first produced in the performance of the contract. This requirement reflects DOE's established software distribution program, and the Department's statutory dissemination obligations. When a contractor requests permission to assert copyright in accordance with paragraph (d)(3) of the Rights in Data—General clause as prescribed for use at 927.409(a)(1), Patent Counsel shall predicate its decision on the considerations reflected in paragraph (e) of the clause at 970.5227-2 Rights in Data—Technology Transfer.

(b) *Subcontracts.* (1)(i) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractor the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in this subpart, and subject to the approval of the contracting officer, where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractors or higher-tier subcontractors. In many, but not all instances, use of the Rights in Technical Data clause of 48 CFR 52.227-14, as modified pursuant to 927.409(a)(1), in a subcontract will provide for sufficient Government rights in and access to technical data. The inspection rights afforded in Alternate V of that clause normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract.

(ii) If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the contracting officer in writing and not proceed with the award of the subcontract without written authorization of the contracting officer.

(iii) In prime contracts (or higher-tier subcontracts) which contain the Additional Data Requirements clause at 48 CFR 52.227-16, it is the further responsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Data Requirements clause at 48 CFR 52.227-16 should not be used at any subcontracting tier where the technical data requirements are fully known. Normally, the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration work. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the subcontractor's limited rights data or restricted computer software for their private use, and they shall not acquire rights to limited rights data or restricted computer software on behalf of the Government for standard commercial

items without the prior approval of Patent Counsel.

(c) *Contractor licensing.* In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to limited rights data or restricted computer software or both necessary for the practice of subject inventions or data first produced or delivered in the performance of the contract. Where the purpose of the contract is research, development, or demonstration, contracting officers should consult with program officials and Patent Counsel to consider whether such rights should be acquired. No such rights should be obtained from a small business or non-profit organization, unless similar rights in background inventions of the small business or non-profit organization have been authorized in accordance with 35 U.S.C. 202(f). In all cases when the contractor has agreed to include a provision assuring commercial availability of background patents, consideration should be given to securing for the Government and responsible third parties at reasonable royalties and under appropriate restrictions, co-extensive license rights for data which are limited rights data and restricted computer software. When such license rights are deemed necessary, the Rights in Data-General clause at 48 CFR 52.227-14 should be supplemented by the addition of Alternate VI as provided at 952.227-14. Alternate VI will normally be sufficient to cover limited rights data and restricted computer software for items and processes that were used in the contract and are necessary in order to insure widespread commercial use or practical utilization of a subject of the contract. The expression "subject of the contract" is intended to limit the licensing required in Alternate VI to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in the patent clause at 952.227-13 pertaining to "Background Patents." Where, however, limited rights data and restricted computer software cover the main purpose or

basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products, or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (k)(1) through (k)(4) of Alternate VI of 952.227-14 should be modified or deleted. Paragraph (k) of 952.227-14 further provides that limited rights data or restricted computer software may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (k) of 952.227-14 to only those classes or categories of limited rights data and restricted computer software determined as being essential for licensing. Although contractor licensing may be required under paragraph (k) of 952.227-14, the final resolution of questions regarding the scope of such licenses and the terms thereof, including provisions for confidentiality, and reasonable royalties, is then left to the negotiation of the parties.

(d) *Access to restricted data.* In contracts involving access to certain categories of DOE-owned Category C-24 restricted data, as set forth in 10 CFR part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, Alternate VII shall be incorporated into the rights in technical data clause of the contract. In addition, in any other types of contracting situations in which the contractor may be given access to restricted data, appropriate limitations on the use of such data must be specified.

■ 22. Add section 927.404-71 to read as follows:

#### 927.404-71 Statutory programs.

Occasionally, Congress enacts legislation that authorizes or requires the Department to protect from public disclosure specific data first produced in the performance of the contract. Examples of such programs are "the Metals Initiative" and section 3001(d) of the Energy Policy Act. In such cases

DOE Patent Counsel is responsible for providing the appropriate contractual provisions for protecting the data in accordance with the statute. Generally, such clauses will be based upon the Rights in Data-General clause prescribed for use at 927.409(a) with appropriate modifications to define and protect the "protected data" in accordance with the applicable statute. When contracts under such statutes are to be awarded, contracting officers must acquire from Patent Counsel the appropriate contractual provisions. Additionally, the contracting officer must consult with DOE program personnel and Patent Counsel to identify data first produced in the performance of the contract that will be recognized by the parties as protected data and what data will be made available to the public notwithstanding the statutory authority to withhold the data from public dissemination.

#### 927.408 [Amended]

- 23. Section 927.408 is amended by removing "FAR" and adding "48 CFR" in its place.
- 24. Section 927.409 is amended by:
  - a. Revising the section heading as set forth below;
  - b. In paragraph (a)(1):
    - i. Removing "substituting the following paragraph (a) and including the following paragraph" and adding in its place "adding the following paragraph";
    - ii. Removing, in two places, "(d)(3)" and adding in its place "(d)(4)"; and
    - iii. Removing ":" and adding in its place ":".
  - c. Removing paragraph "(a) Definitions";
  - d. Redesignating paragraph (d)(3) as (d)(4); and
  - e. Redesignating paragraphs (s) as (l) and (t) as (m).

#### 927.409 Solicitation provisions and contract clauses.

\* \* \* \* \*

- 25. Section 927.409 is further amended in the table below, for each paragraph (including newly redesignated paragraphs) indicated in the left column, remove the word indicated in the middle column from where it appears in the paragraph, and add the word in the right column:

Paragraph	Remove	Add
(d)(4)(2)(i) in 3 places, (d)(4)(2)(ii) in 2 places, (d)(4)(2)(iii), (iv) and (v); (h) in 3 places.	FAR .....	48 CFR.
(d)(4)(i) .....	(i) .....	(e).
(d)(4)(ii) .....	(j) .....	(f).
(d)(4)(iii) .....	(n) .....	(i).

Paragraph	Remove	Add
(d)(4)(v) .....	(l) .....	(h).
(d)(4)(vi) .....	927.402-1(b) .....	927.402(b).
(d)(4)(vii) .....	927.404-70 .....	927.404-71.
(h) .....	FAR 27.406(b) .....	48 CFR 27.406-2(b).
(l) .....	FAR .....	48 CFR.

## PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 26. The authority citation for part 952 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 et seq.; 50 U.S.C. 2401 et seq.

### 952.227-9 [Amended]

- 27. In section 952.227-9, introductory text, remove “927.206–2” and add in its place “927.202–5”.

### 952.227-11 [Removed and Reserved]

- 28. Section 952.227-11 is removed and reserved.
- 29. Section 952.227-13 is amended by:
  - a. Revising the section heading;
  - b. Revising the clause heading;
  - c. Adding “or” to the end of paragraph (f)(ii);
  - d. Removing paragraph (k);
  - e. Redesignating paragraph (l) as (k) and paragraph (m) as (l); and
  - f. Adding “Alternate I” at the end of the section .

The revision and additions read as follows:

### 952.227-13 Patent rights-ownership by the Government.

\* \* \* \* \*

## PATENT RIGHTS—OWNERSHIP BY THE GOVERNMENT (XXX 20XX)

\* \* \* \* \*

Alternate I (XXX 20XX). As prescribed in 927.302-70(c), insert Alternate I under special circumstances to provide for a right to require licensing of third parties to background inventions:

(m) *Background Patents.* (1) *Background Patent* means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract—

(i) Which the Contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon; and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on

terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding paragraph (m)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that—

(i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) The Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(End of alternate)

### 952.227-13 and 952.227-14 [Amended]

- 30. Sections 952.227-13 and 952.227-14 are amended in the tables below:

- a. For each section indicated in the left column (including newly redesignated sections), remove the word(s) indicated in the middle column from where it appears in the section, and add the word(s) in the right column:

Section	Remove	Add
952.227-13(d)(4)(vi) .....	contractor .....	Contractor.
952.227-13(d)(4)(vii) in three places .....	contractor .....	Contractor.
952.227-13(e)(5) .....	FAR .....	48 CFR.
952.227-13(h)(1) in three places .....	contractor .....	Contractor.
952.227-13(h)(1) .....	48 CFR 952.227-11 .....	48 CFR 52.227-11.
952.227-13(h)(5) .....	contractor .....	Contractor.
952.227-13(h)(5) .....	contracting officer .....	Contracting Officer.
952.227-13(l)(2) .....	(m)(1) .....	(l)(1).
952.227-13(l)(3) .....	paragraph (m) .....	paragraph (l).
952.227-14 Alternate VI introductory text .....	48 CFR 927.404(l) .....	927.404-70(c),
952.227-14 Alternate VI, in the first sentence .....	contractor .....	Contractor.
952.227-14 Alternate VII second sentence .....	FAR .....	48 CFR.

- b. For each section indicated in the left column (including newly redesignated sections), remove the

punctuation mark indicated in the middle column from where it appears in

the section, and add the punctuation mark in the right column:

Section	Remove	Add
952.227-13(d)(4)(i) .....	:	—
952.227-13(d)(4)(i)(A) .....	,	;
952.227-13(d)(4)(v) .....	:	—

Section	Remove	Add
952.227-13(l)(1) .....	:	—
952.227-13(l)(2) .....	:	—
952.227-14 Alternate VI introductory text .....	:	:
952.227-14 Alternate VI(k), ending punctuation .....	:	—
952.227-14 Alternate VII introductory text .....	:	:

**952.227-82 [Removed and Reserved]**

- 31. Section 952.227-82 is removed and reserved.

**952.227-84 [Amended]**

- 32. For each section indicated in the left column, remove the word(s)

indicated in the middle column from where it appears in the section, and add the word(s) in the right column:

Section	Remove	Add
952.227-84 introductory text .....	48 CFR 927.409(t) .....	927.409(m).
952.227-84 provision .....	DEAR 952.227-11 .....	48 CFR 52.227-11.
952.227-84 provision, in two places .....	contractor .....	Contractor.

**PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS**

- 33. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 et seq.; 50 U.S.C. 2401 et seq.

- 34. Section 970.2701-1 is revised to read as follows:

**970.2701-1 Applicability.**

This subpart applies to negotiation of patent rights, rights in technical data provisions and other related provisions for the Department of Energy contracts for the management and operation of DOE's sites or facilities, including the conduct of research and development and nuclear weapons production, and contracts which involve major, long-term or continuing activities conducted at a DOE site, including decontamination and decommissioning activities.

- 35. Section 970.2702 is amended by revising the section heading to read as follows:

**970.2702 Patents and copyrights.**

\* \* \* \* \*

**970.2702-1 [Redesignated as 970.2702-1-2]**

- 36. Section 970.2702-1 is redesignated as section 970.2702-1-2, and newly redesignated section 970.2702-1-2 is revised to read as follows:

**970.2702-1-2 Solicitation provision and contract clauses.****(a) Authorization and consent.**

Contracting officers must include the clause at 970.5227-4, Authorization and Consent, instead of the clause at 48 CFR 52.227-1.

**(b) Notice and assistance regarding patent and copyright infringement.**

Contracting officers must include the

clause at 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement, instead of the clause at 48 CFR 52.227-2.

(c) **Patent indemnity.** (i) Contracting officers must include the clause at 970.5227-6, Patent Indemnity-Subcontracts, to assure that subcontracts appropriately address patent indemnity.

(ii) Normally, the clause at 48 CFR 52.227-3 would not be appropriate for an M&O contract; however, if there is a question, such as when the mission of the contractor involves production, the contracting officer must consult with local patent counsel and use the clause where appropriate.

**(d) Rights to proposal data.**

Contracting officers must include the clause at 48 CFR 52.227-23, Rights to Proposal Data, in all solicitations and contracts for the management and operation of DOE sites and facilities.

(e) **Notice of right to request patent waiver.** Contracting officers must include the provision at 970.5227-9 in all solicitations for contracts for the management and operation of DOE sites or facilities.

(f) **Royalties.** Contracting officers must include the solicitation provision at 970.5227-7, Royalty Information, and the clause at 970.5227-8, Refund of Royalties instead of the provision at 48 CFR 52.227-8 and the clause at 48 CFR 52.227-9, respectively.

**970.2702-2, 970.2702-3, 970.2702-4, 970.2702-5 and 970.2702-6 [Removed]**

- 37. Sections 970.2702-2, 970.2702-3, 970.2702-4, 970.2702-5 and 970.2702-6 are removed.

**970.2703-1 [Redesignated]**

- 38. Section 970.2703-1 is redesignated as section 970.2703-70-1.

**970.2703-2 [Redesignated and Amended]**

- 39. Section 970.2703-2 is redesignated as section 970.2703-70-2,

and newly redesignated section 970.2703-70-2 is amended by:

- a. Revising the section heading to read as set forth below;
- b. Adding in paragraph (a), first sentence, after “educational institution”, “, small business”; and
- c. Removing in paragraph (g), in 3 places, “Alternate 1” and adding in their places, “Alternate I”.
- 40. Section 970.2704 is amended by revising the section heading to read as follows:

**970.2704 Rights in data and copyrights.**

\* \* \* \* \*

**970.2704-1 [Redesignated and Amended]**

- 41. Section 970.2704-1 is redesignated as section 970.2704-70-1, and paragraph (a) is amended by:
- a. Adding in the second sentence after “statutory missions” “, including those set forth in the Energy Policy Act of 2005.”; and
- b. Removing “48 CFR” in four places.

**970.2704-2 [Redesignated and Amended]**

- 42. Section 970.2704-2 is redesignated as section 970.2704-70-2, and newly redesignated section 970.2704-70-2 is amended by:
- a. Adding at the end of paragraph (a), a new sentence;
- b. Removing in paragraphs (b) and (c)(1), “Additional Technical Data Requirements” and adding in its place “Additional Data Requirements”; and
- c. Revising the last sentence in paragraph (e).

The revision and additions read as follows:

**970.2704-70-2 Procedures.**

- a. \* \* \* For Research and Development Contracting, requirements for R&D results conveyed in scientific and technical information are addressed in section 935.010 and should be set forth as part of the contract.

Requirements are further addressed in DOE Order 241.1B, or its successor version, which sets forth requirements for scientific and technical information.

\* \* \* \* \* The clause at 970.5227-2, Rights in Data-Technology Transfer, provides for DOE approval of DOE's

taking a limited copyright license during the period in which the copyrighted data is being commercialized. The contractor must notify DOE (Patent Counsel and OSTI) when commercial activity ceases.

\* \* \* \* \*

#### 970.2704-70-2 [Amended]

■ 43. Newly redesignated section 970.2704-70-2, is further amended in the table below, for each paragraph indicated in the left column, remove the word(s) in the middle column from where it appears in the paragraph, and add the word(s) in the right column:

Paragraph	Remove	Add
(c)(1) in 2 places .....	48 CFR 970.5227-1 .....	970.5227-1
(c)(1) .....	48 CFR 970.5227-2 .....	970.5227-2
(c)(2) .....	DEAR 927.409 .....	927.409
(d)(1) .....	927.404-70 .....	927.404-71
(d)(2) .....	48 CFR 970.5227-1 .....	970.5227-1
(d)(2) .....	48 CFR 970.5227-2 .....	970.5227-2
(e) in first instance .....	48 CFR 952.227-14 .....	952.227-14
(e) .....	48 CFR 970.5227-1 .....	970.5227-1
(f) .....	48 CFR 970.5227-2 .....	970.5227-2
	48 CFR 970.5227-3 .....	970.5227-3
	48 CFR 970.5227-2 .....	970.5227-2

#### 970.2704-3 [Redesignated and Amended]

■ 44. Section 970.2704-3 is redesignated as 970.2704-70-3, and newly redesignated section 970.2704-70-3 is amended by:

- (a) Adding a sentence to the end of paragraphs (a) and (b); and
- (b) Removing, in paragraph (a), "48 CFR".

The additions read as follows:

#### 970.2704-70-3 Contract clauses.

(a) \* \* \* The contracting officer shall include the clause with its Alternate II in contracts where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project.

(b) \* \* \* The contracting officer shall include the clause with its Alternate II in contracts where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project.

■ 45. Section 970.5227-1 is amended by:

■ a. Removing "48 CFR 970.2704-3(a)" from the introductory text and adding in its place "48 CFR 970.2704-70-3(a);

- b. Revising the clause heading;
- c. Removing the paragraph designation numbers for paragraphs (a)(1) through (a)(7);
- d. Adding new paragraphs (b)(4) and (c)(3); and
- e. Adding Alternate II at the end of the section.

The revisions and additions read as follows:

#### 970.5227-1 Rights in data-facilities.

\* \* \* \* \*

#### RIGHTS IN DATA—FACILITIES (XXX 20XX)

\* \* \* \* \*

(b) \* \* \*

(4) In the performance of DOE contracted obligations, each contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, the Office of Scientific and Technical Information (OSTI). All such information is reportable to OSTI, whether it is publicly releasable, controlled unclassified information, or classified, unless specifically excluded under contract.

(c) \* \* \*

(3) If the Contractor has not been granted permission to copyright technical data or computer software first produced under the

contract, and if the Government desires to obtain copyright in such data and computer software, the Contracting Officer may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

\* \* \* \* \*

Alternate II (XXX 20XX). As prescribed in 970.2704-70-3(a), where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice of the basic clause: (f) This "limited rights data" may be disclosed in future solicitations for the continuation or completion of the work contemplated under this contract under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

#### 970.5227-1 [Amended]

■ 46. Section 970.5227-1 is further amended in the tables below:

■ a. For each paragraph indicated in the left column, remove the word(s) in the middle column from where it appears in the paragraph, and add the word(s) in the right column:

Paragraph	Remove	Add
(b)(1)(iv) in three places, and Alternate I .....	contracting officer .....	Contracting Officer.
(b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) in two places, (b)(1)(v), (b)(2)(ii) in three places, (b)(3), (e) in two places, (e) Limited Rights Notice paragraph (c), (f)(1) in two places, and (f)(3).	Contract .....	contract.
(c) .....	Copyrighted Material .....	Copyrighted material.
(d)(1) .....	48 CFR Subpart 27.4 .....	48 CFR subpart 27.4.
(d)(1), in the last sentence .....	contractor .....	Contractor.
(d)(1), (d)(2)(i), (d)(2)(ii) .....	contracting officer .....	Contracting Officer.

Paragraph	Remove	Add
Alternate I introductory text .....	48 CFR 970.2704-3(a). .... 48 CFR 970.5227-1 .....	970.2704-70-3(a) 970.5227-1.

■ b. For each paragraph indicated in the left column, remove the punctuation mark in the middle column from where

it appears in the paragraph, and add the punctuation mark in the right column:

Paragraph	Remove	Add
At the end of introductory text for paragraphs (b)(1), (b)(2), (d)(2) and (e); ..... (f) Restricted Rights Notice-Long Form (b)	:	—

- 47. Section 970.5227-2 is amended by:
  - a. Revising the introductory text and clause date;
  - b. Revising paragraph (a);
  - c. Revising paragraph (b)(1) introductory text;
  - d. Revising paragraph (b)(1)(iv);
  - e. Revising paragraph (b)(2)(ii);
  - f. Adding new paragraph (b)(4);
  - g. Adding new paragraph (c)(3);
  - h. Revising paragraphs (e)(1) introductory text and (e)(1)(iii);
  - i. Adding paragraph (e)(1)(iv);
  - j. Revising paragraph (e)(2);
  - k. Revising paragraph (e)(3);
  - l. Removing in paragraph (e)(5), the first word in the paragraph, “a”, and adding in its place “A”;
  - m. Redesignating paragraphs (f) through (i) as (g) through (j);
  - n. Adding a new paragraph (f);
  - o. Revising newly redesignated paragraph (g)(1);
  - p. Revising the heading of newly redesignated paragraph (h); and
  - q. Adding new Alternate II at the end of the section.

The additions and revisions read as follows:

#### **970.5227-2 Rights in data-technology transfer.**

As prescribed in 970.2704-70-3(b), insert the following clause:

\* \* \* (XXX 20XX)

(a) *Definitions.*

*Assistant General Counsel for Technology Transfer and Intellectual Property* is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

*Computer data bases*, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software*, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules,

routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

*Data*, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information. *Department of Energy (DOE)*, as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated. *Limited rights data*, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government’s rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (h) of this clause.

*Open source software*, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments. *Patent Counsel* means the DOE or NNSA Patent Counsel assisting the contracting activity.

*Restricted computer software*, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government’s rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (i) of this clause.

*Technical data*, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and

technical data formatted as a computer data base.

*Unlimited rights*, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) The Government shall have—

\* \* \* \* \*

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this contract delivered to the Government or otherwise disposed of by the Contractor, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. When delivering all contractor produced computer software to the Energy Science and Technology Software Center (ESTSC) in the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this clause. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (g) of this clause (“Rights in Limited Rights Data”) or paragraph (h) of this clause (“Rights in Restricted Computer Software”); and

\* \* \* \* \*

(2) \* \* \*

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, data it first produces in the performance of this contract, except for data in DOE’s Uranium Enrichment Technology, including diffusion, centrifuge, atomic vapor laser isotope separation, and except restricted data category C-24, 10 CFR part 725, provided the data requirements of this contract have been met as of the date of the private use of such data; and

\* \* \* \* \*

(4) In the performance of DOE contracted obligations, each contractor is required to

manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, the Office of Scientific and Technical Information (OSTI). All such information is reportable to OSTI, whether it is publicly releasable, controlled unclassified information, or classified, unless specifically excluded under contract.

(c) \* \* \*

(3) If the Contractor has not been granted permission to copyright data or computer software first produced under the contract where such permission is necessary, i.e., for works other than scientific and technical journal articles and data produced under a CRADA, and if the Government desires to obtain copyright in such data or computer software, the Contracting Officer may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

\* \* \* \* \*

(e) \* \* \*

(1) *Contractor request to assert copyright.*

\* \* \* \* \*

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined exclusively by DOE will be expressly withheld. Such excepted categories include data whose release—

(A) Would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes;

(B) Would not enhance the appropriate transfer or dissemination and commercialization of such data;

(C) Would have a negative impact on U.S. industrial competitiveness;

(D) Would prevent DOE from meeting its obligations under treaties and international agreements; or

(E) Would be detrimental to one or more of DOE's programs.

(iv) Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified under this contract as well as those additional treaties and international agreements which DOE may from time to time identify by unilateral amendment to the contract; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such

treaty or international agreement is added to this contract. Also, the Contractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Contractor under the contract without first obtaining the advanced written permission of the Contracting Officer.

(2) *Patent Counsel Review and Response to Contractor's Request.* The Patent Counsel shall use its reasonable best efforts to respond in writing within 60 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold Patent Counsel's permission for the Contractor to assert copyright or advise the Contractor that Patent Counsel needs additional time to respond, and the reasons therefore. If Patent Counsel grants permission for the Contractor to assert copyright in computer software, the permission extends to subsequent versions with the same name that incorporates the same functions of the original program, unless otherwise directed.

(3) *Permission for contractor to assert copyright.* (i) For computer software, the Contractor shall furnish to the DOE's ESTSC, at the time permission to assert copyright is given under paragraph (e)(2) of this clause—

(A) Announcement information/metadata contained in the Software Announcement Notice 241.4;

(B) The source code and/or executable file for each software program; and

(C) Documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format).

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Contracting Officer, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's OSTI a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iv) During the period in which commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government.

(v) When the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given

permission to assert copyright or at the end of the specified periods as prescribed by Patent Counsel, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(vi) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to the ESTSC the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals.) In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year. If requested, the Contractor will provide annually to Patent Counsel a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year.

(vii) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, published, licensed or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows: Notice: These data were produced by (insert name of Contractor) under Contract No. \_\_\_\_\_ with the Department of Energy. During the period of commercialization or such other time period as specified by DOE, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. Subsequent to that period, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any data, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(End of notice)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the software as provided for in paragraph (e)(3)(iv) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in paragraph (e)(1)(i) of this clause. Before licensing under paragraph (e)(3)(vi) of this clause, DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—“Appeals”.

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(x) At any time the Contractor abandons commercialization activities for data for which the Contractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

\* \* \* \* \*

(f) *Open software source.* The Contractor may release computer software first produced by the Contractor in the performance of this contract under an open source software license. Such software shall hereinafter be referred to as open source software or OSS, subject to the following:

(1) *DOE Program notice for copyright assertion for OSS.* (i) The Contractor shall provide written notice to each DOE Program or Programs that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) has previously provided blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. If Program has neither consented nor objected to the assertion of copyright within two weeks of such written notification, the Contractor may assert copyright in the software with Patent Counsel approval. If notification of funding DOE Program(s) is not practicable, the Contractor shall consult with Patent Counsel, which may provide approval.

For software developed under a CRADA, User Facility Agreement, or WFO Agreement, authorization from the CRADA Participant(s) or User Facility User(s), or WFO Sponsor(s), as applicable, shall be additionally obtained for OSS release.

(ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency(ies). However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) *Assert copyright in the OSS.* Once the Contractor has met the program approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or WFO Agreement, either by the Contractor, CRADA Participant, User Facility User, or WFO Sponsor, as applicable, which precludes marking such OSS as protectable from public distribution.

(3) *Submit Software Announcement Notice 241.4 to ESTSC.* The Contractor must submit Software Announcement Notice (AN) 241.4 (or the current notice as may be required by DOE) to DOE's ESTSC. In the AN 241.4, the Contractor shall provide the unique URL (i.e. a persistent identifier) from which the software can be obtained so that ESTSC can announce the availability of the OSS and the public has access via the URL.

(4) *Maintain OSS record.* The Contractor must maintain a record, available for inspection by DOE, of software distributed as OSS. Upon request of the Patent Counsel, the Contractor shall provide the Patent Counsel a copy of the record. The record shall contain the following information—

(i) Name of the computer software (or other identifier);  
 (ii) An abstract with description or purpose of the software;  
 (iii) Evidence of the funding source's approval or compliance with notification procedure in paragraph (f)(1) of this clause;

(iv) The planned or actual OSS location on the Contractor's Web page or other publicly available location (see paragraph (f)(5) of this clause);

(v) Any names, logos or other identifying marks used in connection with the OSS, whether or not registered;

(vi) The type of OSS license used; and  
 (vii) A release version of the software for OSS containing derivative works.

(5) *Provide public access to the OSS.* The Contractor shall ensure that the OSS is publicly accessible as an open source via the Contractor's Web site, Open Source Bulletin Boards operated by third parties, DOE, or other industry methods.

(6) *Select an OSS license.* Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry

standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the Assistant General Counsel for Technology Transfer and Intellectual Property, may periodically issue guidance on OSS licenses. Each Contractor-created OSS license, must contain, at a minimum, the following provisions—

(i) A disclaimer or equivalent that disclaims the Government's and Contractor's liability for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works. This provision may allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) *Collection of administrative costs* is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.

(8) *Relationship to other required clauses in the contract.* OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference, as set forth in paragraphs (g) and (h) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227-3). The requirement for the Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties, as set forth elsewhere in this clause, is not modified by this section.

(9) *Government license.* For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted in accordance with paragraph (f)(2) of this clause to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(10) *Contractor abandons OSS.* If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to ESTSC the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to ESTSC.

(g) *Subcontracting.* (1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use, in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR subpart 27.4 (as supplemented by 48 CFR 927.400 through 48 CFR 927.409), the clause “Rights in Data-General” at 48 CFR 52.227-14 modified in accordance with 48 CFR 927.409(a). The Contractor shall include Alternate V of 48 CFR 52.227-14, however, Alternates II through IV may be included as appropriate with the prior approval of the

Patent Counsel. The Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of the Patent Counsel. The clause at 48 CFR 52.227-16, "Additional Data Requirements", shall be included in subcontracts in accordance with 48 CFR 927.409(h). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its with DOE, the Contractor shall

instead use the "Rights in Data-Facilities" clause at 48 CFR 970.5227-1.

\* \* \* \* \*

(h) *Rights in limited rights data.* \* \* \*

Alternate II (XXX 20XX). As prescribed in 970.2704-70-3(b), where government facilities are being constructed, modified, or in decontamination and decommissioning, and it is anticipated that further solicitation may be required to complete the project, insert paragraph (f) in the Limited Rights Notice of the basic clause: (f) This "limited rights data" may be disclosed in future solicitations for the continuation or completion of the work contemplated under

this contract under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

(End Clause)

**970.5227-2 [Amended]**

- 48. Section 970.5227-2 is further amended in the tables below:
- a. For each paragraph (including newly redesignated paragraphs) indicated in the left column, remove the word(s) in the middle column from where it appears in the paragraph, and add the word(s) in the right column:

Paragraph	Remove	Add
(b)(1)(i), (b)(1)(ii) in two places, (b)(1)(iii), (b)(1)(v), (b)(2)(ii) in two places, (c)(2), (d)(1), (d)(2) in two places, (e), (e)(1)(i), (h), (h) in Limited Rights notice (c), and (i)(1) in two places.	Contract .....	contract.
(b)(1)(ii) in first instance .....	DOE .....	Patent Counsel.
(c)(1) and (2) .....	(d) and (e) .....	(d), (e) or (f).
(d)(1), (g)(2)(ii), .....	contracting officer .....	Contracting Officer.
(d)(2), (d)(3) .....	contractor .....	Contractor.
(e)(4) .....	Department of Energy .....	Patent Counsel.
(e)(4) in two places in the Notice .....	(c)(3) .....	(e)(3).
(i)(3) .....	Contract .....	contract.
Alternate I .....	Contract .....	contract.
	(DEC 2000) .....	(XXX 20XX).
	48 CFR 970.2704-3(b) .....	970.2704-70-3(b).
	48 CFR 970.5227-2 .....	970.5227-2.

- b. For each paragraph (including newly redesignated paragraphs) indicated in the left column, remove the

punctuation mark in the middle column from where it appears in the paragraph,

and add the punctuation mark in the right column:

Paragraph	Remove	Add
(b)(2), (e)(1)(i), .....	:	—
(e)(1)(i)(A), (B), (C), (D), (E) .....	,	;

- 49. Section 970.5227-3 is amended by:
  - a. Removing "48 CFR 970.2770-4(a)" in the introductory text and adding in its place "970.2770-4(a)";
  - b. Revising the clause heading;
  - c. Removing in paragraph (a)(2), in two places, "Intellectual Property", and adding in its place "intellectual property";
  - d. Adding in paragraph (a)(2), in the last sentence, "exchanges" after "personnel";
  - e. Adding new paragraph (a)(3);
  - f. Revising paragraph (b);
  - g. Revising paragraphs (d) heading, (d)(1) and (d)(10);
  - h. Revising the heading of paragraph (f);
  - i. Adding in paragraph (f)(1)(ii)(B) "or assigning to" after "licensing", in the first occurrence and removing "." and adding in its place ";";
  - j. Adding new paragraphs (f)(1)(ii)(C) and (f)(1)(ii)(D);
  - k. Removing in paragraph (h)(1), "75 percent" and adding in its place "15 percent";

- l. Removing the last sentence in paragraph (h)(2);
- m. Adding in paragraph (h)(3), a new sentence to the end of the paragraph;
- n. Adding in paragraph (j)(1), "as amended, or is subject to export control for nonproliferation and other nuclear-related national security purposes.", at the end of the first sentence;
- o. In paragraph (n)(2)(ii):
- i. Removing "Intellectual Property" and adding "intellectual property" in its place;
- ii. Removing ";" and adding in its place ";" and
- iii. Adding three sentences to the end of the paragraph;
- p. Adding two sentences to the end of paragraph (n)(3)(ii);
- q. Revising the last sentence of paragraph (n)(4)(i);
- r. Adding "or" to the end of paragraph (n)(5)(i)(A)(1);
- s. Adding paragraph (p);
- t. Revising Alternate I by removing all of paragraph (p); and
- u. Revising Alternate I paragraph (q).

The additions and revisions read as follows:

**970.5227-3 Technology transfer mission.**

\* \* \* \* \*

**TECHNOLOGY TRANSFER MISSION (XXX 20XX)**

(a) \* \* \*

(3) *Trademarks and service marks.* The Contractor, with notification to DOE Patent Counsel, is authorized to protect goods/services resulting from work at the Laboratory through Trademark and Service Mark protection. The Laboratory name and associated logos are owned by the Department of Energy and shall be protected by DOE Patent Counsel. In furtherance of the technology transfer mission, should the Contractor want to assert trademark or service mark protection for any word, phrase, symbol, design, or combination thereof that includes or is associated with the Laboratory name, the Contractor must first notify the Department of Energy Patent Counsel. All marks, whether or not registered with the United States Patent and Trademark Office, are to be included in the "Intellectual property rights" paragraph (i) of this clause, below, regarding transfer to successor

contractor, DOE reserves the right to require the Contractor to cancel registration of the mark or cease use of the mark.

**(b) Definitions.**

**Assignment** means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

**Bailment** means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of laboratory biological materials or laboratory tangible research product for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

**Contractor's Laboratory Director** means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

**Cooperative Research and Development Agreement (CRADA)** means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

**Department of Energy (DOE)**, as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

**Intellectual property** means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

**Joint Work Statement (JWS)** means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following—

**(i) Purpose;**

**(ii) Scope of work** which delineates the rights and responsibilities of the Government, the Contractor and third parties, one of which must be a non-Federal party;

**(iii) Schedule for the work;** and

**(iv) Cost and resource contributions** of the parties associated with the work and the schedule.

**Laboratory biological materials** means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or

associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

**Laboratory tangible research product** means tangible material results of research which—

**(i)** Are provided to permit replication, reproduction, evaluation or confirmation of the research effort, or to evaluate its potential commercial utility;

**(ii)** Are not materials generally commercially available; and

**(iii)** Were made under this contract by laboratory employees or through the use of laboratory research facilities.

**Patent Counsel** means the DOE or NNSA Patent Counsel assisting the contracting activity. The Patent Counsel is the first and primary point of contact for activities described in this clause.

\* \* \* \* \*

**(d) Conflicts of interest-technology transfer.**

\* \* \*

**(1)** Inform employees of and require conformance with standards of conduct and integrity in connection with research involving non-Federal sponsors and, for CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

\* \* \* \* \*

**(10)** Notify the Contracting Officer and the funding party or program prior to evaluating a proposal to be funded by a third party or a DOE program, when the subject matter of the proposal involves an elected or waived subject invention under this contract or one in which the Contractor intends to elect to retain title under this contract.

\* \* \* \* \*

**(f) U.S. industrial competitiveness for licensing and assignments of intellectual property.**

**(i)** \* \* \*

**(ii)** \* \* \*

**(C)** If the proposed licensee, assignee, or parent of either type of entity is subject to the control of a foreign company or government, the Contractor, with the assistance of the Contracting Officer, in considering the factors set forth in paragraph (f)(1)(ii)(B) of this clause, may rely upon the following information—

**(1)** U.S. Trade Representative Inventory of Foreign Trade Barriers;

**(2)** U.S. Trade Representative Special 301 Report; and

**(3)** Such other relevant information available to the Contracting Officer; and

**(D)** The Contractor should review the U.S. Trade Representative Web site at: <http://www.ustr.gov> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision.

\* \* \* \* \*

**(h)** \* \* \*

**(3)** The Contractor shall notify the Contracting Officer of any changes to that policy, and such changes, shall be subject to the approval of the Contracting Officer.

\* \* \* \* \*

**(n)** \* \* \*

**(2)** \* \* \*

**(ii)** \* \* \* The Contractor, in considering these factors, may rely upon the following information—

**(A)** U.S. Trade Representative Inventory of Foreign Trade Barriers,

**(B)** U.S. Trade Representative Special 301 Report; and

**(C)** Such other relevant information available to the Contracting Officer. The Contractor should review the U.S. Trade Representative Web site at <http://www.ustr.gov> for the most current versions of these reports and other relevant information. The Contractor is encouraged to utilize other available resources, as necessary, to allow for a complete and informed decision;

\* \* \* \* \*

**(3)** \* \* \*

**(ii)** \* \* \* A final report, upon completion of a CRADA, shall be provided to DOE's Office of Scientific and Technical Information; reports marked as Protected CRADA Information will not be released to the public for a period up to five years, in accordance with the terms of the CRADA.

\* \* \* \* \*

**(4)** \* \* \*

**(i)** \* \* \* The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

\* \* \* \* \*

**(p) Technology partnership ombudsman.**

**(1)** The Contractor agrees to establish a position to be known as "Technology Partnership Ombudsman," to help resolve complaints from outside organizations regarding the policies and actions of the Contractor with respect to technology partnerships (including CRADAs), patents owned by the Contractor for inventions made at the laboratory, and technology licensing.

**(2)** The Ombudsman shall be a senior official of the Contractor's laboratory staff, who is not involved in day-to-day technology partnerships, patents or technology licensing, or, if appointed from outside the laboratory or facility, shall function as such senior official.

**(3)** The duties of the Technology Partnership Ombudsman shall include—

**(i)** Serving as the focal point for assisting the public and industry in resolving complaints and disputes with the laboratory or facility regarding technology partnerships, patents, and technology licensing;

**(ii)** Promoting the use of collaborative alternative dispute resolution techniques such as mediation to facilitate the speedy and low cost resolution of complaints and disputes, when appropriate; and

**(iii)** Submitting a quarterly report, in a format provided by DOE, to the Secretary of Energy, the Administrator for National Nuclear Security Administration, the Director of the DOE Office of Dispute Resolution, and the Contracting Officer concerning the number and nature of complaints and disputes raised, along with the Ombudsman's assessment of their

resolution, consistent with the protection of confidential and sensitive information.

\* \* \* \*

**ALTERNATE I \* \* \***

(q) Nothing in paragraphs (c) Allowable costs, (e) Fairness of opportunity, (f) U.S. industrial competitiveness, (g) Indemnity—product liability, (h) Disposition of income,

and (i) Transfer to successor contractor of this clause are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

\* \* \* \*

**970.5227-3 [Amended]**

■ 50. Section 970.5227-3 is further amended in the tables below:

■ a. For each paragraph indicated in the left column, remove the word indicated in the middle column from where it appears in the paragraphs, and add the word in the right column:

Paragraph	Remove	Add
(c) heading .....	<i>Allowable Costs</i> .....	<i>Allowable costs</i> .
(c)(1) .....	Contract .....	contract.
(c)(1) and (c)(2) .....	contracting officer .....	Contracting Officer.
(d) introductory text .....	Intellectual Property .....	intellectual property.
(d) introductory text in two places, (d)(6), (d)(7), (d)(8). .....	other .....	all.
(d)(2), (d)(4) .....	contracting officer .....	Contracting Officer.
(d)(2), (d)(4), (d)(6), (d)(7), (d)(8), and (d)(9) .....	Contractor .....	contractor.
(d)(6) and (d)(7) .....	Intellectual Property .....	intellectual property.
(e) .....	Contract .....	contract.
(f)(1), (f)(1)(ii)(B) .....	<i>Fairness of Opportunity</i> .....	<i>Fairness of opportunity</i> .
(f)(1)(i), (f)(1)(ii)(A) .....	Intellectual Property .....	intellectual property.
(f)(1)(i) .....	whether .....	Whether.
(f)(1)(ii)(A) .....	; or .....	; and.
(f)(1)(ii)(B) .....	; and .....	;
(f)(1)(ii)(B) .....	in .....	In.
(f)(1)(ii)(B) .....	licensing .....	licensing or assigning.
(f)(2) in two places, .....	contracting officer .....	;
(g) .....	<i>Product Liability</i> .....	<i>product liability</i> .
(h) heading .....	contracting officer .....	Contracting Officer.
(h)(1) .....	<i>Disposition of Income</i> .....	<i>Disposition of income</i> .
(h)(3) in two places .....	Contract .....	contract.
(i) (i) in three places .....	contracting officer .....	Contracting Officer.
(i) and (l) .....	Contract .....	contract.
(j)(1) .....	contracting officer .....	Contracting Officer.
(j)(2) .....	Intellectual Property .....	Intellectual property.
(k), (l) and (m) .....	contracting officer .....	Contracting Officer.
(k) and (m) .....	Technical Data .....	technical data.
(n) heading .....	contract .....	Contracting Officer.
	<i>Technology Transfer Through Cooperative Research and Development Agreements</i> .	<i>Technology transfer through Cooperative Research and Development Agreements (CRADA)</i> .
(n) introductory text .....	Joint Work Statement .....	joint work statement.
(n)(1)(i) .....	contracting officer .....	Contracting Officer.
(n)(1)(ii) .....	Intellectual Property .....	intellectual property.
(n)(1) in three places, (n)(1)(iii) in two places, (n)(1)(iv) in three places, (n)(3)(ii) in two places. .....	Fairness of Opportunity .....	fairness of opportunity.
(n)(2)(iii) .....	contracting officer .....	Contracting Officer.
(n)(2)(iv) .....	Fairness of Opportunity .....	;
(n)(3)(iii) .....	Conflicts of Interest .....	conflicts of interest.
(n)(4) heading .....	Intellectual Property .....	intellectual property.
(n)(4)(i) .....	Contract .....	contract.
(n)(4)(iii) .....	holds .....	Holds
(n)(5)(i)(A)(1) .....	CRADA; .....	CRADA; or.
(n)(5)(i)(A)(2) .....	receives .....	Receives.
(n)(5)(ii), (n)(5)(iii) in two places .....	contracting officer .....	Contracting Officer.
(o) .....	contracting officer .....	Contracting Officer.
Alternate I .....	48 CFR 970.2770-4(b) .....	970.2770-4(b).
Alternate II .....	48 CFR 970.2770-4(c) .....	970.2770-4(c).

■ b. For each paragraph indicated in the left column, remove the punctuation

mark indicated in the middle column from where it appears in the section,

and add the punctuation mark in the right column:

Paragraph	Remove	Add
(d) introductory text .....	to:	to—
(f)(1) .....	:	—
(n)(2) .....	:	—
(n)(2)(ii) .....	;	.
(n)(5)(i) .....	;	—
(n)(5)(i)(A)(1) .....	;	; or

**970.5227–4, 970.5227–5, 970.5227–6,  
970.5227–7, 970.5227–8, and 970.5227–9**

**[Amended]**

- 51. Amend sections 970.5227–4, 970.5227–5, 970.5227–6, 970.5227–7,

970.5227–8 and 970.5227–9 as follows in the table below:

- a. For each section indicated in the left column, remove the word(s) indicated in the middle column from

where it appears in the section, and add the word(s) in the right column:

Section	Remove	Add
970.5227–4, introductory text .....	970.2702–1 .....	970.2701–1–2(a)(1).
970.5227–4(c)(1) .....	52.227–1 .....	48 CFR 52.227–1.
970.5227–4(c)(1) .....	Alternate 1 .....	Alternate I.
970.5227–5, introductory text .....	970.2702 .....	970.2702–1–2(b).
970.5227–6 .....	FAR 48 CFR 52.227–3 .....	48 CFR 52.227–3.
970.5227–7, introductory text .....	970.2702–4 .....	970.2702–2–5.
970.5227–7, paragraph (b) .....	Copies of current licenses. .....	<i>Copies of current licenses.</i>
970.5227–8, introductory text .....	970.2702–4 .....	970.2702–2–5.
970.5227–8 (a) in two places, (d) and (e) .....	Contract .....	contract.
970.5227–9, introductory text .....	970.2704–6 .....	970.2702–1–2(i).

- b. For each section indicated in the left column, remove the punctuation

mark indicated in the middle column from where it appears in the section,

and add the punctuation mark in the right column:

Section	Remove	Add
970.5227–7(a) .....	.....	:
970.5227–8(a) .....	.....	:

- 52. Section 970.5227–10 is amended by:

- a. Revising the section heading;
- b. Removing “970.2703–1(b)(2)” in the introductory text and adding in its place, “970.2703–70–1(b)(2)”.
- c. Removing the paragraph designation numbers for paragraphs (a)(1) through (a)(9);
- d. Revising paragraph (b)(2)(ii);
- e. Adding new paragraphs (b)(2)(ii)(D) and (b)(2)(ii)(E);
- f. Revising paragraph (c)(3); and
- g. Adding, in paragraph (f)(3), before “continue”, “file an application.”.

The additions and revisions read as follows:

**970.5227–10 Patent rights management and operating contracts, nonprofit organization or small business firm contractor.**

\* \* \* \* \*

**PATENT RIGHTS—MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (XXX 20XX)**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) As determined by the DOE, inventions made under any agreement, contract or subcontract, related to the exceptional circumstances under 35 U.S.C. 202, under which the right to retain title to subject inventions may be restricted or eliminated, maintained by the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, include but are not limited to the following—

\* \* \* \* \*

(D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”; and

(E) Solid State Lighting (SSL) Program, if the Contractor is a participant in the “Core Technology Program”.

\* \* \* \* \*

(c) \* \* \*

(3) *Filing of patent applications by the Contractor.* The Contractor will file a provisional, nonprovisional, or Patent Cooperative Treaty patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding first filed patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

\* \* \* \* \*

**970.5227–10 [Amended]**

- 53. Section 970.5227–10 is further amended in the tables below:

- a. For each paragraph indicated in the left column, remove the word indicated in the middle column from where it appears in the paragraphs, and add the word in the right column:

Section	Remove	Add
(a) <i>Subject Invention</i> definition, (b)(1) in the first sentence, (c)(1) in four places.	contractor .....	Contractor.
(c)(1) .....	B&R .....	Budget and Resources (B&R).
(e)(2), in two places .....	Part .....	part.
(f)(3), (f)(4) .....	contractor .....	Contractor.
(g)(2), in two places .....	48 CFR 952.227-11 .....	48 CFR 52.227-11.
(n) heading .....	<i>Examination of Records Relating to Subject Inventions—</i>	<i>Records relating to subject inventions—</i>
(o) heading .....	<i>Facilities License</i> .....	<i>Facilities license</i> .
Alternate 1, introductory text .....	<i>Weapons Related Subject Invention</i> .....	<i>Weapons related subject invention</i> .
Alternate 1, heading .....	Alternate 1 .....	Alternate I.
Alternate I (a) .....	(10) Weapons Related Subject Invention .....	<i>Weapons related subject invention</i> .
Alternate I (b) .....	<i>Principal Rights</i> .....	<i>principal rights</i> .

■ b. For each paragraph indicated in the left column, remove the punctuation mark indicated in the middle column from where it appears in the section, and add the punctuation mark in the right column:

Section	Remove	Add
(b)(2)(i), (f)(6) .....	:	—
(b)(2)(ii)(C) .....	.	;
(f)(1)(i) .....	,	and
(k) .....	—	:
(c), (e), (f), (g)(1), (m), (n), (p), (q), Alternate I (b) .....	—	.

■ 54. Section 970.5227-11 is amended by:  
 ■ a. Removing “970.2703-1(b)(4):” in the introductory text, and adding in its place “970.2703-70-1(b)(4):”;  
 ■ b. Revising the clause heading; and  
 ■ c. Removing in paragraph (a), the paragraph designations numbers (a)(1) through (a)(7).

The additions and revisions read as follows:

**970.5227-11 Patent rights—management and operating contracts, for-profit contractor, non-technology transfer.**

\* \* \* \* \*

**PATENT RIGHTS—MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (XXX 20XX)**

\* \* \* \* \*

**970.5227-11 [Amended]**

■ 55. Section 970.5227-11 is further amended in the tables below:

■ a. For each paragraph indicated in the left column, remove the word indicated in the middle column from where it appears in the paragraphs, and add the word in the right column:

Section	Remove	Add
(b)(2) .....	an	contractor.
(c)(2), (c)(4) .....	Contractor personnel .....	contractor personnel.
(d)(1) heading .....	Contractor License .....	<i>Contractor license</i> .
(d)(1)(iii) and (iv) .....	Part .....	part.
(d), (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(iv) in headings only .....	Contractor .....	contractor.
(k) heading .....	License .....	<i>license</i> .

■ b. For each paragraph indicated in the left column, remove the punctuation mark indicated in the middle column from where it appears in the section, and add the punctuation mark in the right column:

Section	Remove	Add
(b), (c), (e), (f), (g), (j), and (l) .....	—	.
(c)(2) .....	:	—
(f)(2), (f)(3) .....	—	.

■ 56. Section 970.5227-12 is amended by:  
 ■ a. Revising the section heading and introductory text;  
 ■ b. Revising the clause heading;  
 ■ c. In paragraph (a):  
 ■ i. Removing the paragraph designation numbers for (a)(1) through (a)(8);

■ ii. Adding, in alphabetical order, a new definition for “*Department of Energy (DOE)*”; and  
 ■ iii. Revising the definition for “*Patent Counsel*”;  
 ■ d. Revising paragraphs (b)(5)(ii) and (iii);  
 ■ e. Revising paragraph (c)(4), in the first sentence, by removing “an initial patent application” and adding in its

place “a provisional, nonprovisional, or Patent Cooperative Treaty patent application” and in the second sentence, by removing “initial” and adding “first filed” in its place.  
 ■ f. Adding in paragraph (d)(4), before “discontinue”, “not file a nonprovisional application, or to”;  
 ■ g. Revising paragraph (m);

- h. Removing in paragraph (r) “(1)” and “(2)”;
- i. Adding a new sentence, at the end of paragraph (t); and
- j. Redesignating Alternate 1 as Alternate I, and revising the heading and text.

The revisions and additions read as follows:

**970.5227-12 Patent rights management and operating contracts, for-profit contractor, advance class waiver.**

Insert the following clause in solicitations and contracts in accordance with 970.2703-70-1(b)(3):

**PATENT RIGHTS—MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (XXX 20XX)**

(a) \* \* \*

*Department of Energy (DOE)*, as used in this clause, includes the National Nuclear Security Administration (NNSA), and unless otherwise identified or indicated, includes the coordinated efforts of the DOE and NNSA.

\* \* \* \* \*

*Patent Counsel* means the DOE Patent Counsel assisting the DOE contracting activity.

The Patent Counsel is the first and primary point of contact for activities described in this clause.

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) Inventions made under any agreement, contract or subcontract, related to the following initiatives or programs are exceptional circumstance subject inventions—

- (A) DOE Steel Initiative and Metals Initiative;
- (B) U.S. Advanced Battery Consortium;
- (C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);
- (D) Solid State Energy Conversion Alliance (SECA), if the Contractor is a participant in the “Core Technology Program”; and
- (E) Solid State Lighting (SSL) Program, if the Contractor is a participant in the “Core Technology Program”.

(iii) Exceptional circumstances subject inventions are as set forth in the applicable class advance waiver. In addition, DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

\* \* \* \* \*

(m) *Facilities license*. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility—

(1) To practice or have practiced by or for the Government at the facility; and

(2) To transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope

of, or title to, any rights or patents herein licensed.

\* \* \* \* \*  
(t) \* \* \* At the discretion of the Patent Counsel, authority to review publications prior to release may be delegated to the Contractor.

\* \* \* \* \*

*Alternate I Weapons related subject inventions.* As prescribed at 970.2703-70-2(g), insert the following definition after the last definition in paragraph (a) and add subparagraph (b)(10):

(a) *Definitions.* *Weapons related subject invention* means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) *Allocation of principal rights.* (10)  
*Weapons related subject inventions.* Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions.

(End of alternate)

**970.5227-12 [Amended]**

■ 57. Section 970.5227-12 is further amended in the tables below:

■ a. For each paragraph indicated in the left column, remove the word indicated in the middle column from where it appears in the paragraphs, and add the word in the right column:

Paragraph	Remove	Add
(a) <i>DOE licensing regulations and DOE patent waiver regulations</i> definitions, (e)(3) ..	Part .....	part.
(a) <i>Subject invention definition</i> .....	contractor .....	Contractor.
(c), (f)(2) .....	Contractor .....	contractor.
(e)(2) .....	non-transferable .....	non-transferable.
(e), (e)(1), (e)(2), (e)(3), (e)(4) in the headings only .....	Contractor .....	contractor.
(e)(3) in second sentence .....	continues .....	continue.
(e)(3) in last sentence .....	failed .....	have failed.
(j) .....	March-In .....	March-in.

■ b. For each paragraph indicated in the left column, remove the punctuation

mark indicated in the middle column from where it appears in the section,

and add the punctuation mark in the right column:

Paragraph	Remove	Add
(b), (c), (d), (e), (f), (g), (l), (n), (o), and (p) .....	—	.
(c)(1), (c)(5), (f)(1) .....	:	—
(g)(2), (g)(3) .....	—	—

[FR Doc. 2013-24607 Filed 11-6-13; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF AGRICULTURE****Forest Service****50 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**[FWS-R7-SM-2013-0126;  
FXFR13350700640-145-FF07J00000]**Subsistence Management Program for Public Lands in Alaska; Rural Determination Process****AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.**ACTION:** Advanced notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Federal Subsistence Board is extending the comment period through December 2, 2013, on its earlier request for comments (77 FR 77005, Dec. 31, 2012) on the rural determination process. These comments will be used by the Board, coordinating with the Secretaries of the Interior and Agriculture, to assist in making decisions regarding the scope and nature of possible changes to improve the rural determination process.

**DATES:** *Comments:* The comment period for the document published December 31, 2012 (77 FR 77005), is extended through, and comments must be received or postmarked by, December 2, 2013.

*Public meetings:* The Federal Subsistence Regional Advisory Councils, through the Board, has rescheduled public meetings to receive comments and make recommendations to the Federal Subsistence Board on this notice on several dates between November 5 and November 19, 2013. See Public Meetings under

**SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

**ADDRESSES:** *Comments:* Comments on this extension must be received or postmarked by December 2, 2013. You may submit comments by one of the following methods:

- *Electronically:* Comments addressing this notice may be sent to [subsistence@fws.gov](mailto:subsistence@fws.gov).
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of

Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings.

Comments received will be available for public review during public meetings held by the Board on this issue. This generally means that any personal information you provide us will be available during public review.

*Public meetings:* See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings. If the Board decides additional meetings are required, public announcements will be made that provide meeting dates and locations.

**FOR FURTHER INFORMATION CONTACT:**

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Gene Peltola, Office of Subsistence Management; (907) 786-3888; or [subsistence@fws.gov](mailto:subsistence@fws.gov). For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461; or [skessler@fs.fed.us](mailto:skessler@fs.fed.us).

**SUPPLEMENTARY INFORMATION:****Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This Program provides a priority for taking of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to implement this Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The Secretaries have amended these regulations a number of times. Because this Program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and Title 50, “Wildlife and Fisheries,” at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain the following subparts: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

**Federal Subsistence Board**

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair, appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

**Public Meetings**

The Federal Subsistence Regional Advisory Councils have a substantial role in reviewing subsistence issues and making recommendations to the Board. The Federal Subsistence Board scheduled public meetings in conjunction with the Council meetings to accept comments on this notice during the fall meeting cycle. Due to a lapse in appropriations and the subsequent closure of the Federal Government, five preannounced Council meetings were cancelled. The Board decided that a rescheduling of the cancelled meetings was needed to allow for full public participation and discussion of regional subsistence issues. You may present comments on this notice during these rescheduled meetings at the following locations in Alaska, on the following dates:

Region 2—Southcentral Regional Council, Anchorage, November 5, 2013