Subpart 950.70—Nuclear Indemnification of DOE Contractors

Parent topic: PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

950.7000 Scope of subpart.

This subpart describes the established policies concerning indemnification of Department of Energy (DOE) contractors against public liability for a nuclear incident arising out of or in connection with the contract activity.

950.7001 Applicability

The policies and procedures of this subpart shall govern DOE's entering into agreements of indemnification with recipients of a contract whose work under the contract involves the risk of public liability for a nuclear incident or precautionary evacuation.

950.7002 Definitions.

DOE contractor means any DOE prime contractor, including any agency of the Federal Government with which DOE has entered into an interagency agreement.

Nuclear incident means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material. The term includes any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States.

Person indemnified means—

(1) With respect to a nuclear incident occurring within the United States or outside the United States as the term is defined above and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability; or

(2) With respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Secretary of Energy or any project to which indemnification under the provisions of section 170d. of the Atomic Energy Act of 1954, as amended, has been extended or under any subcontract, purchase order, or other agreement, or any tier under any such contract or project.

Public liability means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except: (1) Claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (2) claims arising out of an act of war; and (3) whenever used in subsections a., c., and k. of section 170 of the Atomic Energy Act of 1954, as amended, claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. *Public liability* also includes damage to property of persons indemnified: Provided, that such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

950.7003 Nuclear hazards indemnity.

(a) Section 170d. of the Atomic Energy Act, as amended, requires DOE "to enter into agreements of indemnification with any person who may conduct activities under a contract with DOE that involve the risk of public liability * * *." However, DOE contractors whose activities are already subject to indemnification by the Nuclear Regulatory Commission are not eligible for such statutory indemnity. See 950.7006 below.

(b) The Heads of Contracting Activities shall assure that contracts subject to this requirement contain the appropriate nuclear hazards indemnity provisions.

950.7004-950.7005 [Reserved]

950.7006 Statutory nuclear hazards indemnity agreement.

(a) The contract clause contained in 952.250-70 shall be incorporated in all contracts in which the contractor is under risk of public liability for a nuclear incident or precautionary evacuation arising out of or in connection with the contract work, including such events caused by a product delivered to a DOE-owned facility for use by DOE or its contractors. The clause at 952.250-70 shall be included in contracts with architect-engineer contractors for the design of a DOE facility, the construction or operation of which may involve the risk of public liability for a nuclear incident or a precautionary evacuation.

(b) However, this clause shall not be included in contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for activities to be performed under the contract.

950.7007-950.7008 [Reserved]

950.7009 Fees.

No fee will be charged a DOE contractor for a statutory nuclear hazards indemnity agreement.

950.7010 Financial protection requirements.

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be (a) permitted to furnish financial protection to themselves or (b) permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.