

DOE 3890.1A
6-12-92

THIS PAGE MUST BE KEPT WITH DOE 3890. 1A, CONTRACTOR INSURANCE AND OTHER HEALTH BENEFIT PROGRAMS.

DOE 3890.1A, CONTRACTOR INSURANCE AND OTHER HEALTH BENEFIT PROGRAMS, HAS REVISED DOE 3890.1 TO REFLECT ORGANIZATIONAL TITLE, ROUTING SYMBOL, AND OTHER EDITORIAL REVISIONS REQUIRED BY SEN-6. NO SUBSTANTIVE CHANGES HAVE BEEN MADE. DUE TO THE NUMBER OF PAGES AFFECTED BY THE REVISIONS, THE ORDER HAS BEEN ISSUED AS A REVISION.

U.S. Department of Energy
Washington, D.C.

ORDER

DOE 3890.1A
6-12-92

SUBJECT: CONTRACTOR INSURANCE AND OTHER HEALTH BENEFIT PROGRAMS

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1. PURPOSE To prescribe Department of Energy (DOE) policy and procedures and to assign responsibilities and authorities for the review and approval of-casualty, group, and nuclear insurance and other health benefits programs for DOE management and operating contractors and other contractors.
 2. CANCELLATION. DOE 3890.1, CONTRACTOR INSURANCE AND OTHER HEALTH BENEFITS PROGRAM, of 6-7-85.
 3. SCOPE. The provisions of this Order apply to all management and operating contractors and extensive long-lived construction, architect-engineer, and onsite service contractors performing work for the Department as provided by law and/or contract and as implemented by a DOE contracting officer.
 4. REFERENCES.
 - a. Public Law 85-265, Atomic Energy Act of 1954, as amended, which authorizes DOE to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities involving the risk of and public liability for a substantial nuclear incident.
 - b. Public Law 87-258, section 2679 of title 28, United States Code, which provides for the defense of suits against Federal employees arising out of their operation of motor vehicles in the scope of their employment, and for other purposes.
 - c. Public Law 93-406, Employee Retirement Income Security Act of 1974 (ERISA), which protects interstate commerce and the interests of employee benefit plan participants and their beneficiaries by requiring the disclosure to participants and beneficiaries of financial information; by establishing standards of conduct, responsibility and obligation for fiduciaries of employee benefit plans; and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.
 - d. Title 5, Code of Federal Regulations (CFR) 1320, Controlling Paperwork Burdens on the Public, of 5-2-82, which directs the identification and clearance of information collections levied on the public, including contractors.

DISTRIBUTION:

All Departmental Elements

INITIATED BY:

Office of Procurement, Assistance
and Program Management

- e. DOE 5500.1B, EMERGENCY MANAGEMENT SYSTEMS, of 4-30-91, which coordinates and directs DOE planning preparedness and responds to operating emergencies involving DOE or requiring DOE assistance.
- f. DOE 5500.3A, PLANNING AND PREPAREDNESS FOR OPERATIONAL EMERGENCIES, of 4-30-91, which establishes requirements for site specific emergency plans and procedures.
- g. Department of Energy Acquisition Regulations (DEAR), subpart 970.2870, of 3-28-84, which describes policies concerning indemnification of DOE contractors.
- h. DEAR, section 970.5204-32, of 3-28-84, concerning required bonds and insurance, exclusive of Government property, for cost-type contracts.
- i. DEAR, section 950.7005, of 3-28-84, which describes criteria a Head of a Contracting Activity uses to determine whether a contractor's activities involve the risk of public liability for substantial nuclear incident making the contractor eligible for a statutory indemnity agreement from the DOE.

5. POLICY.

- a. Contractors shall procure and maintain bonds and insurance required by law or by the written direction of the contracting officer.
- b. In the DOE casualty insurance program for contractors, the Government assumes the risk of loss arising out of contractor operations.
- c. Only those group insurance and other health benefits insurance costs directly attributable to benefits provided DOE contractor personnel or former contractor personnel, plus reasonable administrative costs, will be allowable under the contract.
- d. DOE requires contractor efforts to contain health care costs through innovation in insurance coverages, emphasis on the importance of good health, and consideration of alternative delivery systems such as Health Maintenance Organizations (HMOs) and other competitive approaches.
- e. By contract, DOE contractors determined to be under the risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of contract work are given statutory indemnity under section 170d of the Atomic Energy Act of 1954, as amended. Purchase of insurance is normally not allowed, however, see DEAR sections 950.7010 and 970.2870(h).

6. DEFINITIONS.

- a. Bond designates an agreement under which a person or corporation (e.g., an insurance company) becomes surety to pay, within stated limits, for financial loss caused to another by the act or default of a third person or by some contingency over which the principal may have no control.
- b. Claim Reserves indicate the insurance company's dollar estimate of claims incurred but not yet paid at the end of an accounting period.
- c. Incurred Claims are covered losses suffered or covered expenses incurred by insured persons during an accounting period. Claimants may or may not have been paid during the accounting period.
- d. Insurance describes coverage by agreement, whereby one party undertakes to indemnify or guarantee another against loss due to a specified contingency or peril.
- e. Management and Operating Contract is an agreement under which the Government contracts for the operation, maintenance or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency (FAR subpart 17.6, and DEAR subpart 917.6).
- f. Paid Claims include benefits actually paid during the accounting period (policy year). The meaning of "paid" depends upon the accounting practices of the insurance company. In some cases a claim is "paid" when the benefit check is written; in other cases a claim is "paid" when the benefit draft clears the banking system and is recorded in the home office records of the insurance company.
- g. Risk is the hazard or chance for loss.
- h. Risk Assumption includes losses that are treated as an expense, when they occur, without advance funding.
- i. Self-Insurance is a method of dealing with loss, with or without advance funding, with no transfer of risk to a third party.

7. RESPONSIBILITIES AND AUTHORITIES.

- a. Director of Procurement, Assistance and Program Management has overall authority for establishing policies regarding insurance programs of DOE contractors subject to this Order, in addition to assuring inclusion of necessary language in the Department of Energy Acquisition Regulations to implement the policies of this Order.

- b. Director of Contractor Human Resource Management.
- (1) Develops and implements policies, procedures, and standards for group and casualty insurance.
 - (2) Concurs in contractors' insurance plans and policies prior to their approval by Heads of Field Elements, except as stated in paragraphs 6d(2) and (3) below.
 - (3) Assists contracting officers in the review of contractors' insurance programs and claims administration to determine their adequacy and cost effectiveness.
 - (4) As requested, assists contracting officers in decisions relating to final cost settlements under contractors' retrospective rated casualty insurance plans.
 - (5) Advises and assists Heads of Departmental Elements on all contractor insurance problems.
 - (6) Maintains liaison and consults with other Federal agencies and with insurance industry organizations concerning insurance matters.
 - (7) Manages support service contracts to provide expert, independent advice on casualty and group insurance matters.
 - (8) Implements the information collection and clearance requirements contained in 5 CFR 1320 as they apply to contractors, insurance companies, benefits consultants, and other members of the public from whom information is collected under the provisions of this Order.
- c. Director of Emergency Planning and Operations assures that the Director of Contractor Human Resource Management receives proper notification of any agency planning, preparedness, or response, as required by DOE 5500.1B or 5500.3A, that concerns nuclear-related insurance claims.
- d. Heads of Field Elements.
- (1) Assure contractor compliance with the policies and procedures covered by this Order, including extensive long-lived construction, architect-engineer, and onsite service contractors.
 - (2) Approve contractors' insurance and health benefit plans and policies when the plan or policy represents an extension to DOE contract work of existing benefits carried by a contractor for

its private operations and when the contractor involved is an organization engaged predominantly in private competitive business.

- (3) Approve renewal policies for contractors provided there is no substantive change in the policy.
- (4) Approve fidelity and surety bonds of contractors.
- (5) Assure contractors maintain accounting systems and controls adequate for administering their insurance programs.
- (6) Assure contractors establish procedures to prevent any compromise of classified information in processing claims.
- (7) Request assistance from the Office of Contractor Human Resource Management in decisions relating to final cost settlement under contractors' retrospective rated casualty insurance plans.
- (8) Assure that contracts contain appropriate contractor insurance and other benefits program clauses and that each applicable Request for Proposals (RFP) contains such clauses:
- (9) Assure that, where appropriate, competitive procurement procedures are followed by contractors in obtaining needed insurance and other health benefits program coverage.
- (10) Maintain liaison with the Office of Contractor Human Resource Management to provide assistance and review of contractors' insurance program and claims administration to determine their adequacy and cost effectiveness.

BY ORDER OF THE SECRETARY OF ENERGY:



DONALD W. PEARMAN, JR.
Acting Director
Administration and Human
Resource Management

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CHAPTER I

CASUALTY INSURANCE PROGRAMS

1. PURPOSE. To provide policy and procedures regarding contractor casualty insurance.
2. REFERENCES.
 - a. The Defense Base Act of 1958 (Public Law 85-608) is an extension of the Longshoremen's and Harbor Workers' Act and concerns the protection of civilian employees working outside the continental United States (CONUS) for the Federal Government and/or for any nation with which the United States has a common military or defense alliance.
 - b. Environment Impairment Insurance. The Environmental Protection Agency (EPA) has promulgated regulations designed to establish "cradle to grave" control over hazardous wastes. These regulations apply to firms which generate, store, treat, dispose of, or transport hazardous wastes and include the Resource Conservation and Recovery Act of 1976 (RCRA) (Public Law 94-580); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), which established the Super Fund; and the Motor Carrier Act (Public Law 96-296) .
 - c. U. S. Longshoremen's and Harbor Workers' Act (Public La 85-6081) covers compensation for maritime workers who suffer work-related injuries, including death and disability, occurring upon the navigable waters of the United States. Because the basic workers' compensation policy is limited to the statutory benefits of state workers' compensation laws, special coverage needs to be added to cover any Federal liability arising out of maritime operations.
3. DEFINITIONS.
 - a. Fidelity Bond serves as assurance against employee dishonesty.
 - b. Guaranteed Cost Plan. Under this type of insurance the contractor pays a premium based on units of exposure (such as \$100 of expended payroll for workers' compensation, employers' liability, or general liability and an annual flat premium for each car and truck), out of which the insurance company pays claims. There is no direct adjustment of premium for good or bad experience as under a retrospective plan.
 - c. Maximum Premium Plan. In this arrangement, a maximum premium is agreed upon and paid, with the insurance company financially responsible for any and all additional costs which may result from adverse loss experience. Typical of these plans are the current

National Defense Projects Rating Plan and the Comprehensive War Projects Rating Plan used during World War II. DOE has used both these plans.

- d. Plans Without a Minimum or Maximum Premium. A retrospective plan, written on an incurred- or paid-loss basis, without a minimum or maximum premium, constitutes a cost-type insurance arrangement. These plans have been and are used for management and operating contracts involving either hazards with which insurance companies have too little experience to underwrite, or operations so highly classified that sufficient information for risk evaluation cannot be given insurance companies. Most DOE management and operating contracts are currently covered under this type of plan. This means DOE is, in effect, an insurer for these contracts; but, because of their size and scope, there is a substantial distribution of risk. Insurance costs for this group of contracts are the lowest of all which warrant the use of this retrospective plan whenever possible.
- e. Retrospective Insurance Plans provide for the determination of the final premium in retrospect, based on claims paid and/or anticipated by the insurance company. While formulas vary, most take the following approach:
- $$\text{Actual Insurance Cost} = ((\text{actual losses} \times \text{"loss adjustment factor"}) + \text{allocated expenses}) \times \text{premium tax factor.}$$
- Two basic kinds of retrospective rated plans are utilized by DOE contractors:
- (1) Incurred Loss Retro - A retrospective plan under which an insurer holds reserve amounts for claims paid and claims expected to be paid;
 - (2) Paid Loss Retro - A retrospective plan under which premium amounts are paid to an insurer only after or at the time the insurer makes similar payments to claimants.
- f. Subrogation is the legal process by which an insurer seeks from a third party, who may have caused a loss, recovery of the amount paid to the policyholder.

4. COVERAGES.

- a. Worker's Compensation and Employer's Liability. Workers' Compensation insurance protects the employer against liability imposed by State or Federal law to pay benefits and furnish medical care to employees injured and to pay benefits to dependents of employees fatally injured in the course of their employment. The standardized policy form represents a vehicle by which statutory compensation and medical benefits to injured employees or survivors can be provided in accordance with provisions of the applicable workers' compensation and occupational disease acts of each State. Coverage A of the policy provides the predetermined compensation and other benefits required of the insured by the applicable workers' compensation law. Coverage B, Employer's Liability, applies to cases in which a third party, who has been held liable to the employee in

an action at law on account of the employee's injuries, in turn seeks indemnity from the employer. This type of insurance will be required unless the contractor has an acceptable program of self-insurance. Each of the 50 States, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands have workers' compensation laws. Other aspects of workers' compensation may involve the following:

- (1) Employment of Native Workers at Foreign Job Sites sometimes requires separate coverage available only from a foreign government agency. The contractor is required to discuss necessary coverages with the appropriate governmental authority before commencing operations.
- (2) Elective Laws. Workers' compensation laws in certain States permit an employer to elect not to be subject to their provisions. DOE requires its contractors to accept liability for workers' compensation benefits in jurisdictions having elective laws.
- (3) Statutory Immunity. Under the provisions of some State laws, certain types of employers (e.g., nonprofit educational institutions) may be relieved by statute from workers' compensation and employer liability. If such an employer has an option to waive immunity, DOE requires that such coverage be made available to employees.
- (4) Voluntary Compensation Endorsement (see Attachment I-1) is necessary when company officers or employees might not be eligible to receive the statutory benefits of Coverage A in a given state of operation. Including this endorsement voluntarily allows their receipt of statutory benefits. Examples of situations not covered for injuries under workers' compensation include practicing for or participating in athletic games sponsored by the employer, and being stationed for the duration of a project at a location not specifically identified in the policy. Because this printed endorsement is limited to accidental injury, a further amendment is necessary to extend Voluntary Compensation Coverage to occupational disease.
- (5) "Monopolistic" States. are States which do not permit the purchase of workers' compensation coverage from a commercial insurance company. These are Nevada, North Dakota, Ohio, Washington, West Virginia, Wyoming, and Puerto Rico. Contractors with employees in these jurisdictions must obtain coverage from the workers' compensation fund administered directly by those jurisdictions. In some of these states, employers may become approved self-insurers and pay workers' compensation benefits directly to injured workers; otherwise, the contractor must participate in the monopolistic fund. Premiums, sometimes referred to as contributions, are based on a percentage of the payroll falling within each payroll hazard classification. In addition to premiums, employers may also be assessed for the jurisdictions' costs of administering the fund

and for other expenses, such as second-injury funds.

(6) Other States Coverage Endorsement extends coverage to all States except the "monopolistic" States listed above. It should be endorsed to contractors' policies, and it can be acquired without additional charge in any State, except the "monopolistic" fund States which do not permit private insurance.

- b. Comprehensive General Liability Insurance is required unless the contractor has an acceptable program of self-insurance. If the contractor is relieved by statute from liability but has authority to purchase liability insurance, DOE requires that it be purchased. In such cases, the insurance company must endorse its policy to the effect that it will not plead statutory immunity as a defense unless instructed to do so by the contractor. The following are typical features of comprehensive general liability insurance:
- (1) Bodily Injury Coverage protects the insured against loss from any claims for injuries arising from the business premises or operations (except those covered by any workers' compensation law, and others specifically excluded by the policy). This coverage will be required with limits of \$300,000 per occurrence, regardless of the number of persons involved. Any deviations must be justified by the contractor (policyholder) to the satisfaction of Heads of Field Elements. A personal injury clause broadens the scope of the coverage beyond bodily injury to include libel, slander, and false arrest.
 - (2) Property Damage. The standard comprehensive general liability insurance policy includes property damage liability which covers the insured in the event of physical injury or destruction of tangible property of others, including the loss of use of that property. If approved, this insurance shall be purchased with limits of \$100,000 for each occurrence. Any deviations must be justified.
 - (3) Combined Single Limits. A comprehensive general liability policy with both bodily injury and property damage coverage having combined single limits of \$300,000 for each coverage can be substituted for the limits specified in subparagraphs (1) and (2) above. Any deviations must be justified.

- (4) Products Liability insurance protects the insured for damages arising out of the consumption, handling, or use of its products by others. Coverage is present in the standard comprehensive general liability form unless otherwise excluded.
 - (5) Contractual Liability insurance protects the contractor against loss arising under assumption of liability by agreement. Coverage is provided by the standard comprehensive general liability policy at no additional cost if a contractor has assumed liability under the following:
 - (a) A lease of premises;
 - (b) An easement agreement;
 - (c) An agreement required by municipal ordinance;
 - (d) A sidetrack agreement; or
 - (e) An elevator or escalator maintenance agreement.
- c. Contractors' Protective Liability insurance protects the contractor against loss from any claims for injuries because of operations performed for it by independent subcontractors. DOE will require this coverage with bodily injury limits of \$300,000 per occurrence and property damage of \$100,000 whenever any of the work under a contract is performed by subcontractors. Any deviations must be justified.
- d. Medical Malpractice Insurance covers liability for malpractice, error, or mistake in rendering of medical, surgical, nursing, or hospital services or for treatment or the omission thereof. Comprehensive general liability policies ordinarily do not provide this coverage. Where employers render first aid or employ individual nurses -- for example, technicians to staff first aid stations -- it may be desirable to obtain this incidental medical malpractice as an endorsement to the general liability policy. The "contract of hire" of a doctor may require medical malpractice insurance to be furnished.
- e. Automobile Liability Insurance is required by the Department, unless the contractor has an acceptable program of self-insurance, with limits of \$300,000 per occurrence for bodily injury and \$100,000 for property damage. This coverage will be written on the business automobile policy form covering all owned, nonowned, hired, and Government-furnished motor vehicles used in contract operations when use will not be limited exclusively to the premises on which the work under the contract is performed. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be provided unless required by State statute. Contractors may request higher limits for bodily injury and auto property damage; however, in recommending such requests, the Head of the Field Element shall provide the Director of Contractor Human Resource Management the reasons given by the

contractor, as well as any contract term relieving the contractor for losses not covered by insurance. A policy with a \$300,000 single limit of liability may be used in lieu of separate limits.

- f. Fire Insurance insures against three basic perils: fire, lightning, and removal (loss resulting from the removal of insured property from a building damaged or threatened by an insured peril). Insurance of this type is not approved for Government-owned property but can be approved for contractor-owned property used on contract work.
- g. Aircraft Insurance. The owner/operators of commercial airports and the commanding officers of certain military air bases require evidence of insurance for aircraft to use the airport facilities. Only insurance for bodily injury liability, passenger bodily injury liability, and property damage liability will be considered for approval. Coverage purchased should provide at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability and bodily injury combined shall be at least \$200,000, multiplied by the number of seats or the number of passengers, whichever is greater. The purchase of insurance may be required of the lessee for leased aircraft.

5. POLICY.

- a. Coverages Not Approvable by the Department include architects' and engineers' professional liability, directors' and officers' liability, and other forms of professional liability; business interruption insurance; and "extra expense" insurance. Exceptions to this policy must be justified by the contracting officer on the basis of supportive documentation provided by the contractor, and approval must be obtained from the Office of Contractor Human Resource Management.
- b. Choice of Insurance Arrangements.
 - (1) Self-Insurance. DOE will approve a contractor's plan to self-insure its risks if the contractor has adequate and competent personnel to administer the plan, if it meets all State and Federal regulations, and if it results in reasonable cost to DOE.
 - (2) Insurance by Contract. Insurance coverage of a contractor's work for DOE may be obtained by contracting with an insurance company, in which case DOE requires the contractor to seek competitive proposals. However, in States requiring "monopolistic" State workers' compensation funds, there is no choice of insurers for workers compensation insurance.
- c. Negotiation of Insurance Arrangements.
 - (1) Retrospective Plans. The use of retrospective insurance plans is required for Departmental contracts for which the combined annual premiums for commercial insurance would exceed \$10,000.

Departures from this policy must be justified and approved by the Office of Contractor Human Resource Management. Retrospective plans can be packaged to include workers' compensation, employers' liability, comprehensive general liability, and automobile liability risks. Unlike fixed or guaranteed-cost insurance contracts, a retrospective plan's final premium is determined after the expiration of the policy based on an agreed-upon formula.

- (2) Other Plans of Insurance When the combined annual premiums for workers' compensation, employers' liability, and comprehensive general liability, including automobile liability, do not exceed \$10,000, or when for other reasons a retrospective insurance plan is not practical, some other type of insurance arrangement is necessary. This usually requires the use of a guaranteed-cost plan underwritten on a commercial basis.

d. Insurance for Jointly Funded Projects.

- (1) Property. DOE assumes the risk of loss of Government property, as set forth in the FAR property clause 45.103. Cost participants having an insurable interest in project property should provide their own property insurance outside the contract.
- (2) Casualty. The contractor will acquire a DOE retrospective rated casualty insurance program insuring the contractor, all cost-type subcontractors to whatever tier the contracting officer elects, and cost participants, with the cost thereof reimbursed under the contract according to contract terms and conditions. Insurance shall cover statutory workers' compensation benefits and liability for contract operations, the operation of automobiles, with bodily injury limits of \$100,000 per person and \$300,000 per occurrence, and a property damage limit of \$100,000 per occurrence. Liability loss which exceeds recovery from the basic casualty insurance program shall be assumed solely by the Department, with the Government's liability limited to available appropriated funds for the contractor, subcontractor, and cost participants.

(3) Applicability.

(a) The criteria for applying the above shall be:

- 1 The Government's cost is not less than one third of the total project cost;
- 2 Contract duration is not less than 3 years;
- 3 The Government's share of commercial insurance would be not less than \$25,000 per year; and
- 4 Title to the project property is vested in the Government.

(b) Cost-shared projects which do not meet the criteria set forth in this section may be insured under the DOE casualty insurance program when the contracting officer determines there is a need for the program and/or the cost savings provide adequate incentive.

e. Property Insurance.

- (1) Insurance for Leased Property. Owners of leased property generally require the lessee to establish and maintain financial responsibility through liability insurance during the term of the lease; also, an owner may demand the liability insurance include the owner as an additional insured. DOE'S goal is to keep the liability insurance policy limit at or below \$100,000/\$300,000 bodily injury and \$100,000 property damage. The lease agreement shall include a waiver of subrogation in favor of the contractor and the Government, to the full extent of any loss.
- (2) Insurance on Government Property. DOE does not require or approve insurance covering loss of, or damage to, Government property used in connection with contracts. Ordinarily the contractor will be relieved of liability for loss or damage to Government property to the extent provided in the Government property clause of the contract.

6. PROCEDURES.

- a. Approvals. All casualty insurance policies, including self-insurance arrangements, shall be submitted for approval to the Director of Contractor Human Resource Management prior to approval by the Heads of Field Elements, except for the following, which may be approved by Heads of Field Elements:

- (1) Renewal policies for contractors, provided there is no substantive change from the previous policy;
- (2) Scheduled premium payment amounts; and
- (3) Binders for workers' compensation (including occupational disease and employer's liability) and comprehensive general liability (including automobiles), when the Head of the Field Element has determined that the coverage provided is consistent with the terms of the contract and the policy costs are reimbursable under the contract.

b. Administration.

- (1) Statutory and Contractual Requirements When a contractor purchases workers compensation and occupational disease coverage, it will be required to report promptly all accidents and occupational diseases to the State and to its insurance company as required by statute and policy terms. When qualified to act as a self-insurer for workers compensation and occupational diseases, the contractor will be required to report accidents and occupational diseases to the State as required by statute. The contractor will assure the conduct of a complete case investigation as required by the State and, where indicated, will promptly pay benefits to the claimant in accordance with the applicable workers' compensation or occupational disease law. Rehabilitation will be utilized appropriately to return injured employees as soon as possible to their current or other suitable position. Only if required by statute or by collective bargaining agreement will workers' compensation benefits be supplemented to make up the difference or partial difference between the workers' compensation and an injured worker's full salary. The contractor will be required to maintain a complete individual file on each claim to document and support the action taken. These files will be accessible to DOE or authorized representatives.
- (2) Claims Under Voluntary Workers' Compensation Insurance Basic workers' compensation philosophy for voluntary compensation payments anticipates that there will be liability without fault, and that every covered worker subjected to occupational injury will receive medical treatment plus compensation for loss of wages or of wage earning capacity. Wage loss payments must not commence until disability is manifest and wage loss actually occurs, and shall be paid according to income, not on a lump-sum basis, unless required by statute.

- (3) Security. Classified information must not be compromised in the processing of workers' compensation and occupational disease claims of DOE contractors and subcontractors; however, sufficient unclassified information must be developed to allow a just determination of each claim on its merits.
- (4) Procedures for Policies Governing DOE Contract Work.
- (a) Where security permits, the contractor's payroll or other records of the units on which premiums are based will be examined by the insurance company's auditor at intervals designated in the policy. The contractor will prepare worksheets showing the basis for premium computation.
- (b) If security or other reasons prevent the insurance company's auditor from examining the contractor's records, the contractor shall, as required by the Insurer, prepare and certify a periodic statement of payroll or other rating data to be used for premium computation. This statement will be sent to the insurance company.
- (c) Retrospectively rated automobile policies of DOE contractors must be consistent with Public Law 87-258, 28 U.S.C. 2679, and shall include the following endorsement:
- "It is agreed that such insurance as is afforded by the policy with respect to the ownership, maintenance or use of automobiles, including loading or unloading thereof, does not apply to the United States of America, any of its agencies, or any of its officers or employees."
- (d) Contractors' retrospectively rated liability policies with no maximum premiums must be endorsed as follows:
- "The Company may make such investigation, negotiation, and settlement of any claim or suit as it deems expedient, provided that with respect to any settlement or payment which the Company believes should be made in an amount in excess of \$25,000 on account of any claim the Company shall submit its recommendation to the contractor and DOE. The Company shall not make any such settlement or payment without approval by the contractor and DOE."
- (e) Any special claims, exposures, or circumstances that may require DOE employee or contractor involvement in claims matters will be as described in the policy with the company.

(5) Procedures When DOE Contract Work is not Covered Under the Parent Company's Policies.

- (a) Where security permits, the contractor's payroll or other records of the units on which premiums are based will be examined by the insurance company's auditor at intervals designated in the policy. The contractor will prepare worksheets showing the basis for premium computation.
- (b) If security or other reasons prevent the insurance company's auditor from examining the contractor's records, the contractor shall, as required by the insurer, prepare and certify a periodic statement of payroll or other rating data to be used for premium computation. This statement will be sent to the insurance company.

7. RESPONSIBILITIES AND AUTHORITIES.

a. Director of Contractor Human Resource Management.

- (1) Provides technical assistance at the request of field elements.
- (2) Periodically inspects claims services of contractor insurance companies to determine the efficiency of their insurance programs and make spot checks of case files. Advises the Head of the Field Element on the findings resulting from these inspections and checks.
- (3) Reviews claim files of interim settlements submitted under retrospective plans to determine whether loss payments and charges made by the insurance company are covered by the terms of its policies and are in accord with standard claims practiced. The review will also determine whether all subrogation recoveries have been properly credited.
- (4) When settlement results in a refund, advises the Head of the Field Element(s) that settlement has been approved and verifies the amount of the refund.
- (5) Advises Heads of Field Elements as to the acceptability of all final settlements under retrospective plans.

b. Heads of Field Elements.

- (1) Submit for approval to the Director of Contractor Human Resource Management, all policies and endorsements, accompanied by copies of relevant correspondence and by a statement which shall include:

- (a) A brief description of the contract operations with particular attention to unusual or new activities, specialized equipment, and so forth, which represent a unique hazard.
 - (b) A statement of any special features of the contract or of the operations having a bearing on the insurance policy.
 - (c) Recommendations with respect to approval of the policy.
- (2) Assure that policies submitted for approval contain the following by appropriate endorsement:
- (a) A provision excluding any claim on the part of the insurance company to be subrogated on payment of loss or otherwise to any claim against the United States.
 - (b) A provision that in the event of cancellation or nonrenewal by the insurance company, 60 days' advance notice shall be given to the contractor, the field element, and the U.S. Department of Energy, Office of Contractor Human Resource Management.
 - (c) A provision limiting the insurance company's right of inspection of the contractor's records and premises as necessary to comply with DOE's security requirements.
- (3) Provide copies of approved renewal policies to the Office of Contractor Human Resource Management for file.
- (4) Assure insurance claims are administered in accordance with the following:
- (a) Contractors' insurance programs are operating in accordance with State requirements.
 - (b) Adequate controls exist to protect classified information.
- (5) When a contract is terminated, assure that any remaining credits due in connection with the insurance or any outstanding obligations of the contractor with respect to insurance will be assumed by the Government (see Attachment I-2).

VOLUNTARY COMPENSATION ENDORSEMENT

Suggested Wording:

It is agreed that:

In the event of disability or death of any employee (the Employee) of this employer (the Employer), resulting from any occupational disease, (the Company) will voluntarily pay, on behalf of the Employer, the same compensation to the same disabled employee or to any person claiming by, through and under him or her in the event of death resulting from such occupational disease, as would be payable under the Workers' Compensation Law of the State of Tennessee had the disability or death of the Employee resulted from any injury compensable under such law, subject to the following provisions:

1. This endorsement applies only with respect to:
 - a. Such employees as sustain disability or death from an occupational disease due to the nature of an employment in which the hazards of such disease actually exist, are characteristic of, and are peculiar to the trade, occupation, process, or employment covered by the policy, provided that the disability or death is actually incurred in such employment.
 - b. Such employees whose last exposure, in the employment of the Employer, to the conditions causing such occupational disease occurs during the policy period and whose incapacity resulting from such disease occurs not later than 10 years ^{1/} after the end of the policy.
 - c. Such occupational disease with respect to which the workers' compensation benefits are not recoverable under the workers' compensation or occupational disease law of any State of the United States or of any province of Canada.
2. In consideration of these payments and as a condition precedent thereto, the Employee or any persons claiming by, through or under him or her shall execute a full release of all claims for damages against the Employer in the manner required by the Company and shall in addition execute an assignment to the Company of any right of action available to any of them against any person, firm, corporation or estate, other than the Employer, which is or may be liable for such disability or death. If death of the Employee shall result and any one claiming by, through, or under the Employee shall accept any payment provided for in this endorsement which accrues after such death, with notice or knowledge of said release and assignment, the acceptance of such payment shall operate to stop the person accepting from asserting that such release or assignment is not binding upon him or her.

^{1/} Some companies will agree to a period of 10 years. Others may not be willing to agree to this long a period.

3. If the Company proceeds upon such assignment and recovers and collects an amount from the party at fault in excess of the amount of the payments made hereunder, the Company shall first satisfy the necessary expenses of the procedure and shall pay any remaining balance of such excess so obtained to the person or persons executing the assignment. The Company shall have power and discretion to proceed against the party at fault or to settle with said party upon such terms as may seem desirable to the Company, either without litigation or during the pendency thereof.
4. If the Employee or any person claiming by, through, or under him or her shall refuse to accept the payments offered under the provisions of the preceding paragraph, then the Company may withdraw the foregoing proposal without notice, under which circumstances the Company will be no longer bound by the undertaking expressed in the first paragraph of this endorsement. If any claim, suit, or demand is made or prosecuted against the Employer or any other person or organization for damages sustained by such disability or death, such claim, suit, or demand shall be considered as refusal to accept such payments, and the obligations of the Company as expressed in Paragraph I, "Coverage B," of the policy, as well as all parts of the policy having reference thereto, shall be and remain the obligations of the Company as fully and completely as if this endorsement had not been written.
5. All terms, conditions, limitations, and exclusions expressed in the policy, except Condition 7, so far as they are not inconsistent with the obligations undertaken by this endorsement, are applicable to the insurance afforded by this endorsement, but in their application to such insurance, the word "injuries", wherever used in the policy, shall mean occupational disease and the word "accident" shall mean incapacity resulting from occupational diseases.
6. For the purpose of determining the limits of the Company's obligations as assumed by this endorsement, payments under this endorsement shall be regarded as payments made under Paragraph I, "Coverage B," of the policy. Thus, the Company's liability shall be limited to \$300,000 on account of occupational disease, including death at any time resulting therefrom, suffered by any one employee and, subject to such limit with respect to each such employee, the total limit of the Company's liability under this endorsement and under Paragraph I, "Coverage B," shall be limited in the aggregate to \$300,000 for any one consecutive 12 months of the policy beginning 1-1-85.

ASSIGNMENT TO GOVERNMENT AND ASSUMPTION

1-1-85

The undersigned Contractor under Contract No. DEAC01656 does hereby assign, transfer, and set over to the Government, as of the effective date hereof, all of its rights, title, and interest in and to all return premiums, premium refunds, dividends, and any other moneys due or to become due the Contractor in connection with Policy No. WC-01-0875 issued by the Travelers Insurance Company, as applicable to Contract No. DEAC01656. It is agreed that such return premiums, premium refunds, dividends, and other moneys shall be paid by the Insurance Carrier directly to the Government.

The Government does hereby assume all of the obligations of the Contractor, including the obligation to pay directly to the Insurance Carrier any further or additional premium properly charged under any of the above insurance policies heretofore approved by the contracting officer, which further or additional premium has not been paid by the Contractor, to the extent to which such premium would have been reimbursable to the Contractor if payment thereof had been made by the Contractor.

IN WITNESS Whereof, The Contractor and the Government have executed this instrument effective the 1st day of January, 1985.

THE UNITED STATES OF AMERICA

By Alice B. Calm
Alice B. Calm
Contracting Officer

CONTRACTOR: Energy Associates
By John Law
John Law
Attorney-in-Fact

CHAPTER II

GROUP INSURANCE AND OTHER HEALTH BENEFITS PROGRAMS

1. PURPOSE. To provide policy and procedures regarding contractor group insurance and other health benefits programs.
2. REFERENCES.
 - a. Cost Accounting Standards Board. Part 416, "Accounting for Insurance costs," provides criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods, and the allocation of insurance cost to cost objectives.
 - b. Financial Accounting Standards Board. The mission of this Board is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors, and users of financial information.
3. DEFINITIONS.
 - a. Administrative Services Only describes a contract between an employer and an insurance company under which the insurance company provides all normal services except legal defense and the assumption of risk (i. e., insurance).
 - b. Alternative Delivery System describes health care organizations which offer comprehensive benefits at competitive rates, combining the insurance component and the health care delivery system into one. Examples are:
 - (1) Health Maintenance Organizations, which are health care plans that furnish comprehensive, coordinated services on a prepaid basis; and
 - (2) Preferred Provider Organizations, which are health care delivery systems that combine elements of the fee-for-service and health maintenance organization systems. These "preferred" providers may be hospitals or groups of physicians who charge for their services according to a predetermined fee schedule.
 - c. Claim Reserves indicate the insurance company's dollar estimate of those claims incurred but not yet paid as of the end of an accounting period (policy year).
 - d. Coinurance denotes the fixed percentage of covered charges paid by a medical plan after any deductible has been subtracted.
 - e. Conversion Charge is an assessment for rewriting an employer-provided life insurance policy to convert it to an individual policy.

- f. Copayment is the fixed dollar amount one must pay for a service or benefit provided by a medical plan.
- g. Cost of Insurance. In the case of group insurance coverage that is not experience-rated, the cost of insurance is the sum of premiums paid. In the case of coverage that is experience-rated, the cost of insurance is the sum of the actual benefit charges and the insurance company's expenses. Benefit charges under an experience-rated plan include paid claims, any change in the required claim reserves, pooling charges, conversion charges, and the insurance company's retention charges.
- h. Deductible indicates the amount of covered charges one must incur in a calendar year before the medical plan pays benefits.
- i. Fee-for-Service Plans pay incurred covered charges either to the claimant or the provider and allow the claimant to choose physician, hospital, or other health care provider.
- j. Flexible Funding describes an arrangement whereby a policyholder pays a monthly premium equal to claims actually incurred in the prior month plus the insurance company's monthly retention, including a prorata estimate of State premium taxes, risk charges, and claim administration expenses.
- k. Group Insurance indicates a contract under which one party (the insurance company), in consideration of the premium paid by the second party (the employer), assumes full liability for the payment of all benefits accruing to employees under the employer's plan.
- l. Incurred Claims include covered losses suffered or covered expenses incurred during an accounting period (policy year) by insured persons. These losses may or may not have been paid during the accounting period (policy year).
- m. Minimum Premium Plan, also known as excess risk plan, split funded group plan, and modified administration plan is an arrangement whereby a reduced premium is provided an insurer and the remainder is deposited in a special bank account on which the insurer can draw to pay claims. A minimum plan is not appropriate for group life insurance, but is frequently used for medical and dental expense plans and occasionally for short-term disability income plans.
- n. Paid Claims comprise benefits actually paid under the plan during an accounting period (policy year). The meaning of "paid" depends upon the accounting practices of the insurance company. In some cases, a claim is considered paid when the benefit check is written; in other cases, a claim is considered paid when the benefit draft clears the banking system and is recorded in the home office records of the insurance company.

- o. Pooling Charges are charges for handling the portion of a claim that is not experience-rated under an otherwise experience-rated plan. Pooling arrangements encourage an insurance company to underwrite higher amounts of insurance or greater benefit amounts than could otherwise be safely experience-rated.
- p. Premium (Experience-Rated) differs from a non-experience rated premium in that the insurance company is fully accountable to the policyholder for disposition of the experience-rated premiums it receives. Thus, if there is a premium surplus at the end of an accounting period, the insurance company will return that surplus to the employer as an experience refund. In addition to the amounts earmarked for benefit liabilities and expenses, the experience-rated premium includes an amount intended to cover actual benefit liabilities and expenses which may exceed estimates. This additional amount is called a "margin" and is usually the major source of experience refund. Changes in the experience-rated premium rates are determined largely or entirely by the claims experience under the employer's plan.
- q. Premium (Non-Experience-Rated) is the amount estimated by the insurance company to be sufficient to cover, for a class of policyholders, all benefit liabilities and insurance company expenses (including profit margins, cost of risks, and so forth) incurred during the period covered by the premium.
- r. Premium Retrospectively Rated is an additional premium payable under an experience-rated plan at the end of an accounting period (policy year) if the aggregate of benefit charges and expense charges then exceeds premiums paid. The additional premium is the consideration for which the insurance company has agreed to remove the usual "margin" (see paragraph 3p above) from the experience-rated premium. By agreement, the amount of the additional premium usually will not exceed the amount of margin removed from the premiums paid during the policy.
- s. Premium Stabilization Fund denotes an optional arrangement under an experience-rated plan whereby the insurance company does not return surplus premiums to the policyholder but rather retains them in a special account for the purposes of covering experience deficits and mitigating or avoiding premium rate increases otherwise necessary.
- t. Prepaid Plans include medical plans such as Health Maintenance Organizations that provide health care by participating physicians, hospitals, and other providers in particular geographic areas. These plans pay all providers through salaries or other payment arrangements.
- u. Retention Charges are made by the insurance company primarily for underwriting and administering the employer's group insurance program. The charges include the costs of maintaining insurance records, printing and issuing insurance documents (contracts,

certificates, and so forth), processing and paying claims, and paying the state premium tax assessed on each premium dollar an insurance company receives.

- v. Retrospective Premium Arrangement is an arrangement under which the final premium is determined at the end of the policy term, based on claims paid or reserved for by the insurer.
- w. Stop-Loss describes an arrangement by which a self-insured company transfers risk of loss above a certain amount (stop-loss amount) to a third party (insurer).

4. COVERAGES. The following coverages are commonly available through employer group insurance packages:

- a. Group Term Life. Benefits in the event of the insured's death.
- b. Accidental Death and Dismemberment. Benefits for loss of life or of specified body members as a consequence of accidental bodily injury.
- c. Medical. Benefits paid to doctors, hospitals, or for other medical services in the event of sickness or accident.
- d. Dental. Benefit payments for specific dental services, sometimes including oral surgery, in the event such treatment is necessary.
- e. Disability Income. Payments for a loss of income resulting from disability caused by accident or sickness.
- f. Dependent. Life, medical, and dental coverages for eligible dependents of an insured individual.
- g. Retiree. Life and medical coverage for persons who have retired from an employer's active work force.
- h. Other. Additional kinds of coverages such as prescription drug, hearing care, group legal, vision care, and group auto.

5. POLICY.

- a. Allowable benefit costs are those contributed toward the benefits provided to DOE contractor employees. Preferred financial arrangements for contractor group insurance plans attempt to minimize the period of time between the Department's receipt of funds from the U.S. Treasury and ultimate payment to contractor employees, former employees, or their beneficiaries.
- b. DOE will approve a contractor's plan to self-insure its risks if the contractor has adequate and competent personnel to administer the plan, and if the plan meets all State and Federal regulations.

- c. DOE will approve insurance of a contractor's DOE work if it results in reasonable cost to DOE, as determined by the Office of Contractor Human Resource Management. If there is reason to believe that more economical or satisfactory insurance arrangements can be obtained elsewhere, the contractor shall be requested to seek proposals from other companies.
- d. Alternative funding arrangements, such as minimum premium plans or flexible funding methods, may be utilized wherever such arrangements can be concluded to be in the best interests of the Government.
- e. Funding in advance for benefits earned by contractor retirees will not be allowed unless such funding is required by State or Federal statute. Such benefit payments will be provided for on a pay-as-you-go basis.
- f. Contractor insurance arrangements that call for funds for the purpose of budgeting or "leveling" claims experience, such as premium stabilization reserves, will not be allowed.
- g. Contractors will strongly emphasize communication with employees regarding health care, including self-care, to make them better consumers of health services.
- h. Competition will be used, where available, in providing health care to contractor employees. An example of competition would be making Health Maintenance Organizations a viable option.
- i. Subsequent to contract termination or expiration, benefit continuation will be provided for those who earned such benefits, according to the approved benefit plans, on a funding basis most reasonable to the Department. Among acceptable arrangements for these provisions are paying a sum to the outgoing contractor to continue its liability, paying a third party such as an insurer, to guarantee benefit payments, or continuing the benefit payment obligation with the replacement contractor.
- j. Contractors, through benefit plan design, shall make judicious use of coinsurance, deductibles, and copayments to make their employees conscientious consumers of health benefits. Contractors should also encourage outpatient care, second surgical opinions, wellness programs, and other methods of cost-containment.

6. PROCEDURES.

a. Approvals.

- (1) All group insurance policies, including self-insurance arrangements and arrangements for participating in a contractor's corporate program, shall be submitted for approval

to the Director of Contractor Human Resource Management prior to cost approval by Heads of Field Elements, except for the following, which may be approved by Heads of Field Elements.

- (a) Renewal policies or endorsements for contractors, provided there is no substantive change from the previous policy.
 - (b) Changes or amendments to group insurance policies which are an extension of existing group insurance carried by a contractor for its private operations when the contractor involved is an organization engaged predominantly in private competitive business.
 - (c) Premium payments for insurance policies of contractors.
- (2) Funding arrangements for benefits must have the approval of the Director of Contractor Human Resource Management prior to cost approval by the Contracting Officer.
 - (3) Financial experience of the contractor's plans shall be reviewed periodically by Heads of Field Elements and the Office of Contractor Human Resource Management.
 - (4) All plan changes that affect costs, except collectively bargained plan changes, must be approved by the Director of Contractor Human Resource Management prior to approval by the Contracting Officer.

b. Administration.

- (1) Separate policies will be provided for the various group benefits covering a contractor's employees. If this is not considered to be in the best interests of DOE, the circumstances of the proposed deviation must be documented.
- (2) Transmittals to the Director of Contractor Human Resource Management for approval will contain all necessary background information, including the plan's financial experience (if any), projected costs, and the transmitting office's reasonableness-of-total -compensation analysis and recommendation. Current copies of plans, trust documents, insurance policies, and other similar agreements and material also will be sent to the Office of Contractor Human Resource Management.

- (3) Prior to contract termination or expiration, arrangements for benefit continuation as provided for in the contract will be made for eligible contractor employees, former employees beneficiaries, and dependents. The arrangements will be those available at the most reasonable cost to the Government, and may include pay-as-you-go or single premium costs.

CHAPTER III

NUCLEAR INSURANCE

1. PURPOSE. To provide policy regarding insurance and statutory indemnity for nuclear incidents.
2. DEFINITIONS.
 - a. Nuclear Insurance Pools. Because the potential financial consequences of the nuclear energy risk exceed the coverage that could be provided by any single insurer, the insurance industry has formed "pools" to aggregate capacity and provide the highest possible limits of protection. The pools include the American Nuclear Insurers, an association of stock insurance companies, the Mutual Atomic Energy Liability Underwriters and the Mutual Atomic Energy Reinsurance Pool, an association of mutual insurance companies. These pools offer liability and property insurance, and their operations are coordinated.
 - b. Price Anderson System. Section 170 of the Atomic Energy Act, of 1954 as amended, and relevant definitions in section 11 of that statute, comprise the Price-Anderson system. This feature was added to the Atomic Energy Act in 1957 to afford financial protection to the public and to licensees and contractors of the Atomic Energy Commission (AEC) against the risks of public liability associated with the use of atomic energy. When the AEC was reorganized in 1974, the nonlicensing functions of the AEC were transferred to the Energy Research and Development Administration (ERDA), and the licensing functions were transferred to the Nuclear Regulatory Commission (NRC). Thereafter, ERDA became responsible for administering Price-Anderson with regard to ERDA contractors, while NRC became responsible for applying the system to its licensees and contractors. In 1977, when ERDA merged with other energy-related agencies to form the Department of Energy, DOE assumed responsibility for the Price-Anderson system with regard to its contract activities.
 - c. Price-Anderson System Indemnity Agreement. The Price-Anderson system, as it applies to DOE, is centered around indemnity agreements between DOE and its contractors. DOE is authorized to enter into indemnity agreements with its contractors for activities under contract for the benefit of the United States involving "the risk of public liability for a substantial nuclear incident." Applicable DEAR 950.7005 defines the criteria used for determining when a specific contract involves such activities, and specifies the details of the Price-Anderson indemnity.

3. POLICY.

- a. DOE contractors given statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, normally will be neither required nor permitted to furnish financial protection by purchase of insurance to cover liability to the public for possible nuclear incidents, with the following exceptions:
 - (1) With the approval of the Director of Contractor Human Resource Management, DOE contractors now covered by insurance against such liability, may continue to carry such insurance.
 - (2) If nuclear liability insurance is carried by a contractor which is also an NRC licensee, DOE will pay an equitable portion of the insurance premium under its contract.
 - (3) With the approval of the Director of Contractor Human Resource Management, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed \$1 million.
- b. Property insurance coverage will not be approved for contractors operating in DOE-owned facilities. For contractors operating in their own facilities, property coverage may be approved, and DOE will reimburse the contractor for its proportionate share of such coverage.
- c. DOE may enter into contract with the private nuclear insurance industry for the provision of claims-handling services. Such agreements will be national in scope and administered by the Office of Contractor Human Resource Management.
- d. Nuclear liability insurance is subject to an Industry Credit Rating Plan, which is essentially a 10-year retrospective plan based on the experience of all holders of nuclear liability insurance policies. Where nuclear liability insurance is approved for DOE contractors as a reimbursable cost, it is mandatory that the contract be written so as to enable DOE to recoup its proportionate share of any premium refunds. This is best accomplished by an assignment at contract termination, granting to the DOE any right the contractor may have in any such refunds.

4. PROCEDURES

- a. If there is a nuclear incident requiring agency planning, preparedness, and responses as required by DOE 5500.1B and 5500.3A, and insurance claims are anticipated under the Price-Anderson System,

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III-3 (and III-4)

the Director of procurement, Assistance and Program Management, through the Director of Contractor Human Resource Management, will coordinate, as appropriate, any claims processing with the private nuclear insurance industry.

- b. The Director of Procurement, Assistance and Program Management, through the Director of Contractor Human Resource Management, and with the concurrence of the appropriate program office and the Office of General Counsel, will advise the Office of Chief Financial Officer of the need for funds to meet claims as they are identified.

