
Supporting Statement for Contractor Legal Management

Part A: Justification

OMB No. 1910-5115

10 CFR part 719, Contractor Legal Management

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U.S. Department of Energy
Washington, DC 20585

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Introduction

Provide a brief introduction of the Information Collection Request. Include the purpose of this collection, note the publication of the 60-Day Federal Register Notice, and provide the list of forms within this collection.

DOE's Contractor Legal Management Requirements, 10 CFR Part 719, which became effective on April 23, 2001, includes provisions that impose a collection of information. These regulations facilitate management of retained legal counsel and contractor legal costs, including litigation and legal matter costs. The regulation requires covered DOE contractors and subcontractors to submit to DOE counsel a legal management plan, an annual legal budget, and staffing and resource plans for significant matters in litigation. The regulation also 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. OMB renewal of the existing PRA control number is sought to enable DOE's continued collection of the information necessary to enforce part 719 requirements, including requirements for submission and approval of Legal Management Plans, legal budgets, and staffing and resource plans. The Department published a 60-day Federal Register Notice and Request for Comments concerning the collection on February 15, 2022, volume 87, number 31, page number 8575. No comments were received.

A.1. Legal Justification

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.

A.2. Needs and Uses of Data

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 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 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.

A.3. Use of Technology

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. Electronic submissions, e.g., via email, are permitted and will constitute 100 percent of submissions. The content of the information submissions is expected to vary because contractors' use of outside legal services will vary.

A.4. Efforts to Identify Duplication

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.

A.5. Provisions for Reducing Burden on Small Businesses

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 have historically been and are anticipated to remain large entities.

A.6. Consequences of Less-Frequent Reporting

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. Furthermore, multiple GAO reviews and DOE IG audits have been conducted on this subject and the information collected via this information collection has been central to DOE's ability to respond to reviews and audits.

A.7. Compliance with 5 CFR 1320.5

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; or**
- (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, and Departmental directives, and is collected in a manner consistent with 5 CFR 1320 guidelines.

A.8. Summary of Consultations Outside of the Agency

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 collection on February 15, 2022, volume 87, number 31, page number 8575. No comments regarding the proposed collection were received in response to the notice.

The Department published a 30-day Federal Register Notice and Request for Comments concerning the collection on June 1, 2022, volume 87, number 105, page number 33144. No comments regarding the proposed collection were received in response to the notice.

This information collection differs from collections placed on the general public in that it is placed only on DOE contractors. Because contractor activities required to fulfill requirements of this information collection are fully reimbursable under their contractors with the Department, DOE has a clear understanding of the burdens imposed. 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 welcomes 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.

A.9. Payments or Gifts to Respondents

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.

A.10. Provisions for Protection of Information

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

The information collected is subject to protections set forth in the contracts between DOE and the respondent contractors, as well as procurement statutes and regulations. 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.

A.11. Justification for Sensitive Questions

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.

A.12A. Estimate of Respondent Burden Hours

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. The number of responses per respondent is estimated as 3.42. 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 9 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 1,150 hours on an annual basis, with an average time per response of 7.467 hours. The basis for this estimate is 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. For this 2022 information collection renewal, communications with DOE representatives of the various Chief Counsel offices across the DOE complex and nation were consulted to ensure continued appropriateness of the burden hour estimates for both respondents and DOE employees. Cost per response is calculated as \$952.48 (see below).

Estimated Respondent Hour Burden

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	154		1150

A.12B. Estimate of Annual Cost to Respondent for Burden Hours

Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.

Cost per response is calculated as \$952.48. However, costs incurred by DOE contractors in providing the information collections in this package are reimbursable under their contracts and 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. Estimated costs associated with contractor burdens are therefore included in A.14, Annual Cost to the Federal Government, below.

A.13. Other Estimated Annual Cost to Respondents

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.

A.14. Annual Cost to the Federal Government

Provide estimates of annualized cost to the Federal government.

DOE estimates that the total annualized costs to the Federal government is \$201,002.50 (146,682.50+54,320). This includes both direct costs incurred by DOE and costs incurred by respondents that is reimbursed under DOE cost-reimbursement type contracts.

This collection will require approximately 485 DOE hours on an annual basis with direct annualized costs to the Federal government of \$54,320. 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. This estimate was reached by multiplying a burdened estimated applicable wage rate of \$112/hour by 485 hours. This wage rate was calculated by applying a 1.6 multiple to the estimated

unburdened hourly wage of DOE attorneys that perform these functions. Note that DOE’s prior estimates for the subject information collection were based on unburdened wage rates.

Federal Government Cost:

Ave DOE Atty Rate	Ave Fully Loaded DOE Atty Rate (1.6 x DOE Rate)	Total DOE Internal cost per year (485*\$112)
\$70	\$112	\$54,320

As stated in A.12B, above, the costs by DOE contractors in providing the information collections in this package are reimbursable under their contracts and recovered in their contract fees and payments. DOE estimates that the annualized cost to respondents for the hour burdens for collections of information will be \$146,683 (figure is rounded to nearest dollar). This estimate was reached by multiplying a burdened estimated applicable wage rate of \$127.55/hour by 1,150 hours. This rate was calculated by applying a 1.4 multiple to the BLS 75 percentile unburdened wage rate for nation-wide attorneys. Note that DOE’s prior cost estimates for the subject information collection were based on unburdened wage rates.

Respondent Cost:

BLS 75% Atty hourly Rate	Ave Fully Loaded Respond. Atty Rate (1.4 x BLS Rate)	Total Respond. cost per year (1150*\$127.55)
\$91.11	\$127.55	\$146,683

Estimated Government Hour Burden 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

A.15. Reasons for Changes in Burden

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

There are no program changes or adjustments in the estimated number of responses or total time burden. Total burden cost estimate (incurred by the agency) has increased by \$48,933. The estimated burden cost has changed due to a revised labor cost estimate and the fact that DOE’s prior cost estimates for the subject information collection were based on unburdened wage rates. There is no change in Item 14 of the OMB form 83-I, however, as the costs by DOE contractors in providing the information collections in this package are reimbursable under their contracts and recovered in their contract fees and payments.

ICR Summary of Burden

	Requested	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Previously Approved
Total Number of Responses	154	0	0	154
Total Time Burden (Hr)	1150	0	0	1150
Total Cost Burden	\$146,683	0	\$48,933	\$97,750

A.16. Collection, Tabulation, and Publication Plans

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.

A.17. OMB Number and Expiration Date

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.

A.18. Certification Statement

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.

Sections of Existing 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?