transfer activities should also be considered when implementing procedures to avoid conflicts of interest. Such other persons would most likely be long term visitors, job-shop subcontractors, guest scientists, no-pay appointees, post doctoral fellows, industrial exchange participants, academic sabbaticals and other non-Laboratory personnel. DOE agrees and appropriate language to address this comment has been included under Conflicts of Interest—Technology Transfer. The commenter also recommended deleting the requirement under (d)(10) which requires contractors to notify DOE prior to evaluating a proposal by a third party or DOE when the subject matter of the proposal involves an elected or waived subject invention or one in which the Contractor intends to elect to retain title. The commenter believes that (d)(10) is burdensome for Contractors that manage and operate several private and DOE facilities because it requires Contractors to search for inventions unrelated to the contract. DOE has inserted language under (d)(10) to clarify that the notification requirement applies when the subject matter of the proposal involves an elected or waived subject invention under the contract or one in which the Contractor intends to elect to retain title under the contract.

The commenter recommended adding language to indicate that the U.S. Industrial Competitiveness requirements apply to intellectual property where the Laboratory obtains rights during the period the Contractor is operating the Laboratory and would not apply to intellectual property owned by the parent organization/company. Language was added to reflect that the U.S. Industrial Competitiveness requirements solely apply in licensing and assignment decisions involving Laboratory intellectual property where the Laboratory obtains rights during the course of the Contractor's operation of the Laboratory under the contract. The U.S. Industrial Competitiveness requirements would not apply in licensing and assignment decisions involving the Contractor's other intellectual property.

Three comments were made objecting to three separate provisions of the Indemnity-Product Liability paragraph which might, in the commenter's view, result in the contractor being subjected to undue financial/legal risks and administrative burden. Specifically, the commenter objected to language that limited the indemnification in licensing to only personal injury or property injury and which also excluded from the indemnity protection any liability based upon negligence of the Contractor. The Indemnity—Product Liability provisions as written are minimally acceptable to DOE and therefore, no change is being made to the language. However, the Department emphasizes that the Contractor is permitted to negotiate language that is deemed more beneficial to both the Contractor and the Department. With respect to the commenter's objection to the requirement to identify and obtain the approval of the Contracting Officer for any proposed exceptions to the Participant providing indemnification, the Department believes that overall, this requirement is beneficial to the Contractor. This requirement provides a mechanism by which the Contractor is able to obtain exceptions to the indemnification provision and, therefore, no change is believed necessary.

In the Disposition of Income provisions, the commenter made three suggestions. Under subparagraph (h)(1), the first suggestion was to modify the language to reflect that the amount of royalties or other income earned or retained by the Contractor was to be that amount remaining after payment of patenting costs, licensing costs, payments to inventors and other expenses incidental to the administration of Subject Inventions. This language parallels that which appears in 35 U.S.C. 202(c)(7)(E)(i) and has been adopted.

The second comment submitted regarding the Disposition of Income provision was to add the text of 35 U.S.C. 202 (c)(7)(E)(ii) which would allow the licensing of Subject Inventions to be administered by Contractor employees on location at the facility. This suggestion was not adopted in that 35 U.S.C. 202 (c)(7)(E)(ii) is already contained in the patent clause of the M&O contract. The third comment objected to the proposed coverage on inventor award and royalty sharing being subject to the approval of the Contracting Officer. Changing the requirement to obtain Contracting Officer approval with respect to policies for inventor award and royalty sharing, as proposed in this comment, would result in a major change to a long standing Departmental policy and has not been adopted.

Under the Transfer to Successor Contractor provision, the commentor requested that additional assurance be provided in requiring a successor contractor to accept transfer of title and accounts subject to the rights and obligations which the previous operator had to its inventors, its licensees and to its parent organization/company. No change is believed necessary because the intent of the suggestion is implicit in the current language.

In the Technology Transfer Through Cooperative Research and Development Agreements, Withholding of Data provision, the commenter suggests that the likelihood of obtaining commercially reasonable patent protection be included as a standard in determining whether a patent application has to be filed. As provided in the M&O contract's patent clause, if the Contractor does not file a patent application on an invention disclosed to the Government as a subject invention, the Government may file. Disclosure of subject inventions and the Government's right to file is a statutory requirement.

III. Procedural Requirements

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

B. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41285, 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, or 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 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 the States.

C. 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