THIS PAGE MUST BE KEPT WITH DOE 5700.5A, POLICY AND MANAGEMENT PROCEDURES FOR FINANCIAL INCENTIVES PROGRAMS.

DOE 5700.5A, POLICY AND MANAGEMENT PROCEDURES FOR FINANCIAL INCENTIVES PROGRAMS, HAS REVISED DOE 5700.5 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 5700.5A

6-8-92

SUBJECT: POLICY AND MANAGEMENT PROCEDURES FOR FINANCIAL INCENTIVES PROGRAMS

1. PURPOSE. This Order establishes general policy guidelines and management procedures for all authorized financial incentive programs of the Department, including loans, loan guarantees, purchase agreements, price supports, and others which may evolve.

2. CANCELLATION. DOE 5700.5, POLICY AND MANAGEMENT PROCEDURES FOR FINANCIAL INCENTIVES PROGRAMS, of 1-12-81.

3. REFERENCES.

   a. DOE 5700.211, COST ESTIMATING ANALYSIS, AND STANDARDIZATION, of 6-12-92, which delineates the requirements, procedures, authorities and responsibilities for the development of independent cost estimates.

   b. DOE 5440.1D, NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE PROGRAM, of 2-22-91, which establishes procedures to implement NEPA, Executive Order 11514, as amended, and as supplemented by Council on Environmental quality guidelines.

4. OBJECTIVES. The objectives of this Order are to:

   a. Align programs and projects using financial incentive support from DOE with existing Departmental outlay management-implementing systems by:

      (1) Ensuring Secretary, Deputy Secretary, or Under Secretary approval of major commitments.

      (2) Ensuring that overall execution responsibility resides with Heads of Headquarters Elements.

      (3) Maximizing field element responsibilities by encouraging decentralization of program implementation and delegation of approval authority consistent with programmatic goals and objectives and field element capability.

      (4) Ensuring timely and coordinated management support.

   b. Promote, to the maximum extent possible, uniform, financially responsible, and programmatically consistent financial incentive operations.

DISTRIBUTION:
All Departmental Elements

INITIATED BY:
Office of Procurement, Assistance and Program Management

c. Establish Departmental financial incentive procedures, implementation responsibilities and mechanisms, including a Financial Incentives Advisory Board.

d. Minimize processing time of applications by establishing time performance standards and consolidating Headquarters review through the Financial Incentives Advisory Board process.

e. Establish responsibilities for supplemental procedures in accordance with the needs and experience of the Department.

BY ORDER OF THE SECRETARY OF ENERGY:

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

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CHAPTER I

RESPONSIBILITIES AND AUTHORITIES

1. GENERAL. In general, Headquarters Elements are responsible for the development of financial incentive program implementation plans, program regulations and program financial incentive policies. Field elements delegated programmatic authority by the Heads of Headquarters Elements and possessing approval authority for financial incentive awards will be responsible for the implementation of these policies and for evaluation, approval, negotiation, and other aspects of the financial incentives process. Authority to sign financial incentive contractual agreements may be delegated to Heads of Contracting Activities and redelegate to warranted field contracting officers qualified to award financial incentives. However, such delegation is effected separately from delegation of program and approval authorities. Attachment III-1,"Outline of the Financial Incentives Process," provides a transactional representation of the responsibilities assigned by this chapter.

   a. Financial Incentives Advisory Board is responsible for ensuring financial incentives are planned, executed, and monitored on a uniform, financially responsible, and programmatically consistent basis.

      (1) It shall consist of members and advisors, as follows:

      Members: Under Secretary, Chairperson
      Chief Financial Officer
      Assistant Secretary for Domestic and International Energy Policy
      Assistant Secretary for Environment, Safety & Health
      Cognizant Head of Headquarters Element

      Advisors: General Counsel
      Director of Procurement, Assistance and Program Management
      Others as designated for each approval meeting

      (2) It shall advise the Financial Incentives Approving Official on program plans, policy matters, transactions exceeding $50 million, program implementation assignments, and extraordinary actions involving unexpected events.

   b. The Under Secretary is designated the Financial Incentives Approving Official for transactions of $50 million and larger. The Under Secretary may delegate approving official authority for applications that exceed $50 million. The Secretary or Deputy Secretary may elect to be the Approving Official on selected projects. Other Departmental officials, such as the Director of Alcohol Fuels (CE-80), may also be designated as approving officials by the Secretary for transactions exceeding $50 million. In such cases, the designated individual shall perform the functions specified for the Under Secretary by this Order. The Under Secretary, as Approving Official, shall:

(1) Convene meetings and obtain the advice of the Financial Incentives Advisory Board on Headquarters financial incentive approval decisions.

(2) Appoint application evaluation panels for applications $50 million and larger.

(3) Approve program plans and implementation decision memoranda thereby approving projects and defining execution responsibilities for financial incentive programs.

(4) Ensure the coordinated development of program-related financial incentive policies.

c. Chief Financial Officer.

(1) As the business manager of the Department, assures that financial, budgetary, business management, and contractual policy is developed and implemented.

(2) Is responsible for the financial review of all Headquarters financial incentive transactions and for advising Heads of Headquarters Elements, approving officials and application evaluators. Specifically, the CFO shall:

(a) Establish financial policy guidelines for executing financial incentive programs.

(b) Perform an independent financial risk analysis that considers the financial, economic, technical, and management aspects of individual transactions.

(c) Conduct independent cost estimates of applications of $50 million and larger to identify fully the exposure of the approved plan.

(d) Provide financial representation for the coordinated review of solicitations, program implementation plans and regulations.

(e) Serve as principal point of contact with the Treasury Department when concurrence or review is required for particular transactions and on transactions involving the Federal Financing Bank.

(f) Budget and account for financial incentive programs.

(g) Perform Post-closing monitoring of projects. Coordinate and advise, where applicable, on recommendations related to disputes, terminations, loan workout arrangements, cost overruns, loan defaults, principal and interest assistance, and other extraordinary monitoring actions.

(h) For loans and loan guarantees assess the adequacy of established loan loss reserves, periodically audit the program portfolios of outstanding commitments, and recommend changes in loan loss reserves to provide for anticipated use of such reserves.

(i) On projects of $50 million and larger, ensure the establishment of project baselines, maintain a project progress reporting system aimed at monitoring general technical, cost and schedule progress and not detailed project management, analyze reports, and initiate project reviews or decision meetings to review performance.

(J) Concurrence on all transactions of $50 million and larger.

(k) Coordinated development and consistent interpretation of policies and procedures governing financial incentives.

(l) Coordination of independent financial, contractual, legal, policy, and environmental assessments of individual Headquarters financial incentive transactions, solicitations, program implementation plans, and program regulations.

(m) Concurrence on program regulations, program implementation plans, and implementation decision memoranda.

(n) Evaluation of financial incentive planning, evaluation, negotiation, execution and monitoring capability of Headquarters and field elements, leading to establishment of financial incentive approval thresholds for those offices.

(o) Periodic review of field element and Headquarters compliance with policy and procedures.

(p) Evaluation of the financial incentives process and development and implementation of policy changes as appropriate.

(q) Establishment of career programs to train, retain, and reward specialists required for financial incentive programs.

d. Heads of Headauarters Elements are responsible for the planning, execution, monitoring, and overall management of assigned financial incentive programs. The Heads of Headquarters Elements, as program financial incentive approving officials, have final authority to approve financial incentive applications and management plans under $50 million. When so delegated by authority of the Under Secretary, Heads of Headquarters Elements may be approving officials on applications that exceed $50 million. Heads of Headquarters Elements shall:

(1) Develop financial incentive program implementation plans and decision memoranda, program regulations, policies, and procedures.

(2) Maintain and improve programmatic, technical, and financial analysis capability in Headquarters and field offices.

(3) Appoint application evaluation panels for applications under $50 million or as delegated.

(4) Delegate program execution authority to the Heads of Field Elements, provided capability is such to ensure performance that is consistent with Departmental policies and programmatic goals. The proposed levels of program authority and approval authority will be identified in the implementation plan. Whenever authority to approve applications is delegated to Heads of Field Elements, the concurrence responsibilities of the Chief Financial Officer, General Counsel, and Director of Procurement, Assistance and Program Management up to the equivalent dollar level should be similarly delegated to field functional counterparts, whenever possible. Proposed levels for such delegations shall also be identified in the implementation plan.

(a) Whenever Heads of Headquarters Elements delegate program execution authority to Heads of Field Elements for a transaction which may exceed the previously established approval authority of that office, they will obtain the concurrences of the Director of Procurement, Assistance and Program Management, the Chief Financial Officer, General Counsel, and other relevant Headquarters’ offices to confirm that the field element has the functional capability to support the delegation.

(b) Delegation of approval authority above the level of a field element’s previously established approval authority requires the approval of the Under Secretary and the Chief Financial Officer.

(5) Prepare and execute programs and budgets for the financial incentive programs.

(6) Centrally coordinate all program activities involving Headquarters, field elements, and other Governmental agencies, except the Department of the Treasury and the Office of Management and Budget.

(7) With the assistance of appropriate Headquarters Elements, perform the responsibilities of the Heads of Field Elements set forth in subparagraph e, below, when authority is not delegated to the field.

(8) Approve extraordinary actions, for example, loan workout arrangements or impending failure to achieve project goals, with the assistance of appropriate Headquarters Elements, or provide recommendations to the Under Secretary, on such actions, when the Under Secretary is the approving official.

e. Heads of Field Elements (or Heads of Headquarters Elements when authority is not delegated) are responsible for processing financial incentive transactions when delegated such program authority by the Heads of Headquarters Elements. In support of such programmatic authority, capability to evaluate, negotiate, and monitor financial incentive actions within prescribed policy and procedural guidelines will be developed and maintained before a comparable approval authority threshold is established.

(1) For transactions within the delegated program authority levels and approval authority thresholds, Heads of Field Elements shall:

(a) Act as the program financial incentives approving official.

(b) Ensure they receive, prior to their final approval decision, a comprehensive independent risk analysis, including technical, management, financial, legal, environmental, contractual, and related business assessment of each financial incentive transaction similar to the independent assessment performed for Headquarters financial incentives approving officials.

(c) Establish and manage application evaluation panels.

(d) Accept applications in accordance with sol imitations or program regulations and conduct a multidisciplinary evaluation.

(e) Perform application risk analysis of the proposed transaction in compliance with Departmental policies, standards, and procedures.

(f) Negotiate the final business terms and conditions of financial incentive documents and modifications thereto.

(g) Represent the Heads of Headquarters Elements at closing and awards and as Head of the Contracting Activity, execute the transaction document.

(h) Perform post closing and postaward monitoring duties, e.g., the approval of disbursements under guaranteed loan monitoring, project status, lender performance, the repayment of loans. Additionally, key decision approvals required at major milestones and for major financial commitments normally shall be made by the Head of the Field Element responsible for monitoring the financial incentive transaction.

(i) For loans and loan guarantees, initiate actions to prevent default, and where appropriate, coordinate Departmental actions in managing default situations.

(j) provide to the Chief Financial Officer, prior to initiating extraordinary actions, for Chief Financial Officer concurrence and for approval by the cognizant Headquarters approving official, recommendations relative to actions to be taken on disputes, terminations, loan workouts, cost overruns, principal and interest assistance, and loan defaults. Implement decisions and approved recommendations.

(k) Provide periodic reports to reflect the need of the Department to monitor summary technical, cost and schedule progress, but not manage the project.

(2) For transactions beyond delegated thresholds, Heads of Field Elements shall:

(a) Perform, as separately delegated, items on page I-5 and I-6, subparagraph e(1) (a) through (k).

(b) Provide to the Headquarters approving official, through the Office of Procurement, Assistance and Program Management, evaluation reports and any other information required for decisions by the Headquarters approving official.

(c) On financial incentive projects for which they are assigned monitoring responsibility, make all key decision approvals required at major technical, cost and schedule milestones as long as project progress is consistent with the approved plan. If progress has deviated from the approved plan or projected performance is evaluated as having potential for deviation from the approved plan, Heads of Field Elements will initiate action leading to a decision by the cognizant Headquarters approving official.

f. General Counsel is responsible for legal review of all Headquarters financial incentive transactions and for advising the Heads of Headquarters Elements, approving officials, contacting off icers, and application evaluators. Specifically, counsel shall:

(1) Provide legal participation for the coordinated review of Departmental financial policy, financial incentive soli citations, program implementation plans, and program regulations.

Additionally, for loans and loan guarantees, review recommendations related to disputes, terminations, loan workouts, cost overruns, loan defaults, principal and interest assistance, and other extraordinary actions.

(2) Independently assess and advise the approving official on the legal aspects of individual financial incentive application reports developed by application evaluation panels and on the legal aspects of the delegation of program authority and the establishment of approval authority.

(3) Represent or arrange representation for the Department in all financial incentive legal activity.

(4) Develop legal documentation setting forth the terms and conditions of financial incentive agreements.

(5) Assist in negotiating the legal aspects of the final terms and conditions of financial incentive agreements and contracts.

(6) Concur in legal sufficiency of application approvals and contractual documentation.

g. Assistant Secretary for Domestic and International Energy Policy is responsible for ensuring financial incentives are considered in energy policy planning and shall:

(1) Include where appropriate the use of financial incentives in achieving overall energy objectives of the Department.

(2) Participate in the coordinated review of program implementation plans and program regulations to ensure that they reflect Departmental policy objectives.

(3) Advise approving official of the consistency of individual transactions with policy and programmatic objectives.

h. Assistant Secretary for Environment, Safety and Health ensures that financial incentive transactions comply with environmental, flood plains, safety, and health regulations and shall advise approving officials on National Environmental Policy Act considerations to include environmental rules, regulations, and requirements.

l. Director of Procurement, Assistance and Program Management is the signatory official for financial-incentive awards. This responsibility, and others assigned below, may be delegated to Heads of Contracting Activities and redelegate to designated functional field counterparts, except signatory authority, which may only be redelegate to contracting officers warranted for financial incentive instruments. The Director is responsible for financial assistance policy and for the contractual terms, conditions, and aspects of Headquarters financial incentive, transactions. The Office of Procurement, Assistance and Program Management (or Heads of Contracting Activities, when so delegated) shall:

(1) Draft solicitations when solicitations are appropriate. Participate in preparation of prenegotiation positions and coordinate the negotiation team efforts associated with all contract commitments, guarantees, loan agreements, and all other required financial incentive contractual documentation and formally execute the financial incentive agreements.

(2) Assist in monitoring the contractual aspects of awarded financial incentive transactions, and maintain the official contract files.

(3) Develop functionally related aspects of Departmental financial assistance policy and regulations.

(4) Independently assess and advise approving officials on the contractual and related business aspects of individual applications.

(5) Coordinate reviews of solicitations, program implementation plans, and regulations. Participate in the resolution of recommendations related to disputes, terminations, loan workouts, cost overruns, loan defaults, principal and interest assistance, and other extraordinary actions.

(6) Manage, coordinate, and assist in the formation and indoctrination of financial incentives application evaluation panels. Provide procedural and functional advice to them.

(7) Coordinate the presentations made by panels to Headquarters approving officials and conduct a coordination meeting prior to the actual Financial Incentives Advisory Board Meeting.

(8) Conduct coordinated evaluations of the financial incentive planning, evaluation, negotiation, execution, and monitoring capabilities of Headquarters and field elements, reporting results to the Chief Financial Officer who is responsible for evaluating their capabilities to process financial incentive transactions and for establishing approval authority levels.

j. Board ofContract Appeals, sitting as the Board of Financial Assistance Appeals, shall hear and decide appeals from any decision brought before it on disputes relating to financial incentive instruments.

2. IMPLEMENTATION. The Under Secretary and the Chief Financial Officer will ensure that the policies, programs, and transactions for financial incentive programs are properly implemented, timely, and sufficient to support the needs of the Department.

CHAPTER II

POLICY GUIDELINES

1. GENERAL. Program regulations, implementation plans, and solicitations shall be developed in accordance with the following policy guidelines. The foregoing, notwithstanding, such documents shall include consideration of the distinct and unique nature of the objectives of each financial incentive program and shall always be consistent with congressional intent.

   a. Direct Loans.

      (1) General. When authorized by law, DOE may make direct loans to stimulate commercialization of energy conserving and producing technologies when reasonable and adequate private financing is unavailable.

      (2) Borrower's Equity. Recipients of direct loans should provide equity capital in accordance with program statutes or regulations.

      (3) Risk Sharing. Risks that exceed levels acceptable in the private marketplace may be undertaken provided that a reasonable assurance of repayment exists and that it is necessary for program implementation.

      (4) Liens on Assets, Collateral, or Surety and Resource to the Borrower. Lien positions shall be taken by DOE on project assets and on other collateral or surety pledged by the borrower to protect the Government's loan interests. Lending which is collateralized solely by project assets on first and superior lien basis, may be employed if determined by DOE to be necessary and reasonable. Recourse to the borrower, or a pledge of additional collateral or surety, or combinations thereof, may be required by DOE in appropriate situations.

      (5) Evaluation of the Financial Condition of Borrowers and Principal Parties. DOE will evaluate applicant financial data to determine borrower ability to meet loan obligations and sufficiency of funds for carrying out the project.

      (6) Disbursements. Loan proceeds will be disbursed to borrowers under a project milestone and disbursement schedule which is satisfactory to the approving official.

      (7) Project Monitoring. Loan agreements shall provide that auditors designated by DOE or the U.S. Comptroller General shall have access to, and the right to examine any directly pertinent documents and records of the borrower. Further, project reporting information necessary for the Department to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the project shall be obtained.

Loan agreements shall identify those items or types of information which are to be made available to the Department on a confidential basis and which should not be publicly disseminated. If appropriate for the types of projects to be financed with direct loans, the loan agreements shall provide that employees and representatives of the Department shall have access at reasonable times and under reasonable circumstances to the project site.

(8) Default, Demand, Payment, and Collateral Liquidation. Loans must have provisions to ensure adequate assets are pledged to secure the loan and to protect the Department's interests in case of default.

(9) Project Costs. An audit or review shall be conducted of all estimated project costs and any unnecessary or excessive costs shall be identified. The borrower shall be required to make available records and other data necessary to permit the approving official to carry out such an audit or review. In carrying out this responsibility, the approving official may utilize employees of other Federal agencies or private contractors, or may direct the borrower to submit a review performed by an independent public accountant or other competent authority.

(10) Cost Overruns. Subject to the availability of loan funds, a loan agreement may be amended at the discretion of the approving official to increase the amount of the loan in the event that the actual cost incurred exceeds the original estimated cost if permitted by program statute and regulations.

b. Loan Guarantees.

(1) General. When authorized by law, DOE may guarantee loans to stimulate commercialization of energy conserving and producing technologies when reasonable and adequate private financing is unavailable.

(2) Risk Sharing. DOE may undertake risks that exceed levels acceptable in the private marketplace provided that a reasonable assurance of repayment exists and that it is necessary for program implementation.

(3) Liens, Collateral, Surety and Recourse to the Borrower. Each loan guarantee must be supported by liens, collateral, or surety pledges by the borrower to protect the interests of the Government, consistent with its interest. Lending collateralized solely by project assets on a first and superior line basis may be employed if determined by DOE to be necessary and reasonable. Recourse to the borrower, or a pledge of additional collateral or surety, or combinations thereof, may be required in appropriate situations.

(4) Evaluation of the Financial Condition of Borrowers and Principal Parties. DOE will evaluate applicant financial data to determine ability to meet loan obligations and sufficiency of funds for carrying out the project. Where a private lender is involved in the application, the lender shall normally be required to provide DOE with a written credit analysis of the borrower. Real or apparent conflicts of interests of all participants must be avoided.

(5) Loan Funding. DOE guaranteed loans may be funded through private or Federal sources. Private funding will be encouraged when the objective of the program is to involve the financial community in a new technology or to act as the marketing function for the program. Such private funding may take the form of a wholly or partially guaranteed loan. Where private funding is used, the private lender will be encouraged to share in the risk of the project. Guarantee agreements financed through private lenders will consider an assignment agreement which provides for the selling of the guaranteed portions of the loan.

(6) Disbursements. Advancement of loan proceeds by the lender to the borrower will be made under a project milestone and disbursement schedule which is satisfactory to the approving official.

(7) Loan Servicing. Provisions shall be included to ensure loan servicing consistent with servicing responsibilities that a reasonable and prudent lender would undertake in a similar transaction that was not guaranteed by the Government. Servicing and monitoring by a private institution in no way obviates or reduces responsibility of the Department to exercise project monitoring.

(8) Project Monitoring. The guarantee agreements or collateral documents shall provide that representatives of DOE shall have access at reasonable times and under reasonable circumstances to the project site. The agreements shall also provide that auditors designated by DOE or the U.S. Comptroller General shall have access to, and the right to examine any directly pertinent documents and records of the borrower. Further, project reporting information necessary for the Department to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the guaranteed project shall be obtained. The detailed reporting associated with the management of acquisition projects is not appropriate for financial incentive programs. The guarantee agreements or related documents shall identify those items or types of information which are to be made available to the Department on a confidential basis and which should not be publicly disseminated.

(9) Interest Rates and Fees. The interest rate on the loans to be guaranteed and other fees charged by the lender in connection with the making of the loan must be determined to be reasonable by the approving official. The range of interest rates and fees prevailing in the private sector for similar obligations and the degree to which the lender is protected from risk by the guarantee shall be considered in making this determination.

(10) Withdrawal or Limitation of Guarantee. If the purposes for which the guarantee was issued have been materially affected by the borrower's failure to initiate performance, the Department may withdraw or limit the guarantee by written notice to the lender and the borrower.

(11) Default, Demand, Payment, and Collateral Liquidation. Provisions for default shall be included to ensure adequate assets are pledged to secure the guaranteed loan and to protect the Department's interests.

(12) Project Costs. An audit or review shall be conducted of all the estimated project costs. The borrower shall be required to make available records and other data necessary to permit DOE to perform such an audit or review. In carrying out this responsibility, the approving official may utilize employees of other Federal agencies or private contractors, or may direct the borrower to submit a review performed by an independent public accountant or other competent authority.

(13) Cost Overruns. If authorized by program statute and regulation approving officials, guarantee agreements may be amended to increase the amount of the loan guaranteed in the event that the actual cost incurred exceeds the original estimated cost.

c. Price Supports.

(1) General. When authorized by law, DOE may use price supports to stimulate production of energy products. The extent of support should be the minimum amount which will stimulate the desired production activity.

(2) Limitation of Federal Liability. All DOE price support agreements will contain a provision which establishes a finite limit on the financial liability of the Federal Government.

(3) Risk Sharing. Recipients of price support agreements should share in the financial risk of the production enterprise. Price supports should never be structured solely to guarantee a profit or a return on investment.

(4) Limitation of Price Support Period. Because of the reliability of price projections and the commercial need for price support diminishes over time, the period of price support should be

limited to the smallest increment of time which can satisfy programmatic objectives.

(5) Project Monitoring. DOE will not normally have direct authority over the production process that is being supported. However, monitoring of this process should be provided. Price support agreements shall provide for DOE access to producer's records to verify production quantities and other accounting data as necessary to verify the producer's claims for support payment in accordance with the price support agreement's payment schedule.

d. Purchase Agreements.

(1) General. When authorized by law, DOE may use purchase agreements as a means to stimulating desired production activity. Procurement regulations will not apply to such an agreement if its principal purpose is support or stimulation assistance of public purpose rather than acquisition of goods or services for Federal use or benefit.

(2) Refusal of Delivery. All purchase agreements shall include a provision which allows DOE to refuse delivery of guaranteed purchase material if it pays the producer the differential between the guaranteed market price and the most recent open market price for the product.

(3) Project Monitoring. Because DOE may acquire title to material through a purchase agreement, such agreements shall include a provision allowing DOE sufficient monitoring and inspection rights to assure that contractually prescribed quality specifications are met. Direct authority over production, however, should be avoided.

(4) Material Substitution. Because purchase agreements are normally intended to stimulate production by the producer who is a party to the agreement, such agreements should prohibit producers from delivering material under the agreement which has not been produced by the producers except when specifically authorized by DOE.

(5) Limitation of Federal Liability. All DOE purchase agreements will contain a provision which establishes a finite limit on the financial liability of the Federal Government.

2. APPLICATION. The above policies and the special considerations below shall be applied uniformly in all financial incentive programs.

a. In conformance with Departmental Equal Employment Opportunity requirements, program regulations and solicitations for financial incentive programs shall require applicants to comply with Federal nondiscrimination regulations.

b. Program regulations and solicitations shall require that small and disadvantaged businesses be encouraged and actively assisted to participate as prime recipients of DOE financial incentive programs. Evaluation factors for selection and award shall always include the extent of planned participation by small and disadvantaged businesses. Program implementation plans shall describe the techniques that will be used to enhance the opportunity for these businesses to receive prime awards and generally participate in these programs.

CHAPTER III

PROCEDURES

1. GENERAL. The financial incentive process will follow these procedures and the steps contained in Attachment III-1. While timing may be dependent upon specific project constraints, the table below should be used as guidance in preparing milestone schedules.

Event	Steps	Duration
Program Implementation Plan and Program Regulation Publication	2 thru 4	120 days
Solicitation through Receipt of Application	5 thru 8	90 days (assumes 60 day proposal period)
Evaluation Report	9	30 days
Independent Assessment thru Selection Statement and Appointment of Negotiation Team	10 thru 13	15 days
Conditional Commitment and Negotiation thru Closing	14 thru 17	60 days

Figure 1
Milestone Table

a. Planning.

(1) A financial incentives program implementation plan will be prepared for each financial incentive program. The plan will be prepared by the cognizant program office and approved by the Under Secretary, upon advice of the Financial Incentives Advisory Board, and shall include the following sections:

(a) Program purpose and description.

(b) Goals and objectives.

(c) Constraints, including need for financial incentives.

(d) *Issues.*

[e) Alternative implementation strategies.

(f) Risk assessments.

(g) Management approach (including recommended program and approval authority thresholds and implementation and concurrence responsibilities for Headquarters and field offices).

(h) Milestones.

(i) Resource allocation.

(j) Environmental considerations.

(k) Small and Disadvantaged Business Strategy.

(2) If not treated in the previous section, other appropriate market development and commercialization concerns should be covered by this plan.

b. Solicitation. Applications may be invited by a competitive solicitation document issued by an application evaluation panel or by noncompetitive techniques as may be provided for in applicable program regulations. Competitive solicitation is the preferred method of obtaining applications unless it is demonstrated to be incompatible with program or industry objectives. The program implementation plan shall identify the proposed solicitation procedures and enumerate the conditions that support the selected procedures. Solicitation documents will be prepared in accordance with applicable regulations.

c. Application Evaluation.

(1) Competitive Programs. Where applications will be due by a common deadline in response to a competitive solicitation, a multidisciplinary application evaluation panel will be appointed by the approving official. Appointments, responsibilities and other specific instructions will be defined by the approving official in a memorandum to the panel chairperson. Panels will be responsible for developing and releasing a solicitation, receiving and evaluating applications, and reporting their findings to the approving official. Panel members will participate, along with the contracting officer, counsel, and environment representatives, and, as required, financial experts outside the program office, in negotiating final terms and conditions. They will conduct business in accordance with Departmental regulations, financial policy, and guidance provided by the approving official. Panel members will be called upon to participate in negotiations. The panels may be supported administratively by the program or field element assigned the responsibility for the financial incentive program. The panel chairperson normally is a senior program manager for the financial incentive program. Panel members shall include technical, financial and business staff representative of the program or field element assigned responsibility for the program, environmental specialists (to ensure compliance with NEPA

considerations), and other necessary qualified representatives. Legal and procurement representatives must be appointed to the panel and will serve as ex-officio, nonvoting members. Voting and nonvoting members will provide concurrences or nonconcurrence before the final panel report is submitted to the approving official, when the approving official is other than the Secretary, the Deputy Secretary, or Under Secretary. When the Secretary, Deputy Secretary, or Under Secretary is the approving official, Financial Incentive Advisory Board concurrence and approval procedures will be used. Nonvoting advisors may be appointed by the chairperson. Such advisors must be free of any real or apparent conflict of interest, and it shall be the responsibility of the chairperson to verify that all personnel involved with evaluations comply with conflict of interest and ethics regulations.

(2) Noncompetitive Programs shall utilize a less formal process when applications may be submitted over a period of time. In this case, the approving official shall also appoint an application evaluation panel and chairperson. The chairperson will ensure that application evaluation and reporting functions are completed and reported to the approving official. In every case, the application evaluation panel will include technical, environmental, financial, contracting, and legal expertise. Applications received in response to program regulations will be submitted directly to the designated application evaluation panel. The chairperson will determine whether an application merits consideration in light of program priorities and funding availability. Preliminary discussions may be held with an applicant in an attempt to render the application or proposal as supportable as possible. Advice and assistance will be requested from counsel, contract, finance, and environment experts as required. Members and advisors will provide functional concurrence before the final report is submitted to the approving official, when the approving official is other than the Secretary, Deputy Secretary, or Under Secretary. When the Secretary, Deputy Secretary, or the Under Secretary is the approving official, Financial Incentives Advisory Board concurrence and approval procedures will be used.

(3) In both competitive and noncompetitive situations, after each application receives its preliminary screening, it undergoes further review in accordance with the criteria set forth in the solicitation (if any), statutes, or program regulations.

Additionally, if required concurrences are not obtained prior to the final report being submitted to the approving official, the basis for nonconcurrence will be presented to the approving official by the panel chairperson.

d. Application Negotiation. In competitive situations, it is desirable to conduct competitive negotiations prior to the approving official selection(s) so that selection may lead directly to closing or award without additional negotiation.

e. Financial Incentives Advisory Board Meeting. (For Financial Incentive Awards over $50M.)

(1) After discussions and the receipt and assessment of any requested information, the findings and recommendations of the panel will be developed into a report and briefed to the Financial Incentives Advisory Board. The briefing containing the findings and recommendations for approval or disapproval of the application or proposal will be made by the panel chairperson supported by the panel's counsel and contracting officer. The approving official may waive the requirement for a formal, oral briefing.

(a) The report and the briefing will include either the draft conditional commitment or the completed negotiated agreement and will set forth the details of the financing and the terms and conditions of the transaction. For applications requiring Under Secretary or other Headquarters official approval, the report will be submitted to the Office of Procurement, Assistance and Program Management for distribution and coordination of the presentation to the approving official.

(b) When approval authority is delegated to Heads of Field Elements, the report and briefing will be prepared by the panel for this official.

(2) Independent assessments of the report and the application prepared by the Financial Incentives Advisory Board members and advisors will be provided to the approving official at the board meeting. The board meeting shall be scheduled within 15 days from the receipt of the panel report.

f. Closing. When an application or proposal is selected, the approving official will authorize the appropriate actions to complete the transaction in the selection statement and appoint the negotiation team by memorandum. Selected applications will be negotiated and written documents will be completed for execution at a closing for loan guarantees or in similar finalization proceedings for other instruments. As a result of negotiations, significant deviations from previous parameters will be briefed to the approving official before closing. If an application is disapproved, the approving official will immediately notify the applicant.

g. Project Monitoring.

(1) The program or project office is responsible for developing a project-monitoring-plan in coordination with support offices. This plan should normally be prepared prior to the execution of the incentive instrument and will outline the specific responsibilities of DOE offices in monitoring incentive projects. Normally DOE will not be involved in the detailed management of incentive projects. The level of reporting required of recipients, therefore, should be limited normally to that which will enable the monitoring of general technical, cost and schedule progress, support of key decision approvals and the detection of possible defaults early enough to resolve the difficulty or minimize Departmental losses if the difficulty is beyond reasonable resolution. In any case, reporting in financial incentive programs should be limited to that required to support progress overview and not detailed project management.

(2) Program and project offices should monitor technical, cost and schedule progress, and may from time to time visit project sites.

(3) Contracting officers should monitor projects to assure contractual compliance. Only a contracting officer can modify a financial incentive contract or contractually exercise a right to direct the recipient.

(4) The Chief Financial Officer is responsible for tracking cost and schedule progress of incentive projects and advising approving officials when evidence exists indicating major deviations from planned activity. The Chief Financial Officer, in coordination with the program official, shall reconvene the Financial Incentives Advisory Board to counsel the Approving Official when such evidence develops on projects of $50 million and larger.

2. IMPLEMENTATION. Heads of Departmental Elements shall implement this directive to ensure appropriate delegation of authority, essential staffing and timely and effective execution. Although the procedures defined for transactions over $50M are not specifically required on transactions under $50M, such transactions shall:

a. Utilize application evaluation panels to develop comprehensive evaluations;

b. Rely on independent risk analyses to assist the approving official; and

c. Perform the functional roles described in this directive.

OUTLINE OF FINANCIAL INCENTIVES PROCESS

GENERAL.

Preimplementation planning and actual implementation responsibilities are outlined in the following transactional description. Steps 2, 3, and 4 will be performed by Headquarters program offices with the assistance of other Headquarters and field elements. When the Secretary, Deputy Secretary, or the Under Secretary is the approving official, steps 10 through 13 will be performed by Headquarters personnel.

STEPS. 1. Law Enacted. Congress enacts authorization and appropriation laws.

2. Program Implementation Plan. Program office designs program strategy and develops a program implementation plan with assistance from the Assistant Secretary for Environment, Safety and Health, General Counsel, Chief Financial Officer and Director of Procurement. Assistance and Program Management. Heads of Field Elements-shall provide, to program offices, for implementation plan purposes, the manner in which functional responsibilities will be performed. (See page III-1, paragraph 1a).

3. Implementation Decision Memorandum. This memorandum, which approves projects and defines execution responsibilities for financial incentive programs, is drafted by the program office, reviewed at a meeting of the Financial Incentives Advisory Board and approved by the approving official. Delegations to field offices defined in the memorandum will include program and approval thresholds. Delegation of the Chief Financial Officer, General Counsel, Director of Procurement, Assistance and Program Management, and the Assistant Secretary for Environment, Safety and Health functional concurrence responsibilities for transactions within those thresholds, will normally be part of the overall delegation.

4. Program Regulation. In parallel with the development of the program's implementation plan, the program office will develop program-specific regulations with input and assistance from the organizations indicated in Step 2, as well as relevant field offices and others, as necessary.

5. Application Evaluation Panel. The financial incentive approving official appoints an application evaluation panel to evaluate competitive or noncompetitive applications. It will be chaired by a senior program manager and will include program office technical, financial, and business staff members, an

environmental representative, as well as experts from other Departmental staffs. Ex-officio members of the panels include the contracting officer assigned to execute that program's incentives agreements, and counsel.

6. Solicitation. Applications may be solicited using a one-time common cutoff date or periodic submission cycles. If the program regulation does not specifically invite proposals, the panel, with the assistance of the contracting officer and counsel, will prepare a solicitation for the program office, and recommend to the approving official that the solicitation be released. The contracting officer coordinates this activity for the panel, and on behalf of the approving official, signs and distributes the solicitation upon authorization by the approving official.

7. Pre-Application Conference. If the approving official directs, the panel conducts a pre-application conference to answer program and solicitation questions. Such conferences are chaired by the panel chairperson assisted by the contracting officer and counsel. The panel prepares any revisions to the solicitation which may be necessary as a result of the pre-application conference, as indicated in Step 6.

8. Receipt of Applications Applications are received on competitive transactions by the contracting officer on behalf of the panel for appropriate accounting, acknowledgement of application receipt, and safekeeping. The chairperson will receive applications and will use similar techniques when noncompetitive procedures are used.

9. Evaluation Report. The panel performs technical, financial, and programmatic analyses (supported by other Federal agencies as authorized by the program implementation decision memorandum or appointing documentation). Financial analysis will be focused on validating the applicant's methodology and presumptions used in developing its financing, marketing, and related business plans. When the approving official is at Headquarters, the panel submits the report of its findings and analyses through the Director of Procurement, Assistance and Program Management to the approving official with appropriate recommendation(s). Reports shall include a draft conditional commitment, when the issuance of a conditional commitment is recommended by the panel.

10. Independent Assessments. Independent assessments shall be conducted, and, to the extent possible, shall be in parallel with the basic evaluation by the panel. The Director of Procurement, Assistance and Program Management distributes copies of the panel report to the members and advisors of the Financial Incentives Advisory Board and the experts involved

in independent assessments of applications for which a favorable recommendation has been made. The results of the independent assessments will be provided to the panel. As a minimum, it will include:

(a) An assessment of the analysis assumptions and methodologies;

(b) A parametric evaluation of the project as proposed;

(c) The Chief Financial Officer's independent cost estimate for projects of $50M and larger;

(d) A review of the project's capital costs, fixed and variable production costs, and product pricing projections; and

(e) The Chief Financial Officer's financial risk analyses of applications to ensure compliance with established policy and guidelines and the financial interest of the Government.

11. Presentation of Evaluation and Assessment Reports. (For applications of $50M and larger.) A pre-Financial Incentives Advisory Board meeting will normally be held to present background materials to members and advisors or their representatives, and to define the decision meeting agenda. The Director of Procurement, Assistance and Program Management will set up and coordinate the Financial Incentives Advisory Board decision meeting and record minutes and action items. The panel will provide an oral briefing to the approving official which will be followed by presentations by the Financial Incentives Advisory Board and other experts regarding the independent assessments. (The approving official may waive the requirement for a formal oral briefing). The approving official, in consultation with the members and advisors of the Financial Incentives Advisory Board, decides whether or not to accept applications for negotiation (and conditional commitment if appropriate). If a decision is in the affirmative, the contracting officer, supported by counsel, will prepare a selection statement outlining the rationale for selection and the conditions upon which the selection is made.

12. Selection Statement. The approving official signs the selection statement and authorizes the contracting officer to execute the agreement or conditional commitment, as appropriate.

13. Appointment of Negotiation Team. The program office nominates (with counsel and procurement concurrence) a negotiation team which is appointed by the approving official. The team shall

be composed of key program members of the panel and the program office (both technical and financial), the contracting officer, as the team coordinator, counsel and an environmental representative, when appropriate. Other financial experts outside the program office may be appointed, as required.

14. Conditional Commitment. The conditional commitment, based on the factors identified in evaluation and the decision meeting, is drafted by counsel. After approving official concurrence, it must be submitted to the Director of Procurement, Assistance and Program Management for contractual review and signature if the potential value or liability of the resulting contractual arrangement could exceed the contracting authority of the field contracting officer. Otherwise, the field contracting officer executes the conditional commitment upon authorization by the approving official.

15. Negotiation Report to the Approving Official. The negotiating team negotiates final contractual agreements with the applicant and reports its results, including the basis on which the negotiating team believes the conditions have been met, to the approving official. In the case where a conditional commitment has been issued and in the event that one or more of the approving official’s selection conditions cannot be negotiated, the team shall request the approving official’s guidance. After consultation with counsel and the contracting officer, and the Financial Incentives Advisory Board, if appropriate, the approving official may choose to waive or modify the condition(s) or to rescind the selection.

16. Authority to Execute. The approving official will sign an authority to execute memorandum authorizing the contracting officer to proceed to contractually close the transaction.

17. Closing. If all conditions were met (or waived), counsel will prepare, based on agreements reached in negotiation of the conditional commitment, appropriate contractual documents which will be executed on behalf of DOE by the contracting officer, subject to limits of delegated authority. In all cases, concurrence of counsel will be obtained on financial incentive contractual instruments prior to their execution.

18. Post Closing Monitoring. The program or project office is primarily responsible for monitoring financial incentive programs. The program office will be responsible for choosing which contractual steps to take, based on advice provided by counsel, the Chief Financial Officer, and the contracting officer, with the objective of minimizing DOE’s financial exposure or liability if the Government’s contingent liabilities should become operative or are likely to become so. The contracting officer will take contractual steps consistent with the program office’s decision and the contractual terms and conditions. Routine consultation between

the program office, the Chief Financial Officer, and the contracting officer will occur at prescribed compliance. Extraordinary actions, such as loan default strategy, require approving official authorization unless the authority has been specifically delegated to a field or program official.