

**PART 1258—FEES**

1. The authority citation for part 1258 continues to read as follows:

**Authority:** 44 U.S.C. 2116(c).

2. Section 1258.2 is amended by revising paragraphs (c)(1) and (c)(3) through (c)(5), adding paragraph (c)(6)(v), and removing paragraph (c)(10) to read as follows:

**§ 1258.2 Applicability.**

\* \* \* \* \*

(c) \* \* \*

(1) National Archives Trust Fund Board publications, including microfilm publications. Prices are available from the Product Sales Section (NWPS), 700 Pennsylvania Ave., NW., Room G-9, Washington, DC 20408.

\* \* \* \* \*

(3) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Information on the availability of and prices for reproduction of these materials are available from the Motion Picture, Sound, and Video Branch (NWDNM), 8601 Adelphi Rd., Room 3340, College Park, MD 20740-6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(4) Electronic records. Information on the availability of and prices for duplication are available from the Center for Electronic Records (NWRE), 8601 Adelphi Rd., Room 5320, College Park, MD 20740-6001, or from the Presidential library which has such materials (see § 1253.3 of this chapter for addresses).

(5) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Still Pictures Branch (NWDNS) and the Cartographic and Architectural Branch (NWDNC), both located at the National Archives at College Park facility, 8601 Adelphi Rd., College Park, MD 20740-6001, and in the Presidential libraries and regional records services facility (see §§ 1253.3 and 1253.7 of this chapter for addresses) should be obtained from the unit which has the original records.

(6) \* \* \*

(v) Land entry records (order form NATF 84)—\$10.

\* \* \* \* \*

3. The introductory text of § 1258.4(f) is revised to read:

**§ 1258.4 Exclusions.**

\* \* \* \* \*

(f) For records center records only:

\* \* \* \* \*

4. Section 1258.10 is amended by revising paragraph (a) to read:

**§ 1258.10 Mail orders.**

(a) There is a minimum fee of \$10 per order for reproductions which are sent by mail to the customer.

\* \* \* \* \*

**§ 1258.11 [Removed]**

5. Section 1258.11 is removed.

6. Section 1258.12 is amended by revising paragraphs (a) through (f), removing paragraph (g), and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively, to read:

**§ 1258.12 Fee schedule.**

(a) *Certification*: \$10.

(b) *Electrostatic copying*: (1) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by the customer on a NARA self-service copier: \$0.10 per copy.

(2) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by NARA staff:

(i) At a Presidential library; at a regional records services facility; and, when ordered on a same-day "cash and carry" basis, at a Washington, DC, area facility: \$0.50 per copy.

(ii) All other orders placed at a Washington, DC, area facility: \$10 for the first 1-20 copies; \$5 for each additional block of up to 10 copies.

(3) Oversized electrostatic copies (per linear foot): \$2.50.

(4) Electrostatic copies (22 in. by 34 in.): \$2.50.

(5) Microfilm or microfiche to paper copies made by the customer on a NARA self-service copier: \$0.25.

(6) Microfilm or microfiche to paper copies made by NARA staff: \$1.75.

(c) *Microfilm*. (1) Original negative microfilm (paper-to-microfilm): \$10 for the first 1-15 images; \$14 for each additional block of up to 20 pages.

(2) Direct duplicate copy of accessioned microfilm: \$34.00 per roll.

(3) Positive copy of accessioned microfilm: \$34.00 per roll.

(d) *Diazo microfiche duplication (per fiche)*: \$2.10.

(e) *Self-service video copying in the Motion Picture, Sound and Video Research Room*: (1) Initial 90-min use of video copying station with 120-minute videocassette: \$20.

(2) Additional 90-minute use of video copying station with no videocassette: \$14.

(3) Blank 120-minute VHS videocassette: \$6.

(f) *Self-service Polaroid prints*: \$9 per print.

\* \* \* \* \*

7. Section 1258.16 is revised to read:

**§ 1258.16 Effective date.**

The fees in § 1258.12 are effective on July 1, 1997.

Dated: March 24, 1997.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 97-7898 Filed 3-28-97; 8:45 am]

BILLING CODE 7515-01-P

**DEPARTMENT OF ENERGY****48 CFR Parts 915, 927, 952, and 970**

**RIN 1991-AB33**

**Revisions to Rights in Data Regulations**

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) proposes to amend its Acquisition Regulation to effect changes to its rights in technical data regulations to reflect a greater reliance upon the rights in technical data coverage in the Federal Acquisition Regulation and the requirements relating to technology transfer activities at certain DOE laboratories.

**DATES:** Written comments must be submitted no later than May 30, 1997.

**ADDRESSES:** Comments (three copies) should be addressed to: Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, Office of Policy, HR-51, Room 8H-023, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:**

Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-8264

Judson Hightower, U.S. Department of Energy, Office of Assistant General Counsel for Technology Transfer and Intellectual Property, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586-2813.

**SUPPLEMENTARY INFORMATION:**

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- F. Review Under Executive Order 12612.

## I. Background

The Department has in place policy, reflected in Acquisition Letter 87-5, instructing its contracting officers to rely substantially on the rights in technical data coverage in the Federal Acquisition Regulation (FAR).

Congress enacted the National Competitiveness Technology Transfer Act of 1989 (Pub. L. 101-189) which had the effect of establishing technology transfer missions for certain of DOE's management and operating contractors. Acquisition Letters 88-1 and 91-8 were issued on this subject, and on December 22, 1995 (60 FR 66510), the Department promulgated technology transfer regulations to implement that Act.

The purpose of this proposed rule is to codify the policies in the acquisition letters and provide an up-to-date uniform treatment of the subject of rights in technical data, including provision for technology transfer.

## II. Discussion

### a. General

This proposed rule proposes to delete the existing coverage of rights in technical data, including regulations, solicitation provisions, and contract clauses currently in the Department of Energy Acquisition Regulation (DEAR). The proposed coverage would rely substantially on the rights in technical data regulations, provisions, and clauses in the Federal Acquisition Regulation (FAR), except where additional coverage would be necessary to fulfill DOE's statutory duties to disseminate data produced in its research, development and demonstration programs. Also, the coverage in Subpart 970.27 of the DEAR is proposed to be rewritten to reflect the considerations relating to and use of proposed versions of the two alternate rights in technical data clauses intended for DOE's management and operating contracts.

### b. Section-by-Section Analysis

The proposed rule would amend subpart 915.4 of the DEAR by revising subsection 915.413-2 to provide for the use of non-Federal personnel in the evaluation of competitive proposals. That subsection would implement the provisions of subsection 15.413-2 of the FAR. In addition, that subsection would supplement the FAR coverage at 37.204, which implements sec. 6002 of Pub. L. 103-355, the Federal Acquisition Streamlining Act of 1994, to provide DOE's process for determining that neither sufficient DOE personnel nor

personnel from other Federal agencies are available to evaluate proposals, leading to the use of non-Federal personnel for that purpose. The coverage would include a standard agreement to be executed by the non-Federal evaluator, stating his or her responsibilities in the treatment of proposal data. The current source of regulatory coverage on this subject, Subpart 927.70, would be deleted. That same subpart also contains provisions dealing with the Government's rights in proposal data and holding proposal data in confidence. The proposed rule would rely on the FAR coverage on these subjects.

Subsection 915.608(d) would be added to provide a reference to the DEAR provision proposed to deal with the use of non-Federal evaluators. Subsection 927.303(b) is proposed to be amended to include reference to DOE's patent waiver regulations now promulgated at 10 CFR Part 784. In this latter regard, section 927.370 has been deleted because it is duplicative of those patent waiver regulations. Portions of sections 927.401 through 927.403 have been proposed for deletion. A new section 927.404 has been proposed to be added. It would supplement the FAR coverage at 27.404 by adding a paragraph (k) on the subcontract flowdown obligations under the rights in technical data clause at FAR 52.227-14, adding paragraph (l) to obtain, in appropriate situations, the right for DOE to require the contractor to license proprietary data relating to the subject of an individual contract to DOE or others and adding (m) dealing with a modification of the FAR clause in contracts where access to DOE restricted data is contemplated.

The proposed rule would add a section 927.408 to make clear that, as a result of DOE's statutes that require dissemination, this Department may not apply the provisions of FAR 27.408 to cosponsored or cost shared contracts. The proposed rule would also add a section 927.409 to supplement the FAR with regard to the requirement of contracting officers to include the FAR rights in technical data clause at 52.227-14. In the Department of Energy, Alternates I and V will always be used. The proposed rule would substitute definitions for use by DOE that simplify and shorten the FAR definitions. The only change to the definitions worthy of note is that computer data bases would be considered technical data and not computer software. This reflects more accurately the nature of computer data bases. They are, in fact, a form of technical data. The accurate depiction of computer data bases becomes

increasingly important as a result of DOE's, the Government's, and our society's increasing reliance on computers and computer software. This change has a beneficial result in that it would create an enhanced opportunity to prepare data bases in common languages, not computer program dependent. As a result more data bases created under DOE contracts may receive wider dissemination than when data bases are considered computer software. We have also proposed a minor change to the definition of unlimited rights, also taking into account our increasing dependence on computer networks, stating expressly, what is implicit, that unlimited rights include the right to disseminate data by electronic means.

The Additional Data Requirements clause at FAR 52.227-16 would be required for use in all contracts for research, development, and demonstration except those with universities or colleges for basic or applied research of \$500,000 or less.

The various existing provisions and clauses from 952.227 would be deleted from the DEAR with the intention that DOE's Contracting Officers use the provisions and clauses on the same subject that appear in FAR Subpart 52.227.

The proposed rule would insert into the DEAR Alternate VI, dealing with contractor licensing and Alternate VII, dealing with contractor access to DOE restricted data. Those alternates would be used in conjunction with the FAR Rights in Technical Data clause at 52.227-14.

The solicitation provision at Subsection 952.227-84 would be amended to make references consistent with the DEAR.

In DEAR part 970 sections 970.2705 and 970.2706 would be revised to describe the use of and the general content of the two rights in technical data clauses that would be used alternatively in DOE management and operating contracts.

The proposed rule would add a new section 970.2707 to instruct the appropriate use of the management and operating contract rights in technical data clauses.

Finally, the proposed rule would add a rights in technical data clause, 970.5204-XX, for DOE management and operating contracts that do not have a technology transfer mission and another, 970.5204-YY, for those management and operating contracts that do have a technology transfer mission.

### III. Public Comments

#### A. Consideration and Availability of Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESS** section of this notice. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 am and 4 pm, Monday through Friday, except Federal holidays. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR Part 1004.11).

#### B. Public Hearing Determination

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule. However, should a sufficient number of people request a public hearing, the Department will reconsider its determination.

### IV. Procedural Requirements

#### A. Review Under Executive Order 12866

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 action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

#### 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 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 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, the proposed regulations meet the relevant standards of Executive Order 12988.

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

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, that requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. The contracts to which this rulemaking would apply are agreements that contemplate the creation of technical data. Normally, such contracts, and any resulting subcontracts, would be cost reimbursement type contracts. Thus, there would not be an adverse economic impact on contractors or subcontractors. Accordingly, DOE certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

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

No additional information or recordkeeping requirements are proposed to be imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### 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 proposed amendments to the DEAR would be 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 12612

Executive Order 12612, (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule, when finalized, would merely reflect current practice relating to rights in technical data. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

#### List of Subjects in 48 CFR Parts 915, 927, 952, and 970

Government Procurement.

Issued in Washington, D.C. on March 18, 1997.

**Richard H. Hopf,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set out in the preamble, Chapter 9 of Title 48 of the

Code of Federal Regulations is proposed to be amended as set forth below.

## PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 915 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 915.413-2 is revised to read as follows:

### 915.413-2 Evaluation of Proposals. (DOE coverage-paragraphs (e) and (f))

(e) In order to maintain the integrity of the procurement process and to assure that the propriety of proposals will be respected, the notice at FAR 15.413-2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

(f)(1) Normally, evaluations of proposals shall be performed only by employees of the Department of Energy. As used in this section, "proposals" includes the offers in response to requests for proposals, sealed bids, program opportunity announcements, program research and development announcements, or any other method of solicitation where the review of proposals or bids is to be performed by other than peer review. In certain cases, in order to gain necessary expertise, employees of other agencies may be used in instances in which they will be available and committed during the period of evaluation. Evaluators or advisors who are not Federal employees, including employees of DOE management and operating contractors may be used where necessary. Where such non-Federal employees are used as evaluators, they may only participate as members of technical evaluation committees. They may not serve as members of the Source Evaluation Board or equivalent board or committee.

(2)(i) Pursuant to section 6002 of Public Law 103-355, a determination is required for every competitive procurement as to whether sufficient DOE personnel with the necessary training and capabilities are available to evaluate the proposals that will be received. This determination, discussed at FAR 37.204, shall be made in the memorandum appointing the technical evaluation committee by the Source Selection Official, in the case of Source Evaluation Board procurements, or by

the Contracting Officer in all other procurements.

(ii) Where it is determined such qualified personnel are not available within DOE but are available from other Federal agencies, a determination to that effect shall be made by the same officials in the same memorandum. Should such qualified personnel not be available, a determination to use non-Federal evaluators or advisors must be made in accordance with paragraph (f)(3) of this subsection.

(3) The decision to employ non-Federal evaluators or advisors, including employees of DOE management and operating contractors, in Source Evaluation Board procurements must be made by the Source Selection Official with the concurrence of the Head of the Contracting Activity. In all other procurements, the decision shall be made by the senior program official or designee with the concurrence of the Head of the Contracting Activity. In a case where multiple solicitations are part of a single program and would call for the same resources for evaluation, a class determination to use non-Federal evaluators may be made by the DOE Procurement Executive.

(4) Where such non-Federal evaluators or advisors are to be used, the solicitation shall contain a provision informing prospective offerors that non-Federal personnel may be used in the evaluation of proposals.

(5) The nondisclosure agreement as it appears in paragraph (f)(6) of this subsection shall be signed before DOE furnishes a copy of the proposal to non-Federal evaluators or advisors, and care should be taken that the required handling notice described in paragraph (e) of this subsection is affixed to a cover sheet attached to the proposal before it is disclosed to the participant. In all instances, such persons will be required to comply with nondisclosure of information requirements and requirements involving Procurement Integrity, see FAR 3.104; with requirements to prevent the potential for personal conflicts of interest; or, where a non-Federal evaluator or advisor are acquired under a contract with an entity other than the individual, with requirements to prevent the potential for organizational conflicts of interest.

(6) Non-Federal evaluators or advisors shall be required to sign the following agreement prior to having access to any proposal:

#### Nondisclosure Agreement

Whenever DOE furnishes a proposal for evaluation, I, the recipient, agree to use the information contained in the proposal only

for DOE evaluation purposes and to treat the information obtained in confidence. This requirement for confidential treatment does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the contracting officer, I agree that I shall not contact the originator of the proposal concerning any aspect of its elements.

Recipient: \_\_\_\_\_

Date: \_\_\_\_\_

(End of Agreement)

3. Subpart 915.6, Source Selection, is added to read as follows:

### Subpart 915.6—Source Selection

#### 915.608 Proposal evaluation. (DOE coverage-paragraph (d))

(d) Personnel from DOE, other Government agencies, consultants, and contractors, including those who manage or operate Government-owned facilities, may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are to be used as advisors or as evaluators, approval and nondisclosure procedures as required by 48 CFR (DEAR) 915.413-2 shall be followed and a notice of the use of non-Federal evaluators shall be included in the solicitation. In all instances, such personnel will be required to comply with DOE conflict of interest and nondisclosure requirements.

## PART 927—PATENTS, DATA, AND COPYRIGHTS

4. The authority citation for Part 927 continues to read as follows:

**Authority:** Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); Sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168); Federal Nonnuclear Energy Research and Development Act of 1974, Sec. 9, (42 U.S.C. 5908); Atomic Energy Act of 1954, as amended, Sec. 152, (42 U.S.C. 2182); Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1987, as amended, Sec. 3131(a), (42 U.S.C. 7261a.)

#### 927.300 [Amended]

5. Section 927.300(b) is amended by replacing the phrase "41 CFR 9-9.109"

as it appears in the second sentence with "10 CFR part 784."

**927.303 [Amended]**

6. Section 927.303(b) is amended by inserting the phrase ", pursuant to 10 CFR part 784," after "advance waiver" in the first sentence and after "identified invention" in the second sentence.

**927.370 [Removed and reserved]**

7. Remove and reserve section 927.370.

**927.401 [Removed]**

8. Section 927.401 is removed.

**927.402-1 [Amended]**

9. In section 927.402-1, paragraphs (c) through (g) are removed, and paragraph (h) is redesignated as paragraph (c).

**927.402-3 [Removed]**

10. Section 927.402-3 is removed.

11. Section 927.404 is added to read as follows:

**927.404 Rights in Technical Data in Subcontracts. (DOE coverage—paragraphs (g), (k), (l), and (m))**

(g)(4) Contractors are required by paragraph (d)(3) of the clause at FAR 52.227-14, as modified pursuant to 48 CFR 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, recognized at FAR 27.404(g)(2), 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 48 CFR 927.409(a)(1), patent counsel shall predicate its decision on the policy and procedures reflected in paragraph (e) of the clause at 48 CFR 970.5204-YY Rights in Data-Technology Transfer.

(k) *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 section, 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 FAR 52.227-14 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 Technical Data Requirements clause at FAR 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 Technical Data Requirements clause at FAR 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 inequitably acquire rights in the subcontractor's confidential data developed at private expense for their private use, and they shall not acquire rights to confidential data developed at private expense on behalf of the Government for standard commercial items unless required by the prime contract.

(l) *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 confidential data developed at private expense necessary to 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 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 proprietary data. When such a license right is deemed necessary, the Rights in Data-General clause at FAR 52.227-14 should be supplemented by the addition of Alternate VI as provided at 48 CFR 952.227-14. Alternate VI will normally be sufficient to cover proprietary contract data 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 48 CFR 952.227-13 pertaining to "Background Patents." Where, however, proprietary contract data 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 paragraphs (j)(1) through (j)(4) of Alternate VI of 48 CFR 952.227-14 should be modified or deleted. Paragraph (j) of 48 CFR 952.227-14 further provides that technical data 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 (j) of 48 CFR 952.227-14 to only those classes or categories of proprietary data determined as being essential for licensing. Although contractor licensing may be required under paragraph (j) of FAR 52.227-14, the final resolution of questions regarding the scope of such licenses the terms thereof, including provisions for confidentiality, and reasonable royalties, is then left to the negotiation of the parties.

(m) *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 appropriate rights in technical data clause of the contract in accordance with the instructions at 48 CFR 952.227-14. 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.

12. Subsection 927.404-70 is added to read as follows:

**927.404-70 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 48 CFR 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 protected data will be made available to the public notwithstanding the statutory authority to withhold the data from public dissemination.

13. Section 927.408 is added to read as follows:

**927.408 Cosponsored research and development activities.**

Because of the Department of Energy's statutory duties to disseminate data first produced under its contracts for research, development, and demonstration, the provisions of FAR 27.408 do not apply to cosponsored or cost shared contracts.

14. Section 927.409 is added to read as follows:

**927.409 Solicitation provisions and contract clauses. (DOE coverage—paragraphs (a), (h), (s), and (t)).**

(a)(1) The contracting officer shall insert the clause at FAR 52.227-14, Rights in Data-General, substituting the following paragraph (a) and including the following paragraph (d)(3), Alternate I, and Alternate V in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract:

(a) Definitions.

(1) *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.

(2) *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.

(3) *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.

(4) *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 (g)(2) if included in this clause.

(5) *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 subparagraph (g)(3) if included in this clause.

(6) *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. Technical data does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(7) *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.

\* \* \* \* \*

(d)(3) The Contractor agrees not to establish claim to copyright in computer software first produced in the performance of this contract without prior written permission of the patent counsel assisting the contracting activity. When such permission is granted, the patent counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to patent counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(2) However, rights in data in these specific situations will be treated as described, where the contract is—

(i) For the production of special works of the type set forth in FAR 27.405(a), but the clause at FAR 52.227-14, Rights in Data-General, shall be included in the contract and made applicable to data other than special works, as appropriate (See paragraph (i) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405(b) (See paragraph (j) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (See paragraph (n) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case contracting officers shall utilize the clause at FAR 52.227-17, Rights in Data-Special Works;

(v) A Small Business Innovation Research contract (See paragraph (l) of FAR 27.409);

(vi) For management and operating of a DOE facility or the production of data necessary for the management or operation of a DOE facility (See 970.2705); or

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (See 927.404-70).

(h) The contracting officer shall insert the clause at FAR 52.227-16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the

contract. See FAR 27.406(b). This clause may also be used in other contracts when considered appropriate.

\* \* \* \* \*

(s) Contracting officers shall incorporate the solicitation provision at FAR 52.227-23, Rights to Proposal Data (Technical), in all requests for proposals.

(t) Contracting officers shall include the solicitation provision at 952.227-84 in all solicitations involving research, development, or demonstration work.

#### **Subpart 927.70 [Removed and Reserved]**

15. Subpart 927.70 (Secs. 927.7000 through 927.7005) is removed and reserved.

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

16. The authority citation for Part 952 continues to read as follows:

**Authority:** 42 U.S.C. 7254; 40 U.S.C. 486(c).

#### **§ 952.227-13 [Amended]**

17. Subsection 952.227-13 is amended in paragraph (a) of the clause by inserting the sentence "See 10 CFR part 784." at the end of the definition of "DOE patent waiver regulations" and in paragraph (c)(1)(ii) of the clause by inserting "(10 CFR part 784)" after the phrase "patent waiver regulations".

18. Subsection 952.227-14 of part 952 is added to read as follows:

#### **952.227-14 Rights in data—general. (DOE coverage alternates VI and VII)**

##### **Alternate VI (XXX 1997)**

As prescribed at 48 CFR 927.404(l) insert Alternate VI to require the contractor to license data regarded as limited rights data or restricted computer software to DOE and third parties at reasonable royalties upon request by the Department of Energy.

(j) *Contractor Licensing.* Except as may be otherwise specified in this contract as data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this contract, a nonexclusive license in any limited rights data or restricted rights software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obliged to license any such data if the contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternate available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

(End of Alternate)

##### **Alternate VII (XXX 1997)**

As prescribed in 48 CFR 927.404(m) insert Alternate VII to limit the contractor's use of DOE restricted data.

Insert the parenthetical phrase "(except Restricted Data in category C-24, 10 CFR 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)." after the phrase "data first produced or specifically used by the Contractor in the performance of this contract" in paragraph (b)(2)(i) of the clause at FAR 52.227-14.

(End of Alternate)

#### **952.227-73 through 952.227-83 [Removed]**

19. In part 952, subsections 952.227-73, 952.227-75, 952.227-76, 952.227-77, 952.227-78, 952.227-79, 952.227-80, 952.227-81, 952.227-82, and 952.227-83 are removed.

20. Subsection 952.227-84 is revised to read as follows:

#### **952.227-84 Notice of right to request patent waiver.**

Include this provision in all appropriate solicitations in accordance with 48 CFR 927.409(t).

##### **Right To Request Patent Waiver (XXX 1997)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at 952.227-13 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations

normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR part 784.

(End of Provision)

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

21. The authority citation for Part 970 continues to read:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

22. Section 970.2705 is revised to read as follows:

#### **970.2705 Rights in Data—General.**

(a) Rights in data relating to the performance of the contract and to all facilities are significant in assuring continuity of the management and operation of DOE facilities. It is crucial in assuring DOE's continuing ability to perform its statutory missions that DOE obtain rights to all data produced or specifically used by its management and operating contractors and their subcontractors. In order to obtain the necessary rights in technical data, DOE contracting officers shall assure that management and operating contracts contain either the Rights in Data clause at 48 CFR 970.5204-XX or the clause at 48 CFR 970.5204-YY. Selection of the appropriate clause is dependent upon whether technology transfer is a mission of the management and operating contract. If technology transfer is not a mission of the management and operating contractor, the clause at 48 CFR 970.5204-XX will be used. In those instances in which technology transfer is a mission, the clause at 48 CFR 970.5204-YY will be used.

(b) Employees of the management and operating contractor may not be used to assist in the preparation of a proposal or bid for the performance of services, which are similar or related to those being performed under the contract, by the contractor or its parent or affiliate organization for commercial customers unless the employee has been separated from work under the DOE contract for such period as the Head of the Contracting Activity or designee shall have directed.

(c) Management and operating contractors shall not use data acquired from other Government agencies or private entities in the performance of their contracts for the private purposes of the contractor unless the agency or entity authorizes such use.

23. Revise Section 970.2706 as follows:



**970.2706 Rights in Technical Data—Procedures.**

(a) The clauses at 48 CFR 970.5204–XX and 48 CFR 970.5204–YY both provide generally for Government ownership and for unlimited rights in the Government for all data first produced in the performance of the contract and unlimited rights in data specifically used in the performance of the contract. Both clauses provide that, subject to patent, security, and other provisions of the contract, the contractor may use contract data for its private purposes. The contractor, under either clause, must treat any data furnished by DOE or third parties in accordance with any restrictive legends contained therein.

(b) Since both clauses secure access to and, if requested, delivery of technical data used in the performance of the contract, there is generally no need to use the Additional Technical Data Requirements clause at FAR 52.227–16 in the management and operating contract.

(c)(1) Paragraph (d) of the clause at 48 CFR 970.5204–XX and paragraph (f) of the clause at 48 CFR 970.5204–YY provide for the inclusion of the Rights in Technical Data-General clause at FAR 52.227–14, with Alternates I and V, and, as appropriate and with DOE's prior approval, Alternates II, III, and IV, and the Additional Technical Data Requirements clause at FAR 52.227–16 in all subcontracts for research, development, or demonstration and all other subcontracts having special requirements for the production or delivery of data, except in those 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 by the contractor under its contract with DOE. In those latter subcontracts, the management and operating contractor shall include the Rights in Data-Facilities clause at 48 CFR 970.5204–XX.

(2) Where, however, a subcontract is to be awarded by the management and operating contractor in connection with a program, as discussed at 927.404–70, which provides statutory authority to protect from public disclosure, data first produced under contracts awarded pursuant to the program, contracting officers shall ensure that the M&O contractor includes in that subcontract the rights in data clause provided by DOE Patent Counsel, consistent with any accompanying guidance.

(d) Paragraphs (e) and (f) of the clause at 48 CFR 970.5204–XX and paragraphs

(g) and (h) of the clause at 48 CFR 970.5204–YY provide for the contractor's granting a nonexclusive license in any limited rights data and restricted computer software specifically used in performance of the contract.

(e) The Rights in Data-Technology Transfer clause at 48 CFR 970.5204–YY differs from the clause at 48 CFR 970.5204–XX in the context of its more detailed treatment of copyright. In management and operating contracts that have technology transfer as a mission, the right to assert copyright in data first produced under the contract will be a valuable right, and commercialization of such data, including computer software, will assist the M&O contractor in advancing the technology transfer mission of the contract.

(f) Contracting officers should consult with patent counsel to assure that requirements regarding royalties and conflicts of interest associated with asserting copyright in data first produced under the contract are appropriately addressed in the Technology Transfer Mission clause of the management and operating contract. Where it is not otherwise clear which DOE contractor funded the development of a computer software package, such as where the development was funded out of a contractor's overhead account, the DOE program which was the primary source of funding for the entire contract is deemed to have administrative responsibility. This issue may arise, among others, in the decision whether to grant the contractor permission to assert copyright. See paragraph (e) of the Rights in Data-Technology Transfer clause at 970.5204–YY.

(g) In management and operating contracts involving access to 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 restricted data and technology. Alternate I to each clause shall be used where access to Category C–24 restricted data is contemplated in the performance of a contract.

24. Section 970.2707 is added to read as follows:

**970.2707 Rights in Data Clauses.**

(a) Contracting officers shall insert the clause at 48 CFR 970.5204–XX, Rights in Data-Facilities, in management and operating contracts which do not contain the clause at 48 CFR 970.5204–40, Technology Transfer Mission.

(b) Contracting officers shall insert the clause at 970.5204–YY, Rights in Data-

Technology Transfer, in management and operating contracts which contain the clause at 970.5204–40, Technology Transfer Mission.

(c) In accordance with 48 CFR 970.2706(f), in contracts where access to Category C–24 restricted data, as set forth in 10 CFR part 725, is to be provided to contractors, Contracting Officers shall incorporate Alternate I of the appropriate rights in data clause prescribed in paragraph (a) or (b) of this section.

22. Subsection 970.5204–XX is added to read as follows:

**970.5204–XX Rights in Data-Facilities.**

Insert the following clause in the management and operating contracts in accordance with 48 CFR 970.2707.

**Rights in Data-Facilities (XXX 1997)**

(a) Definitions.

(1) *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.

(2) *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.

(3) *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.

(4) *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 subparagraph (e) of this clause.

(5) *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 (f) of this clause.

(6) *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. Technical data does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(7) *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:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(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. 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 (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software");

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software in accordance with the provisions of this clause;

(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, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(3) The Contractor agrees that for limited rights data or restricted computer software or

other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) *Copyrighted Material.*

(1) The Contractor shall not, without prior written authorization of the Patent Counsel, establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

(2) The Contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such 08347 material in the technical data prior to its delivery.

(d) *Subcontracting.*

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data 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 (FAR) subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data"—General at 48 CFR 52.227-14 with the paragraph (a) of this clause substituted for paragraph (a) of that clause and including Alternates I & V, including its use with Alternate II through Alternate IV as may be required or authorized pursuant to FAR 27.409. Prior to using Alternate II, Alternate III, or Alternate IV, the Contractor shall consult with the DOE Patent Counsel.

(2) It is the responsibility of the Contractor to obtain from its Subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a Subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) *Rights in Limited Rights Data.*

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice":

**Limited Rights Notice**

These data contain "limited rights data," furnished under Contract No. \_\_\_\_\_ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other Contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed. This Notice shall be marked on any reproduction of this data in whole or in part.

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(End of Notice)

(f) *Rights in Restricted Computer Software.*

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the

extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

#### Restricted Rights Notice—Long Form

(a) This computer software is submitted with restricted rights under Government Contract No. \_\_\_\_\_. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b) (1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

#### Restricted Rights Notice—Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. \_\_\_\_\_ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human

readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished—rights reserved under the Copyright Laws of the United States."

(g) Relationship to patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

#### Alternate I (XXX 1997)

In accordance with 48 CFR 970.2706(f), insert the parenthetical phrase "(except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)" after "technical data" in paragraph (b)(2)(ii) of the clause at 48 CFR 970.5204-XX, as appropriate.

(End of Alternate)

26. Subsection 970.5204-YY is added to read as follows:

#### 970.5204-YY Rights in Data-Technology Transfer.

Insert the following clause in management and operating contracts in accordance with 48 CFR 970.2707.

#### Rights in Data-Technology Transfer (XXX 1997)

(a) Definitions.

(1) *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.

(2) *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.

(3) *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.

(4) *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 (g) of this clause.

(5) *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 subparagraph (h) of this clause.

(6) *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. Technical data does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

(7) *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:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, subject to the withholding provisions for protected CRADA information in accordance with Technology Transfer actions under this Contract;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(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. 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 (e) of this clause ("Rights in Limited Rights Data") or

paragraph (f) of this clause ("Rights in Restricted Computer Software");

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software in accordance with the provisions of this clause;

(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, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause and the right to request permission to assert copyright subsisting in works other than scientific and technical articles as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d) and (e) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph (d) or (e) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause below. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the Contracting Officer to include such material in the data prior to its delivery.

(d) Copyrighted works (scientific and technical articles).

(1) The Contractor shall have the right to assert, without prior approval of the

Contracting Officer, copyright subsisting in scientific and technical articles composed under this contract or based on or containing data first produced in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, or similar works. When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. 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, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) The contractor shall mark each scientific or technical article first produced or composed under this contract and submitted for journal publication with a notice, similar in all material respects to the following, on the front reflecting the Government's non-exclusive, royalty free, world-wide license in the copyright.

This manuscript has been authored by [insert the name of the contractor] under contract no. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the article for publication, acknowledges that the United States Government retains a non-exclusive, royalty-free, world-wide license to publish or reproduce the published form of this manuscript, or allow other to do so, for United States Government purposes.

(End of notice)

(3) The title to the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical articles).

The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) *Contractor Request to Assert Copyright.*

(i) For data other than scientific and technical articles, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. Each request by the Contractor must include:

(A) the identity of the data (including any computer program) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the

data and is suitable for dissemination purposes, (B) the program under which it was funded, (C) whether the data is subject to an international treaty or agreement, (D) whether the data is subject to export control, (E) a statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright, and (F) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization. For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(ii) Permission for the Contractor to assert copyright in excepted categories of data as determined 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. Additional excepted categories may be added by the Assistant General Counsel for Intellectual Property where data are determined to be subject to export controls. 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. Additionally, 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) *DOE Review and Response to Contractor's Request.* The Patent Counsel shall use its best efforts to respond in writing within 90 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 DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond and the reasons therefor.

(3) *Permission for Contractor to Assert Copyright.*

(i) For computer software, the Contractor shall furnish to a DOE designated, centralized software distribution and control point, at the time permission to assert copyright is given under paragraph (e)(2) of this clause: (A) an abstract describing the software suitable for publication, (B) the source code for each software program, and (C) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The Patent Counsel, for good cause shown by the Contractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. 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.

(ii) 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 above, the Contractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (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.

(iii) For a period of five (5) years beginning on the date the Contractor is given permission to assert copyright in data, 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. Subject to DOE approval, the five-year period for assertion of copyright is renewable for successive five year periods. The DOE approval will be based on the standard that the work is still commercially available and the market demand is being met.

(iv) After the authorized five (5) year period, or successive five year period(s) for assertion of copyright by the contractor as described in paragraph (e)(3)(iii) of this clause, or if, prior to the end of such period(s), the Contractor abandons commercialization activities pertaining to the data to which the Contractor has been given permission to assert copyright, 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.

(v) 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 acknowledgement of the Government sponsorship and license rights of paragraphs (e)(3) (iii) and (iv) 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 acknowledgement of Government sponsorship and license rights shall be as follows:

NOTICE: These data were produced under Contract No. \_\_\_\_\_ with the Department of Energy. The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained), the Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, 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 initial five year period may have been extended for successive periods of five years, thereby allowing the contractor to assert its copyright for that additional period. However, prior to the expiration of the initial and any successive five year period, the conditions underlying the permission to assert copyright might have been violated, denying the contractor the right to assert the copyright. 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 INFORMATION, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

(End of Notice)

(vi) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the 5 year period or successive five year period set forth in subparagraph (e)(1)(i) 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 subparagraph (e)(1)(A) of this clause. Before licensing under this subparagraph (vi), 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".

(vii) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee and 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.

(viii) 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.

(4) The following notice may be placed on the software prior to any publication and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the software pursuant to paragraph (c)(3) of this section.

NOTICE

This program was prepared by [Insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [Insert the Contract Number] with the Department of Energy (DOE). All rights in the program are reserved by DOE on behalf of the United States Government and the Contractor as provided in the contract. You are authorized to use this program for Governmental purposes but it is not to be released or distributed to the public. Neither the Government nor the Contractor makes any warranty, express or implied, or assumes any liability or responsibility for the use of this software. This notice including this sentence must appear on any copies of this program.

(End of Notice)

(f) *Subcontracting.*

(1) Unless otherwise directed by the Contracting Officer, the Contractor agrees to use in subcontracts in which technical data 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 (FAR) subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data—General" at 48 CFR 52.227-14 with the paragraph (a) of that clause and including Alternates I & V, including its use with Alternate II through Alternate IV as may be required or authorized pursuant to 48 CFR 27.409. Prior to using Alternate II, Alternate III, or Alternate IV, the Contractor shall consult with the DOE Patent Counsel.

(2) It is the responsibility of the Contractor to obtain from its Subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the

Contractor's obligations to the Government with respect to such data. In the event of refusal by a Subcontractor to accept a clause affording the Government such rights, the Contractor shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons or the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

*(g) Rights in Limited Rights Data.*

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice":

**Limited Rights Notice**

These data contain "limited rights data," furnished under Contract No. \_\_\_\_\_ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other Contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed. This Notice shall be marked on any reproduction of this data in whole or in part.

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(End of Notice)

(h) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

**Restricted Rights Notice-Long Form**

(a) This computer software is submitted with restricted rights under Government Contract No. \_\_\_\_\_. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

**Restricted Rights Notice—Short Form**

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. \_\_\_\_\_ with (name of Contractor).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(i) Relationship to patents.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

Alternate I (XXX 1996): In accordance with 970.2706(f), insert the parenthetical phrase "(except Restricted Data in category C-24, 10 CFR part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)" after "technical data" in paragraph (b)(2)(ii) of the clause at 970.5204-44, as appropriate.

(End of Alternate)

[FR Doc. 97-7327 Filed 3-28-97; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Part 395**

**[FHWA Docket No. MC-96-28]**

**RIN 2125-AD93**

**Hours of Service of Drivers**

March 24, 1997.

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM); extension of comment period.

**SUMMARY:** The FHWA is extending this rulemaking's comment period until June 30, 1997. This is in response to two petitions received by the FHWA requesting an extension of the comment period closing date. The petitioners based their requests upon the FHWA's