

**970.0371-9 Contract clause.**

The contracting officer shall insert the clause at 970.5203-3, Contractor's Organization, in all management and operating contracts. The approval authority of the Secretary of Energy required in paragraph (c) may not be delegated. In paragraph (a) the words "and managerial personnel (see 970.5245-1(j))" may be inserted after "(see 952.215-70)".

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36370, July 22, 2009]

### Subpart 970.04—Administrative Matters

**970.0404 Safeguarding classified information.****970.0404-1 Definitions.**

*Access Authorization* means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

*Classified Information* means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12958, Classified National Security Information, April 17, 1995, as amended, or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

*Counterintelligence* means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

*Facility Clearance* means an administrative determination that a facility is eligible to access, produce, use or store classified information or special nuclear material.

*Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the

use of special nuclear material in the production of energy; but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2162).

[65 FR 81009, Dec. 22, 2000, as amended at 67 FR 14878, Mar. 28, 2002; 74 FR 36370, July 22, 2009]

**970.0404-2 General.**

(a) Guidance regarding the National Industrial Security Program as implemented by the Department of Energy (DOE) may be found at subpart 904.4, Safeguarding Classified Information Within Industry. Additional information concerning contractor ownership when national security or atomic energy information is involved may be found at subpart 904.70. Information regarding contractor ownership involving national security program contracts may be found at subpart 904.71.

(b) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. DOE has established a counterintelligence program subject to this Executive Order which is described in DOE Order 5670.3 (as amended). All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations, should undertake the necessary precautions to ensure that DOE and covered Contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

(c) For DOE management and operating contracts and other contracts designated by the Senior Procurement Executive, or designee, the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts," implements the requirements of section 234B of the Atomic Energy Act (see 904.402(c)(1)) for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any