decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

## F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect, will not have any effect on existing Federal laws, and will only clarify the existing regulations on this subject. The revised clauses will apply only to contracts which would be awarded after the effective date of the final rule, and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

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

Government procurement, Patents.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., on February 16, 1995.

## Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

## PART 927—PATENTS, DATA, AND COPYRIGHTS

1. 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.)

2. Subpart 927.2 is added to read as follows:

## Subpart 927.2—Patents

Sec.

927.200 Scope of subpart.
927.201 Authorization and consent.
927.201-1 General.
927.206 Refund of royalties.
927.206-1 General.

927.206–2 Clause for refund of royalties. 927.207 Classified contracts. 927.207–1 General.

## Subpart 927.2—Patents

**927.200** Scope of subpart. When consulting 48 CFR part 27, subpart 27.2 of the FAR, consider "research, development, and demonstration" to replace the phrase "research and development" or "R&D," for the purposes of DOE actions.

## 927.201 Authorization and consent.

#### 927.201-1 General.

In certain contracting situations, such as those involving research, development, or demonstration projects, consideration should be given to the impact of third party-owned patents covering technology that may be incorporated in the project which patents may ultimately affect widespread commercial use of the project results. In such situations, Patent Counsel shall be consulted to determine what modifications, if any, are to be made to the utilization of the Authorization and Consent and Patent Indemnity provisions or what other action might be deemed appropriate.

## 927.206 Refund of royalties.

## 927.206–1 General.

The clause at 952.227-9. Refund of Royalties, obligates the contractor to inform DOE of the payment of royalties pertaining to the use of intellectual property, either patent or data related, in the performance of the contract. This information may result in identification of instances in which the Government already has a license for itself or others acting in its behalf or the right to sublicense others. Also, there may be pending antitrust actions or challenges to the validity of a patent or the proprietary nature of the data, or the contractor may be able to gain unrestricted access to the same data through other sources. In such

situations the contractor may avoid the payment of a royalty in its entirety or may be charged a reduced royalty.

## 927.206-2 Clause for refund of royalties.

The contracting officer shall insert the clause at 952.227–9, Refund of Royalties, in solicitations and contracts for experimental, research, developmental, or demonstration work or other solicitations and contracts in which the contracting officer believes royalties will have to be paid by the contractor or a subcontractor of any tier.

## 927.207 Classified contracts.

## 927.207-1 General.

Unauthorized disclosure of classified subject matter, whether in a patent application or resulting from the issuance of a patent, may be a violation of the Atomic Energy Act of 1954, as amended, other laws relating to espionage and national security, and provisions of the proposed contract pertaining to disclosure of information.

3. Section 927.300 is revised to read as follows:

## 927.300 General.

(a) One of the primary missions of the Department of Energy is the use of its procurement process to ensure the conduct of research, development, and demonstration leading to the ultimate commercialization of efficient sources of energy. To accomplish its mission, DOE must work in cooperation with industry in the development of new energy sources and in achieving the ultimate goal of widespread commercial use of those energy sources. To this end, Congress has provided DOE with the authority to invoke an array of incentives to secure the commercialization of new technologies developed for DOE. One such important incentive is provided by the patent system.

(b) Pursuant to 42 U.S.C. 2182 and 42 U.S.C. 5908, DOE takes title to all inventions conceived or first actually reduced to practice in the course of or under contracts with large, for-profit companies, foreign organizations, and others not beneficiaries of Pub. L. 96-517. Regulations dealing with Department's authority to waive its title to subject inventions, including the relevant statutory objectives, exist at 41 CFR 9-9.109. Pursuant to that section, DOE may waive the Government's patent rights in appropriate situations at the time of contracting to encourage industrial participation, foster commercial utilization and competition, and make the benefits of DOE activities widely available to the public. In