

**Supporting Statement:
Contractor Legal Management Requirements
OMB Control Number 1910-5115**

This supporting statement provides additional information regarding the Department of Energy (DOE) request for processing of the proposed information collection, Contractor Legal Management Requirements. The numbered questions correspond to the order shown on the Office of Management and Budget (OMB) Form 83-I, "Instructions for Completing OMB Form 83-I."

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the information collection.**

DOE's Contractor Legal Management Requirements, 10 CFR Part 719, which became effective on April 23, 2001, include provisions that impose a collection of information. These regulations were promulgated under authority in section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201, the Department of Energy Organization Act, 42 U.S.C 7101, *et seq.*, and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.* Copies of the relevant sections of these statutes have been attached.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection**

The regulation (Subparts B-D, § 719.10, *et seq.*) imposes certain requirements on covered contractors. Covered contracts include all management and operating contracts and non-management and operating contracts exceeding \$100,000,000 that include cost reimbursable elements exceeding \$10,000,000; and contracts otherwise not covered that contain a clause requiring compliance with the requirement. The regulation requires covered DOE contractors and subcontractors to submit to DOE counsel a legal management plan within 60 days following execution of a contract or request of the contracting officer. Covered contractors must also submit an annual legal budget that includes cost projections for matters defined as significant matters. The budget detail will depend on the nature of the activities and complexity of the matters included in the budget. The regulation further requires covered contractors to submit staffing and resource plans addressing matters defined as significant matters in litigation. The regulation requires covered contractors to submit certain information related to litigation initiated against the contractor before initiating defensive litigation, offensive litigation, or entering into a settlement agreement.

Once approved by DOE, the legal management plan, as well as applicable regulations and contract provisions, has been and will be used to form the basis for DOE actions on requests from the contractors for reimbursement of litigation and other legal expenses. The information collected

related to annual legal budget, staffing and resource plans, and initiation or settlement of defensive or offensive litigation is and will be similarly used.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The regulation does not specifically preclude or provide for the use of particular automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. The content of the information submissions is expected to vary because contractors' use of outside legal services will vary.

4. Describe efforts to identify duplication.

This information collection applies to management of programs in DOE and does not duplicate any existing data in DOE or of other agencies.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The collection of information does not adversely impact small businesses or other small entities. The contractors covered by the information collection are large entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The initial submission of a legal management plan, staffing and resource plan, annual budget, and certification of costs submitted for reimbursement are the minimum requirements for an effective program to oversee and make decisions regarding management and reimbursement of contractor legal costs. Submission of information related to litigation initiated against a contractor or proposed to be initiated by a contractor is similarly essential to effective management of contractor legal matters and costs. If the information were not collected it would be more difficult to determine the appropriateness of the legal costs and proposed offensive and defensive litigation. Without the information DOE's costs would likely increase. DOE's management of contractor legal costs continues to be a matter of interest. Several GAO reviews and one DOE IG audit have been conducted on this subject.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines. (a) requiring respondents to report information to the agency more often than quarterly; (b) requiring respondents to prepare a written response

to a collection of information in fewer than 30 days after receipt of it; (c) requiring respondents to submit more than an original and two copies of any document; (d) requiring respondents to retain records, other than health, medical government contract, grant-in-aid, or tax records, for more than three years; (e) in connection with a statistical survey, that is not designed to product valid and reliable results that can be generalized to the universe of study; (f) requiring the use of statistical data classification that has not been reviewed and approved by OMB; (g) that includes a pledge of confidentiality that is not supported by authority established in stature of regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; (h) requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This collection of information has been reviewed and justified by Departmental management requirements, statutes, external regulations, Departmental directives, and is collected in a manner consistent with 5 CFR 1320 guidelines.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or report.

The Department published a 60-day Federal Register Notice and Request for Comments concerning the underlying revisions to 10 CFR part 719 requiring this collection in the Federal Register on December 28, 2011, volume 76, number 249, page number 81408. The notice described the changes to the regulations and noted that DOE was submitting the proposed collection to OMB for review and approval. No comments regarding the proposed collection were received in response to the December 28, 2011 notice.

This information collection differs from collections placed on the general public in that it is placed only on DOE contractors. Consultation with outside agencies or persons as to this information collection would not be appropriate. DOE does solicit input from DOE contractors regarding the burden implications of new or revised collections and also solicits their input on ways to reduce the burden of existing collections and still provide DOE contractor management with sufficient information to fulfill their managerial and statutory responsibilities.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gift will be provided to respondents, other than remuneration of contractors.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

In the unlikely event that confidential information would be involved in any information collection, the provisions for dealing with this confidential information are set forth in the contract documents and the related Departmental regulations, and the matter would be handled under established procedures.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why DOE considers the questions necessary, the specific uses to be made of the information., the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No information of a sensitive or personal nature will be collected.

12. Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, DOE should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample fewer than 10 potential respondents is desirable.

Respondents & Responses

DOE estimates that the total annual number of respondents will be 45 and responses will be 154. This estimate is based on the estimate that approximately 45 contractors will be subject to the requirement to submit a legal management plan; that these contracts are for up to five year periods; and that in any one year approximately 20% of the total number of covered contractors may be required to submit a legal management plan in any given year. An annual legal budget submission is also required of all covered contractors. Thus, the total number of annual responses is estimated to be nine for the legal management plan and 45 for the annual legal budget portion of the legal management plan. Based on an assessment of historical data, DOE estimates that approximately 70 lawsuits will be filed each year by or against contractors subject to the collection requirements related to initiation or defense of litigation. Approximately 30 requests for settlement will be submitted.

Burden Hours

The burden hours for this collection are estimated to be approximately 1150 hours on an annual basis. The basis for this estimate is on the estimate that preparation time of the initial plan is 20 hours and that 20% of the 45 contractors will need to submit a legal management plan in any given year. The

estimate total for the year also includes an estimate of approximately 10 hours for an annual budgetary update, which would be submitted by all of the contractors. It is estimated that contractors will spend approximately 4 hours preparing the information to be submitted in relation to contractor engagement in offensive or defensive litigation and approximately 8 hours preparing the information required to be submitted when requesting permission to settle a matter. This burden hours estimate was reached by consulting with a small sample of potential respondents.

See Attachment 1.

Burden Costs associated with Burden Hours

DOE estimates that the annualized cost to respondents for the hour burdens for collections of information will be \$97,750. This estimate was reached by consulting with a small sample of potential respondents and multiplying an unburdened estimated applicable wage rate of \$85/hour by the 1150 hours. It should also be noted that costs incurred by DOE contractors in providing the information collections in this package are recovered in their contract fees and payments. In this sense, they differ from information collections imposed on the general public for which no cost reimbursement is provided.

See Attachment 1.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

There are no additional: (1) capital and start-up costs or (2) operation and purchase of service costs associated with these data collections. Estimated costs associated with the hourly burden estimated to be imposed on potential respondents are set forth in the answer to question 12, above. It should also be noted that costs incurred by DOE contractors in providing the information collections in this package are recovered in their contract fees and payments. In this sense, they differ from information collections imposed on the general public for which no cost reimbursement is provided.

14. Provide estimates of annualized cost to the Federal government.

This collection will require approximately 485 hours on an annual basis with annualized costs to the Federal government of \$28,615. These figures were calculated based on the estimated collection frequencies set forth in section A.12 above and estimated corresponding Federal burdens as follows: 5 hours to review a legal management plans; 4 hours to review an annual budget; 2 hours to review a contractor request to initiate or defend litigation; and 4 hours to review a contractor request to settle a matter. These burdens were multiplied by \$59/hour, the average salary of DOE attorneys that perform these functions. See Attachment 1. As noted in answers to questions 12 and 13, the costs incurred by respondents will likely be allowable costs under their cost-type contracts. Therefore, the combined estimated annualized costs of \$126,365 set forth in these answers will ultimately be incurred by the Federal government.

15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.

The amendments to 10 CFR part 719 described above will increase the amount of information collected from contractors under this collection. First, while the requirements related to contractor submissions of legal management plans and annualized budgets remain largely unchanged and result in no alteration to the existing associated burden hours, the Department has shifted downward its estimate of the burdens associated with contractor preparation of legal management plans and annualized budgets based on experience and communications with respondents. Second, the rulemaking now requires that contractors submit information related to requests to settle matters. Third, while 10 CFR part 719 has required contractors to submit information regarding their initiation of offensive and defensive litigation since its inception in 2001, previous Paperwork Reduction Act submissions did not account for burdens associated with these requirements. See Attachment 1 for a comparison of the estimated responses and burden hours between the proposed rule and the current rule. See Attachment 2 for an index of the PRA triggering elements of the existing and proposed regulations.

Note that this Supporting Statement is associated with a DOE draft Final Rule and follows a Supporting Statement submitted on January 7, 2012 in connection with the Final Rule's associated Notice of Proposed Rulemaking (published at 76 FR 81408 on December 28, 2011). The draft Final Rule includes minor changes to the collection requirements presented in the Notice of Proposed Rulemaking. First, DOE is proposing elimination of certain elements that were proposed to be included in the Legal Management Plan in the NOPR. This means that while the Plans will be required at the same frequency; fewer informational categories will be required in each LMP submittal. Second, the draft Final Rule lessens the requirements for submission of Staffing and Resource Plans. The NOPR required their submission for all significant matters, while the draft Final Rule would require their submission only for significant matters in litigation. Finally, a few other minor changes to the specific language or elements of required submissions are also included in the Final Rule (e.g., engagement letters are now required to be submitted after they are finalized, not when they are proposed; the wording of the certification require in engagement letters has been slightly altered). These changes do not alter the estimated burdens associated with the proposed collection or the answers to Questions 1-14 above.

16. For collections whose results will be published, outline the plans for tabulation and publication.

DOE does not plan to publish the information obtained by this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

DOE is seeking approval to not display the expiration date for OMB approval of this information collection. The information collection applies to only a few DOE contractors and is prescribed by

Federal Regulation. Displaying the expiration date would likely require more frequent amendments to the Code of Federal Regulations than would otherwise be necessary and provide little benefit to the small number of affected contractors.

18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.

This collection of information has been reviewed and justified by Departmental management requirements, statutes, external regulations, and Departmental directives, and meets the requirements listed in the “Certification for Paperwork Reduction Act Submissions.”

Attachment 1.

Estimated Burden Hours and Costs – Proposed Regulation

Contractors/respondents			
submission/collection	number of collections per year	hours/collection	total hours per year
legal management plan	9	20	180
budget	45	10	450
initiation/defense of litigation	70	4	280
settlement requests	30	8	240
total contractor burden hours			1150

Ave Respond. Atty Rate	Total Respond. cost per year
\$85	\$97,750

DOE			
submission/collection	number of collections per year	hours/collection	total hours per year
legal management plan	9	5	45
budget	45	4	180
initiation/defense of litigation	70	2	140
settlement requests	30	4	120
total DOE burden hours			485

Ave DOE Atty Rate	Total DOE cost per year
\$59	\$28,615

Estimated Burden Hours and Costs – Existing Regulation PRA 83I and SS

Contractors/respondents			
submission/collection	number of collections per year	hours/collection	total hours per year
legal management plan	7	(est. range average) 22	154
budget	36	10	360
initiation/defense of litigation	N/A	N/A	N/A
settlement requests	N/A	N/A	N/A
total contractor burden hours			515

Ave Respond. Atty Rate	Total Respond. cost per year
Not Calculated	Not Calculated

DOE			
submission/collection	number of collections per year	hours/collection	total hours per year
legal management plan	Not calculated	Not calculated	Not calculated
budget	Not calculated	Not calculated	Not calculated
initiation/defense of litigation	Not calculated	Not calculated	Not calculated
settlement requests	Not calculated	Not calculated	Not calculated
total DOE burden hours			Not calculated

Ave Atty Rate	total DOE \$ per year
Not calculated	Not calculated

Attachment 2.

Sections of Proposed regulation triggering information collections:

- 10 CFR 719.10 Who must submit a Legal Management Plan?
- 10 CFR 719.11 When must a Legal Management Plan be submitted or revised?
- 10 CFR 719.12 What information must be included in the Legal Management Plan?
- 10 CFR 719.13 Who at the Department receives and reviews the Legal Management Plan?
- 10 CFR 719.14 Will the Department notify the Contractor concerning the adequacy or inadequacy of the submitted Legal Management Plan?
- 10 CFR 719.15 What are the requirements for a Staffing and Resource Plan?
- 10 CFR 719.16 When must the Staffing and Resource Plan be submitted?
- 10 CFR 719.17 Are there any budgetary requirements?
- 10 CFR 719.30 In what circumstances may the Contractor initiate litigation, including appeals from adverse decisions?
- 10 CFR 719.32 What must the Contractor do when it receives notice that it is a party to litigation?
- 10 CFR 719.33 In what circumstances must the Contractor seek permission from the Department to enter a settlement agreement?
- 10 CFR 719.34 What documentation must the Contractor provide to Department Counsel when it seeks permission to enter a settlement agreement?
- 10 CFR 719.35 When must the Contractor provide a copy of an executed settlement agreement?

Sections of Existing regulation triggering information collections:

- 10 CFR 719.10 What information must be included in the legal management plan?
- 10 CFR 719.11 Who must submit a legal management plan?
- 10 CFR 719.12 When must the plan be submitted?
- 10 CFR 719.13 Who at the Department must receive and review the plan?
- 10 CFR 719.14 Will the Department notify the contractor concerning the adequacy or inadequacy of the submitted plan?
- 10 CFR 719.15 What are the requirements for a staffing and resource plan?
- 10 CFR 719.16 When must the staffing and resource plan be submitted?
- 10 CFR 719.17 Are there any budgetary requirements?