



DEPARTMENT OF ENERGY

48 CFR Chapter 9

RIN 1991-AC17

Department of Energy Acquisition Regulation

AGENCY: Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this technical amendment to reinstate text that was deleted from the Department of Energy Acquisition Regulation (DEAR) in error when the DEAR was revised through a final rule in November 2024, and effective December 13, 2024. The deleted text was adopted through previous rulemakings, and because the text is still applicable to the DEAR, this technical amendment is necessary to ensure the regulation in its entirety is reported in the Code of Federal Regulations. By reinstating this text, the regulation on access to and ownership of records will clearly state which records are considered contractor-owned records.

DATES: The effective date of this technical amendment is [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2024, DOE published a final rule that comprehensively revised its Acquisition Regulation in order to update and streamline the policies, procedures, provisions and clauses that are applicable to DOE's contracts ("November 2024 Final Rule"). 89 FR 89720. The rulemaking updated or eliminated coverage that is obsolete or that unnecessarily duplicates the Federal Acquisition Regulation (FAR) and retained only that coverage which either implements or supplements the FAR for the award and administration of the DOE's contracts. The rule added several new clauses and amended several existing clauses in order to promote more uniform application of the DOE's contract award and administration policies.

II. Need for Correction

The November 2024 Final Rule in error provided amendatory instructions which resulted in deletion of text from 48 CFR 970.5204-3(b) that was not intended to be removed through the rulemaking. The deleted text, 48 CFR 970.5204-3(b)(2)-(5), was initially adopted in 2005 (70 FR 37016) and amended in 2009 (74 FR 36374) and 2014 (79 FR 56285). Through this technical amendment, DOE is reinstating 48 CFR 970.5204-3(b)(2)-(5) as adopted in the 2014 rulemaking as the November 2024 Final Rule never intended to remove this text from the regulations. Without reinstating this text, the records that are deemed contractor-owned records significantly decrease. It would leave open to interpretation whether these types of records would be Federal records subject to Federal records management requirements, as opposed to contractor-owned records. This technical amendment is necessary to ensure that regulation in its entirety is reported in the Code of Federal Regulations.

III. Procedural Issues and Regulatory Review

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), DOE finds that there is good cause not to issue a separate notice to solicit public comment on the change made by this rule. This rule reinstates language that was removed in error. Additionally, the reinstated language was adopted pursuant to notice-and-comment and no changes have been made to the

reinstated language in this rule. Therefore, issuing a separate notice to solicit public comment is unnecessary and serves no useful purpose.

As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule; technical amendment.

List of Subjects in 48 CFR Part 970

Accounting, Classified information, Drug abuse, Government procurement, Insurance, Labor, Minority businesses, Reporting and recordkeeping requirements, Small businesses, Surety bonds, Taxes, Whistleblowing, Women.

Signing Authority

This document of the Department of Energy was signed on June 30, 2025, by William J. Quigley, Deputy Associate Administrator, Partnership and Acquisition Services, National Nuclear Security Administration, pursuant to delegated authority from the Administrator, National Nuclear Security Administration, and Janella Davis, Acting Director, Office of Acquisition Management, Department of Energy, pursuant to delegated authority from the Secretary of Energy. These documents with the original signature and date are maintained by DOE/NNSA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on July 2, 2025.

Treena V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

For the reasons set forth in the preamble, DOE amends part 970 of chapter 9 of title 48 of the Code of Federal Regulations, as set forth below:

PART 970 – DOE MANAGEMENT AND OPERATING CONTRACTS

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

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

2. Amend section 970.5204-3 by revising paragraph (b) of the clause to read as follows:

§ 970.5204-3 Access to and ownership of records.

* * * * *

(b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (*i.e.*, the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232–3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

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