communication occurs in the text of the clause. We have also added a definition of DOE patent waiver regulations and used that term where appropriate in the text of the clause. We deleted the definition of the Head of contracting agency and used Secretary of Energy where appropriate throughout the clause.

In several places in the clause the proposed clause used the word "retain" in the context of the greater rights determination. We have used more specific terms depending upon the context to reflect the contractor's right to "request" greater rights or the Department's having "granted" the contractor greater rights.

In the third sentence of paragraph (b)(2)(i), we have substituted a definite condition for the application of the minimum rights flowing to the Government under paragraph (c) upon its granting a request for waiver in place of "normally."

At paragraph (b)(2)(ii) we have substituted a time certain, two months after filing the patent application, rather than "upon request" for the contractor's providing identifying information relating to the application. We have also edited that subparagraph to grammatically reflect the separate duties with regard to a patent application and issuance of the patent. In order to assure that a contractor's patent application not expire for failure to prosecute we have added new subparagraph (b)(2)(iii) requiring notice by the contractor should it decide not to prosecute. The subparagraph (iii) of the proposed rule has been redesignated as subparagraph (iv)

We have substituted the term "subparagraphs(c)(1)" for "subdivisions" in subparagraph (c)(1)(iii). The former reference added unnecessarily to the opportunity for misinterpretation.

At paragraph (d)(4)(vi) we have corrected a reference for the duration of the time period for DOE's not publishing invention disclosures relating to an application for foreign patent rights by providing for that time period to be determined by the DOE patent counsel. At subparagraph (d)(4)(vii), we have corrected a mistaken reference in the first sentence with the phrase "in a timely manner." We have added as the penultimate sentence of paragraph (e)(2) a description of the report called for. At paragraph (e)(5) we have corrected a reference that is in error in the FAR clause, i.e, "FAR 27.302(j)" in place of "FAR 27.302(i)." Finally, with regard to the clause, at

Finally, with regard to the clause, at paragraph (g)(3), we have substituted the obligation of acquiring an affirmative patent clearance before final payment in lieu of "past due confirmatory instruments."

A commenter questions the provision at 970.2702(b) that describes the right of management and operating contractors, not small businesses or nonprofit entities, to request advance waivers and waivers in identified inventions. He suggests that this premise makes this a "significant regulatory action." We disagree. These rights have existed throughout the history of DOE's statutory patent policy. We have made an attendant change in the last sentence of this subsection substituting "42 U.S.C. 5908" for "927.300."

The same commenter has suggested the insertion of the word "nonprofit" in the first sentence of 970.2702(e) describing Bayh-Dole rights of DOE management and operating contractors. We have made the change.

Two commenters question the provisions of 970.2703 and the provisions of paragraph (m) of the clause at 970.5204–XX, relating to the transfer of title and reservation of income from licensing of subject inventions for the benefit of the laboratory, rather than the contractor. Both note that Bayh-Dole vests title in the nonprofit or educational entities and suggest that the provisions do not comply with the law where DOE employs such an entity to manage and operate one of its facilities. This provision merely reflects the reality of provisions of DOE's management and operating contracts in the interplay between patent provisions and technology transfer. That reality takes into account the special position of DOE's management and operating contractors as was recognized in Bayh-Dole. We have made no change at either place.

One commenter questions 970.2795(c), saying that it should be revised "to indicate that the limitations on the use of contractor employees only apply to those contractor employees assigned to, and working at the DOE facility." This provision verbatim existed before this rulemaking at 970.2701(d). An underlying premise of DOE's management and operating contracts is that the organization is independent of its corporate body. The workforce is dedicated to the work and is located at the DOE facility. This provision is written to that reality, and must remain that way to prevent any unintended restriction on its application. No change has been made.

II. Procedural Requirements

A. Regulatory Review

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, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

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

D. Review Under NEPA

The DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, 4331–4335, 4341– 4347 (1976)), the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), or the DOE guidelines (10 CFR Part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. 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 national Government and the States, and in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all