

## Headquarters Policy Flash

Flash # 99-06

DATE: April 9, 1999

TO: Distribution

FROM: Office of Procurement and Assistance Policy (MA-51)  
Office of Procurement and Assistance Management

SUBJECT: **A. Contractor Employee Protection Program Interim Rule**  
**B. Whistleblower Costs Proposed Rule**  
**C. Performance Guarantees Final Rule**  
**D. Notice N 110.3 on Conference Management**

SUMMARY: This Flash summarizes a recent interim final rule on the DOE Contractor Employee Protection Program, forwards a copy of the revised clause at DEAR 970.5204-59 titled "Whistleblower Protection for Contractor Employees," summarizes a proposed rule addressing costs associated with defense of whistleblower actions, summarizes a final rule on performance guarantees, and summarizes a DOE Notice addressing the management of DOE or DOE contractor sponsored conferences.

Flash # 99-06

**A. Contractor Employee Protection Program Interim Final Rule**

*Effective April 14, 1999*

*Comments due May 14, 1999*

In the Interim Final Rule, published in the Federal Register on March 15, 1999 (64 FR 12862), the Department issued revised text for the DOE contractor employee protection program. Previously, the whistleblower regulations pertained only to contractor employees who worked at DOE-owned or -leased sites. Part of the interim final rule extended these protections to contractor employees performing work directly related to activities at DOE-owned sites, even if the contractor or work is off-site. The program provides procedures to protect employees of DOE contractors who believe they have suffered retaliation for disclosing information concerning danger to health or safety, substantial violations of law, or gross mismanagement; for participating in Congressional proceedings; or for refusing to participate in dangerous activities. This rulemaking also makes conforming changes to procurement regulations to address the expanded scope of the Department's whistleblower protection program, and revises an existing contract clause to read as follows:

970.5204-59 Whistleblower protection for contractor employees.

As prescribed in 970.2274-2, insert the following clause in management and operating contracts. As prescribed in 922.7101, insert the following clause in contracts that are not management and operating contracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

*Whistleblower Protection for Contractor Employees (APR 1999)*

*(a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.*

*(b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.*

For further information contact Terrence D. Sheppard at 202-586-8193 or at [terry.sheppard@hq.doe.gov](mailto:terry.sheppard@hq.doe.gov).

## **B. Whistleblower Costs Proposed Rule**

*Comments due April 23, 1999*

This proposed rule was re-published on March 24, 1999 (64 FR 14206) to allow for public comment on an alternate approach to the cost clause that DOE proposed in the January 5, 1998 proposed rule. That notice proposed to amend the DEAR to incorporate a contract reform initiative concerning costs associated with defense of whistleblower actions. The alternate text in the most recent notice would implement a cost principle instead of a contract clause approach, and would expand the coverage of the proposed DEAR revision to include allowability of labor settlement costs in general. Written comments must be submitted no later than April 23, 1999, and should be addressed to Terrence D. Sheppard, Office of Procurement and Assistance Policy (MA-51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585-0705. For further information contact Terrence D. Sheppard at 202-586-8193 or at [terry.sheppard@hq.doe.gov](mailto:terry.sheppard@hq.doe.gov).

## **C. Performance Guarantees Final Rule**

*Effective May 6, 1999*

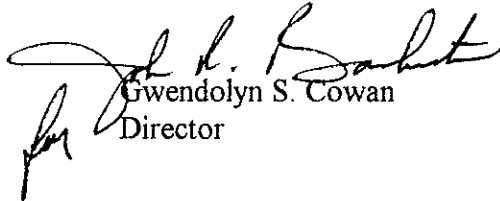
On April 6, 1999, the Department published a final rule in the Federal Register (65 FR 16649) to require a performance guarantee under certain circumstances. The rule includes a new solicitation provision at 970.5204-89, Requirement for Guarantee of Performance. This rule formalizes the guidance provided in Acquisition Letter 98-05R dated 5/27/98. The AL also included a model performance agreement which should be negotiated and included as an appendix in appropriate contracts. For further information, contact Robert Webb at 202-586-8264 or at [robert.webb@hq.doe.gov](mailto:robert.webb@hq.doe.gov)

## **D. Notice N 110.3 Conference Management**

On March 22, 1999, the Secretary tasked the Heads of Departmental Elements to implement Department of Energy Notice DOE N 110.3, "Conference Management," which was issued the same day. The Notice establishes the Department's policy on managing DOE or DOE contractor sponsored conferences and on controlling DOE or DOE contractor employees' participation in or attendance at any conference. The Secretary directed that DOE contracts be modified within 90 days.

Please ensure that within 90 days the Notice is incorporated into management and operating contracts and other contracts for work performed at DOE-owned or DOE-leased facilities (including management and integration contracts and environmental restoration contracts). You should modify your contracts by revising List B per paragraph (b) of the Laws, regulations and DOE directives clause (DEAR 970.5204-78). If you have other contracts that might involve conference management, you should modify them also via an appropriate contractual vehicle.

Department of Energy Notice DOE N 110.3, "Conference Management," is available via DOE Directives Online at <http://www.explorer.doe.gov>. Please contact Michael Righi ([Michael.L.Righi@hq.doe.gov](mailto:Michael.L.Righi@hq.doe.gov) or 202-586-8175) if you have any questions.



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