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This directive was reviewed and certified as current and necessary by (Enter Name), (Enter Title) Director, Office of Management, Budget and Evaluation/Chief Financial Officer, XX-XX-XXXX.

SUBJECT: CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS

1. OBJECTIVES.

- a. To establish Department of Energy (DOE) responsibilities, requirements, and cost allowability criteria for the management and oversight of contractor Human Resource Management (HR) programs.
- b. To ensure that DOE contractors manage their HR programs to support the DOE mission, promote work force excellence, champion work force diversity, achieve effective cost management performance, and comply with applicable laws and regulations.
- c. To implement consistent requirements that allow contractors flexibility in determining how to meet the requirements.
- d. To ensure that all elements of cash and non-cash compensation are considered in the design and implementation of an appropriate total compensation philosophy, but are not used as a means to deflect needed cost reductions in either or both.

2. CANCELLATIONS. In addition to the Orders listed in the chapters of this Order, the Orders listed below are canceled. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual obligation to comply with such an Order. Canceled Orders incorporated by reference in a contract shall remain in effect until the contract is modified to delete the reference to the requirements in the canceled Orders.

- a. DOE 3220.1A, MANAGEMENT OF CONTRACTOR PERSONNEL POLICIES AND PROGRAMS, of 5-14-92.
- b. DOE 3220.4A, CONTRACTOR PERSONNEL AND INDUSTRIAL RELATIONS REPORTS, of 1-7-93.
- c. DOE 3220.6A, FEDERAL LABOR STANDARDS, of 5-14-92.
- d. DOE 3309.1A, REDUCTIONS IN CONTRACTOR EMPLOYMENT, of 11-30-92.

Vertical line denotes change.

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INITIATED BY:
Office of Contractor Human Resource Management

- e. DOE 3830.1, POLICIES AND PROCEDURES FOR PENSION PLANS UNDER OPERATING AND ONSITE SERVICE CONTRACTS, of 8-23-82.
- f. DOE 3890.1A, CONTRACTOR INSURANCE AND OTHER HEALTH BENEFIT PROGRAMS, of 6-12-92.
- g. DOE N 3131.1, ACCESS TO SKILLS, KNOWLEDGE AND ABILITIES OF RETIRED SCIENTISTS AND ENGINEERS FOR THE NUCLEAR WEAPONS PROGRAM, of 4-28-95.

3. APPLICABILITY.

- a. DOE Elements. Except for the exclusions in paragraph 3c, this Order applies to all DOE Elements.
- b. Except for the exclusions in paragraph 3c or as specified in the Applicability section of this Order's individual chapters, Attachment 1, the Contractor Requirements Document (CRD) located at the back of each of this Order's individual chapters, sets forth requirements that are applicable to the universe of prime cost reimbursement contracts for the management and operation of DOE-owned or DOE-leased facilities and other contracts and sub-contracts as identified in the specific chapters of this Order. Applicability to other designated long-lived onsite contracts is optional at the discretion of Departmental and Field Elements. Contractor compliance with the CRD will be required to the extent set forth in a contract. Contractors shall be directed to continue to comply with the requirements of orders canceled by this Order until their contracts are modified to delete the reference to the requirements of the canceled orders.
- c. Exclusions.
 - (1) Specific exclusions, if applicable, are identified in the Applicability section of each of this Order's individual chapters.
 - (2) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act; [same as section 830.2(a)].
 - (3) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, as described in Public Law 98-525; [same as section 830.2(b)].

4. REQUIREMENTS. Requirements are set forth in Chapters I through IX of this Order.

5. RESPONSIBILITIES. Assignments of responsibility are set forth in Chapters I through IX of this Order.
6. REFERENCES. Applicable references are listed in Chapters I through IX of this Order.
7. CONTACT. See Chapters I through IX for the appropriate contacts.

BY ORDER OF THE SECRETARY OF ENERGY:



ARCHER L. DURHAM
Assistant Secretary for
Human Resources and
Administration

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CHAPTER I. LABOR RELATIONS

1. OBJECTIVES.

- a. To ensure that Department of Energy management and operating contractors pursue collective bargaining practices that promote efficiency and economy in contract operations, judicious expenditure of public funds, equitable resolution of disputes, and effective collective bargaining relationships.
- b. To achieve full consultation with management and operating contractors prior to contract negotiations and during the term of a contract on matters that may have a significant impact on work rules, make-or-buy decisions, or past customs and practices.

2. APPLICABILITY. Contractors. This chapter applies to prime contractors that perform work under prime contracts at DOE-owned installations to the extent set forth in the prime contract. Contractor requirements are set forth in Attachment 1 to this chapter.

3. REQUIREMENTS.

- a. DOE retains absolute authority on all questions of security, security rules, and their administration. However, to the fullest extent feasible, DOE shall consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.
- b. DOE shall not take a public position concerning the merits of a labor dispute between a contractor and its employees or organizations representing those employees.

4. RESPONSIBILITIES.

a. Director, Office of Worker and Community Transition.

- (1) Establishes DOE labor relations policy in consultation with field organizations.
- (2) Represents DOE Headquarters on all matters involving contractor labor relations issues. This includes:
 - (a) informing DOE senior management of significant labor relations developments,
 - (b) acting as DOE liaison to other government agencies and to international unions and their representatives,
 - (c) serving as a clearing house for labor relations information,

- (d) coordinating union representation at meetings and conferences initiated by DOE Headquarters elements; and
 - (e) approving all DOE policy affecting contractor labor relations.
 - (2) Works with DOE program offices that originate or change qualification standards, testing requirements, or other programs that may affect conditions of employment for contractor employees to ensure that they are developed and/or implemented consistent with collective bargaining requirements.
- b. Heads of Contracting Activities.
 - (1) Review collective bargaining issues with contractors and reach agreement on economic parameters prior to commencement of negotiations.
 - (2) Consult regularly with contractors during the term of collective bargaining agreements to stay abreast of matters of interest and concern to DOE.
 - (3) Serve as DOE liaison to regional governmental agencies and offices and to regional union officials.
 - (4) Notify the Office of Worker and Community Transition of National Labor Relations Board charges and any significant labor relations issues.
 - (5) Provide timely information and advice to DOE Headquarters and others concerning local contractor labor issues and arbitration decisions.

5. REFERENCES.

- a. Federal Acquisition Regulation (FAR), Subpart 22.1, BASIC LABOR POLICIES, which provides guidance to contracting officers on labor relations matters.
- b. Department of Energy Acquisition Regulation (DEAR), Subpart 970.22, APPLICATION OF LABOR POLICIES, which provides DOE guidance to contracting officers on labor relations matters.
- c. DEAR 970.3102-2(e), which addresses allowability of compensation costs.

6. CONTACT. Office of Worker and Community Transition, at (202) 586-7550.

**CONTRACTOR REQUIREMENTS DOCUMENT
LABOR RELATIONS**

The following requirements apply to prime contractors that perform work under cost reimbursement contracts at DOE-owned installations to the extent set forth in the prime contract.

1. Develop and implement labor relations policies that will promote orderly collective bargaining relationships, equitable resolution of disputes, efficiency and economy in operations, and the judicious expenditure of public funds.
 - a. Consult with the contracting officer prior to and during the course of negotiations with labor unions, and during the term of resultant contracts, on economic issues and other matters that have a potentially significant impact on work rules, make-or-buy decisions, or other matters that may cause a significant deviation from past customs or practices.
 - b. Provide the contracting officer with a settlement summary within 30 to 60 days after formal ratification of the agreement, using the "Report of Settlement" form.
 - c. Immediately advise the DOE Field Element of the following:
 - d. Possible strike situations or other job actions affecting the continuity of operations; in the event of work stoppage, the contractor is responsible for completing Bureau of Labor Statistics (BLS) Form 817 and forwarding two copies to the DOE Field Element.
 - e. Formal action by the National Labor Relations Board or the National Mediation Board (copies of the Board correspondence shall be provided to the Field Element).
2. Recourse to procedures under the Labor-Management Relations Act of 1947, as amended, or any other federal or state law.
3. Any grievance scheduled for arbitration under a collective bargaining agreement that has the potential for significant economic or other impact.
4. Other significant issues that may involve review by other federal or state agencies.

CHAPTER II. LABOR STANDARDS

1. OBJECTIVES.

- a. To ensure that applicable labor standards are included in all Department of Energy contracts and subcontracts.
- b. To cooperate with the Department of Labor, as appropriate, to:
 - (1) obtain information,
 - (2) provide complete and timely reports, and
 - (3) exercise oversight responsibility to ensure contractor compliance with applicable laws.

2. APPLICABILITY. This Chapter is applicable to all DOE Elements responsible for the management of contracts for prime contractors of the Department's government owned facilities.

3. REQUIREMENTS. Proposed acquisition and designated contractor work packages shall be reviewed to determine the applicability of the Davis-Bacon Act and/or the Service Contract Act; work shall be accomplished in accordance with such determinations.

4. RESPONSIBILITIES.

a. Director, Office of Worker and Community Transition.

- (1) Coordinates Departmental comments on proposed revisions to Department of Labor regulations and provides interpretations of final revisions to Headquarters and field elements.
- (2) Prepares and submits the Davis-Bacon Semi-Annual Enforcement Report to the Department of Labor by April 30 and October 30.
- (3) By April 10 of each year, submits to the Administrator, Wage and Hour Division, Department of Labor, a consolidated annual forecast of construction programs, which is required by Department of Labor All Agency Memorandum No. 144.
- (4) Coordinates responses to Congress and the Department of Labor on labor standards complaints on acquisitions administered by Headquarters.

b. Heads of Contracting Activities.

- (1) Establish Labor Standards Committees to advise contracting officers on the applicability of the various labor standards statutes to contracts and proposed work packages.

- (2) Review the SF-98 and SF-98a, Notice of Intention to Make a Service Contract and Response Notice, to ensure that the contemplated work is appropriately covered by the Service Contract Act and that forms are prepared properly. Forwards such forms to the Department of Labor.
- (3) Advise Director of Worker and Community Transition of complaints and significant labor standards violations generated by contractor employees and others.
- (4) Ensure that all contracts contain the appropriate labor standards provisions.
- (5) Ensure that bidders and contractors are provided with applicable labor standards information and that, where necessary, conferences and contract orientation meetings are held for solicitations or contracts.
- (6) Assist the Department of Labor in preparing for a hearing on and/or investigating any alleged violations or disputes on alleged violations.
- (7) For Service Contract Act covered contracts in excess of \$10,000.00, furnish Standard Form 279, Federal Procurement Data System Individual Contract Action Report, or its equivalent, to the Federal Procurement Data System (see 29 CFR 4.8).
- (8) Request Davis-Bacon Act project wage determinations from the Department of Labor on the SF-308, Request for Determination and Response to Request for instances in which general area decisions are not available or are not appropriate to the DOE site or job. Accordingly, submit wage data to the Department of Labor.
- (9) Ensure payroll and job-site audits are conducted as may be necessary to determine compliance with the Davis-Bacon Act..
- (10) Investigate complaints under the Davis-Bacon Act to determine compliance and proceed as follows:
- (11) If no violation is discovered, advise the complainant of the reasons for the conclusion.
- (12) If a violation is discovered:
 - (a) determine the amount of back wages, fringe benefits, and overtime pay due each employee, and request the contractor to make restitution;
 - (b) determine the amount of liquidated damages due, if any, and request the contractor to make restitution;

- (c) withhold sufficient funds to compensate employees and to cover any liquidated damages that may be due when the contractor does not agree with the findings and refuses to make restitution;
- (d) furnish an enforcement report to the Administrator, Wage and Hour Division, Department of Labor within 60 days after completion of an investigation where the Davis-Bacon Act underpayments by a contractor totals \$1,000.00 or more; there is reason to believe the violations are willful; the contractor does not agree with the findings and refuses to make restitution; or the Department of Labor requested the investigation;
- (e) ensure that funds withheld to compensate employees for back wages are forwarded to the Comptroller General for disbursement if restitution has not been made.
- (f) Prepare and submit the Davis-Bacon Semi-Annual Enforcement Report to the Director, Office of Worker and Community Transition, by April 21 and October 21 of each year.

5. REFERENCES.

- a. Federal Acquisition Regulations (FAR), Subpart 22.4, LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION, which explains the applicability of the Davis-Bacon Act.
- b. Federal Acquisition Regulations (FAR), Subpart 22.10, SERVICE CONTRACT ACT OF 1965, AS AMENDED, which explains the applicability of the Service Contract Act.
- c. Department of Energy Acquisition Regulation 970.2273, ADMINISTRATIVE CONTROLS AND CRITERIA FOR APPLICATION OF THE DAVIS-BACON ACT IN OPERATIONAL OR MAINTENANCE ACTIVITIES.

6. CONTACT. Office of Worker and Community Transition, at (202) 586-7550.

**CONTRACTOR REQUIREMENTS DOCUMENT
LABOR STANDARDS**

The following requirements apply to contractors who perform work subject to the Davis-Bacon Act and the Service Contract Act.

1. Request labor standards coverage determinations from the contracting officer by submitting proposed work authorizations for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works that involve the employment of laborers and mechanics. (See FAR 22.401 for definition of terms.)
2. Accomplish work tasks in accordance with the labor standards determination.
3. Ensure that subcontractors comply with the Davis-Bacon Act and conduct payroll and job-site audits as requested or authorized by the Head of Contracting Activity.
4. Maintain accurate and complete Davis-Bacon Act payrolls for 3 years from completion of contract when performing as the construction contractor.
5. Post in a prominent job-site location the following Department of Labor Publications.
 - a. WH-1321, Notice to Employees Working on Federal or Federally Financed Construction Projects.
 - b. WH-1313, Notice to Employees Working on Government Contracts.
6. Prepare Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice" for all subcontracts subject to the Service Contract Act and forward to the contracting officer.
7. Provide information requested by the Head of Contracting Activity for its responses to inquiries received from Congress and Headquarters.
8. Provide information requested by the Head of Contracting Activity for its reporting requirements.

CHAPTER III. REDUCTIONS IN CONTRACTOR EMPLOYMENT

1. OBJECTIVES.

- a. To perform work force planning that ensures continued availability of critical knowledge, skills, and abilities required for the Department's mission; and supports a schedule of work force restructuring actions that minimizes the impacts on programmatic activities.
- b. To provide reasonable notice to employees, their representatives, public officials, and other stakeholders of necessary reductions in contractor employment, and to consult with them in planning for work force restructuring.
- c. To the extent practicable, to minimize reductions at DOE defense nuclear facilities and other facilities through retraining efforts. If retraining is not feasible, consider early retirement, attrition, and other options that minimize layoffs.
- d. To provide assistance to communities in reducing the impact of employment reductions.

2. APPLICABILITY. This chapter applies to prime contractors and their integrated subcontractors that perform work at DOE-owned installations to the extent set forth in the prime contract.

3. REQUIREMENTS.

- a. In compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Secretarial policy, a work force restructuring plan at defense nuclear facilities and other DOE facilities shall be prepared whenever the DOE determines that a change in the work force is necessary. Plans may be developed for multiple years, but the requirement for a plan is triggered when the planned change affects 100 or more employees at a site within a 12-month period, or when the Head of the Field Element determines that a change in the work force will significantly affect the community. In instances where fewer than 100 employees are affected, the objectives of section 3161 shall be applied as feasible.
- b. Work force restructuring plans shall be prepared in accordance with "Interim Planning Guidance for Contractor Work Force Restructuring," published in the Federal Register Vol. 61, No. 44, dated March 5, 1996, as amended from time to time (Attachment 2).
- c. For defense nuclear facilities, work force restructuring plans and implementation reports shall be submitted to the Secretary, who will approve/disapprove them for delivery to Congress. For other DOE facilities, delivery of a work force restructuring plan to Congress is at the discretion of the Secretary.

- d. Annual implementation reports shall be submitted by Field Elements to the Office of Worker and Community Transition that include the following information:
- (1) Data on the retained worker force and its ability to meet mission requirements.
 - (2) Data on workers whose positions were eliminated and who were reassigned to other work at the site and a description of training provided to achieve such placements, including training costs.
 - (3) Data comparing the number of workers separated voluntarily and involuntarily and costs associated with each category of benefits provided to them, including estimates of such costs that were included in the work force restructuring plan.
 - (4) The contractor's statement as to whether adverse EEO impact resulted from involuntary separations. If affirmative, its extent, business necessity, and a description of the efforts taken to prevent it.
 - (5) An evaluation of plan implementation.
 - (6) Detailed guidance on submitting this information will be provided by the Office of Worker Community Transition.
- e. The Department must have ready access to retired scientists and engineers who may be needed on a part-time basis to support the Department's nuclear weapons program. The Department will maintain a list of individually identified retirees, including an affirmation of their agreement to be members of the retiree corps and necessary identification information to ensure ready access. The purposes for such access include archiving technical information, data and recollections not available from the active work force in areas related to weapons disassembly and nuclear weapons testing; assisting stockpile stewardship activities as required; and training replacement scientists and engineers. Access to members of the corps will not be restricted by other policies of DOE or within the control of DOE unless explicitly agreed to by the Secretary of Energy, and members of the retiree corps will maintain their security clearances for as long as they are in the retiree corps program. Further, inclusion in the corps will not amend, abrogate, or affect any retirement annuity with regard to any DOE-imposed restrictions on such annuity.

4. RESPONSIBILITIES.

- a. The Secretary.
- (1) Approves/disapproves work force restructuring plans that are submitted to Congress.
 - (2) Approves/disapproves notifications of reductions in force of more than 100 employees at a single site.

- (3) Submits work force restructuring plans and updates (implementation reports) to Congress.

b. Director, Office of Worker and Community Transition.

- (1) Provides direction and guidance in the development and implementation of work force restructuring plans and the implementation of economic development plans when a community is significantly affected by changes in the work force.
- (2) Recommends to the Secretary for approval Work Force Restructuring Plans that are submitted to Congress.
- (3) Approves/disapproves work force restructuring actions which do not require Secretarial approval, including programs to minimize lay offs. Coordinates review with the affected program office and with General Counsel, Field Management, and Human Resources and Administration.
- (4) Coordinates notifications to Congress with Heads of Field Elements and with the Assistant Secretary for Congressional and Intergovernmental Affairs.
- (5) Performs other tasks that are assigned to the Office of Worker and Community Transition (WT-1) in Attachment 2.

c. Heads of Field Elements.

- (1) Oversee the management of work force changes consistent with direction from the Office of Worker and Community Transition, Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 and Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 - 8602 (March 5, 1996), as may be amended DOE O 350.1 III-5 (and III-6) 9-30-96 from time to time.
- (2) Prepare site-specific work force restructuring plans (and update them annually by means of implementation reports) in accordance with guidance contained in Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 - 8602 (March 5, 1996), as may be amended from time to time.
- (3) Obtain approval of separation incentives beyond those expressly authorized by contract from WT-1 early in the planning process and submit a final work force restructuring plan to WT-1 as early as practicable.

- (4) Establish a baseline employment data base for use in preparing work force analyses and work force restructuring plans; provide quarterly reports on the data base to the Office of Worker and Community Transition.
- (5) Provide the following notifications upon WT-1 approval.
 - (a) General Notification to Employees prior to any public announcement and, where possible, 120 days prior to the involuntary separation of any employee.
 - (b) Notification to the Public. Coordinate with the Office of Worker and Community Transition any general announcement describing work force changes at the site and the estimated number of affected positions.
 - (c) Notification to Individual Employees. Ensure that contractors provide 60day notification if the Work Force Adjustment and Retraining Notification (WARN) Act applies. If it does not apply, contractors shall provide individual employees as much notice of involuntary separation as is practicable, but not less than 2 weeks or 2 weeks pay in lieu of notice.
- (6) For work force reductions requiring only contracting officer or his designee approval, ensure the following are notified prior to the involuntary separation other than for cause of 10 or more employees.
 - (a) Affected national and local unions.
 - (b) State and local governments.
 - (c) Congressional delegation.
- (7) Develop mechanisms to ensure that hiring preferences are being honored by all prime contractors and designated subcontractors. Requirements shall address employee responsibilities as well as use of the DOE automated Job Opportunity Bulletin Board System (JOBBS).
- (8) Maintain a list of individually identified retired scientists and engineers who will comprise a retiree corps to assure ready access to those whose skills may be needed on a part time basis to support the Department's Nuclear Weapons Program.

5. REFERENCES.

- a. Worker Adjustment and Retraining Notification Act, Public Law 100-379 (August 4, 1988).

- b. Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484).
 - c. Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol.61, No.44, pp. 8593 - 8602 (March 5, 1996).
6. CONTACT. Office of Worker and Community Transition, at (202) 586-7550.

**CONTRACTOR REQUIREMENTS DOCUMENT
REDUCTIONS IN CONTRACTOR EMPLOYMENT**

1. Contractors will regularly analyze work force requirements consistent with mission and will develop appropriate work force transition strategies coinciding with restructuring objectives consistent with DOE Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register, Vol. 61, No. 44, pp. 85938602 (March 5, 1996) as may be amended from time to time.
2. Where a change in the nature or structure of a contractor's work force may affect 100 or more employees at a site within a 12-month period, the contractor shall provide such information as directed by the contracting officer or his designee to enable compliance with section 3161 of the National Defense Authorization Act for Fiscal Year 1993; DOE Interim Planning Guidance for Contractor Work Force Restructuring Federal Register vol. 61, no. 44, pp 8593-8602 (March 5, 1996) , as may be amended from time to time; and Chapter III of DOE Order 350.1.
3. Provide notifications to employees, the public, and stakeholders in accordance with a schedule approved by the contracting officer or his designee.
4. Extend preferences, to the extent practicable, in filling vacancies in their work force to employees terminated from a defense nuclear facility. Guidance for this program is contained in section V of Department of Energy Interim Planning Guidance for Contractor Work Force Restructuring, Federal Register Vol. 61, No. 44, pp. 8593 8602 (March 5, 1996), as may be amended from time to time.
5. Notify the contracting officer or his designee of any work force reduction that involves the involuntary separation of 10 or more employees at least 10 work days prior to such separations. The notification shall include affected job classifications, numbers of employees affected, and actions taken to assist the employees find other employment or otherwise lessen the impact of the involuntary separation.

CHAPTER IV. COMPENSATION

1. OBJECTIVE. To ensure that contractors develop and administer compensation programs that will attract and retain competent and productive employees and that facilitate achievement of objectives and business strategies in support of DOE missions in a cost effective manner.
2. APPLICABILITY. This chapter is applicable to all DOE Elements responsible for management of **cost reimbursable** contracts **that include provisions for DOE reimbursement of contractor human resources costs. for the management and operation of the Department's facilities.**
3. REQUIREMENTS. Reasonableness and allowability of compensation under contracts to manage and operate DOE facilities shall be determined in accordance with the cost principles at DEAR 970.3102-2, and with either the clause "Allowable Costs and Fixed Fee" (management and operation contracts, DEAR 970.5204-13) or the clause "Allowable Costs and Fixed Fee" (support contracts, DEAR 970.5204-14) and shall be determined for all other contracts in accordance with the guidelines at FAR 31.205-6.
4. RESPONSIBILITIES.
 - a. **Senior Procurement Executive**~~Deputy Assistant Secretary for Procurement and Assistance Management~~. Establishes Department Performance Objectives for contractor employee compensation programs, and in consultation with the cognizant program officer, approves the initial compensation and any changes in compensation for each contractor's top official.
 - b. Heads of Contracting Activities.
 - (1) Approve the initial compensation program design, including application of parent organization policies and practices, and appraise its implementation at least once during the term of the contract; that appraisal shall be within 2 years when there has been a successor contractor.
 - (2) Approve the following prior to DOE reimbursement under the contract.
 - (a) Compensation increase plan (**CIP**).
 - (b) Individual compensation (including stipends, if any) of ~~those contractor employees identified by the Head of Contracting Activity as among those who report directly to~~ the contractor's top official (e.g., General Manager/Director) **and key personnel not included in the CIP. For those key personnel included in the CIP, approval upon initial contract award and when replaced during the life of the contract.**
 - (c) Incentive plan if such a plan is established.

~~(d) The annual Overtime Control Plan.~~

- (3) Ensure there are procedures in place to verify the accuracy of the ~~Contractor Executive Compensation Report and the~~ Annual Contractor Salary-Wage Increase Expenditure Report (see paragraph 5c) and the reports ~~is~~are forwarded to the ~~Senior Procurement Executive Office of Contractor Human Resource Management~~ for applicable contractors.
- (4) Ensure that periodic appraisals of Contractor performance with respect to Total Compensation System implementation are conducted. Such appraisals will be conducted through either DOE validation of the Contractor's performance self-assessment of its Total Compensation System or third party expert review.
- (45) Develop performance measures and related incentives for performance based contracts to achieve Department objectives in management of contractor employee compensation and use of overtime.
- (65) Ensure the personnel responsible for accomplishing 4b(1) through (4) above, have the skills, knowledge and abilities to meet these responsibilities or receive sufficient training to do so.
- (7) Ensure the contractor submits the Application for Contractor Compensation Approval Form (see paragraph 5d) ~~is submitted for each~~ initial compensation for key personnel and annually for top executive ~~or change~~.

5. REFERENCES.

- a. Federal Acquisition Regulations 31.205-6, COMPENSATION FOR PERSONAL SERVICES.
- b. Department of Energy Acquisition Regulations 970.3102-2, COMPENSATION FOR PERSONAL SERVICES.
- c. Contractor Salary-Wage Increase Expenditure Report (located at <http://energy.gov/sites/prod/files/cioprod/documents/350-1.pdf>)
- d. Application For Contractor Compensation Approval (located at <http://energy.gov/sites/prod/files/cioprod/documents/3220-5.pdf>)

6. CONTACT. ~~Office of Contractor Human Resources Policy Division Management~~, at (202) 586287-90081300.

~~CONTRACTOR REQUIREMENT DOCUMENT COMPENSATION~~

~~Contractors shall submit to the Contracting Officer for approval the following documents.~~

- ~~1. A description of the compensation program supported by relevant data comparing it to other industry or relevant benchmark programs and including the following components.~~
- ~~2. Philosophy and strategy for all pay delivery programs.~~
 - ~~a. System for establishing a job worth hierarchy.~~
 - ~~b. Method for relating internal job worth hierarchy to external market.~~
 - ~~c. System that links individual and/or group performance to compensation decisions.~~
 - ~~d. Method for planning and monitoring the expenditure of funds.~~
 - ~~e. Method for ensuring compliance with applicable laws and regulations.~~
 - ~~f. System for communicating the programs to employees.~~
 - ~~g. System for internal controls and self assessment.~~
 - ~~h. System to ensure that reimbursement of compensation, including stipends, for employees who are on joint appointments with a parent or other organization shall be on a pro-rated basis.~~
- ~~3. Proposed major compensation program design changes for approval prior to implementation.~~
- ~~4. Annual Compensation Increase Plan and reports as follows.~~
 - ~~a. The Compensation Increase Plan (CIP) should include the following components and data:~~
 - ~~(1) Comparison of average pay to market average pay.~~
 - ~~(2) Information regarding surveys used for comparison.~~
 - ~~(3) Aging factors used for escalating survey data and supporting information.~~
 - ~~(4) Projection of escalation in the market and supporting information.~~
 - ~~(5) Information to support proposed structure adjustments, if any.~~
 - ~~(6) Analysis to support special adjustments.~~

- ~~(7) Funding requests for each pay structure to include breakouts of merit, promotions, variable pay, special adjustments, and structure movement.
 - ~~(a) The proposed plan totals shall be expressed as a percentage of the payroll for the end of the previous plan year.~~
 - ~~(b) All pay actions granted under the compensation increase plan are fully charged when they occur regardless of time of year in which the action transpires and whether the employee terminates before year end.~~
 - ~~(c) Specific payroll groups (e.g., exempt, nonexempt) for which CIP amounts are intended shall be defined by mutual agreement between the contractor and the Contracting Officer.~~
 - ~~(d) The Contracting Officer may adjust the CIP amount after approval based on major changes in factors that significantly affect the plan amount (for example, in the event of a major reduction in force or significant ramp-up).~~~~
- ~~(8) A discussion of the impact of budget and business constraints on the CIP amount.~~
- ~~(9) Comparison of pay to relevant factors other than market average pay.~~
- ~~b. An annual Contractor Salary Wage Increase Expenditure Report (see attached form) to include, at a minimum, breakouts for merit, promotion variable pay, special adjustments, and structure movements for each pay structure showing actual against approved amounts.~~
- ~~5. Individual compensation actions, as required in the contract, and compensation reports as follows:
 - ~~a. Initial and proposed changes to base salary and/or payments under an Executive Incentive Plan for all positions requiring Contracting Officer approval prior to reimbursement. The contractor shall provide supporting justification related to internal and external equity as well as individual performance; for each initial compensation or change the contractor shall submit the Application for Contractor Compensation Approval Form (see attached form).~~
 - ~~b. The semiannual Report of Compensation (see attached forms^[r1]) which includes:
 - ~~(1) subtotal dollar amounts for exempt and nonexempt employees and~~
 - ~~(2) individual compensation by employee name, position, and amount for each direct report to the top official and individual compensation at \$100,000 and above.~~~~~~



- ~~6. Any proposed establishment of an incentive compensation plan, must be budget neutral. Such proposal must contain:~~
- ~~a. the design of the incentive compensation plan, the funding methodology, and linkage to contract performance measures;~~
 - ~~b. requirement for approval of incentive compensation plan design changes by the Contracting Officer prior to implementation;~~
 - ~~c. requirement for an annual approval, prior to the performance period, of the total dollar amount of the pool, the eligible positions, and contract performance goals;~~
 - ~~d. requirement for policy that provides a specific passover rate, i.e., percent of participants who will not receive an incentive;~~
 - ~~e. requirement for an annual summary report on distributions made under an Incentive Compensation Plan; and~~
 - ~~f. requirement for pay at risk.~~
- ~~7. Annually, an overtime control plan and semiannual Report on Overtime Use, if any of the following criteria are met: the contractor's overtime expenditures as a percent of payroll exceed the DOE contractor median overtime expenditures for the preceding calendar year plus two percent; the contractor's overtime as a percent of payroll exceeds the DOE contractor median overtime expenditures for the preceding calendar year and the contractor's policy permits payment of overtime for exempt employees earning greater than or equal to \$45,000 per annum; or the contractor's overtime as a percent of payroll exceeds the DOE contractor median overtime expenditures for the preceding calendar year and the contractor provides for overtime premium pay on any other basis than for hours worked in excess of 40 hours per week.~~
- ~~a. The overtime control plan must strike a balance between use of other alternatives, including the hire of additional personnel in a workplace that is safe and promotes the health of employees. This plan must include:~~
 - ~~(1) the institutional overtime premium fund (maximum dollar amount) negotiated annually;~~
 - ~~(2) specific controls for casual overtime for non-exempt employees;~~
 - ~~(3) prohibition of casual overtime for exempt employees except as stipulated in an advance understanding;~~
 - ~~(4) an evaluation of alternatives to the use of overtime; and~~
 - ~~(5) a requirement for the Contracting Officer to approve any additional overtime premium funds or plan changes required for mission requirements not included in the approved plan.~~

~~b. The semiannual Report on Overtime Use including:~~

~~(1) total cost of overtime;~~

~~(2) total cost of straight time;~~

~~(3) overtime cost as a percentage of straight time cost;~~

~~(4) total overtime hours;~~

~~(5) total straight time hours; and~~

~~(6) overtime hours as a percentage of straight time hours.~~

1. For review of Contractor Salary-Wage Increase Expenditure Report form currently in effect go to:

<http://www.energy.gov/sites/prod/files/cioprod/documents/350.1pdf>

2. For review of Application For Contractor Compensation Approval form currently in effect go to:

<http://www.energy.gov/sites/prod/files/cioprod/documents/3220.5pdf>

3. The following reports are no longer required by DOE Order 350.1

- a. Report of Compensation (formerly Report of Compensation Part I, Individual Compensation. For view of the template go to:

<http://energy.gov/sites/prod/cioprod/documents/3230-6a.pdf>

- b. Report of Contractor Hours and Earnings (formerly Report of Compensation Part II Frequency Distribution Compensation. For view of the template go to:

<http://energy.gov/sites/prod/files/cioprod/documents/3230-3.pdf>

CHAPTER V. BENEFITS

1. OBJECTIVE. To ensure that contractors that perform work under cost reimbursement contracts develop employee benefit programs that will attract and retain competent and productive employees and that facilitate the achievement of objectives and business strategies in support of DOE missions in a cost effective manner.
2. APPLICABILITY. ~~This chapter is applicable to all DOE Elements responsible for management of cost reimbursable contracts that include provisions for DOE reimbursement of contractor human resources costs. This chapter is applicable to all Department Elements responsible for management of contracts for the management and operation of the Department's facilities.~~
3. REQUIREMENTS. Reasonableness and allowability of compensation, including welfare benefits, shall be determined for contracts to manage and operate DOE facilities in accordance with the cost principles at DEAR 970.3102-2, and with either the clause "Allowable Costs and Fixed Fee" (management and operation contracts, DEAR 970.520413) or the clause "Allowable Costs and Fixed Fee" (support contracts, DEAR 970.520414) and shall be determined for all other contracts in accordance with the guidelines at FAR 31.205-6.
4. RESPONSIBILITIES.
 - a. ~~Deputy Assistant Secretary for Procurement and Assistance Management Senior Procurement Executive~~.
 - (1) Establishes Departmental performance objectives for contractor welfare benefit programs management and assists field staffs to define performance measures and expectations that will be used to evaluate accomplishment of performance objectives.
 - (2) Approves contractor benefit plans and proposed changes that are an exception to DOE policy.
 - (3) Defines reporting requirements regarding benefits cost and workers' compensation loss information including format, definition of requirements, and schedule of reporting.
 - (4) Provides consultation on benefit programs to Department Managers, Heads of Contracting Activities, and contractors.
 - (5) Provides the results of any applicable benefits studies to Department Managers, Heads of Contracting Activities, and contractors.
 - (6) Provides guidance to Heads of Contracting Activity on the conduct and use of the methods for evaluating contractor welfare benefit programs using either the ~~tables published by the U.S. Department of Labor's~~

~~Bureau of Labor Statistics, Chamber of Commerce Benefits Survey~~ or the Value Study method or other nationally recognized survey.

b. Heads of Contracting Activities.

- (1) Develop performance measures, expectations, and related incentives for performance-based contracts to achieve Department objectives and desired improvements in contractor management of employee benefit programs.
- (2) Evaluate contractor benefit programs on a periodic basis to assess program costs and assure costs are reasonable and allowable.
- (3) Approve the adoption by contractors of corporate benefit programs in their entirety, which incorporate policy, procedures, cost sharing and other arrangements of the parent organization.
- (4) Approve contractor benefit plans and proposed changes that are either new or first time on a site, set a precedent for the DOE contractor system, or involve flexible benefit programs.
- (5) Obtain approval of the ~~Senior Procurement Executive Director, OCHRM~~ for contractor benefit plans and proposed changes that are an exception to DOE policy.
- (6) For other than corporate benefit programs, approve the contractor's methodology for evaluating its currently approved welfare benefits programs, ~~consistent with the provisions in the Contractor Requirements Document and (a) and (b) below.~~ Either the tables published by the U. S. Department of Labor's Bureau of Labor Statistics ~~Chamber of Commerce-Benefit Survey comparison method,~~ (the per capita cost per full-time equivalent employee), ~~or~~ the Value Study method (net benefit value), or other nationally recognized survey may be used in this evaluation to establish an appropriate comparison.
 - (a) When the contractor's cost or value is within the range of acceptability (i.e., no more than 5 percent above the comparator for other organizations), no further action is required.
 - (b) When the contractor's cost or value is greater than 5 percent above the comparator for other organizations, a corrective action plan to achieve conformance with the range of acceptability defined in (a) above will be required, unless otherwise justified in writing.
- (7) Instruct contractors on the conduct and use of the methods for evaluating contractor welfare benefit programs using either the tables published by the U. S. Department of Labor's Bureau of Labor Statistics, ~~U.S. Chamber of Commerce Benefits Study~~ or the Value Study method, or other nationally recognized survey consistent with the guidance provided by the Senior Procurement Executive ~~Deputy Assistant Secretary for Procurement~~

~~and Assistance Management.~~

- (8) Approve a contractor's corrective action plan and evaluate contractor progress against the plan.
- (9) Approve contractor benefit programs and program changes. ~~in accordance with the criteria set forth in the Contract Requirements Document.~~ If the program or changes result in the contractor's cost or value exceeding the range of acceptability defined in 4b(6)(a) above, the program or changes will only be acceptable if offset by changes that result in the contractor's costs or value being within the range of acceptability.
- (10) Approve contractor proposals for new workers compensation policies, initial proposals for self-insurance for workers compensation, and assignment and/or settlement of workers compensation programs.
- (11) Establish a ~~workers~~worker's compensation settlement claims threshold for contractors to obtain DOE approval; all settlement claims of \$100,000.00 and more must be approved by the Contracting Officer.
- (12) Assure that contracts contain appropriate insurance and other benefits program clauses and that each applicable Request for Proposals (RFP) contains such clauses.
- (13) Assure that, where appropriate, competitive procurement procedures are followed by contractors to obtain needed insurance coverage.
- (14) Assure that 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 or other contractor, to guarantee benefit payments, or continuing benefit payment obligation with the replacement contractor.
- (15) Assure that 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 on a pay-as-you-go basis.
- (165) Assure that the contractors annually submit the Report of Contractor Expenditures for Employee Supplementary Compensation (see paragraph 5c).

5. REFERENCES.

- a. Federal Acquisition Regulations 31.205-6, COMPENSATION FOR PERSONAL SERVICES.

- b. Department of Energy Acquisition Regulations 970.3102-2, COMPENSATION FOR PERSONAL SERVICES.
 - c. Report of Contractor Expenditures for Employee Supplementary Compensation (located at <http://energy.gov/sites/prod/files/cioprod/documents/3220-4a.pdf>)
6. CONTACT. Contractor Human Resources Policy Division, at (202) 287-1300. ~~Office of Contractor Human Resource Management, at (202) 586-9008.~~

For review of Report of Contractor Expenditures for Employee Supplementary Compensation template currently in effect go to:

<http://www.energy.gov/sites/prod/files/cioprod/documents/32204a.pdf>

~~**CONTRACTOR REQUIREMENTS DOCUMENT
EMPLOYEE BENEFITS**~~

The following requirements apply to contracts for the management and operation of DOE facilities, as set forth in a contract.

- ~~1. Contractors shall develop and implement welfare benefit programs that meet the tests of allowability and reasonableness established by Federal Acquisition Regulation 31.205-6 and Department of Energy Acquisition Regulation 970.3102-2, COMPENSATION FOR PERSONAL SERVICES.~~
- ~~2. Contractors shall submit the following to the Contracting Officer for approval, except where the Contracting Officer has approved the adoption by the contractor of corporate benefit programs in their entirety.~~
 - ~~a. An evaluation of Contractor Benefit Programs using a professionally recognized measure to compare their benefit programs to other organizations (either a Value Study or a U.S. Chamber of Commerce (COC) Employee Benefit Survey Comparison based on facility size). The contractor Value Study or COC survey results must fall within the following acceptable values: 1) when contractor's per capita cost per full-time equivalent employee or net benefit value is within the range of acceptability (i.e., no more than 5 percent above the comparator for other organizations), no further action is required; 2) when the contractor per capita cost per full-time equivalent employee or net benefit value is greater than 5 percent above the comparator for other organizations, the contractor shall submit to the Contracting Officer a corrective action plan to achieve conformance with the range of acceptability defined above, unless otherwise justified in writing. The plan shall include specific benefit plan changes and a timetables for implementation and shall be approved by the Contracting Officer.~~

~~Once a method of evaluation has been chosen, either a Value Study or COC, Contracting Officer approval shall be required to change the method in subsequent years. For contractors using the Value Study method, the studies shall be conducted every three years and are valid for three years, regardless of contractor transition. For contractors using the COC method, comparison results must be submitted annually to the Contracting Officer.~~

~~(1) If a Value Study is used, the following requirements apply.~~

- ~~(a) The contractor shall determine a list of no less than 15 participants to be a part of the study. The Contracting Officer shall approve the list prior to the performance of the study.~~
- ~~(b) The Value Study shall include major non-statutory benefit plans offered by the contractor, including qualified defined benefit and defined contribution retirement and capital accumulation plans,~~

- ~~(c) and death, disability, health, and paid time off welfare benefit programs.~~
 - ~~(d) The Value Study must be performed by a national consulting firm with expertise in benefit value studies.~~
 - ~~(e) To the extent this methodology does not address post retirement benefit programs, contractors shall provide the Contracting Officer separate cost and plan design data on post retirement benefits other than pensions compared to external benchmarks of a nationally recognized survey source once every three years.~~
 - (2) If the COC is utilized, by March 1 of each year, the contractor shall provide to the Contracting Officer a completed COC survey, including a comparative analysis to the COC survey data, utilizing either the all industries data or the data from a single Service Industry Code (SIC) that has been agreed to by the Contracting Officer. The calculated per capita benefits cost per full-time equivalent employee shall be compared to the most recently published COC survey and contractor benefits data from the same benefit year as the survey benefit year (i.e., comparing 1994 contractor data to the 1994 survey data).
- b. ~~Benefit Program Approval.~~
 - (1) ~~Contractors shall submit new benefit plans and changes to plan design or funding methodology with justification to the Contracting Officer for approval. The justification must:~~
 - ~~(a) demonstrate the effect of the plan changes on the contract net benefit value or per capita benefit costs,~~
 - ~~(b) provide the dollar estimate of savings or costs, and~~
 - ~~(c) provide the basis of determining the estimated savings or cost.~~
 - (2) ~~Contractors, other than those whose workers' compensation coverage is provided through a state funded arrangement or a corporate benefits program, shall submit to the Contracting Officer for approval all new compensation policies and all initial proposals for self insurance (contractors shall provide copies to the Contracting Officer of all renewal policies for workers compensation):~~
 - ~~(a) Have a claims management program that establishes specific guidelines and practices, and that ensures a regular review of program components. This program includes, but is not limited to:~~

- ~~1~~ providing the Contracting Officer with annual status reports on all claims reserves over \$25,000, as well as reserves established on all new claims;
 - ~~2~~ conducting an annual review of all claims over \$25,000 in reserves and claims over 2 years old, regardless of reserve amount;
 - ~~3~~ reviewing reserves under an insured program on all open claims at the end of each policy year but prior to the valuation of claims for the interim premium adjustment report to determine their appropriateness;
 - ~~4~~ reviewing medical cost containment programs, such as managed care networks, where allowed by statutes; and
 - ~~5~~ conducting a sample claims review of open and closed claims during the first 3 years of a contract period for both active and canceled policies with existing claims activity. A written report of the findings shall be submitted to the Contracting Officer.
- ~~(b)~~ Contractors under insured plans shall review and verify the accuracy of interim premium adjustment reports and make payment of adjusted premium or request of credit from carrier.
- ~~(c)~~ Contractors' workers compensation insurance policies shall contain the following provisions:
- ~~1~~ 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.
 - ~~2~~ A provision that in the event of cancellation or non-renewal by the insurance company, 60 days advance notice shall be given to the contractor, the Contracting Officer, and the Office of Contractor Human Resource Management.
 - ~~3~~ 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.
 - ~~4~~ A provision for the right of assignment of the policy to DOE, with payment of all return premiums, premium refunds dividends, or other moneys due or to become due, to be payable to the Government.

- ~~5 — Employer's liability coverage, except in cases where the contractor has an acceptable self insurance program.~~
- ~~6 — Workers compensation and employer's liability coverage for its employees in those states that allow statutory immunity for certain types of employers (e.g., nonprofit educational institutions).~~
- ~~7 — Voluntary Compensation Endorsement in states that do not automatically provide voluntary coverage. This allows for coverage of employees or volunteers who would not otherwise be covered for accidental injury (e.g., employees participating in an athletic event or volunteers at the work-site). An additional amendment is necessary to extend Voluntary Compensation Coverage to occupational disease.~~
- ~~(d) — Workers compensation loss income benefit payments, when supplemented by other programs (such as salary continuation, short term disability) are to be administered so that total benefit payments from all sources shall not exceed 100 percent of the employee's net pay.~~
- ~~(3) — Contractors approve all workers compensation settlement claims up to the threshold established by the Contracting Officer for DOE approval and submit all settlement claims above the threshold to DOE for approval.~~
- ~~(4) — If Dependent Care Facilities are approved by the Contracting Officer, ensure the following non-discretionary elements that apply to contractor-sponsored workplace or near workplace Dependent Care Facilities are satisfied.~~
 - ~~(a) — Workplace child care centers or other facilities for children shall not be located at a DOE nuclear weapons complex or other hazardous materials site.~~
 - ~~(b) — Dependent care benefit programs for contractor operated facilities must meet employee needs and management objectives based on a valid study of dependent care needs.~~
 - ~~(c) — Support costs associated with the operation of a contractor workplace or near workplace facility for exclusive use of DOE and contractor employees may include all or a portion of such expense items as utilities and maintenance, as well as food and medical services or supplies that are already being used in support of site operations and are readily available to additionally support the facility. Such use shall be approved by the contracting officer in advance. For the following costs to be considered allowable,~~

~~capital construction of a facility must be validated and approved by the contracting officer.~~

~~1 Capital costs budgeted and accounted for in accordance with DOE requirements related to capital projects. If the results of the study indicate that dependent care needs can be adequately addressed through any option or combination of options other than a workplace or near workplace contractor.~~

~~2 Sponsored dependent care facility, any costs associated with the lease or purchase of such facility shall not be reimbursable.~~

~~3 The costs for labor, materials, and supplies expended for the operation of contractor workplace or near workplace dependent care facilities shall not be allowable under any circumstances. However, options for employees to finance such costs through contractor employee welfare benefits programs flexible spending accounts are subject to the requirements of this chapter as it relates to welfare benefits.~~

~~(d) Any agreement between contractors and dependent care (program) provider organizations must ensure that contractors and the DOE are held harmless from liability.~~

~~1 Property damage liability and bodily injury liability insurance policies must be retained by the dependent care (program) provider organization in an amount appropriate for services provided. The contractors must also be insured under these policies.~~

~~2 Agreements between the contractors and dependent care (program) provider organizations must ensure that the provider organizations operate, maintain, and upgrade any proposed workplace dependent care facility in compliance with federal, state, and local policies, regulations, and requirements for environment, safety and health.~~

~~(5) The contractor shall annually submit the Report of Contractor Expenditures for Employee Supplemental Compensation (see attached forms).~~

CHAPTER VI. DOE CONTRACTOR PENSION PLANS

1. OBJECTIVES.

- a. To assign responsibilities for establishing, maintaining, and terminating pension plans provided for personnel employed by designated contractors at DOE facilities.
- b. To properly consign assets when contractors are replaced, a portion of the existing plan is spun off, or a plan terminates fully or partially.
- c. To provide guidance regarding the contractual treatment of separate and commingled pension plans where DOE has a continuing long-term involvement.

2. APPLICABILITY. ~~This chapter applies to all Departmental Elements responsible for the contracts for management, operation, and control of DOE facilities. Application to other designated long-lived onsite contracts is optional at the discretion of Departmental and Field Elements.~~ This chapter is applicable to all DOE Elements responsible for management of cost reimbursable contracts that include provisions for DOE reimbursement of contractor human resources costs.

3. REQUIREMENTS. The following protective measures will be implemented for each contract that provides a continuing Departmental pension obligation.

- a. Separate accounting of assets resulting from DOE reimbursements and liabilities related to service under DOE contracts.
- b. Reimbursement to DOE of excess assets at time of contract termination or expiration or plan termination.
- c. Limitation on annual DOE reimbursements of contributions as specified herein.
- d. Approval by the contracting officer of any plan change.

4. RESPONSIBILITIES.

- a. ~~Senior Procurement Executive~~ Director, Office of Contractor Management and Administration.
 - (1) Establishes DOE policy and requirements for contractor pension plans at DOE facilities.
 - (2) Provides guidance to ~~Field Operations~~ Offices on pension matters.
 - (3) Advises the cognizant contracting officer concerning:
 - (a) Structuring of pension plans, including funding levels and actuarial assumptions;

- (b) Changes in contractor pension plan provisions other than Taft-Hartley pension plan provisions;
 - (c) Final settlements of assets and liabilities; and
 - (d) The DOE-reimbursable portions of contractor contributions to Taft-Hartley pension plans.
- (4) Maintains liaison on contractor pension matters with the Department of Labor, the Internal Revenue Service (IRS), the Pension Benefit Guaranty Corporation (PBGC), and the Cost Accounting Standards Board.
- b. Heads of Contracting Activities (HCA). Approve contract provisions for contractor pension programs and changes to contractor pension plans covered by this order.
- c. Cognizant Contracting Officers.
- (1) Establish and negotiate contract provisions affecting contractor pension programs.
 - (2) Negotiate settlements with the contractor when a pension plan is modified or terminated, either fully or partially.
 - (3) Approve contract provisions and changes to contractor pension plans covered by this order when delegated by the HCA. **Proposed pension plan changes will be evaluated by DOE, with approval/disapproval based on the merits of each proposed change, including but not limited to evaluation of the following:**
 - (a) Total compensation.
 - (b) Pension benefit surveys published by the Bureau of Labor Statistics or other Contracting Officer approved broad based national survey.
 - (c) Retirement studies published by consulting firms, educational institutions, or policy groups.
 - ~~(d)~~ Software models developed by qualified actuaries.
 - (4) Advise the ~~Senior Procurement Executive Office of Contractor Management and Administration~~ of any significant changes in the funding status or level of assets in a pension plan.
- d. General Counsel. Advises and assists in negotiations at time of contract termination, plan termination, plan spin-off, or plan merger, including reviewing fiduciary documents, as necessary.

5. REFERENCES.

- a. Employee Retirement Income Security Act (ERISA) (Public Law 93-406, 29 U.S.C. Sections 1001 et seq.), as amended, defines federally mandated features of pension plans.
- b. Internal Revenue Code (IRC) Sections 401 through 418 establish nondiscrimination and funding requirements, inter alia, that a pension plan must meet to qualify for a tax deduction.
- c. Final and Temporary Internal Revenue Service (IRS) Regulations 1.401 through 1.418 provide working guidelines for applying the principles of the IRC.
- d. Final and Temporary Department of Labor (DOL) Regulations 860 and 2500 through 2599 provide minimum standards for pension accrual formulas, pension crediting, retirement eligibility, and fiduciary roles.
- e. Final and Temporary PBGC Regulations 2600 through 2699 prescribe the steps for terminating a defined benefit pension plan.
- f. Cost Accounting Standards (CAS) 412, 413, and 415 describe minimum standards for measuring and allocating pension costs to a government contract activity.
- g. Department of Energy Acquisition Regulation (DEAR) 970.3102-2(l) establishes the allocability and allowability of DOE contractor pension plans.
- h. Federal Acquisition Regulation Part 31 establishes contract cost principles and procedures.
- i. Federal Acquisition Regulation Part 32.6 establishes authority to collect debt.
- j. Financial Accounting Standards Board (FASB) Statements 35, 87, and 88 provide generally accepted accounting principles for reporting pension expenses to the contractor's stockholders and to the Securities and Exchange Commission (SEC).
- k. The Labor Management Relations Act of 1947 (61 Stat. 136, 29 U.S.C. Sections 141 et seq.) (Taft-Hartley Act) establishes the legal basis for collectively-bargained, trustee pension plans (i.e., multi employer plans).

6. CONTACT. ~~Contractor Human Resources Policy Division, at (202) 287-1300. Office of Contractor Management and Administration, HR-55, at (202) 586-1368.~~

~~CONTRACTOR REQUIREMENTS DOCUMENT
DOE CONTRACTOR PENSION PLANS~~

~~Contractor officials shall ensure that requirements set forth below are applied in the establishment and administration of DOE-funded pension plans covering prime cost reimbursement contracts for management and operation of DOE facilities and for other DOE-funded pension plans as stipulated in the contract.~~

1. ~~BASIC REQUIREMENTS.~~

- a. ~~Except for commingled plans in existence as of the effective date of this Order, each pension plan covering contractor employees at designated DOE and contractor facilities shall be a separate pension plan as defined below. When appropriate, commingled plans shall be converted to separate plans at the time of new contract or the extension of an old contract.~~
- b. ~~DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract.~~
- c. ~~DOE approval is required for each newly adopted pension plan or for any changes to commingled pension plans or Taft Hartley pension plans.~~
- d. ~~Each contractor pension plan shall be submitted to an annual, full-scope audit by an outside independent organization and the resulting report, submitted to DOE, must provide the accounting details specified in ERISA Sections 103 and 104.~~
- e. ~~For existing commingled plans, the contractor shall maintain and provide separate annual accounting of DOE liabilities and assets as for a separate plan.~~
- f. ~~For existing commingled plans, the contractor shall be liable for any shortfall in the plan assets caused by funding or events unrelated to DOE contracts.~~
- g. ~~Contractors shall comply with the requirements of ERISA to the fullest extent practical, even when a specific pension plan is exempt from ERISA.~~
- h. ~~Changes will be evaluated by DOE, with approval/disapproval based on the merits of each benefit or proposed change, including the following:~~
 - (1) ~~Total compensation.~~
 - (2) ~~Pension benefit surveys published by the Bureau of Labor Statistics.~~
 - (3) ~~Retirement studies published by consulting firms, educational institutions, or policy groups.~~
 - (4) ~~Software models developed by qualified actuaries.~~

~~2. REIMBURSEMENT OF CONTRACTORS FOR CONTRIBUTIONS TO DEFINED-BENEFIT PENSION PLANS.~~

- ~~a. Contractors that sponsor single employer or multiple employer defined benefit (DB) pension plans will be reimbursed for the annual minimum required pension contribution under the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA) of 2006. Reimbursement for pension contributions above the annual minimum required contribution will require prior approval of the contracting officer and will be considered on a case-by-case basis. Reimbursement amounts will take into consideration all pre-funding balances and funding standard carryover balances.~~
- ~~b. Contractors that sponsor multi employer DB pension plans will be reimbursed for the annual minimum required pension contribution under ERISA, as amended by the PPA. Reimbursement for pension contributions above the annual minimum required contribution under ERISA, as amended by the PPA, will require prior approval of the contracting officer and will be considered on a case by case basis. Reimbursement amounts will take into consideration all pre funding balances and funding standard carryover balances.~~

~~3. REPORTING REQUIREMENTS FOR DESIGNATED CONTRACTS. The following reports shall be submitted to DOE within one year of the last day of the plan year by the contractor responsible for each designated pension plan funded by DOE.~~

- ~~a. Actuarial Valuation Reports. The annual actuarial valuation report for each DOE reimbursed pension plan. When a pension plan is commingled, the contractor shall submit separate reports for DOE's portion and the plan total.~~
- ~~b. Forms 5500. Copies of IRS Forms 5500 with Schedules for each DOE funded pension plan.~~
- ~~c. Forms 5300. Copies of all forms in the 5300 series submitted to the IRS that document the establishment, amendment, termination, spin-off, or merger of a plan.~~

~~4. TERMINATING OPERATIONS. When operations at a designated DOE facility are terminated and no further work is to occur under the prime contract, the following apply.~~

- ~~a. No further benefits for service shall accrue.~~
- ~~b. The contractor shall provide a determination statement in its settlement proposal, defining and identifying all liabilities and assets attributable to the DOE contract.~~

- ~~e. The contractor shall base its pension liabilities attributable to DOE contract work on the market value of annuities or dispose of such liabilities through a competitive purchase of annuities. Insurance companies bidding for such business shall satisfy Department of Labor requirements.~~
- ~~d. Assets shall be determined using the “accrual basis market value” on the date of termination of operations.~~
- ~~e. DOE and the contractor(s) shall establish an effective date for spinoff or plan termination. On the same day as the contractor notifies the IRS of the spinoff or plan termination, all DOE assets assigned to a spun off or terminating plan shall be placed in a high yield, fixed income portfolio until the successor trustee, or an insurance company, is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's “AA.”~~
- ~~5. CONTINUING OPERATIONS. When one prime contractor is replaced by another, the contracting parties shall ensure the following.~~
- ~~a. Incumbent Contractor.~~
- ~~(1) Shall spin off the DOE portion of any commingled plan used to cover employees working at the DOE facility into a separate plan. The new plan will normally provide benefits similar to those provided by the commingled plan and shall carry with it the DOE assets on an accrual basis market value, including DOE assets that have accrued in excess of DOE liabilities.~~
- ~~(2) Shall bargain in good faith with DOE or the successor contractor to determine the assumptions and methods for establishing the liabilities involved in a spinoff.~~
- ~~b. Successor Contractor. Shall assume sponsorship of any DOE site specific plans from the departing contractor. This includes site specific plans already in existence or newly created.~~
- ~~c. Spun off Plan. DOE and the contractor(s) shall establish an effective date of spinoff. On the same day as the contractor notifies the IRS of the spinoff, all DOE assets assigned to a spun off plan shall be placed in a high yield, fixed income portfolio until the successor trustee is able to assume stewardship of those assets. The portfolio shall be rated no lower than Standard & Poor's “AA.”~~
- ~~6. TERMINATING PLANS.~~
- ~~a. DOE contractors shall not terminate any pension plan (commingled or site specific) without notifying the Department at least 60 days prior to the scheduled date of plan termination.~~

- b. ~~To the extent possible, the contractor shall satisfy plan liabilities to plan participants by the purchase of annuities through competitive bidding on the open annuity market. Insurance companies bidding for this business shall satisfy Department of Labor standards. Otherwise, the contractor shall apply the assumptions and procedures of the Pension Benefit Guaranty Corporation.~~
 - e. ~~Funds to be paid or transferred to any party as a result of settlements relating to pension plan termination or reassignment shall accrue interest from the effective date of termination or reassignment until the date of payment or transfer.~~
 - d. ~~If ERISA or IRC rules prevent a full transfer of excess DOE reimbursed assets from the terminated plan, the contractor shall pay any deficiency directly to DOE according to a schedule of payments to be negotiated by the parties.~~
 - e. ~~On the same day as the contractor notifies the IRS of the plan termination, all DOE assets will be placed in a high yield, fixed income portfolio until full disposition of the terminating plan's liabilities. The portfolio shall be rated no lower than Standard & Poor's "AA."~~
 - f. ~~DOE liability to a commingled pension plan shall not exceed that portion which corresponds to DOE contract service. The DOE shall have no other liability to the plan, to the plan sponsor, or to the plan participants.~~
 - g. ~~After all liabilities of the plan are satisfied, the contractor shall return to DOE an amount equaling the asset reversion from the plan termination and any earnings which accrue on that amount because of a delay in the payment to DOE. Such amount and such earnings shall be subject to DOE audit. To effect the purposes of this paragraph, DOE and the contractor may stipulate to a schedule of payments.~~
7. ~~SPECIAL PROGRAMS. Contractors must advise DOE and receive prior approval for each early out program, window benefit, disability program, plan loan feature, employee contribution refund, asset reversion, or incidental benefit.~~

DEFINITIONS

1. ~~Commingled Plans. Cover employees from the contractor's private operations and its DOE contract work.~~
2. ~~Current Liability. The sum of all plan liabilities to employees and their beneficiaries. Current liability includes only benefits accrued to the date of valuation. This liability is commonly expressed as a present value.~~
3. ~~Defined Benefit Pension Plan. Provides a pension amount calculated by applying to an employee's service (and, in some cases, to an employee's salary) a formula specified in the plan document.~~
4. ~~Defined Contribution Pension Plan. Provides to each plan participant the accumulation of employer contributions, employee contributions, and investment returns on behalf of that plan participant. The plan specifies contributions (normally as a percent of salary). The plan also specifies the permissible timing, type, and amount of payments to the plan participant or survivors.~~
5. ~~Designated Contract. For purposes of this Order, a contract (other than a prime cost reimbursement contract for management and operation of a DOE facility) for which the Head of the Departmental Contracting Activity determines that advance pension understandings are necessary or where there is a continuing Departmental obligation to the pension plan.~~
6. ~~Pension Fund. The portfolio of investments and cash provided by employer and employee contributions and investment returns. A pension fund exists to defray pension plan benefit outlays and (at the option of the plan sponsor) the administrative expenses of the plan.~~
7. ~~Separate Accounting. Account records established and maintained within a commingled plan for assets and liabilities attributable to DOE contract service. NOTE: The assets so represented are not for the exclusive benefit of any one group of plan participants.~~
8. ~~Separate Plan. Must satisfy IRC Sec. 414(l) definition of a single plan, designate assets for the exclusive benefit of employees under DOE contract, exist under a separate plan document (having its own DOL plan number) that is distinct from corporate plan documents and identify the contractor as the plan sponsor.~~
9. ~~Spun-off Plan. A new plan which satisfies IRC Reg. 1.414 (l) - 1 requirements for a single plan and which is created by separating assets and liabilities from a larger original plan. The funding level of each individual participant's benefits shall be no less than before the event, when calculated on a "plan termination basis."~~

CHAPTER VII. RISK MANAGEMENT AND LIABILITY PROGRAMS

1. OBJECTIVES.
 - a. To assign responsibilities and authorities for the review and approval of contractor liability insurance programs.
 - b. Ensure DOE compliance with applicable liability and indemnification requirements.
 - c. Provide a framework through which DOE contractors can develop a cost-effective program for handling liability matters peculiar to their operational responsibility.
2. APPLICABILITY. This chapter applies to all Departmental Elements responsible for the contracts for management, operation, and control of DOE facilities. Application to other designated long-lived onsite contracts is optional at the discretion of Departmental and Field Elements.
3. REQUIREMENTS. A cost-effective liability program will be developed covering employer's liability, commercial general liability, business auto liability, aircraft public and passenger liability, and vessel liability (FAR 28.307-2).
4. RESPONSIBILITIES.
 - a. Director, Office of Contractor Management and Administration.
 - (1) Develops and assists with the implementation of policies, procedures, and standards for contractor insurance programs.
 - (2) Provides advice and assistance to Heads of Departmental and Field Elements on all contractor insurance matters, when requested. Areas of consultation include:
 - (a) policy and plan review,
 - (b) claims administration review for adequacy and cost effectiveness,
 - (c) final insurance policy/program cost settlements,
 - (d) claim threshold reviews along with claims that exceed established thresholds,
 - (e) support of claims services negotiation, and
 - (f) required language in covered contracts.
 - (3) Maintains liaison and consults with other federal agencies and insurance industry organizations concerning insurance matters.

- (4) Maintains contractor insurance data sufficient to serve as a program baseline and provide overall measurement and justification for implementation of program initiatives and direction.

b. Heads of Contracting Activities (HCA).

- (1) Ensure compliance with the policies, procedures, and requirements set forth in this chapter.
- (2) Ensure that proposed commercial insurance policies clearly define and include the liability coverage required/desired, that the cost for proposed coverage is fair and reasonable, and that commercial, self-insurance, and DOE TPA options are considered.

c. Cognizant Contracting Officers.

- (1) Establish and negotiate contract provisions affecting contractor insurance programs.
- (2) Approve contractor insurance policies and plans proposed for operations at DOE facilities when delegated by the HCA.
- (3) Approve renewal insurance policies and plans for contractor operations at DOE facilities.
- (4) Ensure that solicitations and contracts contain required insurance language and clauses.
- (5) Provide copies of contractor insurance policies, contracts, and annual cost and loss data to the Office of Contractor Management and Administration.

5. REFERENCES.

- a. Public Law 85-265, ATOMIC ENERGY ACT OF 1954, as amended.
- b. Federal Acquisition Regulations (FAR) 28.3, INSURANCE.
- c. Department of Energy Acquisition Regulations (DEAR) 928.3, INSURANCE.
- d. FAR Part 30, COST ACCOUNTING STANDARDS ADMINISTRATION.
- e. FAR 31.205-19, INSURANCE AND INDEMNIFICATION.
- f. Cost Accounting Standards (CAS) 416, ACCOUNTING FOR INSURANCE COSTS.

- g. DEAR 950, EXTRAORDINARY CONTRACTUAL ACTIONS, describes DOE contractual indemnification authority for nuclear and non-nuclear public liability risks.
 - h. DEAR 950.70, NUCLEAR INDEMNIFICATION OF DOE CONTRACTORS.
 - i. DEAR 950.71, GENERAL CONTRACT AUTHORITY INDEMNITY.
 - j. DEAR 970.28, BONDS AND INSURANCE
 - k. DEAR 970.2870, INDEMNIFICATION.
 - l. DEAR 970.5204-14 ALLOWABLE COSTS AND FIXED-FEE (SUPPORT CONTRACTS)
 - m. DEAR 970.5204-31, INSURANCE-LITIGATION AND CLAIMS.
 - n. Acquisition Letter Number 94-15, dated 10-18-94, provides guidance on determining reasonableness of costs charged to government contracts.
6. CONTACT. Office of Contractor Management and Administration, HR-55, at (202) 586-1368.

**CONTRACTOR REQUIREMENTS DOCUMENT
RISK MANAGEMENT AND LIABILITY PROGRAMS**

Contractor officials shall ensure that the requirements set forth below are applied in the establishment and administration of DOE-funded prime cost reimbursement contracts for management and operation of DOE facilities and other designated long-lived onsite contracts for which the contractor has established separate operating business units.

1. BASIC REQUIREMENTS.

- a. Maintain commercial insurance or self-insurance programs required by law, regulation, and the requirements of the contract.
- b. Contractors shall not purchase insurance to cover public liability for nuclear incidents without DOE authorization. (See DEAR 950.7010 and 970.2870.)
- c. Demonstrate that insurance program costs comply with cost limitations and exclusions at FAR 31.205.19, INSURANCE AND INDEMNIFICATION.
- d. Demonstrate that the liability insurance program is being conducted in the government's best interest and at reasonable cost.
- e. Provide current copies of all insurance policies or insurance arrangements, throughout the contract term, to the contracting officer.
- f. Ensure that self-insurance programs include the following elements.
 - (1) Criteria required to justify self-insurance costs. (See FAR 28.308, SELF-INSURANCE.)
 - (2) Demonstration of full compliance with applicable state and federal regulations and related professional administration necessary for participation in alternative insurance programs.
 - (3) Safeguards to ensure that third party claims and claim settlements are processed in accordance with approved procedures.

2. PLAN EXPERIENCE REPORTING.

- a. Provide the contracting officer with annual experience reports for each type of liability (i.e., automobile and commercial general liability) listing the following for each category.
 - (1) The amount paid for each claim.
 - (2) The amount reserved for each claim.
 - (3) The direct expenses related to each claim.

- (4) A summary for the year showing total number of claims.
 - (5) A total amount for claims paid.
 - (6) A total amount reserved for claims.
 - (7) The total amount of direct expenses.
 - b. When applicable, separately identify total policy expenses (e.g., commissions, premiums, and costs for claims servicing) and major claims during the year including those expected to become major claims (e.g., those valued at \$100,000 or greater).
 - c. Additional claim and financial experience data may be requested from the policyholder on a case by case.
3. TERMINATING OPERATIONS. Responsible officials shall ensure:
 - a. That the government's interests are protected through proper recording of cancellation credits due to policy terminations and/or experience rating.
 - b. Continuing policy administration requirements are identified and provided by the terminated contractor, another DOE contractor, or a DOE Operations/Field Office.
 - c. DOE and any self-insured contractor reach agreement on handling and settlement of claims incurred but not reported at time of contract termination; otherwise, the contractor shall retain this liability; and
 - d. Insurance policies are transferred to DOE through an "assignment" of policies after all claims are closed.
4. SUCCESSOR CONTRACTOR OR INSURANCE POLICY CANCELLATION. Unless otherwise determined to be in the government's best interests, contractors shall ensure:
 - a. That insurance policies of a former DOE contractor are assumed by the successor;
 - b. the contractor protects the government's interests, through proper recording of all cancellation credits, due to policy terminations and/or experience rating;
 - c. the successor contractor assumes any continued claims administration relating to the former DOE contractor operation;
 - d. incurred but not reported claims relating to the former DOE contractor's operation are reported to and handled by the appropriate insurer;
 - e. successor DOE contractors obtain the written approval by the contracting officer for any change in program direction; and

- f. insurance coverage replacement is maintained as required and/or approved by the contracting officer.

ADDITIONAL GUIDANCE

1. Insurance. Contractors selected to manage and operate DOE-owned facilities have traditionally used insurance companies to provide claims and settlement services. These traditional policies are referred to as “service-type policies” or “retrospective policies.” Under such policies, DOE has underwritten losses to the extent the losses were allowable under the terms of the contract. The contractor has some flexibility as to how it sets up its insurance program; however, if it is determined that specific alternative arrangements, as noted below, will be in the government's best interest, DOE officials may require participation by DOE contractors.
 - a. Service-type (Retrospective) Insurance Policies. These policies represent an unbundling of insurer services to allow claims adjustment and settlement only. Under this arrangement, an insurer issues policies to the DOE contractor and the insurer's claims services are then utilized; however, no contingent liabilities are transferred to the insurer. Various types of claims can be handled under these policies, as approved by the appropriate DOE contracting official. The cost of the policy is the cost of claims plus adjustment costs, administrative costs (e.g., taxes), and a fee for service to the insurer. Adjustment costs are to be determined on a basis that avoids in fact and appearance a percentage of cost fee structure. Final cost is not determined until the policy is canceled or expires and all claims incurred have been processed and settled. Certificates of insurance can be issued by the insurer as required to show proof of financial responsibility.
 - b. Self-insurance by DOE contractors. This program requires contractors to service claims using their own personnel or to acquire a TPA to service claims. Previously, some DOE self-insured contractors have used a TPA contractor to accomplish their claim services. TPAs offer “administrative services,” including claims investigation and claims settlement and possibly other related services.
 - c. Self-insurance Using the Departmental Third Party Administrator (TPA). DOE HQ has a contract for nationwide services with a TPA contractor that is available to DOE contractors on a fixed cost per claim basis. It also offers a variety of loss control/prevention services on a fixed price per hour basis. This contract is the “cost” standard against which all others should be measured. DOE contracts should require DOE contractors to use this service, where it is in the Government's best interest. Contracting Officers should carefully evaluate contractor justification for use of any alternative insurance program, against the cost and benefits provided by the Departmental TPA.

CONTRACTOR LIABILITY SCENARIOS

The following are some of the types of liability exposures to which a contractor may be exposed.

1. Premises and Operations Liability Exposures. Premises and operations claims can arise out of either the premises owned or utilized or out of operations conducted at or away from these premises.
2. Products and Completed Operations Liability Exposures. Products claims can arise out of goods that have been manufactured, sold, handled, or distributed; completed operations claims can arise out of services performed after such services have been completed.
3. Employee Benefit Programs Liability Exposures. Employee benefit program claims can arise out of negligent administration of such plans by those authorized to act in some certain administrative capacity for these plans.
4. Fiduciary Liability Exposures. Fiduciary claims can arise from violation(s), or alleged violation(s), of the responsibilities, obligations, or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto.
5. Employers Liability Exposures. Employer claims can arise when an employee is injured or becomes stricken with an occupational disease due to an employer's negligence.
NOTE: Workers compensation is payable to employees when an employer has met its "duty of care" responsibilities.
6. Pollution Liability Exposures. Pollution claims can arise due to careless or reckless conduct that damages others through the impairment of air, land, or water resources.
7. Medical Malpractice Liability Exposures. Medical malpractice claims can arise when others are damaged by medical professionals who have breached a standard or standards of care.
8. Auto, Aircraft, Watercraft Liability Exposures. Auto, aircraft, or watercraft claims can arise when, through the use of such vehicles, third persons are damaged.

DEFINITIONS

1. Liability. A condition of being legally bound in law and justice to do something that may be enforced in the courts. Liability insurance can provide extremely broad coverage for this legal liability.
2. Commercial insurance policy. A contract in which one party, for consideration, agrees to reimburse another for a loss caused by designated contingencies. The first party is called the insurer or underwriter; the second, the insured or policyholder; the contract is the insurance policy; the legal consideration is the premium; the bodily injury or property insured is the exposure; and the contingency is the happening of the insured event.
3. Service-type (retrospective) insurance policy. An insurance policy (contract) in which the cost of the policy (premium) equals the policyholder's claims experience and the insurer's administration cost, plus a fee to the insurer. Under this type of policy, the insurance company does not use its own assets to reimburse the policyholder for a loss caused by covered contingencies. The policy provides only for claim processing and any other designated services.
4. Self-insurer. An individual, partnership, or corporation that retains responsibility for all or part of its contingent losses.
5. Risk. The hazard or condition whose measure relates to the likely frequency or severity of loss.
6. Risk management. A discipline with the goal to protect the assets and profits of an organization by reducing the potential for a loss before it occurs. Includes appropriate financing, through insurance and other means, and reduction of potential exposures to catastrophic loss such as acts of God, human error, or court judgments.
7. Administrative Services Contract. An arrangement under which an insurer (underwriter), insurance broker, or other organization provides administrative services only (e.g., claims investigation, claims settlement). The party acquiring the service retains the liability for loss exposure and losses incurred (self-insurance).
8. Third Party Administrator (TPA). The organization that has a contract requiring performance of "administrative services only."

CHAPTER VIII. CONTRACTOR WORKPLACE SUBSTANCE ABUSE PROGRAMS

1. OBJECTIVES.

- a. To maintain a substance abuse free workplace at DOE facilities operated under the authority of the Atomic Energy Act of 1954 as amended.
- b. To ensure Contractor Workplace Substance Abuse Programs that comply with the requirements in 10 CFR 707, Work Place Substance Abuse Programs at DOE Sites and with the requirements of other Federal agencies, are developed and implemented.

2. APPLICABILITY.

- a. This chapter applies to all DOE Elements that manage contracts for the management and operation of DOE facilities and other contracts or subcontracts with a value of \$25,000 or more that have been determined by DOE to involve:
 - (1) access to or handling of classified information or special nuclear material,
 - (2) transportation of hazardous materials to or from a DOE site, and/or
 - (3) high risk of danger to life, the environment, public health and safety, or national security.
- b. The drug testing provisions apply only to those contractors and subcontractors where positions subject to testing, pursuant to 10 CFR 707, called Testing Designated Positions (TDP's), have been identified and/or applicable testing regulations of other Federal agencies (e.g. Department of Transportation regulations) are applicable.

3. REQUIREMENTS. Contractor Workplace Substance Abuse Programs shall conform to the requirements of 10 CFR 707 and applicable regulations issued by other Federal agencies.

4. RESPONSIBILITIES.

- a. Assistant Secretary for Defense Programs. Develops policy and issues implementation guidance for any substance abuse requirements in the Personnel Assurance Program that are in addition to those in 10 CFR 707, regulations of other Federal agencies, and this chapter.
- b. Assistant Secretary for Environment, Safety and Health through the Office of Occupational Medicine and Medical Surveillance. Develops policies, procedures, and standards for the medical and behavioral aspects of human reliability programs, including treatment and followup for Contractor Workplace Substance Abuse programs.

- c. Deputy Assistant Secretary for Procurement and Assistance Management.
 - (1) Provides consultation, advice, and assistance to Heads of Contracting Activities and contractors to facilitate effective implementation of Workplace Substance Abuse programs.
 - (2) Maintains a consolidated record of prime contractors and subcontractors that the cognizant Heads of Contracting Activity have determined to be covered by 10 CFR 707 and provides a current list to the Managers of Field Elements and covered contractors on at least a semiannual basis.
- d. Director, Office of Nonproliferation and National Security. Develops policy and issues implementation guidance for any substance abuse requirements in the Personnel Security Assurance Program that are in addition to those in 10 CFR 707 and this chapter.
- e. Heads of Contracting Activities.
 - (1) Include the following in the procurement request package for each DOE procurement requiring the application of 10 CFR 707, substance abuse testing programs of other Federal agencies and this chapter.
 - (a) Those requirements in 10 CFR 707 appropriate to the specific site and/or facility.
 - (b) Requirements for the flow-down of 10 CFR707 to any subcontract covered by the regulation.
 - (c) Requirements for substance abuse testing for other Federal agencies.
 - (2) Review and approve Contractor Workplace Substance Abuse Programs, including provisions for testing designated positions.
 - (3) Review and approve in advance the annual costs associated with contractor Workplace Substance Abuse Programs.
 - (4) Approve contractor requests to conduct additional testing programs as permitted in Sections 10 CFR 707.5(e) and 707.7(d).

5. REFERENCES.

- a. 10 CFR 707, Work Place Substance Abuse Programs at DOE Sites, which establishes requirements and defines program elements for programs established by contractors for prevention, education and testing to deal with possible use of illegal drugs.

- b. “Mandatory Guidelines for Federal Workplace Drug Testing Programs” issued by Department of Health and Human Services in Federal Register dated June 9, 1994, and subsequent revisions.
 - c. “Substance Abuse Education and Training: A Resource Guide for Compliance with 10 CFR part 707” dated January 1994.
 - d. Department of Transportation Regulations:
 - (1) Drug and Alcohol Testing Rule, 49 CFR part 40
 - (2) Federal Highway Administration, 49 CFR part 382
 - (3) Federal Transportation Agency, 49 CFR parts 653 and 654
 - (4) Federal Aviation Administration, 14 CFR part 121
 - (5) Research and Special Program Administration, 49 CFR part 199
 - (6) Federal Railroad Administration, 49 CFR part 219
 - e. Nuclear Regulatory Commission, 10 CFR part 26, Fitness-for-Duty Program.
6. CONTACT. Office of Contractor Human Resource Management, at (202) 586-9008.

**CONTRACTOR REQUIREMENTS DOCUMENT
CONTRACTOR WORKPLACE SUBSTANCE ABUSE PROGRAMS**

1. The following requirements apply to contracts for the management and operation of DOE facilities and other contracts or subcontracts with a value of \$25,000 or more that have been determined by DOE to involve:
 - a. access to or handling of classified information or special nuclear material,
 - b. transportation of hazardous materials to or from a DOE site, and/or
 - c. high risk of danger to life, the environment, public health and safety, or national security.
2. Comply with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites. DOE contractors that have positions that fall within the scope of other agency requirements shall, in addition, comply with the substance abuse program requirements of those agencies. These include the Department of Transportation (DOT), the Nuclear Regulatory Commission (NRC), and the Department of Defense (DOD).
3. Submit to the Contracting Officer for approval:
 - a. A written Workplace Substance Abuse Program consistent with the minimum requirements of 10 CFR part 707, Workplace Substance Programs at DOE Sites, and provides for baseline services including education awareness programs on the hazards of using substances in the DOE workplace; supervisory training on their responsibilities with impaired employees; and Employee Assistance Program services. Where testing designated positions have been identified, contractors must include a testing program that meets the requirements of the Department of Health and Human Services Mandatory guidelines and 10 CFR part 707.
 - b. The written program shall include: (Contractors which have no testing designated positions may exclude (7)(c), (8), and (9) below.)
 - (1) Contractor name, address, and telephone and fax numbers.
 - (2) Program manager name, title, address, and telephone and fax numbers.
 - (3) All federal regulations on substance abuse testing that are applicable.
 - (4) Formal policy statement as required by 10 CFR part 707.5 (a)(3).
 - (5) Identification of any testing designated positions and indication or estimation of the number and type for each of the following categories, as applicable.
 - (a) Personnel Assurance Program.

- (b) Personnel Security Assurance Program.
 - (c) National Security.
 - (d) Safety and Health and other critical/ sensitive positions.
 - (e) Visitors with unescorted access to reactor control areas.
 - (f) Additional positions required by the Contracting Officer or company policy that are in excess of 10 CFR part 707 requirements (i.e. applicants, specific positions).
- (6) Identification of positions covered by requirements of other Federal agencies.
- (7) A description of whether each service such as Employee Assistance Program services, specimen collection, laboratory analysis, or Medical Review Officer services is provided by an employee or external entity. Identify the name, title, department, location, telephone number (where applicable), and duties and responsibilities.
- (8) Employee Assistance Services, Education and Training.
- (a) Description of how prevention assessment and referral services will be provided.
 - (b) Description of education and training program components, including system for the documentation of training provided to employees, supervisors, and other contractor management officials to comply with requirements of 10 CFR 707 and applicable regulations of other Federal agencies.
 - (c) Policy on rehabilitation and return-to-duty criteria, when applicable.
- (9) When applicable, describe general procedures used to collect and process specimens and specified procedures for each of the following types of tests.
- (a) Applicant Testing.
 - (b) Random Testing, selection methods.
 - (c) Reasonable Suspicion Testing. Describe contractor provisions to ensure that supervisors and officials are properly trained to make the determinations necessary with regard to reasonable suspicion testing.

- (d) Describe contractor provisions to ensure that proper determinations are made with regard to occurrence testing.
 - (e) Return-to-Duty Testing.
 - (f) Followup Testing.
 - (10) Describe how the program will ensure the rights of personnel in testing designated positions regarding privacy, confidentiality, and access to test results. The conditions for permitting and prohibiting access to information for each entity involved in the program (e.g., supervisors, collectors, Medical Review Officers and Department of Energy officials) should also be specified.
 - (11) Describe plans for program evaluation and those of their subcontractors, as applicable.
 - c. A plan on subcontractor application that describes:
 - (1) the method for determining coverage of all lower tier subcontractors, in accordance with requirements of 10 CFR part 707 and other Federal agencies;
 - (2) the contractor's review and approval of subcontractor plans;
 - (3) the methods for evaluating Workplace Substance Abuse Programs of covered subcontractors at all lower tiers; and
 - (4) contractor-subcontractor agreements for shared services.
 - d. Ensure that all service providers are qualified and perform according to the requirements of 10 CFR part 707, Department of Health and Human Services, and Department of Transportation regulations.
4. Submit reports and maintain records as follows.
- a. Submit to the Contracting Officer reports consistent with 10 CFR 707 on program results and separate reports on each of the lower tier subcontractors including testing results where there are testing designated positions and for positions subject to requirements of other Federal agencies.
 - b. Maintain records in such a manner that permits preparation of a semiannual report, covering the periods January 1 to June 30 and July 1 to December 31, to be provided within 30 days of the close of each period.
 - c. These reports will include the following information for each of the categories identified in 2b(5) above.

- (1) The total number of tests administered for illegal drugs.
- (2) The number of tests administered in each testing category (i.e., random, occurrence, reasonable suspicion, return-to-duty, followup). Include and identify tests administered under authority of another Federal agency or independent contractor authority which are used to satisfy DOE requirements.
- (3) The number of additional tests administered (e.g. applicants).
- (4) The number of tests administered to comply with requirements of other Federal agencies.
- (5) The number of individuals who receive a Medical Review Officer-determined positive test by testing category.
- (6) The number of individuals who received a Medical Review Officer-determined positive test by drug category.
- (7) The action taken with regard to each individual who received a Medical Review Officer-determined positive test (e.g., referral to employee assistance services, termination, removal from a testing designated position).
- (8) Education and training required in 10 CFR 707 for supervisors/managers and employees.

CHAPTER IX. EMPLOYEE ASSISTANCE PROGRAMS

1. OBJECTIVE. To ensure that contractors that manage and operate DOE facilities provide employee assistance program services that conform to the requirements of 10 CFR 707, Work Place Substance Abuse Programs at DOE Sites and regulations of the Department of Transportation. Additional employee assistance program services, as appropriate, should be made available to contractor employees and their dependents.
2. APPLICABILITY. This chapter applies to all DOE Elements that manage contracts where the contractors are subject to the requirements of 10 CFR 707 to the extent set forth in a contract and other contracts where Employee Assistance Programs are provided.
3. REQUIREMENTS. Employee assistance programs shall be developed and implemented to conform to the requirements of 10 CFR 707 and other directives.
4. RESPONSIBILITIES.
 - a. Deputy Assistant Secretary for Procurement and Assistance Management. Provides consultation, advice and assistance to Heads of Contracting Activities and contractors to facilitate implementation of Employee Assistance Programs so that they provide an effective set of services to contractor employees.
 - b. Assistant Secretary for Environment, Safety and Health, Office of Occupational Medicine and Medical Surveillance.
 - (1) Reviews and approves the medical-behavioral aspects of contractor Employee Assistance Programs.
 - (2) Assists in developing education and training materials concerning the medical-behavioral aspects of Employee Assistance Programs.
 - (3) Determines medical-behavioral standards and guidelines for Employee Assistance programs.
 - c. Heads of Contracting Activities. Review and approve all contractor implementation plans and associated costs for Employee Assistance Programs.
5. REFERENCES. 10 CFR 707, WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES.
6. CONTACT. Office of Contractor Human Resource Management, at (202) 586-9008.

**CONTRACT REQUIREMENTS DOCUMENT
EMPLOYEE ASSISTANCE PROGRAMS**

1. Provide a program of preventive services, education, short-term counseling, coordination with and referrals to outside agencies, and follow-up upon return to work that conforms to the requirements of 10 CFR 707.6, EMPLOYEE ASSISTANCE, EDUCATION, AND TRAINING. A description of the Employee Assistance Program services shall be included in contractor Substance Abuse Plans. In addition, the Employee Assistance Programs shall provide services for other medical behavioral, mental, emotional or personal problems of employees and dependents.
2. Contractors not covered by the provisions of Workplace Substance Abuse Programs at DOE sites, 10 CFR part 707, shall provide a program of consultation services, assessment, referral for treatment and/or rehabilitation, and educational services concerning illegal drug use or other medical-behavioral, mental, emotional or personal problems of employees and dependents.
3. Submit for approval by the Contracting Officer an employee assistance program implementation plan that addresses the following.
 - a. A policy statement.
 - b. The service delivery design, with services provided by either the contractor's own staff or through a subcontractor and coordinated with community services and services available through the health benefits plan. The design shall include program education and awareness, crisis intervention, problem assessment and referral, follow-up and monitoring services, and short-term counseling.
 - c. Name of Employee Assistance Program coordinator.
 - d. Needs assessment information.
 - e. Budget data.
 - f. A program evaluation plan.
 - g. A description of the system used to ensure confidentiality of records. Contractors will maintain confidentiality of information and records to the extent required by applicable statutes and regulations.
 - h. Employee and supervisor training.
 - i. Organizational partnerships, i.e. internal and external groups and organizations involved in integrated programs to assist employees and dependents.
 - j. Specific Employee Assistance Program requirements of other government agencies, such as the Department of Transportation and the Nuclear Regulatory Commission.

4. Implement an Employee Assistance Program that includes the following components:
 - a. Written policies and procedures.
 - b. Services provided by staff who have training appropriate to their specialty and are certified or licensed, as required by the state in which the facility operates.
 - c. If services are provided by external vendors, identify the providers for on-site and off-site delivery of services.
 - d. Confidentiality and referrals.
 - e. Employees may request Employee Assistance Program services at their own initiative, or they may accept both suggested and formal referrals by their supervisor.
 - (1) Self-Referral and Supervisory Suggested Referral.
 - (a) Communication between the employee and the program staff will be confidential except as allowed or required by applicable laws and regulations. For example, confidentiality is not required when the employee has signed an appropriate waiver pursuant to applicable DOE security requirements, or, in the opinion of the Employee Assistance Program staff, the individual presents a clear or imminent danger to self or others.
 - (2) Supervisory Formal Referral.
 - (a) The content of communication between the referred employee and the Employee Assistance Program will be in confidence.
 - (b) When the referral is for substance abuse or safety concerns, and if a signed release has been provided by the employee, the Employee Assistance Program staff will inform contractor management in a timely manner if rehabilitation services have been refused or discontinued against advice. Management will require a signed release before evaluation, treatment, and follow-up monitoring services.
 - (c) Orientation. Staff will explain the limits of confidentiality to employees at the initial interview and through descriptive material. Employees will be informed that with the exception of legal limitations, access to confidential information maintained by the Employee Assistance Program about the individual will be provided only upon receipt of a special consent for release of information signed by the employee.

- (d) For employees with Access Authorizations who are in the Personnel Assurance Program (PAP) or the Personnel Security Assurance Program (PSAP), communications from Employee Assistance Program staff are not permitted, except as provided in paragraph (e) below, without the employee's written consent unless a waiver has been signed as part of the employee's entry into PAP or PSAP.
 - (e) If, in the opinion of the Employee Assistance Program staff, allowing the employee to continue in a work assignment would create a threat to health, safety, or the national security, the Employee Assistance Program staff will notify contractor management if the employee is unwilling to do so. If the threat is based on national security concerns, the contractor shall notify the cognizant DOE security official.
5. Implement an Employee Assistance Program that provides the following services.
- a. For employees.
 - (1) Employee orientation and training about the Employee Assistance Program . All employees will be informed at least annually of the availability of Employee Assistance Program services, including the nature of services and limits of confidentiality.
 - (2) Problem assessment and referral to appropriate resources.
 - (3) Short-term counseling, provided either internally or externally.
 - (4) Crisis intervention for individuals who are experiencing emergencies or acute behavioral problems, including the threat to harm self or others.
 - (5) Follow-up services following treatment or rehabilitation.
 - b. For contractor management.
 - (1) Training on identification of deteriorating job performance or judgment, or observation of unusual conduct, and appropriate handling and referral to the Employee Assistance Program. Training shall be provided upon program implementation and on appointment of new supervisors and managers. Other Employee Assistance Program information shall be made available at least annually.
 - (2) Medical-behavioral health care management assistance.
 - (3) Fitness for Duty evaluations and recommend Fitness for Duty status of employees formally referred by management to the Employee Assistance Program for substance abuse or safety concerns and refer employee to the

on-site occupational medical program or off-site to a qualified health care provider if on-site occupational medical services are not available.

6. Prepare and submit information to DOE concerning Employee Assistance Program services as requested by the Contracting Officer. Such reports shall not include individual identifiers.

SUBJECT: CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS

1. PURPOSE. To transmit revised pages to DOE O 350.1, CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS, OF 9-30-96.
2. EXPLANATION OF CHANGE.
 - a. The change to Chapter V, paragraph 4b(6)(b), deletes the clause requiring the Head of Contracting Activity to do an in-depth study if contractor values exceed the acceptable range because both the value study and Chamber of Commerce study provide in-depth back-up information as to why the contractor has exceeded the acceptable range.
 - b. The change to Chapter V, paragraph 2a, Contractor Requirements Document (CRD), Attachment 1, inserts the acceptable range of values permitted by DOE and mirrors the requirements outlined in Chapter V. These ranges were inadvertently omitted in the CRD when the Order was first issued.
3. FILING INSTRUCTIONS.
 - a.

<u>Remove Pages</u>	<u>Dated</u>	<u>Insert Pages</u>	<u>Dated</u>
V-1 and V-2 V-2	9-30-96	V-1	9-30-96 5-8-98
Attachment 1 V-5 and V-6	9-30-96	Attachment 1 V-5	5-8-98
Attachm V-6		ent 1	9-30-96
 - b. After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:



ARCHER L. DURHAM
Assistant Secretary for
Human Resources and
Administration

SUBJECT: CONTRACTOR HUMAN RESOURCE MANAGEMENT PROGRAMS

1. PURPOSE. To transmit revised pages to DOE O 350.1, *Contractor Human Resource Management Programs*, dated 9-30-96.
2. EXPLANATION OF CHANGE. Funding requirements are revised to align with the Pension Protection Act of 2006.
3. LOCATION OF CHANGE.

Page Paragraph _____

VI-6 2.a-b

After filing the attached pages, this transmittal may be discarded.

BY ORDER OF THE SECRETARY OF ENERGY:

DANIEL
Deputy



PONEMAN
Secretary

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BY ORDER OF THE SECRETARY OF ENERGY:

DANIEL
Deputy



PONEMAN
Secretary