

**THE PROTECTIVE FORCES AT THE DEPARTMENT
OF ENERGY**

HEARING
BEFORE THE
SUBCOMMITTEE ON STRATEGIC FORCES
OF THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

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MARCH 3, 2010
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THE PROTECTIVE FORCES AT THE DEPARTMENT OF ENERGY

WEDNESDAY, MARCH 3, 2010

U.S. SENATE,
SUBCOMMITTEE ON STRATEGIC FORCES,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:35 p.m. in room SR-232A, Russell Senate Office Building, Senator E. Benjamin Nelson (chairman of the subcommittee) presiding.

Committee members present: Senators Ben Nelson, Begich, and Vitter.

Majority staff member present: Madelyn R. Creedon, counsel.

Minority staff members present: Daniel A. Lerner, professional staff member; and Diana G. Tabler, professional staff member.

Staff assistants present: Kevin A. Cronin and Paul J. Hubbard.

Committee members' assistants present: James Tuite, assistant to Senator Byrd; Lindsay Kavanaugh, assistant to Senator Begich; Sandra Luff, assistant to Senator Sessions, and Michael T. Wong, assistant to Senator Vitter.

OPENING STATEMENT OF SENATOR E. BENJAMIN NELSON, CHAIRMAN

Senator BEN NELSON. Well, good afternoon. I think we'll go ahead and begin, because we're going to be up against the full Senate Armed Services Committee beginning at 4:30, and I don't want to delay getting to that. So, I call this hearing to order.

Welcome to the hearing of the Subcommittee on Strategic Forces.

I'd like to thank our witnesses for their flexibility in accommodating the scheduling needs of the full committee. We have an important briefing for the full committee, as I said, that we need to make time for, but had some difficulties in somehow getting things scheduled, but apparently we've been able to succeed.

It's with great irony and pleasure that, after a 3-year stint as chairman of the Personnel Subcommittee, that I note the first hearing in my new role as chairman of the Strategic Forces Subcommittee is on a personnel matter once again. So, as Yogi Berra once said, it's like *deja vu* all over again; here we are.

The Department of Energy (DOE) is responsible for the security of nuclear weapons on DOE sites, tons of weapons-grade materials, mostly highly-enriched uranium and plutonium, and various weapons parts at various locations across the country. Even a small amount of this material, in the hands of a terrorist, could lead to a horrific result.

After the tragedy of September 11, 2001, the DOE reviewed the security of these sites, and their vulnerability to a terrorist attack, and came to the conclusion that the security needed to be increased. As a result, DOE adopted a new approach for the protective forces, shifting many of them to tactical response forces akin to a SWAT team. These new teams were trained in offensive combat tactics to move, train, communicate, and fight as a team. This was a major shift from the previous defensive posture that was taken at the sites. With this new focus came new rigorous training and other requirements which were not uniformly implemented at the various sites and, where implemented, became an issue for the protective forces. While the protective forces fully supported the need for the increased security, it quickly became apparent that the new requirement would be progressively difficult for older guard personnel to meet.

At the same time, DOE had decided to reduce post-retirement healthcare benefits and eliminate defined-benefit retirement plans for new employees. This misalignment, as the GAO describes it, between the protective force personnel systems and the increased physical and other demands of a paramilitary operation, has become a significant concern, and one of the underlying causes for a 44-day strike at the Pantex plant in 2007.

The DOE protective forces are all contractors, with the management of the force varying from site to site. DOE orders establish the security requirements that each site must meet, but not how each site will meet those requirements. As a result of the growing concern over the protective forces, the security at the sites, and the strike at Pantex, this committee asked the Government Accountability Office (GAO) to conduct a comprehensive study of the management of the forces in the National Defense Authorization Act for Fiscal Year 2008.

GAO completed this study on January 29, and today we'll hear from Eugene Aloise, GAO Director, Natural Resources and Environment, on the findings and recommendations in the study. Also with us, are Glenn Podonsky, the Director of the Department of Energy Office of Health, Safety, and Security (HSS), the DOE Security Policy and Oversight Office, who has worked on these issues for many years, and Mike Stumbo, President of the National Council of Security Police, the union representing over 2,600 members of the protective force.

We welcome each of you this afternoon, and look forward to getting a clear understanding of the issues and difficulties of ensuring that the Nation's stockpile of nuclear weapons materials remains secure.

When Senator Vitter arrives, we will ask him for any opening comments that we have.

I would ask that each of our witnesses give a very short opening statement, perhaps 5 minutes, or thereabouts. We've received your prepared statements, and, without objection, they will all be included in the record, in their entirety.

Mr. Aloise, we'll begin with you, followed by Mr. Podonsky, and later by Mr. Stumbo.

Mr. Aloise.

**STATEMENT OF EUGENE E. ALOISE, DIRECTOR, OFFICE OF
NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT
ACCOUNTABILITY OFFICE**

Mr. ALOISE. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss issues with DOE's protective forces.

Over 2,300 heavily-armed protective forces provide security for DOE and the National Nuclear Security Administration (NNSA) at 6 sites, with long-term missions to store and process weapons-grade nuclear materials, DOE's highest security threat.

As mentioned, since September 11, DOE has sought to transform its protective forces into an elite fighting force, a tactical response force (TRF) with training and capabilities similar to the U.S. military. Protective force unions are concerned that TRF's more demanding requirements threaten the ability of the forces to work until retirement age.

My remarks today are based on a recently issued report (GAO-10-275) which shows that contractor protective forces are not uniformly managed, organized, staffed, trained, equipped, or compensated across the six DOE sites. These differences exist because the forces operate under separate contracts and collective bargaining agreements at each site, and because of DOE's contracting approach, which allows each site to tailor security to site and mission needs.

Since 2005, TRF has raised concerns in DOE security organizations, among protective force contractors, and force unions about the ability of the forces, especially older force members, to continue to meet DOE's weapons, physical fitness, and medical qualifications.

Adding to these concerns are DOE's efforts to manage its long-term contractor post-retirement and pension liabilities which could negatively impact protective forces retirement eligibility and benefits. As mentioned, these concerns contributed to a 44-day strike in 2007 by protective forces at the Pantex plant, where the assembly and disassembly of nuclear weapons occurs.

According to union officials, failure to resolve TRF and retirement benefit issues could lead to strikes at three sites with over 1,500 protective forces when their collective bargaining agreements end in 2012.

Now, DOE has considered two principal options to more effectively manage its protective forces: improving the existing contractor system or creating a Federal protective force.

In 2009, NNSA and DOE officials rejected federalization of protective forces because they believed it would be too costly and would provide little increase in security effectiveness. Instead, they supported the continued use of contractor forces, but with improvements.

Our analysis shows that if the forces are well managed, either a contractor or a Federal force could result in effective and uniform security. Both options have offsetting advantages and disadvantages, with neither option emerging as clearly superior. A key disadvantage of the contractor system is the potential for strikes by contractor forces. However, according to NNSA's Administrator, strikes can be effectively managed by the use of replacement forces.

Reliably estimating the cost to compare the two options proved difficult and precluded our detailed reporting on it. Because contractor and Federal forces could each have numerous permutations, choosing any particular option to assess would be arbitrary.

In March 2009, DOE commissioned a group to recommend ways to improve the protective force contractor personnel system. In June of last year, the group made 29 recommendations designed to enable protective force members to reach a normal retirement age within the forces, take another job within DOE, or transition to a non-DOE career. To date, action by DOE on these recommendations has been limited.

In our view, DOE and its protective force contractors have not successfully aligned protective force systems with the increased physical and other demands of TRF. Without better alignment, there is a greater potential for strikes and potential risk to site security when collective bargaining agreements expire.

DOE's study group recommendations are a step forward: However, DOE faces the possibility of more strikes by its protective forces at some of its highest security-risk facilities if these issues are not resolved. Therefore, it is imperative that DOE resolve these issues soon, as recommended by our report and directed by the full committee in the National Defense Authorization Act for Fiscal Year 2010.

Mr. Chairman, that concludes my remarks, and I would be happy to address any questions you or other members may have.

[The prepared statement of Mr. Aloise follows:]

PREPARED STATEMENT BY GENE ALOISE

Mr. Chairman and members of the subcommittee:

I am pleased to be here today to discuss the Department of Energy's (DOE) contractor guards, also known as protective forces. My testimony is based on our recently released report *Nuclear Security: DOE Needs to Address Protective Forces' Personnel System Issues*¹ and recent discussions with protective force union officials.

Protective forces are a key component of security at DOE sites with special nuclear material (SNM), which the department considers its highest security risk. This material—including plutonium and highly enriched uranium—is considered to be Category I when it is weapons grade and in specified forms (e.g., nuclear weapons, nuclear weapons components, metals, and oxides) and quantities. The risks associated with Category I SNM include theft and the potential for sabotage through the use of a radioactive dispersal device, also known as a "dirty bomb." Currently, DOE and its National Nuclear Security Administration (NNSA), an agency within DOE responsible for the safety, security, and reliability of the U.S. nuclear weapons stockpile, have six contractor-operated sites that possess—and will possess for the foreseeable future—Category I SNM (sites with "enduring" missions).² The six sites include four that NNSA is responsible for—the Los Alamos National Laboratory, in Los Alamos, NM; the Y-12 National Security Complex (Y-12), in Oak Ridge, TN; the Pantex Plant, near Amarillo, TX; and the Nevada Test Site, outside of Las Vegas, NV. In addition, DOE's Office of Environmental Management is responsible

¹GAO, *Nuclear Security: DOE Needs to Address Protective Forces' Personnel System Issues*, GAO-10-275 (Washington, DC: Jan. 29, 2010).

²We excluded three other DOE Category I SNM sites from our review because they are likely to downsize or downgrade their protective forces in the near future. These sites include the Office of Environmental Management's Hanford Site, near Richland, WA, which recently transferred its highest value Category I SNM off site but will maintain lower value Category I SNM for the foreseeable future; NNSA's Lawrence Livermore's National Laboratory, in Livermore, CA, which plans to transfer its Category I SNM off site by the end of fiscal year 2012; and the Office of Science's Oak Ridge National Laboratory, in Oak Ridge, TN, which plans to dispose of its Category I SNM by the end of fiscal year 2015.

for the Savannah River Site, near Aiken, SC, and DOE's Office of Nuclear Energy is responsible for the Idaho National Laboratory, near Idaho Falls, ID.³

In the aftermath of the September 11, 2001, terrorist attacks, DOE embarked on a multifaceted effort to better secure its sites with Category I SNM against a larger and more sophisticated terrorist threat by changing policies, such as its Design Basis Threat (DBT)—a classified document that specifies the potential size and capabilities of adversary forces that the sites must defend against.⁴ Protective forces, which accounted for slightly more than 50 percent of DOE's \$862 million for field security funding in fiscal year 2008, also have been an important focus of DOE security improvements. DOE has sought to improve the effectiveness of its protective forces by deploying security technologies, such as sensors capable of detecting adversaries at long ranges, and through the use of advanced weaponry, such as belt-fed machine guns and grenade launchers. In addition, DOE has sought to enhance protective forces' tactical skills—the ability to move, shoot, and communicate in a combat environment—through its Tactical Response Force (TRF) initiative.⁵ Among other things, TRF revised the application of DOE's existing protective force categories to emphasize tactical skills and instituted more rigorous weapons and physical fitness qualifications for many of DOE's protective forces.

However, protective force unions have been concerned that the planned implementation of TRF—with its potentially more demanding requirements—threatens the ability of protective forces to work until retirement age. These concerns contributed to a 44-day protective force strike at the Pantex Plant in 2007. The strike raised broader issues in DOE and Congress about the continued suitability of DOE's model for managing its protective forces. Unionized protective forces can strike when their collective bargaining agreements end, and strikes may create security vulnerabilities at DOE's sites with Category I SNM. In addition, DOE's practice of managing its protective forces through separate contracts at each site could create disparities in protective force performance, pay, and benefits. In 2009, a DOE protective forces study group, composed of DOE and union representatives, made a number of recommendations that, while maintaining contractor protective forces, may better balance protective forces' concerns over their careers with DOE's need to provide effective security and control costs.

In this context, the National Defense Authorization Act for Fiscal Year 2008 directed us to report on the management of DOE's protective forces at its sites with Category I SNM.⁶ Among other things, we (1) analyzed information on the management, organization, staffing, training and compensation of protective forces; (2) examined the implementation of TRF; (3) assessed DOE's two options to more uniformly manage DOE protective forces; and (4) reported on DOE's progress in addressing protective force issues. Our recent report *Nuclear Security: DOE Needs to Address Protective Forces' Personnel System Issues* presents the full findings of our work and includes two recommendations to DOE to fully assess and implement, where feasible, recommendations made by DOE's 2009 protective forces study group. DOE generally agreed with these recommendations.

To obtain information on DOE's contractor protective forces, we visited three of the sites with enduring Category I SNM missions—Pantex, the Savannah River Site, and Los Alamos National Laboratory—because each site represented one of the three different types of protective force contracts currently in place. We also met with protective force contractors, Federal site office officials, and protective force union representatives at these sites. We also distributed a data collection instrument to protective force contractors and Federal site office officials at each of these sites and at the other three sites with enduring Category I SNM missions—Y-12, the Nevada Test Site, and the Idaho National Laboratory. From this instrument, we received site information about the protective forces, the status of TRF and DBT implementations, views on DOE options for managing the protective forces, and the reliability of site data. Prior to this testimony, protective force union officials provided us with updated information.

³The Office of Environmental Management is responsible for cleaning up former nuclear weapons sites, and the Office of Nuclear Energy is primarily responsible for nuclear energy research.

⁴In 2008, DOE changed the name of its DBT (DOE Order 470.3A) to the Graded Security Protection policy (DOE 470.3B).

⁵DOE announced this initiative, originally known as "Elite Force" initiative in 2004, and began to formalize it into policy through the issuance of DOE Manual 470.4-3, Protective Force, in 2005. DOE revised this policy in 2006 with DOE Manual 470.4-3 Change 1, Protective Force. In 2008, DOE further revised this policy, which is now contained in DOE Manual 470.4-3A, Contractor Protective Force.

⁶Pub. L. No. 110-181 § 3124 (2008).

We conducted our work from April 2008 to March 2010 in accordance with generally accepted government auditing standards, which require us to plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PROTECTIVE FORCES ARE NOT UNIFORMLY MANAGED, ORGANIZED, STAFFED, TRAINED, OR COMPENSATED

Contractor protective forces—including 2,339 unionized officers and their 376 non-unionized supervisors—are not uniformly managed, organized, staffed, trained, or compensated across the 6 DOE sites we reviewed. For example, we found the following:

- Three different types of protective force contracts are in use. These contract types influence how protective force operations are overseen by Federal officials and how protective force operations are coordinated with other site operations.⁷
- The size of sites' protective forces ranges from 233 to 533 uniformed, unionized officers, and the composition of these forces and their associated duties and responsibilities vary based on their categorization. Protective forces are divided into four categories:⁸
 - Security Officer (SO): Responsible for unarmed security duties such as checking for valid security badges. SOs represent about 5 percent of total unionized protective forces.
 - Security Police Officer-I (SPO-I): Primarily responsible for protecting fixed posts during combat. SPO-I's represent about 34 percent of total unionized protective forces.
 - SPO-II: Primarily responsible for mobile combat to prevent terrorists from reaching their target but can also be assigned to fixed posts. SPO-II's represent about 39 percent of total unionized protective forces.
 - SPO-III: Primarily responsible for mobile combat and special response skills, such as those needed to recapture SNM (on site) and recover SNM (off site) if terrorists succeed in acquiring it. SPO-IIIs are usually organized into special response teams, and SPO-IIIs represent about 19 percent of total unionized protective forces.
- Each protective force has uniformed, nonunionized supervisors, but the duties, responsibilities, and ranks of these supervisors are generally site specific and not detailed in DOE's protective force policies.
- DOE policy mandates certain protective force training but allows sites some flexibility in implementation. For example, newly hired protective forces must complete DOE's Basic Security Police Officer Training class, but these courses, offered by each of the sites we reviewed, range in length from 9 to 16 weeks. In addition, we found that one site had largely completed the implementation of most aspects of the TRF initiative, but others are not expecting to do so until the end of fiscal year 2011.
- Pay, based on the site and the category of protective forces, ranges from nearly \$19 per hour to over \$26 per hour.⁹ Overtime pay, accrued in different ways at the sites, and other premium pay, such as additional pay for night shifts and holidays, may significantly increase protective force pay.
- While all employers contributed to active protective force members' medical, dental, and life insurance benefits, they differed in the amount of their contributions and in the retirement benefits they offered. In general, new hires were offered defined contribution plans, such as a 401(k) plan, that provides eventual retirement benefits that depend on the amount of contributions by the employer or employee, as appropriate, as well as the earnings and losses of the invested funds. At the time of our review, two sites offered new hires defined benefit plans that promised retirees a certain monthly payment at retirement.

⁷These types of contracts include: (1) direct contracts between protective force contractors and DOE or NNSA; (2) a component of management and operating (M&O) contracts between M&O contractors and DOE or NNSA; and (3) subcontracts between an M&O contractor and a protective force contractor.

⁸Other positions, such as trainers and alarm operators, constitute the remaining 3 percent of protective force positions. At some sites, personnel in such positions may be SPO qualified, and their positions are counted in the appropriate SO categories. All protective force numbers were current as of September 30, 2008.

⁹Pay rates were current as of September 30, 2008.

Two other sites had defined benefit plans that covered protective force members hired before a particular date but were not open to new hires.

We found two primary reasons for these differences. First, protective forces at all six of the sites we reviewed operate under separate contracts and collective bargaining agreements. Second, DOE has a long-standing contracting approach of defining desired results and outcomes—such as effective security—instead of detailed, prescriptive guidance on how to achieve those outcomes.¹⁰ While creating some of the differences noted, this approach, as we have previously reported, allows security to be closely tailored to site- and mission-specific needs.¹¹

TACTICAL RESPONSE FORCE IMPLEMENTATION HAS RAISED CONCERNS ABOUT THE LONGEVITY OF PROTECTIVE FORCES CAREERS

Since its inception in 2005, TRF has raised concerns in DOE security organizations, among protective force contractors, and in protective force unions about the ability of protective forces—especially older individuals serving in protective forces—to continue meeting DOE's weapons, physical fitness, and medical qualifications. As we reported in 2005,¹² some site security officials recognized they would have to carefully craft career transition plans for protective force officers who may not be able to meet TRF standards. Adding to these concerns are DOE's broader efforts to manage its long-term postretirement and pension liabilities for its contractors, which could have a negative impact on retirement eligibility and benefits for protective forces. In 2006, DOE issued its Contractor Pension and Medical Benefits Policy (Notice 351.1), which was designed to limit DOE's long-term pension and postretirement liabilities. A coalition of protective force unions stated that this policy moved them in the opposite direction from their desire for early and enhanced retirement benefits.

Concerns over TRF implementation and DOE's efforts to limit long-term pension and postretirement liabilities contributed to a 44-day protective force strike at the Pantex Plant in 2007. Initially, Pantex contractor security officials designated all of the plant's protective force positions as having to meet a more demanding DOE combatant standard,¹³ a move that could have disqualified a potentially sizable number of protective forces from duty. Under the collective bargaining agreement that was eventually negotiated in 2007, some protective forces were allowed to meet a less demanding combatant standard. DOE has also rescinded its 2006 Contractor Pension and Medical Benefits Policy. However, according to protective force union officials, failure to resolve issues surrounding TRF implementation and retirement benefits could lead to strikes at three sites with large numbers of protective forces—Pantex, the Savannah River Site, and Y-12—when their collective bargaining agreements expire in 2012.

EITHER IMPROVING THE EXISTING CONTRACTOR FORCES SYSTEM OR CREATING A FEDERAL FORCE COULD RESULT IN MORE UNIFORM MANAGEMENT OF PROTECTIVE FORCES

To manage its protective forces more effectively and uniformly, over the past decades DOE has considered two principal options—improving elements of the existing contractor system or creating a Federal protective force. We identified five major criteria that DOE officials, protective force contractors, and union officials have used to assess the advantages and disadvantages of these options.¹⁴ Overall, in comparing these criteria against the two principal options, we found that neither contractor nor Federal forces seems overwhelmingly superior, but each has offsetting advantages and disadvantages. Either option could result in effective and more uni-

¹⁰ DOE Order 251.1C, Departmental Directives Program, specifies that DOE directives should focus on results by specifying the goals and requirements that must be met and, to the extent possible, refraining from mandating how to fulfill the goals and requirements.

¹¹ Our recent review showed that DOE's policy for nuclear weapons security provides local officials with greater flexibility than the Department of Defense's policy for determining how to best meet security standards and has a greater emphasis on cost-benefit analysis as a part of the decisionmaking process. See GAO, *Homeland Defense: Greater Focus on Analysis of Alternatives and Threats Needed to Improve DOD's Strategic Nuclear Weapons Security*, GAO-09-828 (Washington, DC: Sept. 18, 2009).

¹² GAO, *Nuclear Security: DOE's Office of the Under Secretary for Energy, Science, and Environment Needs to Take Prompt, Coordinated Action to Meet the New Design Basis Threat*, GAO-05-611 (Washington, DC: July 15, 2005).

¹³ DOE's combatant standards are defined by specific physical fitness, firearms, and medical qualifications. SPO-Is must meet defensive combatant standards, while SPO-IIIs and SPO-IIIs must meet more demanding offensive combatant standards.

¹⁴ We reviewed five DOE studies completed between 1992 and 2009, as well as responses to our data collection instrument, to identify these criteria.

form security if well-managed. However, we identified transitional problems with converting the current protective force to a federalized force.

When assessing whether to improve the existing contractor system or federalize protective forces, DOE, protective force contractors, and union officials have used the following five criteria:

- A personnel system that supports force resizing and ensures high-quality protective force members.
- Greater standardization of protective forces across sites to more consistently support high performance and ready transfer of personnel between sites.
- Better DOE management and oversight to ensure effective security.
- Prevention or better management of protective force strikes.
- Containment of the forces' costs within expected budgets.

Evaluating the two principal options—maintaining the current security force structure or federalizing the security force—against these criteria, we found that if the forces are well-managed, either contractor or Federal forces could result in effective and more uniform security for several reasons:

- First, both options have offsetting advantages and disadvantages, with neither option emerging as clearly superior. When compared with a possible federalized protective force, a perceived advantage of a contractor force is greater flexibility for hiring or terminating an employee to resize the forces; a disadvantage is that a contractor force can strike. In contrast, federalization could better allow protective forces to advance or laterally transfer to other DOE sites to meet protective force members' needs or DOE's need to resize particular forces, something that is difficult to do under the current contractor system.
- Second, a key disadvantage of the current contractor system, such as potential strikes for contractor forces, does not preclude effective operations if the security force is well-managed. For instance, a 2009 memo signed by the NNSA administrator stated that NNSA had demonstrated that it can effectively manage strikes through the use of replacement protective forces.
- Third, distinctions between the two options can be overstated by comparing worst- and best-case scenarios, when similar conditions might be realized under either option. For example, a union coalition advocates federalization to get early and enhanced retirement benefits, which are available for law enforcement officers and some other Federal positions, to ensure a young and vigorous workforce. However, such benefits might also be provided to contractor protective forces.

Reliably estimating the costs to compare protective force options proved difficult and precluded our detailed reporting on it. Since contractor and Federal forces could each have many possible permutations, choosing any particular option to assess would be arbitrary. For example, a 2008 NNSA-sponsored study identified wide-ranging federalization options, such as federalizing all or some SPO positions at some or all facilities or reorganizing them under an existing or a new agency. In addition, DOE would have to decide on the hypothetical options' key cost factors before it could reasonably compare costs. For example, when asked about some key cost factors for federalization, an NNSA Service Center official said that a detailed workforce analysis would be needed to decide whether DOE would either continue to use the same number of SPOs with high amounts of scheduled overtime or hire a larger number of SPOs who would work fewer overtime hours. Also, the official said that until management directs a particular work schedule for federalized protective forces, there is no definitive answer to the applicable overtime rules, such as whether overtime begins after 8 hours in a day. The amount of overtime and the factors affecting it are crucial to a sound cost estimate because overtime pay can now account for up to about 50 percent of pay for worked hours.

FEDERALIZING PROTECTIVE FORCES COULD CREATE DIFFICULTIES EITHER UNDER CURRENT LAWS OR WITH SPECIAL PROVISIONS FOR ENHANCED RETIREMENT BENEFITS

If protective forces were to be federalized under existing law, the current forces probably would not be eligible for early and enhanced retirement benefits and might face a loss of pay or even their jobs. For example:

- According to officials at the Office of Personnel Management (OPM)¹⁵ and NNSA's Service Center,¹⁶ if contractor SPOs were federalized under existing law, they would likely be placed into the Federal security guard (GS-0085) job series. Although a coalition of unions has sought federalization to allow members to have early and enhanced retirement benefits, which allows employees in certain Federal jobs to retire at age 50 with 20 years of service, Federal security guards are not eligible for these benefits.
- Our analysis indicated transitioning protective force members may receive lower pay rates as Federal security guards. Contractor force members receive top pay rates that could not generally be matched under the likely General Schedule pay grades.
- If protective forces were federalized, OPM officials told us that current members would not be guaranteed a Federal job and would have to compete for the new Federal positions; thus, they risk not being hired. Nonveteran protective force members are particularly at risk because competition for Federal security guard positions is restricted to those with veterans' preference, if they are available.

According to OPM officials, legislation would be required to provide Federal protective forces with early and enhanced retirement benefits because their positions do not fit the current definition of law enforcement officers that would trigger such benefits. However, if such legislation were enacted, these benefits' usual provisions could create hiring and retirement difficulties for older force members. Older members might not be rehired because agencies are typically authorized to set a maximum age, often age 37, for entry into Federal positions with early retirement. In addition, even if there were a waiver from the maximum age of hire, older protective forces members could not retire at age 50 because they would have had to work 20 years to meet the Federal service requirement for "early" retirement benefits. These forces could retire earlier if they were granted credit for their prior years of service under DOE and NNSA contracts. However, OPM officials told us OPM would strongly oppose Federal retirement benefits being granted for previous years of contractor service (retroactive benefits). According to these officials, these retroactive benefits would be without precedent and would violate the basic concept that service credit for retirement benefits is only available for eligible employment at the time it was performed. Moreover, retroactive benefits would create an unfunded liability for Federal retirement funds.

DOE SEEKS TO ADDRESS PROTECTIVE FORCE ISSUES BY REFORMING CONTRACTOR FORCES, BUT PROGRESS HAS BEEN LIMITED TO DATE

In a joint January 2009 memorandum, senior officials from NNSA and DOE rejected the federalization of protective forces as an option and supported the continued use of contracted protective forces—but with improvements. They concluded that, among other things, the transition to a Federal force would be costly and would be likely to provide little, if any, increase in security effectiveness. However, these officials recognized that the current contractor system could be improved by addressing some of the issues that federalization might have resolved. In particular, they announced the pursuit of an initiative to better standardize protective forces' training and equipment. According to these officials, more standardization serves to increase effectiveness, provide cost savings, and facilitate better responses to potential work stoppages. In addition, in March 2009, DOE commissioned a study group to recommend ways to overcome the personnel system problems that might prevent protective force members from working to a normal retirement age, such as 60 to 65, and building reasonable retirement benefits.

In addition, NNSA established a Security Commodity Team to establish standardized procurement processes and to identify and test security equipment that can be used across sites. According to NNSA officials, NNSA established a common mechanism in December 2009 for sites to procure ammunition. In addition, to move toward more standardized operations and a more centrally managed protective force program, NNSA started a broad security review to identify possible improvements. As a result, according to NNSA officials in January 2010, NNSA has developed a draft standard for protective force operations, which is intended to clarify both policy expectations and a consistent security approach that is both effective and efficient.

¹⁵OPM is the central human resources agency for the Federal government.

¹⁶NNSA's Service Center provides business, technical, financial, legal, human resources, and management support to NNSA site organizations.

For the personnel system initiative to enhance career longevity and retirement options, in June 2009, the DOE-chartered study group made 29 recommendations that were generally designed to enable members to reach a normal retirement age within the protective force, take another job within DOE, or transition to a non-DOE career. The study group identified 14 of its 29 career and retirement recommendations as involving low- or no-cost actions that could conceivably be implemented quickly. For example, some recommendations call for reviews to find ways to maximize the number of armed and unarmed positions that SPOs can fill when they can no longer meet their current combatant requirements. Other recommendations focus on providing training and planning assistance for retirement and job transitions. The study group also recognized that a majority (15 out of 29) of its personnel system recommendations, such as enhancing retirement plans to make them more equivalent and portable across sites, may be difficult to implement largely because of budget constraints.

Progress on the 29 recommendations had been limited at the time of our review. When senior department officials were briefed on the personnel system recommendations in late June 2009, they took them under consideration for further action but immediately approved one recommendation—to extend the life of the study group by forming a standing committee. They directed the standing committee to develop implementation strategies for actions that can be done in the near term and, for recommendations requiring further analysis, additional funding, or other significant actions, to serve as an advisory panel for senior department officials. According to a DOE official in early December 2009, NNSA and DOE were in varying stages of reviews to advance the other 28 recommendations. Later that month, NNSA addressed an aspect of one recommendation about standardization, in part by formally standardizing protective force uniforms. In the Conference Report for the National Defense Authorization Act for Fiscal Year 2010, the conferees directed the Secretary of Energy and the Administrator of the NNSA to develop a comprehensive DOE-wide plan to identify and implement the recommendations of the study group.

In closing, while making changes to reflect the post-September 11 security environment, DOE and its protective force contractors through their collective bargaining agreements have not successfully aligned protective force personnel systems—which affect career longevity, job transitions, and retirement—with the increased physical and other demands of a more paramilitary operation. Without better alignment, in our opinion, there is greater potential for a strike at a site, as well as potential risk to site security, when protective forces' collective bargaining agreements expire. In the event of a strike at one site, the differences in protective forces' training and equipment make it difficult to readily provide reinforcements from other sites. Even if strikes are avoided, the effectiveness of protective forces may be reduced if tensions exist between labor and management. These concerns have elevated the importance of finding the most effective approach to maintaining protective force readiness, including an approach that better aligns personnel systems and protective force requirements. At the same time, DOE must consider its options for managing protective forces in a period of budgetary constraints. With these considerations in mind, DOE and NNSA have recognized that the decentralized management of protective forces creates some inefficiencies and that some systemic career and longevity issues are not being resolved through actions at individual sites. NNSA's standardization initiatives and recommendations made by a DOE study group offer a step forward. However, the possibility in 2012 of strikes at three of its highest risk sites makes it imperative, as recommended by our report and directed by the National Defense Authorization Act for Fiscal Year 2010, that DOE soon resolve the issues surrounding protective forces' personnel system.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or other members of the subcommittee have.

GAO United States Government Accountability Office
Report to Congressional Committees

January 2010

NUCLEAR SECURITY

DOE Needs to Address Protective Forces' Personnel System Issues




GAO
 Accountability-Integrity-Reliability
Highlights

Highlights of GAO-10-275, a report to congressional committees

Why GAO Did This Study

The September 11, 2001, terrorist attacks raised concerns about the security of Department of Energy's (DOE) sites with weapons-grade nuclear material, known as Category I Special Nuclear Material (SNM). To better protect these sites against attacks, DOE has sought to transform its protective forces protecting SNM into a Tactical Response Force (TRF) with training and capabilities similar to the U.S. military. DOE also has considered whether the current system of separate contracts for protective forces at each site provides sufficiently uniform, high-quality performance across its sites.

Section 3124 of PL 110-181, the fiscal year 2008 National Defense Authorization Act, directed GAO to review protective forces at DOE sites that possess Category I SNM. Among other things, GAO (1) analyzed information on the management and compensation of protective forces, (2) examined the implementation of TRF, and (3) assessed DOE's two options to more uniformly manage DOE protective forces.

What GAO Recommends

GAO recommends that the Secretary of Energy develop plans to implement the DOE study group's recommendations—and, as needed, conduct research—to enhance protective forces' career longevity and retirement options. DOE generally agreed with the report and the recommendations.

View GAO-10-275 or key components. For more information, contact Gene Aloise at (202) 512-3841 or aloise@gao.gov.

January 2010

NUCLEAR SECURITY

DOE Needs to Address Protective Forces' Personnel System Issues

What GAO Found

Over 2000 contractor protective forces provide armed security for DOE and the National Nuclear Security Administration (NNSA) at six sites that have long-term missions to store and process Category I SNM. DOE protective forces at each of these sites are covered under separate contracts and collective bargaining agreements between contractors and protective force unions. As a result, the management and compensation—in terms of pay and benefits—of protective forces vary.

Sites vary in implementing important TRF requirements such as increasing the tactical skills of protective forces so that they can better "move, shoot, and communicate" as a unit. While one site has focused on implementing TRF requirements since 2004, other sites do not plan to complete TRF implementation until the end of fiscal year 2011. In addition, broader DOE efforts to manage postretirement and pension liabilities for its contractors have raised concerns about a negative impact on retirement eligibility and benefits for protective forces. Specifically, protective force contractors, unions, and DOE security officials are concerned that the implementation of TRF's more rigorous requirements and the current protective forces' personnel systems threaten the ability of protective forces—especially older members—to continue their careers until retirement age.

Efforts to more uniformly manage protective forces have focused on either reforming the current contracting approach or creating a federal protective force (federalization). Either approach might provide for managing protective forces more uniformly and could result in effective security if well-managed. Although DOE rejected federalization as an option in 2009 because it believed that the transition would be costly and would yield little, if any, increase in security effectiveness, the department recognized that the current contracting approach could be improved by greater standardization and by addressing personnel system issues. As a result, NNSA began a standardization initiative to centralize procurement of equipment, uniforms, and weapons to achieve cost savings. Under a separate initiative, a DOE study group developed a number of recommendations to enhance protective forces' career longevity and retirement options, but DOE has made limited progress to date in implementing these recommendations.

DOE Protective Force Members in Tactical Training



Source: DOE.

United States Government Accountability Office

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Abbreviations

DBT	Design Basis Threat
DOE	U.S. Department of Energy
FERS	Federal Employee Retirement System
FBI	Federal Bureau of Investigation
GSP	Graded Security Protection
HSS	Office of Health, Safety and Security
INL	Idaho National Laboratory
LANL	Los Alamos National Laboratory
M&O	Management and Operations
NE	Office of Nuclear Energy, Science and Technology
NNSA	National Nuclear Security Administration
NTS	Nevada Test Site
OPM	Office of Personnel Management
OST	Office of Secure Transportation
PX	Pantex Plant
SNM	special nuclear material
SO	security officer
SPO	security police officer
SRS	Savannah River Site
TRF	Tactical Response Force
Y-12	Y-12 National Security Complex

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United States Government Accountability Office
Washington, DC 20548

January 29, 2010

The Honorable Carl Levin
Chairman
The Honorable John McCain
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Ike Skelton
Chairman
The Honorable Howard McKeon
Ranking Member
Committee on Armed Services
House of Representatives

Contractor guard forces, or protective forces, are a key component of security at Department of Energy (DOE) sites with special nuclear material (SNM), which the department considers its highest security risk. This material—including plutonium and highly enriched uranium—is considered to be Category I when it is weapons grade and in specified forms (e.g., nuclear weapons, nuclear weapons components, metals, and oxides) and quantities. The risks associated with Category I SNM include theft and the potential for sabotage through the use of a radioactive dispersal device, also known as a “dirty bomb.” Currently, DOE and its National Nuclear Security Administration (NNSA), a agency within DOE responsible for the safety, security, and reliability of the U.S. nuclear weapons stockpile, has six contractor-operated sites that possess—and will possess for the foreseeable future—Category I SNM (sites with “enduring” missions). The six sites include the Los Alamos National Laboratory, in Los Alamos, New Mexico; the Y-12 National Security Complex (Y-12), in Oak Ridge, Tennessee; the Pantex Plant, near Amarillo, Texas; the Nevada Test Site, outside of Las Vegas, Nevada; the Savannah

River Site, near Aiken, South Carolina; and the Idaho National Laboratory, near Idaho Falls, Idaho.¹

In the aftermath of the September 11, 2001, terrorist attacks, DOE embarked on a multifaceted effort to better secure its sites with Category I SNM against a larger and more sophisticated terrorist threat by changing policies, such as its Design Basis Threat (DBT)—a classified document that specifies the potential size and capabilities of adversary forces that the sites must defend against.² Protective forces have been an important focus of DOE security improvements. Initially, DOE deployed a larger number of protective force members at its sites. More recently, DOE has sought to improve the effectiveness of its protective forces by deploying security technologies, such as sensors capable of detecting adversaries at long ranges, and through the use of advanced weaponry, such as belt-fed machine guns and grenade launchers. In addition, DOE has sought to enhance protective forces' tactical skills—the ability to move, shoot, and communicate in a combat environment—through its Tactical Response Force (TRF) initiative.³ Among other things, this initiative directed the development of new training curricula at DOE's National Training Center, revised the application of DOE's existing protective force categories to emphasize tactical skills, and instituted more rigorous weapons and physical fitness qualifications for many of DOE's protective forces.

However, protective force unions have been concerned that the planned implementation of TRF—with its potentially more demanding requirements—threatens the ability of protective forces to work until

¹We excluded three other DOE Category I SNM sites from this review because they are likely to downsize or downgrade their protective forces in the near future. These sites include the Office of Environmental Management's Hanford Site, near Richland, Washington, which recently transferred its highest value Category I SNM off site but will maintain lower value Category I SNM for the foreseeable future; NNSA's Lawrence Livermore's National Laboratory, in Livermore, California, which plans to transfer its Category I SNM off site by the end of fiscal year 2012; and the Office of Science's Oak Ridge National Laboratory, in Oak Ridge, Tennessee, which plans to dispose of its Category I SNM by the end of fiscal year 2015.

²In 2008, DOE changed the name of its DBT (DOE Order 470.3A) to the Graded Security Protection policy (DOE 470.3B).

³DOE announced this initiative, originally known as "Elite Force" initiative in 2004, and began to formalize it into policy through the issuance of DOE Manual 470.4-3, *Protective Force*, in 2005. DOE revised this policy in 2006 with DOE Manual 470.4-3 Change 1, *Protective Force*. In 2008, DOE further revised this policy, which is now contained in DOE Manual 470.4-3A, *Contractor Protective Force*.

retirement age. These concerns contributed to a 44-day protective force strike at the Pantex Plant in 2007. The strike raised broader issues in DOE and Congress about the continued suitability of DOE's model for managing its protective forces. Unionized protective forces can strike when their collective bargaining agreement ends and strikes may create security vulnerabilities at DOE's sites with Category I SNM. In addition, DOE's practice of managing its protective forces through separate contracts at each site could create disparities in protective force performance, pay, and benefits. A coalition of unions that represent a large number of DOE protective forces has supported federalizing contractor-operated protective forces to provide a federal personnel system that better supports a TRF through standardized pay and retirement benefits. The coalition noted that DOE's Office of Secure Transportation's (OST) federal agents, who are responsible for transporting Category I SNM among DOE sites and to military bases and who have a unique federal job classification, could serve as a template for federalization. In January 2009, DOE rejected federalization of contractor protective forces on the grounds that it would be costly and would likely provide little, if any, increase in security effectiveness. However, a DOE study group, composed of DOE and union representatives, recently made a number of recommendations that, while maintaining contractor protective forces, may better balance protective forces' concerns over their careers with the need to provide effective security and control costs.

In this context, the National Defense Authorization Act for Fiscal Year 2008 directed us to report on the management of DOE's protective forces at its sites with Category I SNM.⁴ As agreed with your offices, we (1) analyzed information on DOE's protective forces, including their contract and management structures, responsibilities, number and categories, training, pay, and benefits; (2) examined the implementation of TRF and any resulting issues; (3) assessed compliance with the 2005 DBT; (4) compared relevant characteristics of contractor protective forces with OST federal agents; (5) reviewed law enforcement duties and capabilities of protective forces and OST federal agents; and (6) assessed DOE's options for more uniformly managing protective forces. The act also required DOE to submit a report on the management of its protective forces 90 days after our report is issued.

⁴Pub. L. No. 110-181 § 3124 (2008).

Scope and Methodology

To obtain information on DOE's contractor protective forces, we visited three of the sites with enduring Category I SNM missions—Pantex, the Savannah River Site, and Los Alamos National Laboratory—and met with protective force contractors, federal site office officials, and protective force union representatives at these sites. We selected these sites because each represented one of the three different types of protective force contracts currently in place. In addition, we distributed a data collection instrument to protective force contractors and federal site office officials at each of these sites and at the other three sites with enduring Category I SNM missions—Y-12, the Nevada Test Site, and the Idaho National Laboratory. From this instrument, we received site information about the protective forces, the status of TRF and DBT implementations, views on DOE options for managing the protective forces, and the reliability of site data. We conducted interviews and reviewed documents with NNSA and DOE's offices of Environmental Management (EM), Nuclear Energy (NE), Science. We also met with several organizations within DOE's Office of Health, Safety and Security (HSS), including the Office of Policy; the Office of Independent Oversight, which regularly performs inspections at Category I SNM sites; and the National Training Center, in Albuquerque, New Mexico, which is responsible for developing protective force training curricula and certifying site protective force training instructors and programs. To obtain comparative information on OST and its federal agents, we reviewed documents and met with officials from OST headquarters in Albuquerque, New Mexico. All data collected to describe contractor protective forces and OST federal agents were current as of September 30, 2008. To identify and assess options for the more uniform protective force management through federalization, we met with the NNSA Service Center in Albuquerque, New Mexico,⁵ and the Office of Personnel Management (OPM) on cost and job classification of protective forces. We developed criteria for options for more uniform management by reviewing past and ongoing DOE protective force and federal agent studies that HSS, NNSA, and OST provided. We also reviewed documents and met with officials from the National Council of Security Police, which is a coalition of unions that represent many of the protective forces at DOE's Category I SNM sites.

We conducted our work from April 2008 to January 2010 in accordance with generally accepted government auditing standards, which require us

⁵NNSA's Service Center provides business, technical, financial, legal, human resources, and management support to NNSA site organizations.

to plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

DOE's HSS, which is the department's central security organization, is responsible for developing the department's security policies and overseeing their implementation. Specifically, HSS's Office of Policy develops and promulgates orders and policies such as the DBT policy, as well as manuals such as Manual 470.4-3A, Contractor Protective Forces, which details protective force's duties and requirements. Other DOE organizations with diverse program missions—EM, NE, and NNSA—are responsible for the six DOE sites in our review with enduring Category I SNM missions.⁶ In accordance with DOE policy, EM, NE, and NNSA must ensure that each of their sites has a safeguards and security program with the necessary protections to protect security interests against malevolent acts such as theft, diversion, sabotage, modification, compromise, or unauthorized access to nuclear weapons, nuclear weapons components, special nuclear material, or classified information. Each of these DOE organizations has site offices staffed by federal employees located at or near each site to oversee day-to-day operations, including security.

The management and operations (M&O) contractors that manage the six sites we reviewed must develop effective programs to address DOE security requirements. In particular, each site with Category I SNM must prepare a Site Safeguards and Security Plan, which is a classified document that identifies known vulnerabilities, risks, and protection strategies for the site. The site's protection measures are developed in response to site-specific vulnerability assessments and become the basis for executing and reviewing protection programs. Table 1 highlights some of the site differences in mission, topography, and size that may dictate the site-specific protection measures, including the protective forces' size and equipment.

⁶NNSA is primarily responsible for ensuring the continued safety and reliability of nuclear weapons; EM is responsible for cleaning up former nuclear weapons sites; and NE is primarily responsible for nuclear energy research.

Table 1: Characteristics of Sites with Enduring Category I SNM Missions

	Pantex Plant	Y-12 National Security Complex	Los Alamos National Laboratory	Nevada Test Site	Savannah River Site	Idaho National Laboratory
Primary mission (related to SNM)	Assembles and dismantles nuclear weapons and stores SNM in the form of weapons and surplus plutonium pits	Manufactures highly enriched uranium components for nuclear weapons	Conducts research, design, and development of nuclear weapons; manufactures plutonium pits	Maintains the capability to conduct underground nuclear testing and other Category I missions	Maintains Cat I/II quantities of SNM associated with DOE activities	Engaged in research and development of nuclear reactor technologies and nuclear fuels
Topography	Relatively flat plateau	Hilly and heavily vegetated terrain	Sloping plateau with canyons and mesas	Dry lake beds and mountains	Gently rolling forested hills with a swamp and many streams	Rolling arid terrain
Size of site area (square miles)	25	1	36	1350	310	890
Size of protected area where SNM is stored (acres)	389	154	45	17	16	9
Approximate number of site employees	3,800	4,440	15,000	5,500	14,430	6,800

Source: DOE.

Protective forces are one of the key elements in DOE sites' layered "defense-in-depth" protective systems. Specific elements vary from site to site but almost always include, in addition to protective forces,

- a variety of integrated alarms and sensors capable of detecting intruders;
- physical barriers, such as fences and antivehicle barriers;
- numerous access control points, such as turnstiles, badge readers, vehicle inspection stations, radiation detectors, and metal detectors;
- operational security procedures, such as the "two-person" rule—which is designed to prevent only one person from having access to SNM ; and
- hardened facilities and storage vaults to protect SNM from unauthorized access.

Increasing security at DOE sites since the terrorist attacks of September 11, 2001, has been costly and challenging. The complexwide funding for

protective forces and physical security systems rose almost 60 percent (in constant dollars) from fiscal years 2001 through 2008, to \$862 million. Protective forces—the single most costly element of DOE security, as well as one of the most important⁷—have been a major focus of DOE security efforts. The need to increase security at DOE sites as rapidly as possible following the 2001 attacks meant that DOE protective forces worked large amounts of overtime for an extended period. DOE's Inspector General and Office of Independent Oversight, as well as GAO, reported on the potential for extended overtime to increase fatigue and reduce readiness, and training opportunities for protective forces.⁸ Since then, DOE has sought to control protective force costs by increasing the use of security technology and advanced weaponry and by consolidating material into fewer and better protected locations.

Since September 11, 2001, DOE security policies, including the DBT, have been under almost constant examination and have undergone considerable change. For example, DOE issued new DBTs in 2003, 2004, and 2005, and, most recently, in November 2008. In its latest iteration, the DBT was renamed the Graded Security Protection (GSP) policy. The GSP is conceptually identical to DOE's previous DBTs. However, compared with the 2005 DBT, the GSP identifies a generally smaller and less capable terrorist adversary force for DOE sites with Category I SNM.

DOE has also sought to increase the tactical effectiveness of protective force performance. Specifically, according to a 2004 classified DOE review, the then-current organization and tactics of DOE protective forces needed improvement to deal with possible terrorist threats. The review found that, historically, DOE protective forces had been more concerned with a broad range of industrial security and order-keeping functions than with preparing to conduct a defensive battle against a paramilitary attacker, as described in DOE's previous DBTs and GSP. To address this situation, the review recommended shifting to an aggressive militarylike,

⁷According to DOE's fiscal year 2010 budget request, protective forces accounted for slightly more than 50 percent of its field-site security funding in fiscal year 2008.

⁸DOE Office of Inspector General, *Audit Report: Management of the Department's Protective Forces*, DOE/IG-0602, (Washington, D.C.: June 3, 2003); DOE Office of Security and Safety Performance Assurance (now known as the Office of Health, Safety and Security), *Department of Energy Protective Force Management and Capabilities* (a classified report), (Washington, D.C.: June 28, 2004), and GAO, *Nuclear Security: DOE Needs to Resolve Significant Issues Before It Fully Meets the New Design Basis Threat*, GAO-04-623 (Washington, D.C.: Apr. 27, 2004).

small-unit, tactical defense posture, which included enhanced tactical training standards to allow protective forces to move, shoot, and communicate effectively as a unit in a combat environment. It also recommended more frequent, realistic, and rigorous force-on-force performance testing and training for the department's protective forces.

On the basis of this review, DOE has sought to transform DOE's protective forces who safeguard special nuclear material into an "elite force"—a TRF—with training and capabilities similar to military units. To create TRFs at Category 1 SNM sites, in 2005 DOE's policy for protective forces clarified which positions required more demanding physical fitness and firearms qualification standards, increased tactical training, and reorganized protective forces into tactically cohesive units.

Although DOE and NNSA considered federalizing the contractor protective forces to better support the TRF, the department's reviews of this issue predate its post September 11, 2001, concerns. Since the early 1990s, the department has intermittently considered federalization because of variety of security challenges, often involving actual or potential strikes by contractor protective forces:

- A 1992 DOE review concluded there was no clear evidence that federalization of protective forces would significantly save costs or improve security. DOE reviewed the issue of federalization in response to a 1990 GAO report that examined a protective force strike at Los Alamos National Laboratory in 1989.⁹
- A 1997 DOE report raised concerns about the potential deterioration of an aging protective force's physical and combat capabilities; the increasing difficulties in meeting the sudden demand for additional personnel in the event of a strike; and cost pressures, such as more overtime pay after the department had downsized the protective forces. The report considered federalization as a solution but recommended other options using existing contractor protective forces.
- A 2004 DOE study group, examining ways to strengthen DOE's security posture after September 11, 2001, recommended federalization to better support tactical forces and to promote uniform, high-quality security across sites, but the department did not implement the recommendation.

⁹GAO, Nuclear Safety: Potential Security Weaknesses at Los Alamos and Other DOE Facilities, GAO/RCED-91-12 (Washington, D.C.: Oct. 11, 1990).

- Two 2008 NNSA studies, which followed the 2007 strike at the Pantex Plant, compared contractor and federalized options for improving protective forces, but these studies did not make any firm recommendations.
- In 2009, partly in response to a union coalition calling for federalization, NNSA and DOE's HSS started protective force initiatives to address some of the goals that federalization was meant to accomplish, such as improving efficiency and effectiveness.

Protective Forces Are Not Uniformly Managed, Organized, Staffed, Trained, Equipped, or Compensated

Contractor protective forces—including 2,339 unionized officers and their 376 nonunionized supervisors—are not uniformly managed, organized, staffed, trained, equipped, or compensated across the six DOE sites. These differences occur because protective forces operate under separate contracts and collective bargaining agreements at each site and because of DOE's long-standing contracting approach of defining desired outcomes instead of detailed, prescriptive guidance on how to achieve those outcomes.¹⁰ As we have previously reported, DOE's contract model may allow security to be closely tailored to site- and mission-specific needs.¹¹

Management and Organization Vary by Contract

As of September 30, 2008, protective forces at the six sites we reviewed operated under the following three separate types of contracts:

- *Direct contract with DOE.* At Y-12, Nevada Test Site (NTS), and Savannah River Site (SRS), NNSA and DOE contract directly with private firms to provide protective forces. These contracts are separate from NNSA's and DOE's contracts with the site M&O contractors. Protective force managers report to officials from federal site offices. To coordinate site operations and protective force operations, managers from the M&O contractors meet regularly to discuss issues with managers from the protective force and site office.

¹⁰DOE Order 251.1C, *Departmental Directives Program* specifies that DOE directives should focus on results by specifying the goals and requirements that must be met and to the extent possible, refraining from mandating how to fulfill the goals and requirements.

¹¹Our recent review showed that DOE's policy for nuclear weapons security provides local officials greater flexibility than the Department of Defense's policy for determining how to best meet security standards and has a greater emphasis on cost-benefit analysis as a part of the decision-making process. See GAO, *Homeland Defense: Greater Focus on Analysis of Alternatives and Threats Needed to Improve DOD's Strategic Nuclear Weapons Security*, GAO-09-828 (Washington, D.C.: Sept. 18, 2009).

-
- *Within the M&O contract.* For two sites, Pantex Plant (PX) and Idaho National Laboratory (INL), the M&O contractors provide the protective forces. The M&O contractor directly manages the protective forces, and DOE's or NNSA's site office oversees the protective force operations as part of the overall M&O contract.
 - *Subcontract to the M&O contractor:* At Los Alamos National Laboratory (LANL), the M&O contractor subcontracts the protective force operations. The protective force manager reports to and is overseen by the M&O contractor. Since NNSA has no direct contractual relationship with the protective force manager, NNSA site office managers coordinate oversight direction through the M&O contractor.

Protective force contractors at the six DOE sites have a management and support structure that includes training and physical fitness, human relations, legal and contract services, and procurement. Each protective force also has uniformed supervisors who are not part of the protective forces' collective bargaining agreements. The duties, responsibilities, and ranks of these supervisors are generally site specific and not detailed in DOE's protective force policies.

Protective Forces Differ in Number and Composition

According to DOE's 2008 policy in Manual 470.4-3A, Contractor Protective Force, protective forces are composed of unarmed and armed positions. Security Officers (SO) are responsible for certain unarmed security duties, such as checking for valid security badges at entrances and escorting visitors. Security Police Officers (SPO), who are armed, are divided into three main categories:

- SPO-I: Primary responsibility is protecting fixed posts during combat.
- SPO-II: Primary responsibility is mobile combat to prevent terrorists from reaching their target but can also be assigned to fixed posts.
- SPO-III: Primary responsibilities are mobile combat and special response skills, such as those needed to recapture SNM (on site) and recover SNM (off site) if terrorists succeed in acquiring it. SPO-IIIs are usually organized into special response teams.

As shown in table 2, the number of personnel and composition of protective forces vary considerably across sites. It should be noted that three sites—INL, LANL, and NTS—had few or no SPO-Is as of September 30, 2008. At that time, not all sites had incorporated this position into their

collective bargaining agreements. In the interim, some SPO-IIs were performing the SPO-I-type duties at these sites.¹²

Table 2: Numbers and Categories of Protective Force Members, as of September 30, 2008

	PX	Y-12	LANL	NTS	SRS	INL	Total
SO	1	5	45	0	33	26	110
SPO-I	285	301	0	7	209	0	802
SPO-II	180	72	189	177	149	139	906
SPO-III	67	89	92	50	99	50	447
Other protective force positions*	0	42	24	0	0	8	74
Total	533	509	350	234	490	223	2339

Source: DOE.

*Protective forces may include additional unionized positions, such as trainers, and alarm operators. At some sites, personnel in such positions may be SPO qualified, and their positions are counted in the appropriate SPO categories.

Training and Equipment Vary

DOE policy mandates certain protective force training but allows sites some flexibility in its implementation. For example, DOE Manual 470.4-3A requires newly hired protective forces to complete the Basic Security Police Officer Training course that the sites tailor to meet their specific needs. The site-specific courses range in length from 9 to 16 weeks. Other required training includes annual refresher training in a wide variety of topics; tactical exercises, including force-on-force exercises; physical fitness training; and firearms training. The content and frequency of this training varies by site and, to some extent, by type of protective forces, with SPO-IIIs generally receiving more training than other protective forces because of their special response mission. To ensure some degree of equivalency, DOE's National Training Center assesses sites' training plans and, while most sites perform their own training, the National Training Center certifies instructors.

Some training requirements are driven by the type of protective force equipment, such as firearms and vehicles, that are used at each site. The primary protective force weapon at most sites is the M4 rifle, a weapon

¹²According to NNSA security officials, by September 30, 2009, LANL had converted all of its SPO-II positions to SPO-I positions, and NTS had converted almost half of its SPO-II positions to SPO-I positions.

that is widely used in the U.S. military. Other weapons, such as belt-fed machine guns, are generally versions of the M240 and M249 family, also widely used in the U.S. military. However, sites have variously adopted other equipment, including the following:

- three models of handguns with two different calibers of ammunition;
- four types of grenade launchers, although all use 40mm grenades;
- several types of precision rifles, capable of accurate long range fire, in three different calibers; and
- several different armored vehicles, but older vehicles are being replaced by a single type of vehicle across the six sites.

Figure 1: Protective Force Equipment at One DOE Site



Source: DOE.

Pay and Benefits Vary

Pay varies for protective forces, based on the site and the category of protective forces. Table 3 shows that top pay, as negotiated in collective bargaining agreements at each site, ranged from nearly \$19 per hour to over \$26 per hour. SOs received the lowest hourly pay, and SPO-IIIIs received the highest. Overtime pay, accrued in different ways at the sites, and other premium pay, such as additional pay for night shifts and holidays, may significantly increase protective force pay.

Table 3: Top Pay by Site, as of September 30, 2008

DOE site	PX	Y-12	LANL	NTS	SRS	INL
Top hourly pay^a						
SO	\$22.00	\$19.83	\$22.74	\$22.42	\$18.81	\$20.64
SPO-I	22.90	23.13	Not available ^b	23.41	22.69	Not available ^b
SPO-II	23.43	23.65	25.14	24.44	24.84	22.64
SPO-III	\$24.44	\$24.17	\$26.11	\$25.77	\$25.92	\$23.64
Typical shift	12 hours for 4 days	12 hours for 4 days	8 hours for 5 days	12 hours for 4 days	12 hours for 4 days	12 hours for 4 days
Overtime rule for typical shift						
After 8 hours per day	Yes	No	Yes	Yes	No	No
After 40 hours per week	Yes	Yes	Yes	Yes	Yes	Yes

Source: GAO analysis of collective bargaining agreements.

^aCited pay is for nonspecialists within a position. Specialists, such as dog handlers, may be eligible for different hourly pay.

^bAs of September 30, 2008, pay rates for SPO-Is had not been negotiated into the collective bargaining agreement.

Table 4 shows the types of benefits by site. While all employers contributed to active protective force members' medical, dental, and life insurance benefits, they differed in the amount of their contributions and in the retirement benefits they offered. In general, new hires were offered defined contribution plans, such as a 401(k) plan, that provides eventual retirement benefits that depend on the amount of contributions by the employer or employee, as appropriate, as well as the earnings and losses of the invested funds. At the time of our review, two sites offered new hires defined benefit plans that promised retirees a certain monthly payment at retirement. Two other sites had defined benefit plans that covered protective force members hired before a particular date but were not open to new hires. A coalition of unions has expressed its preference for defined benefit plans.

Table 4: Benefits by Site, as of September 30, 2008

DOE site	PX	SRS	LANL	NTS	INL	Y-12
Employer contributes to medical, dental, and basic life insurance	Yes	Yes	Yes	Yes	Yes	Yes
Retirement plan						
Defined contribution	401(k)	401(k)	Plan 1: Money Purchase Plan Plan 2: 401(k)	401(k)	401(k)	401(k)
Employer contributes	Yes	Yes	Plan 1: Yes Plan 2: No	No	Yes	Yes
Defined benefit open to new hires	No	No	No	Yes ^a	No	Yes
Defined benefit closed to new hires but open to hires before a certain date	Yes	No	No	No ^b	Yes	No
Medical insurance for eligible retirees						
Employer contributes to premiums for eligible retirees	Yes	Yes	No	No	Yes	Yes

Source: GAO analysis of collective bargaining agreements.

^aA money purchase pension plan requires the employer to put a fixed annual contribution into an employee's individual account.

^bThe NTS defined benefit plan was open to new hires in 2008 but closed to new hires after the 2009 collective bargaining negotiations.

Tactical Response Force Implementation Varies and Has Raised Concerns about the Longevity of Protective Forces Careers

Sites are at different stages in the implementation of TRF requirements. However, TRF implementation, coupled with broader DOE efforts to limit postretirement and pension liabilities, has raised concerns with DOE security officials, protective force contractors, and protective force unions about the longevity of protective forces' careers and the adequacy of their personnel systems.

TRF Implementation Varies

DOE has identified the following important TRF requirements for protective forces:

- *Improved tactical skills, so that protective forces "move, shoot, and communicate" as a unit.* To better facilitate tactical training to meet a sophisticated terrorist attack, TRF calls for the development and implementation of TRF training curricula as well as the creation of

training relief elements or shifts to allow protective forces to participate in unit-level training.

- *Revised application of DOE's offensive and defensive combatant standards for protective forces.* DOE's offensive combatant standard is more demanding than its defensive combatant standard.¹³ Nevertheless, prior to TRF, SPO-IIs hired before 2000 were allowed to meet DOE's less demanding defensive combatant standard but could retain their SPO-II designation and fill some offensive combatant positions. TRF policy eliminated this approach, known as "grandfathering," and restricted protective force members who meet only defensive combatant standards to serve as SPO-Is. That is, SPO-IIs that did not meet offensive combatant standards would be moved into SPO-I positions.
- *Career longevity plans to assist with the shift to the new application of offensive and defensive combatant standards.* TRF mandates that all newly hired protective forces meet DOE's more demanding offensive combatant standard as SPO-IIs. Protective force members may advance to the SPO-III level, which requires qualifying at a higher level of firearms proficiency. However, under TRF policy, the forces who cannot maintain their current standards—perhaps as their years of service accumulate and they age—may "fall back" by applying for open protective force positions with less demanding standards. For example, protective forces may move from meeting offensive combatant standards to defensive combatant standards or unarmed SO positions, although they may lose pay with each "fall back."

Table 5 summarizes the physical fitness, firearms and medical qualifications protective forces must pass for DOE's combatant standards.

¹³DOE's combatant standards are defined by physical fitness, firearms, and medical qualifications.

Table 5: Required Qualifications by Protective Force Positions and Combatant Standards

	DOE combatant standard	Annual physical fitness qualification	Semiannual firearms qualifications	Medical qualifications
SO	Not applicable	Not applicable	Not applicable	Numerous medical conditions may result in disqualification for service
SPO-I	Defensive standard	Run one-half mile in 4 minutes, 40 seconds; and prone to 40-yard dash in 8.5 seconds.	Proficiency on several required day and night courses for each weapon carried on duty.	
SPO-II	Offensive standard	Run 1 mile in 8 minutes, 30 seconds; and prone to 40-yard dash in 8 seconds.		
SPO-III	Offensive standard		Must demonstrate higher day and night proficiency on duty weapons and may have to qualify on a wider variety of weapons.	

Sources: DOE 473.4-3A and 10 C.F.R. 1046.

One site we visited had implemented most of TRF's key elements. Since 2005, this site has constructed new training facilities, implemented a training cadre that allows unit-sized tactical training, increased the amount of tactical training its protective forces receive, and integrated protective force plans with other security elements and response plans.

As of September 30, 2008, three sites were still using an older job classification of SPO-II (that is, allowing a defensive combat standard, rather than the offensive combatant standard), which is not a TRF classification. In addition, while some sites have created unarmed security officer positions to provide fallback positions for protective forces that can no longer meet DOE's defensive combat standard, there are relatively few unarmed positions (110—less than 5 percent—of the protective forces at the sites we reviewed), and some of these positions, according to a protective force contract official and a union representative, were eliminated for budgetary reasons.

We also found that TRF training was not uniform across the six sites:

- DOE's National Training Center piloted a more tactically oriented basic training course (Tactical Response Force - 1) at one site in 2008, but according to a National Training Center official, this class will not replace

its existing multiweek Basic Security Police Officer Training course for newly hired SPO-IIs until later in 2010.

- All sites have increased the amount of tactical training for protective forces but have been separately developing courses and training facilities.
- Some sites had purchased and deployed advanced weapons but had not adequately trained their protective forces to use these weapons and had not integrated these weapons into their response plans, according to DOE's Inspector General and DOE's Office of Independent Oversight. In 2007, DOE's Inspector General reported that one site's training program for the use of a weapon that was key to the site's security strategy did not provide protective forces with the knowledge, skills, and abilities to perform assigned tasks.¹⁴ A follow-up inspection in 2008 found similar problems at several other sites.¹⁵
- According to a NNSA official, NNSA sites did not receive dedicated TRF training funds until fiscal year 2009. Also, according to NNSA's fiscal year 2010 budget submission, NNSA does not expect its sites to complete TRF activities until the end of fiscal year 2011.

TRF Implementation Has Raised Concerns

Since its inception in 2005, TRF has raised concerns in DOE security organizations, among protective force contractors, and in protective force unions about the ability of protective forces—especially older individuals serving in protective forces—to continue meeting DOE's weapons, physical fitness, and medical qualifications. As we reported in 2005,¹⁶ some site security officials recognized they will have to carefully craft transition plans for currently employed protective force officers who may not be able to meet the new standards required for an elite force, which is now known as TRF. Adding to these concerns are DOE's broader efforts to manage its long-term postretirement and pension liabilities for its contractors, which could have a negative impact on retirement eligibility

¹⁴DOE Office of Inspector General, *Protective Force MK-19 Grenade Launcher Use at the National Nuclear Security Administration's Pantex Facility*, DOE/IG-0770 (Washington, D.C., July 2007).

¹⁵DOE Office of Inspector General, *40 MM Grenade Launcher Qualification Requirements at Department of Energy Sites*, DOE/IG-0806 (Washington, D.C., November 2008).

¹⁶GAO, *Nuclear Security: DOE's Office of the Under Secretary for Energy, Science, and Environment Needs to Take Prompt, Coordinated Action to Meet the New Design Basis Threat*, GAO-05-611 (Washington, D.C., July 15, 2009).

and benefits for protective forces. In 2006, DOE issued its Contractor Pension and Medical Benefits Policy (Notice 351.1), which was designed to limit DOE's long-term pension and postretirement liabilities.¹⁷ A coalition of protective force unions stated that this policy moved them in the opposite direction from their desire for early and enhanced retirement benefits.

These concerns contributed to the 44-day protective force strike at the Pantex Plant in 2007. Initially the site designated all of its protective force positions as offensive positions, a move that could have disqualified a potentially sizable number of protective forces from duty. Under the collective bargaining agreement that was eventually negotiated in 2007, some protective forces are allowed to meet the less demanding defensive combat standards. DOE has also rescinded its 2006 Contractor Pension and Medical Benefits Policy. However, according to protective force union officials, tensions over TRF implementation and retirement benefits remain driving forces behind protective force unions' drive to federalize.

With the Issuance of the Graded Security Protection Policy, Most Sites Ceased Efforts to Implement the 2005 Design Basis Threat

With the issuance of the new GSP policy in August 2008, most sites ceased 2005 DBT implementation efforts.¹⁸ However, unlike its practice with previous DBTs, DOE did not establish a deadline for GSP implementation. While sites study GSP requirements and develop implementation plans, the GSP directs that they continue to meet the requirements of the 2003 DBT. Under the 2003 DBT, most DOE sites are required to maintain denial protection strategies for Category I SNM. Under these strategies, DOE requires that adversaries be denied "hands-on" access to nuclear weapons and nuclear test devices at fixed sites, as well as all Category I SNM in transit. For other Category I SNM at fixed sites, DOE requires that adversaries be prevented from having enough time to complete malevolent acts. If adversaries gain access to Category I SNM, DOE requires that protective forces engage in recapturing the SNM on site or recovering the material if it leaves the site. As required by the Fiscal Year 2006 National

¹⁷GAO, *Department of Energy: Information on Its Management of Costs and Liabilities for Contractors' Pension and Postretirement Benefit Plans*, GAO-08-642R (Washington, D.C.: June 19, 2008).

¹⁸One DOE site completed 2005 DBT implementation efforts on schedule and approved a Site Safeguards and Security Plan for the 2005 DBT.

Defense Authorization Act,¹⁹ DOE reported to Congress in 2007 that all its sites could meet the 2003 DBT.

To verify the information DOE reported, we examined whether the sites had approved Site Safeguards and Security Plans and whether they had undergone an Office of Independent Oversight Inspection to test those plans. We found that all sites (except for the one DOE site that had implemented the 2005 DBT) had approved Site Safeguards and Security plans for the 2003 DBT, and almost all had undergone inspections by the Office of Independent Oversight to test those plans. In most cases, protective forces performed effectively in these inspections. However, in a 2008 inspection, one site's protective forces received a "needs improvement" rating—that is, it only partially met identified protection needs or provided questionable assurance that identified protection needs were met.

Office of Secure Transportation Federal Agents and Protective Forces Differ Significantly in Several Respects

Although they are both responsible for protecting SNM, OST federal agents substantially differ from site protective forces in terms of numbers, organization, management, pay, benefits, mission, and training:

- OST forces totaled 363 as of September 30, 2008, or less than one-seventh the total number of protective forces members at DOE sites with enduring Category I missions.
- OST forces are geographically dispersed, but unlike protective forces, management is centralized. OST operations are organized into three commands, which are collocated at two DOE sites and a Department of Defense military base. These commands report to a central command in Albuquerque, New Mexico, which is under a single organization, NNSA. In contrast, the protective forces at six sites have decentralized management and are overseen by one of three DOE organizations.
- Federal managers directly operate the OST organization and supervise federal agents.

Unlike protective forces, OST federal agents cannot collectively bargain and are covered by a single pay system.²⁰ Effective in March 2008, the

¹⁹Pub. L. No. 109-163 § 3113 (2006).

NNSA's Pay Band Demonstration is a pay system for most NNSA federal employees—including OST federal agents.²¹ Table 6 shows the differences between the protective forces' many negotiated pay rates and the nonsupervisory federal agents' single pay band, which is linked to federal pay grades that are established governmentwide.

Table 6: Protective Forces and Federal Agents' Pay Systems

	Protective forces		Nonsupervisory OST federal agents	
Basis for pay provisions	Collective bargaining agreements with various contractors		2008 NNSA pay band demonstration	
Type of pay	Hourly rates		Salary	
Range of base pay rates		Lowest pay rates	Highest pay rates	\$19.54 to 30.90/hour ^a
	SPO-I	\$15.00-22.90/hour	\$22.69-23.41/hour	
	SPO-II	\$15.00-22.90/hour	\$22.64-25.14/hour	
	SPO-III	\$17.53-25.77/hour	\$23.64-26.11/hour	
Overtime pay rate	Generally 1.5 times base rate		1 times base rate plus 0.5 times regular rate ^a	

Sources: Collective bargaining agreements and NNSA.

^aThese hourly rates are derived from the annual salary range (the pay grades of GS-8, step 1 through GS-10, step 10) for OST federal agents in NNSA's Pay Band 1, a range that was at \$40,779 to \$64,482 at the end of fiscal year 2008.

^aA regular rate is potentially greater than a base rate, because it is calculated on total remuneration that reflects the base rate plus applicable premium pays, if any, such as a night shift premium.

In addition, while OST's pay system is designed for more flexible pay, protective forces' pay rules generally do not provide for any variation in a position's pay rate after a few years of service. Specifically, OST agents' pay rates can vary more when they are hired and in later years because the NNSA pay system is designed to give OST managers more flexibility to offer exceptional candidates higher entry salaries and to provide faster or slower annual pay progression, depending on individual performance. In

²⁰ 5 U.S.C. § 7103(b). Exec. Order No. 12171, 44 FR 66565, (1979), recently amended by Exec. Order No. 13480, 73 Fed. Reg. 73991 (2008), provides that NNSA's federal workers cannot be represented by unions.

²¹The NNSA Pay Band Demonstration establishes a pay framework by creating a career path and pay bands for OST federal agent positions as well as the rules for pay for performance. In addition, the pay system for OST federal agents must conform to other relevant legal and regulatory requirements and agency rules and procedures covering, for example, premium pay for overtime, holiday worked, Sunday worked and night work. In contrast, aspects of such premium pay could be variously negotiated for contractor protective forces.

contrast, fixed pay rules allow a contracted SPO to start at the top pay rate or to reach or closely approximate it after only about 1 to 3 years of service. However, as table 6 shows, both protective forces and federal agents receive significantly higher pay for overtime hours.

Concerning benefits, OST federal agents generally receive those that are broadly available to other federal employees, such as through the Federal Employee Health Benefit program and the Federal Employee Retirement System (FERS), which has a defined benefit component and a defined contribution component. In contrast, at each site, protective force unions negotiate for benefits such as medical insurance and retirement plans, and new hires in protective forces generally do not receive defined benefits for retirement. In addition, in 1998, Congress made OST federal agents eligible to retire earlier (at age 50 after 20 years of service) with a higher monthly retirement annuity (defined benefit) than is typical for other federal employees.²² This early retirement provision contrasts with the provisions for the two defined benefit plans open to new protective force hires as of September 2008, which provides for retirement with more years served or at older ages.

OST federal agents' mobile mission also differs significantly from that of protective forces that guard fixed sites. OST agents operate convoys of special tractor trailers and special escort vehicles to transport Category I SNM. These agents travel on U.S. highways that cross multiple federal, state, tribal, and local law enforcement jurisdictions. They also travel as many as 15 days each month. Agents may also provide security for weapons components that are flown on OST's small fleet of aircraft. In contrast to the public setting of agents' work, protective forces that guard Category I SNM at fixed sites typically have elaborate physical defenses and tightly restricted and monitored public access.

Finally, the training for OST federal agents and protective forces differs. Although both OST and protective force contractors must comply with DOE orders and regulations when developing and executing training, OST agents undergo longer, more frequent, and more diverse training than do most protective forces. For example, newly hired OST trainees undergo longer basic training, lasting 21 weeks at OST's academy in Fort Chaffee, Arkansas. To operate OST's fleet of vehicles, federal agents must also complete the requirements for a commercial driver's license. In addition,

²²Pub. L. No. 105-261 § 3154 (1998).

all agents must meet DOE's offensive combatant standard throughout their careers. Overall, OST officials estimate that OST federal agents spend about a third of their time in training, which, according to an NNSA official, is much more frequent than most contractor protective forces. Much of the training is tactically oriented, and OST convoy elements are organized into tactical units.

**Protective Forces and
Office of Secure
Transportation
Federal Agents Do
Not Routinely Use
Their Federal Law
Enforcement
Authority to Make
Arrests**

In the performance of their official duties, both protective forces and OST federal agents have limited arrest authority for a variety of misdemeanors and felonies,²² though neither routinely exercises this arrest authority. Both protective forces and OST federal agents are also authorized to use deadly force to protect SNM and may pursue intruders in order to prevent their escape and to arrest those they suspect have committed certain misdemeanors or felonies or have obtained unauthorized control of SNM. DOE's Federal Protective Force manual (DOE M 470.4-8) and DOE's Contractor Protective Force manual (DOE 470.4-3A) set guidelines and direct DOE sites to develop policies for using deadly force and for fresh pursuit, which involves pursuing suspected criminals who flee across jurisdictional boundaries, such as leaving the property of a DOE site. These actions include developing memorandums of understanding that establish, among other things, fresh pursuit guidelines with other law enforcement agencies.

DOE protective forces and OST federal agents have limited authority to make arrests for specific misdemeanors and felonies, such as trespassing on, or the theft or destruction of, federal property. Other offenses against government property subject to arrest include sabotage, civil disorder, conspiracy, and the communication of or tampering with restricted data. For the covered misdemeanors and felonies, protective forces and OST federal agents have authority to arrest if they observe the offenses while they are performing their official duties; for the covered felonies, they may also make arrests if they have reasonable grounds to believe that the person has committed a felony. If other federal law enforcement agencies, such as the Federal Bureau of Investigation (FBI), are involved in the apprehension of suspected criminals, even on DOE property, protective forces and OST federal agents must relinquish arresting authority to the other federal agencies. While both protective forces and OST federal

²²Atomic Energy Act of 1954 § 161.k (codified at 42 U.S.C. § 2201(k)). Defense Programs: Limited Arrest Authority and Use of Force by Protective Force Officers, 10 C.F.R. § 1047.

agents receive initial and annual refresher training in law enforcement authorities and duties, we found that protective forces at the six sites last made an unassisted arrest using their federal authority more than 25 years ago. The protective forces at Pantex arrested nine individuals, six in 1981 and three in 1983, for trespassing on site property. In both instances, the offenders were convicted and sentenced to a federal detention facility.

According to OST officials, federal agents do not routinely make arrests because they have not encountered individuals attempting to steal SNM from their shipments, which is the focus of their legal concerns. Protective forces do not routinely use their federal authority to make arrests for several reasons, in addition to limited authority. First, one contractor site official told us, federal courts, which have jurisdiction for all arrests made by protective forces using their federal authority, are reluctant to pursue what may be considered minor cases associated with a DOE site. Instead, this official said, the site had more success prosecuting crimes in state and local courts. In these cases, arrests are made by local and state law enforcement agencies. Second, DOE security officials told us that sites may be concerned about the legal liability of using contractor employees to make arrests and potential lawsuits that could ensue.²⁴ Finally, both DOE and site contractor officials told us that routine law enforcement duties may distract protective forces from performing their primary duty to protect Category I SNM.

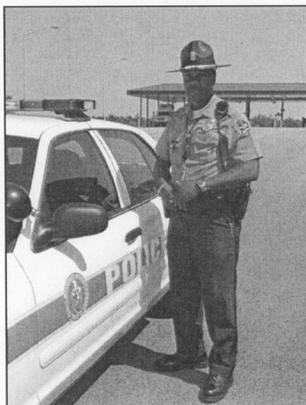
Rather than make arrests when witnessing possible crimes, protective forces may gather basic facts, secure the crime scene, and notify management, which decides whether to refer the matter to local law enforcement agencies, DOE's Inspector General, the U.S. Marshall, or the FBI for arresting and transporting suspects. However, we could not determine how often the forces take these actions because sites do not typically document detainments or have facilities in which to hold such detainees.

While protective forces and OST federal agents seldom use their federal arrest authority, protective forces have used other legal authorities to make arrests. For example, specially designated protective force officers at the Savannah River Site (SRS), are authorized under South Carolina law

²⁴A DOE Inspector General report found this to be the case at a DOE site not covered in our review. See DOE, *Inspection Report: Protective Force Response to a Security Incident at Sandia National Laboratory, California*, DOE/IG-0658 (August 2004).

to make arrests and investigate crimes.²⁵ The SRS protective force includes 26 Special State Constables (about 5 percent of SRS's total protective force) who have state law enforcement jurisdiction on the 310-square-mile SRS complex, which spans three counties and includes public highways. These officers wear special uniforms and drive specially marked vehicles. In addition, they must complete and maintain state law enforcement qualification requirements, in order to retain their state law enforcement authority. This additional authority, according to SRS officials, allows the remaining protective force personnel to focus on the other aspects of the site's national security mission.

Figure 2: Protective Force Constable, SRS



Source: DOE.

²⁵This authority is contained in S. Carolina Code § 23-7-10 through 7-50.

Either of the Two Principal Options DOE Has Considered Could Result in More Uniform Management of Protective Forces

To manage its protective forces more effectively and uniformly, DOE has considered two principal options—improving elements of the existing contractor system or creating a federal protective force. We identified five major criteria that DOE, protective force contractors, and union officials have used to assess the advantages and disadvantages of these options. Overall, in comparing these criteria against the two principal options, we found that neither contractor nor federal forces seem overwhelmingly superior, but each has offsetting advantages and disadvantages. Either option could result in effective and more uniform security if well-managed. However, we identified transitional problems with converting the current protective force to a federalized force. Furthermore, while DOE has sought to improve protective force management by reforming protective forces, this effort is still at an early stage and budgetary limitations may constrain some changes.

Both a Contractor Force and a Federalized Force Present Advantages and Disadvantages

Table 7 summarizes the five criteria that DOE, protective force contractors, and union officials have used to discuss whether to improve the existing contractor system or federalize protective forces, as well as associated issues or concerns.

Table 7: Assessment Criteria for Management Options and Associated Issues

Criteria	Issues associated with stakeholders' views on how the options align with the criteria
A personnel system that supports force resizing and ensures high-quality protective force members.	<ul style="list-style-type: none"> • Several contractors and DOE managers believe the current contractor system provides more flexibility than a federal system to hire and fire quickly to meet changing DOE personnel needs and to handle poor performers. • A union coalition advocates federalization to get early and enhanced retirement benefits, which are available for law enforcement officers and some other federal positions, to ensure a young and vigorous workforce.
Greater standardization of protective forces across sites to more consistently support high performance and ready transfer of personnel between sites.	<ul style="list-style-type: none"> • Protective forces perform inconsistently across sites, in part because DOE culture and policy give each site leeway to manage itself, which can result in differences, such as various interpretations of DOE orders. • Protective forces are also trained and equipped differently, making it difficult to provide reinforcements from other sites for strikes or other emergencies. • A 2004 DOE work group concluded federalization might drive standardization across the DOE complex, which would benefit from more uniform training and application of policies and from more uniform and efficient procurement of, among other things, equipment and services.

Criteria	Issues associated with stakeholders' views on how the options align with the criteria
Better DOE management and oversight to ensure effective security.	<ul style="list-style-type: none"> • Federalization could enhance DOE's direct control and awareness of protective force operations. • Some DOE officials are concerned that more centralized federal control might slow and impede protective forces' support of the site contractors' operations and federalization could confuse the roles, responsibilities, and interfaces between contractor personnel in other types of security positions and federal protective force personnel.
Prevention or better management of protective force strikes.	<ul style="list-style-type: none"> • Contractor protective forces can legally strike when their collective bargaining agreements expire, creating a potential lapse in security. Security operations during a strike must be managed through temporary replacement protective forces. • According to OPM, a federalized protective force could not legally strike.
Containment costs within expected budgets.	<ul style="list-style-type: none"> • Protective forces are the most expensive component of security costs, which have increased dramatically since September 11, 2001. • DOE officials are concerned that future security budgets will be relatively flat and may not support changes that require significant new expenditures, which federalization may involve.

Source: GAO analysis of information from federal, contractor, and union sources.

Evaluating the two principal options against these criteria, we found that, for several reasons, either contractor or federal forces could result in effective and more uniform security if the forces are well-managed. First, both options—maintaining the current security force structure or federalizing the security force—have offsetting advantages and disadvantages, with neither option emerging as clearly superior. For example, one relative advantage of a contractor force is the perceived greater flexibility for hiring, disciplining, or terminating an employee; one relative disadvantage of a contractor force is that it can strike. In contrast, federalization could better allow protective forces to advance or laterally transfer to other DOE sites to meet protective force members' needs or DOE's need to resize particular forces.

Second, key disadvantages, such as potential strikes, do not preclude effective operations if the security force is well-managed. According to one protective force manager, a well-managed protective force is less likely to strike. In addition, a 2009 memo signed by the NNSA administrator stated that NNSA had demonstrated that it can effectively manage strikes through the use of replacement protective forces. With respect to federal protective forces, a 2004 department work group on protective force issues observed that even federal operations like OST had experienced difficult labor-management relations that had to be carefully managed in order to ensure effective performance.

Third, as can be seen in the following examples, distinctions between the two options, each of which could have many permutations, can be overstated by comparing worse- and best-case scenarios, when similar conditions might be realized under either option.

- While federalization might improve effectiveness and efficiency by driving standardization, NNSA recently announced initiatives to increase standardization among contract protective forces to achieve some of the same benefits, including cost savings.
- Federalization could potentially provide early and enhanced retirement benefits, which could help to ensure a young and vigorous workforce. However, such benefits might also be provided to contractor protective forces.
- Although more centralized federal control might impede both protective forces' support of a site's operations and the coordination between contractors and federal managers, this concern presumes a scenario in which the department would choose a highly centralized organization, whereas it might delegate responsibility for day-to-day operations to its site managers.
- Either option could be implemented with more or less costly features. For example, adding the early and enhanced retirement benefits would increase costs for either contractor or federal protective forces.

Reliably estimating the costs of protective force options proved difficult and precluded our detailed reporting on it for two broad reasons. First, since contractor and federal forces could each have many possible permutations, choosing any particular option to assess would be arbitrary. For example, a 2008 NNSA-sponsored study identified wide-ranging federalization options, such as federalizing all or some SPO positions at some or all facilities or reorganizing them under an existing or a new agency. Second, DOE will have to decide on the hypothetical options' key cost factors before it can reasonably compare costs.²⁶ For example, when

²⁶In terms of retirement benefits, for example, the features and costs are not clear for hypothetical contractor options, for which any variety of retirement plans could potentially apply. In contrast, the likely features and costs are fairly clear for hypothetical federal forces because they would likely be placed under existing retirement plans. According to OPM estimates for fiscal year 2008, for instance, annuities under the Federal Employee Retirement System for regular or early and enhanced retirement cost the government an average of 11.2 percent or 24.9 percent of basic pay, respectively.

asked about some key cost factors for federalization, an NNSA Service Center official said that a detailed workforce analysis would be needed to decide whether DOE would either continue to use the same number of SPOs with high amounts of scheduled overtime or hire a larger number of SPOs who would work fewer overtime hours. Also, the official said that until management directs a particular work schedule for federalized protective forces, there is no definitive answer to the applicable overtime rules, such as whether overtime begins after 8 hours in a day. The amount of overtime and the factors affecting it are crucial to a sound cost estimate because overtime pay can now account for up to about 50 percent of pay for worked hours.

Transition to a Federalized Security Workforce Creates Difficult Issues Either under Current Laws or with Special Provisions for Enhanced Retirement Benefits

Federalization under Existing Laws May Not be Palatable to Current Protective Force Members and Their Unions

If protective forces were to be federalized under existing law, the current forces might face a loss of pay or even their jobs. OPM told us that legislation would be required to provide these federalized protective forces with early and enhanced retirement benefits. However, provisions associated with these benefits could create hiring and retirement difficulties for current older members of the protective forces.

According to officials at OPM and NNSA's Service Center, if contractor SPOs were federalized under existing law, they would likely be placed into the security guard (GS-0085) federal job series. Although a coalition of unions has sought federalization to allow members to have early and enhanced retirement benefits, which allows employees in certain federal jobs to retire at age 50 with 20 years of service, security guards under the GS-0085 job series are not eligible for these benefits. Under the applicable rules for federal security guards, transitioning protective forces would not become eligible to retire with immediate federal annuities until at least age 55, and only after accruing sufficient years of federal service. For example, transitioning protective forces could begin receiving a federal annuity at age 62 with 5 years of service or, with reduced benefits, at age 55 to 57 (depending on birth year) with 10 years of service.²⁷

²⁷Although transitioning members would still be required to work beyond age 50, they could also work for even more federal service years, retiring with an immediate annuity at age 60 with 20 years of service or at age 55 to 57 (depending on birth year) with 30 years of service. These retirement eligibility provisions are for FERS, which is the federal plan open to new hires.

In addition, transitioning force members may receive lower pay as federal employees, according to our analysis of two tentative federal pay levels for protective force positions at SPO levels of I, II, and III.²⁸ As of September 30, 2008, contractors are generally paid higher top rates than the top rates for the applicable federal General Schedule (GS) pay grades.²⁹ Only SPO-III positions at three sites and SPO-II positions at one site could have their top rates potentially matched by 2008 federal rates, but only under certain assumptions.³⁰ Also, to reach federal pay rates that better approximate the contractor rates, transitioning contractor protective forces might have to wait many years. While most collective bargaining agreements allow protective forces to reach a position's top pay rate after 3 years or fewer, federal guards could take much longer because the 10 steps within a GS pay grade have progressively longer periods of service between incremental increases. This step progression means reaching the top of a pay grade (step 10) could take up to 18 years.

Finally, if protective forces are federalized, OPM officials told us that current members would not be guaranteed a federal job. According to

²⁸We separately asked OPM and the NNSA Service Center to tentatively classify SPOs at levels I, II, and III for the applicable federal pay grades using the contractor job descriptions for SPOs. The NNSA service center classified SPO levels I, II, and III at GS pay grades of 5, 6, and 7, respectively. OPM classified each SPO level at one higher grade level. For a more definitive classification of federal pay, more information on the positions at each site may be required.

²⁹According to a 2008 NNSA-sponsored study, the current contractor pay rates might be matched by federal pay under the flexibility allowed by NNSA's new pay demonstration that established pay bands that may cover more than one GS grade. Indeed, our analysis confirmed that the likely pay band—spanning the pay range of GS grades 5 through 8 and applicable to all SPO levels—will generally accommodate the top contractor pay rates at NNSA sites, particularly because it allows higher pay rates for SPO I and II positions than is likely through the regular GS pay grades. Nevertheless, transitioning SPOs may still fail to match their contractor pay rates for two reasons. First, according to the NNSA service center, if DOE hires all forces under the regular General Schedule for pay, no forces will then fall under the NNSA pay banding. Alternatively, if the protective forces were organized under separate DOE organizations, at most only those protective forces employed by NNSA would be paid under its pay banding. Second, to match the contractor rates, new hires must be paid at the top end of the pay band. However, according to the NNSA Service Center, it would be unusual to hire employees at rates close to the top of a pay band, since a pay band is intended to allow for annual pay-for-performance raises.

³⁰According to NNSA Service Center officials, DOE has flexibility to hire at above step 1 of the GS grade when a candidate demonstrates superior qualifications. However, DOE might not use this hiring authority to put new hires at the top end of a GS pay grade because its use must be consistent with, among other things, merit system principles and budgetary considerations.

Legislation Could Provide Federalized Forces with Early and Enhanced Retirement Benefits, but Providing These Benefits Could Pose Problems for Current Force Members

those officials, current members would have to compete for the new federal positions, and thus they risk not being hired. Nonveteran members are particularly at risk because competition for federal security guard positions is restricted to those with veterans' preference, if they are available. According to NNSA Service Center officials, veterans groups would likely oppose any waiver to this hiring preference. Thus, if the protective forces were to be federalized, the department might lose some of the currently trained and experienced personnel.

According to OPM officials, legislation would be required to provide federal protective forces with early and enhanced retirement because their positions do not fit the current definition of law enforcement officers that would trigger such a benefit.³¹ For the same reason, DOE had to pursue legislation to extend early and enhanced retirement for OST federal agents in 1998. OPM had determined that OST federal agents did not meet the definition for law enforcement officer that would have made them eligible for early and enhanced retirement benefits. Consequently, at DOE urging, Congress enacted legislation to give OST federal agents the special 20-year retirement provisions.³²

Although a coalition of unions has supported federalization to get early and enhanced retirement benefits, provisions associated with these benefits could create hiring and retirement difficulties for older force members. Older members might not be rehired because agencies are typically authorized to set a maximum age, often age 37, for entry into federal positions with early retirement. In addition, even if there were a waiver from the maximum age of hire, older protective forces members could not retire at age 50 because they would have had to work 20 years to meet the federal service requirement for "early" retirement benefits. These forces could retire earlier if they were granted credit for their prior years of service under DOE and NNSA contracts. However, OPM officials told us OPM would strongly oppose federal retirement benefits being granted for previous years of contractor service (retroactive benefits). According to

³¹According to a 2004 OPM report, the retirement definition for a law enforcement officer has a more restrictive meaning than the common understanding of law enforcement. The main element of the definition is that the employee's duties must be primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. This definition generally excludes federal guards and even uniformed police officers from being eligible for law enforcement officer retirement because they prevent or detect violations instead of investigating them.

³²Pub. L. No. 105-261 § 3154 (1998).

these officials, these retroactive benefits would be without precedent and would violate the basic concept that service credit for retirement benefits is only available for eligible employment at the time it was performed. Moreover, retroactive benefits would create an unfunded liability for federal retirement funds. When the law changed to allow OST federal agents early retirement, these agents were already federal employees, and they received retroactive enhanced credit for service; DOE paid the extra liability (approximately \$18 million over 4 years).

DOE Seeks to Address Protective Forces Issues by Reforming Contractor Forces, but Some Changes May Be Constrained by Budgetary Limitations, and Progress Has Been Limited to Date

In a joint January 2009 memorandum, the NNSA Administrator and DOE's Chief Health Safety and Security (HSS) Officer rejected the federalization of protective forces as an option and supported the continued use of contracted protective forces—but with improvements. They concluded that, among other things, the transition to a federal force would be costly and would be likely to provide little, if any, increase in security effectiveness. However, these officials recognized that the current contractor system could be improved by addressing some of the issues that federalization might have resolved. In particular, they announced the pursuit of an initiative to better standardize protective forces' training and equipment. According to these officials, more standardization serves to increase effectiveness and cost efficiency as well as to better facilitate responses to potential work stoppages. In addition, in March 2009, the Chief HSS Officer commissioned a study group, which included DOE officials and protective force union representatives and had input from protective force contractors, to recommend ways to overcome the personnel system problems that might prevent protective force members from working to a normal retirement age, such as 60 to 65, and building reasonable retirement benefits.

Both of these initiatives might benefit the department and its programs. For example, the initiative to standardize protective forces has started focusing on the inefficiencies arising from having each contractor separately choose and procure security equipment and support services; one identified inefficiency is that smaller separate orders hinder contractors from negotiating better prices. In NNSA's fiscal year 2010 budget request, NNSA predicted that standardizing procurement and security equipment, such as vehicles, weapons, and ammunition, could save NNSA, cumulatively, 20 percent of its costs for such equipment by 2013. With respect to the career and retirement initiative, the DOE study group reported, among other potential benefits, that improving career incentives for individuals to enter a protective force career and then remain in the DOE security community for a lifetime of service could help

the department minimize the significant costs associated with hiring, vetting, and training protective force members.

NNSA has established a Security Commodity Team—composed of security and procurement professionals from NNSA, some DOE sites, and other DOE organizations—to focus first on procuring ammunition and identifying and testing other security equipment that can be used across sites. According to NNSA officials, NNSA established a common mechanism in December 2009 for sites to procure ammunition. Another effort will seek greater standardization of protective force operations across sites, in part by HHS or NNSA clarifying protective force policies when sites do not have the same understanding of these policies or implement them in different ways. To move toward more standardized operations and a more centrally managed protective force program, NNSA started a broad security review to identify possible improvements. As one result of this security review, according to NNSA officials in January 2010, NNSA has developed a draft standard for protective force operations, which is intended to clarify both policy expectations and a consistent security approach that is both effective and efficient.

For the personnel system initiative to enhance career longevity and retirement options, in June 2009, a DOE-chartered study group made 29 recommendations that were generally designed to enable members to reach a normal retirement age within the protective force, take another job within DOE, or transition to a non-DOE career. The study group identified 14 of its 29 career and retirement recommendations as involving low- or no-cost actions that could conceivably be implemented quickly. For example, some recommendations seek to ensure that protective force members are prepared for job requirements through expanding fitness and wellness programs and reviewing the appropriateness of training. Other recommendations call for reviews to find ways to maximize the number of armed and unarmed positions that SPOs can fill when they can no longer meet their current combatant requirements. Other recommendations focus on providing training and planning assistance for retirement and job transitions. (All 29 recommendations are described in app. I.)

The study group recognized that some of its personnel system recommendations may be difficult to implement largely because of budget constraints. The study group had worked with the assumption that DOE security budgets will remain essentially flat for the foreseeable future, and may actually decline in real dollars. Nevertheless, it identified 15 of its 29 career and retirement recommendations as challenging because they involve additional program costs, some of which are likely to be

substantial, and may require changes to management structures and contracts.³³ For example, to provide some income security when protective officer members must take a lower-paying position because of illness, injury, or age, one recommendation would include provisions in collective bargaining agreements to at least temporarily prevent or reduce drops in pay. Among the more challenging recommendations is a call to enhance retirement plans and to make them more equivalent and portable across sites—the types of changes that a coalition of unions had hoped federalization might provide.

Progress on the 29 recommendations has been limited to date. When senior department officials were briefed on the personnel system recommendations in late June 2009, they took them under consideration for further action but immediately approved one recommendation—to extend the life of the study group by forming a standing committee. They directed the standing committee to develop implementation strategies for actions that can be done in the near term and, for recommendations requiring further analysis, additional funding, or other significant actions, to serve as an advisory panel for senior department officials. According to a DOE official in early December 2009, NNSA and DOE were in varying stages of reviews to advance the other 28 recommendations. Later that month, NNSA achieved aspects of one recommendation about standardization, in part by formally standardizing protective force uniforms, as well as the uniforms' cloth shields. In the Conference Report for the fiscal year 2010 National Defense Authorization Act,³⁴ the conferees directed the Secretary of Energy and the Administrator of the National Nuclear Security Administration to develop a comprehensive DOE-wide plan to identify and implement the recommendations of the study group.

Conclusion

Protective forces are a key component of DOE's efforts to secure its Category I SNM, particularly after the September 11, 2001, terrorism attacks. Since the attacks, DOE has made multiple changes to its security policies, including more rigorous requirements for its protective forces. However, in making these changes, DOE and its protective force contractors through their

³³According to officials in DOE's Office of General Counsel, one issue for changing benefits is that the department does not set protective forces' benefits because their members are not department employees. Instead, protective forces and their various employing contractors would have to negotiate changed benefits into the collective bargaining agreements.

³⁴H.R. Conf. Rep. No. 111-288 (2009).

collective bargaining agreements have not successfully aligned protective force personnel systems—which affect career longevity, job transitions, and retirement—with the increased physical and other demands of a more paramilitary operation. Without better alignment, in our opinion, there is greater potential for a strike at a site, and potential risk to site security, when protective forces' collective bargaining agreements expire. In the event of a strike at one site, the differences in protective forces' training and equipment make it difficult to readily provide reinforcements from other sites. Even if strikes are avoided, the effectiveness of protective forces may be reduced if tensions exist between labor and management. The potential for a strike and for declines in protective forces' performance have elevated the importance of finding the most effective approach to maintaining protective force readiness, including an approach that better aligns personnel systems and protective force requirements. At the same time, DOE must consider its options for managing protective forces in a period of budgetary constraints.

With these considerations in mind, DOE and NNSA, to their credit, have recognized that the decentralized management of protective forces creates some inefficiencies and that some systemic career and longevity issues are not being resolved through actions at individual sites. NNSA's recent standardization initiatives and the 29 recommendations made by a DOE study group in June 2009 offer a step forward. The responsibility lies with DOE, working with protective force unions and contractors, to further develop and implement these initiatives and recommendations. However, if DOE decides not to take meaningful actions or if its actions will not achieve the intended goals, an examination of other options, including the federalization of protective forces, may be merited.

Recommendation for Executive Action

To better align protective force personnel policies and systems with DOE's security requirements for Category I SNM sites, we recommend that the Secretary of Energy promptly develop implementation plans and, where needed, undertake additional research for the DOE study group's 2009 recommendations to improve career longevity and retirement options for protective force personnel. Specifically, we recommend the Secretary take the following two actions:

- For actions such as reviewing the appropriateness of training that the study group identified as low or no cost, unless DOE can state compelling reasons for reconsideration, it should develop and execute implementation plans.

-
- For actions that may involve substantial costs or contractual and organizational changes, such as enhancing the uniformity and portability of retirement benefits, DOE should plan and perform research to identify the most beneficial and financially feasible options.

Agency Comments

We provided DOE with a draft of this report for its review and comment. In its written comments for the department, NNSA generally agreed with the report and the recommendations. However, NNSA stated that the report does not sufficiently credit the department for its significant efforts taken to address protective force issues. We added some information to the report about the status of the department's efforts that NNSA provided separately from its comment letter. Nevertheless, we continue to view DOE's progress on its study group's 29 recommendations as generally limited to date. The complete text of NNSA's comments are presented in appendix II. NNSA also provided technical clarifications, which we incorporated into the report as appropriate.

OPM also received a draft of this report for review and comment. It chose not to provide formal comments because it said our report fairly and accurately represented the facts and policy issues that OPM provided to us.

We are sending copies of this report to congressional committees with responsibilities for energy issues; the Secretary of Energy; and the Director, Office of Management and Budget. This report is also available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions regarding this report, please contact me at (202) 512-3841 or aloisee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors are listed in appendix III.



Gene Aloise
Director, Natural Resources and Environment

Appendix I: Recommendations from the Protective Force Career Options Initiative Study Group

In March 2009, the Department of Energy's (DOE) Chief Health, Safety and Security (HSS) Officer commissioned a study to examine "realistic and reasonable options for improving the career opportunities and retirement prospects of protective force (PF) members while maintaining, within current and anticipated budgetary constraints, a robust and effective security posture." Under the leadership of HSS and with input from protective force contractors, a study group was formed consisting of senior leaders of the National Council of Security Police and senior technical staff from the National Nuclear Security Administration, the Office of Environmental Management, the Office of Nuclear Energy, and the Office of Fossil Energy.

The study group's report, *Enhanced Career Longevity and Retirement Options for DOE Protective Force Personnel*, released on June 30, 2009, included 29 recommendations to overcome the problems that prevent protective force members from working to a normal retirement age and building reasonable retirement benefits. Summaries of these recommendations follow.

Study Groups Recommendations

The study group thought the following 14 recommendations were achievable mostly within existing management structures and anticipated budgetary constraints.

1. PF deployment strategies should be re-examined to ensure that appropriate Security Police Officers' (SPO) skill sets and response capabilities (e.g., offensive or defensive capabilities) are matched to current response plan requirements in a manner that maximizes reliance on defensive combatants. The intent is to maximize the number of defensive positions that could be filled by personnel who can no longer meet the higher offensive combatant requirements.
2. Anticipated requirements for security escorts and other security-related unarmed positions (including current outsourcing practices) should be reviewed and procedures implemented to maximize work opportunities for unarmed PF members (Security Officers). The intent of this recommendation and the next is to provide positions to be filled by PF members who can no longer meet either the offensive or the defensive combatant standards.
3. Unarmed PF-related work should be identified as part of the career path for PF members.

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Protective Force Career Options Initiative
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4. Measures should be adopted to minimize the impact of current physical fitness standards upon career longevity, and these standards should be reviewed against current job requirements.
5. Revisions to current medical requirements should be developed to ensure that existing medical conditions do not represent (given the current state of the medical arts) unreasonable barriers to career longevity.
6. So long as the department expects PF personnel to meet explicit medical and fitness standards, it should provide reasonable means to prepare for testing and evaluation.
7. Existing "fitness/wellness" programs should be expanded to help SPOs maintain and prolong their ability to meet physical fitness requirements and to achieve medical cost savings that result from maintaining a well-managed program. According to the study group, this recommendation is not cost-neutral.
8. Retirement/transition planning should be integrated into PF training.
9. The capabilities of the National Training Center should be used to facilitate career progression and job transition training.
10. PF organizations should be encouraged to appoint "Career Development/Transition" officers to assist personnel in career path and transition planning.
11. The Human Reliability Program (HRP) monitors employees to ensure they have no emotional, mental, or physical conditions that impede them from reliably conducting their work. Under this program, if a reasonable belief or credible evidence indicates that employees are not reliable, they should be immediately removed from their duties as an interim precautionary measure. The study group recommended taking strong actions to correct HRP administrative errors and to rigorously enforce existing prohibitions against using HRP in a punitive manner. This recommendation and the next arise from a concern that some protective force members may be punished without the opportunity for timely recourse.
12. Contractor policies and actions that lead to placing PF members in nonpaid status without appropriate review or recourse should be closely monitored (and, where necessary, corrected).

13. DOE M 470.4-3A, Contractor Protective Force, should be reviewed to ensure that requirements are supportable by appropriate training.
14. To encourage future communication on the issues considered in this study, the life of the present study group should be extended as a standing committee, and union participation in the DOE HSS Protective Force Policy Panel should be ensured.

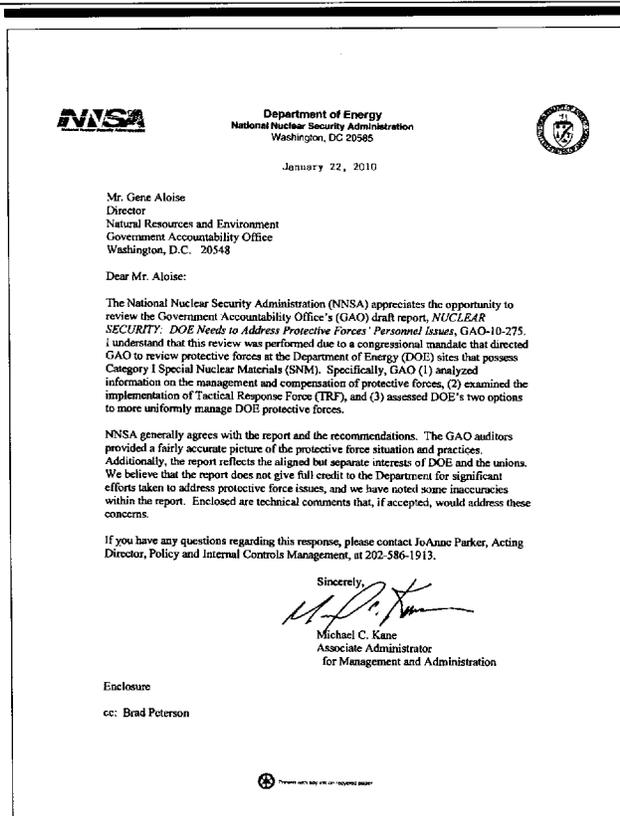
The study group thought the following 15 recommendations would require currently unbudgeted resources or changes to existing contracts.

15. Existing defined contribution plans should be reviewed in order to identify methods to improve benefits, to ensure greater comparability of benefits from one site to the next, and to develop methods to improve portability of benefits. This recommendation, and those through number 19, involve changes to retirement plans that could enhance benefits and allow protective force personnel to transfer benefits more easily when moving to other sites.
16. Consistency in retirement criteria should be established across the DOE complex (e.g., a point system incorporating age and years of service or something similar).
17. The potential for incorporating a uniform cost-of-living allowance into defined benefit retirement programs based on government indexes should be examined.
18. Portability of service credit between PF and other DOE contractors should be explored. This could be directed in requests for proposals for new PF contracts.
19. Potential actions should be explored to create a reasonable disability retirement bridge for PF personnel when alternate job placement is unsuccessful.
20. Job performance requirements (such as firearms proficiency) should be supported by training sufficient to enable PF members to have confidence in meeting those requirements.
21. A retraining fund should be created to assist personnel with job transitions and second careers.
22. A centralized job registry should be established to facilitate identification of job opportunities across the complex.

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23. Consideration should be given to sponsoring a student loan program to assist PF members in developing second careers.
24. The department, as a matter of policy and line management procedure, should establish the position that SPOs be considered for job placement within each respective site's organizational structure before a contractor considers hiring personnel from outside of the site.
25. "Save pay" provisions should be included in collective bargaining agreements to cover specified periods when a PF member must be classified to a lower-paying position because of illness, injury, or aging.
26. DOE should explore the potential for facilitating partnerships among the various contractor organizations in order to broaden employment opportunities for aging or injured personnel and to encourage PF personnel seeking alternative career paths to actively compete for those opportunities.
27. Where possible, the department should review its separate PF prime contracts and convert them to "total" security and emergency management contracts. The intent of this recommendation is to permit protective force personnel to better compete for emergency management positions when they lack the ability or desire to continue with their security positions.
28. PF arming and arrest authority should be reviewed with the objective of enhancing the capabilities of SPOs. The intent of this recommendation is to, among other things, ease SPOs' postretirement path into law enforcement positions.
29. Where possible, equipment, including uniforms, weapons, and badges, should be standardized throughout the department. According to the study group, more standardized uniforms might improve protective forces' morale and could offer some offsetting cost savings for the department.

Appendix II: Comments from the Department of Energy



Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Gene Aloise, (202) 512-3841 or aloisee@gao.gov

Staff Acknowledgments

In addition to the contact named above, Jonathan Gill, Assistant Director; John Cooney; Don Cowan; Cindy Gilbert; Terry Hanford; Mehrzad Nadji; Cheryl Peterson; and Carol Herrnstadt Shulman made key contributions to this report. Other contributors include Carol Kolarik, Peter Ruedel, and Robert Sanchez.

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Senator BEN NELSON. Okay.

Senator Vitter, there are two votes starting at 2:45 p.m., so if we could, maybe we could finish the other opening statements, go vote, and then come back and you can give us some opening statements.

Senator VITTER. Sure.

Senator BEN NELSON. Okay.

Mr. Podonsky.

STATEMENT OF GLENN S. PODONSKY, DIRECTOR, OFFICE OF HEALTH, SAFETY, AND SECURITY, DEPARTMENT OF ENERGY

Mr. PODONSKY. Mr. Chairman and Ranking Member Vitter, thank you for inviting me to testify about the Department of Energy's efforts to address the career-related concerns of our protective force.

This hearing comes at a critical junction in the Department's longstanding efforts to evaluate the tactical capabilities of the protective forces supported by career and retirement opportunities commensurate with the professionalism we've come to expect.

When the Department was created, protective forces were essentially industrial security gate guards. In the early 1980s, the Department acknowledged the potential for more serious terrorist threats, and began a dramatic effort to ramp up the tactical capabilities of its protective forces. This was accompanied by increasing performance expectations for the protective force members. Compensation and benefits improved, but did not always keep pace with the increasing demands of the job.

In the 1990s, cuts in the protective force numbers became part of the post-Cold War peace dividend. The events of September 11 ushered in a new focus on security across the DOE and the Nation, and a new emphasis on protective forces. The Department needed a security posture able to meet much greater challenges, including the need for more tactical capability security forces.

In 2004, I recommended to Secretary Abraham that he create an initiative called the Elite Force, which included federalization of the protective force. The Elite Force concept is currently known as the DOE's TRF Initiative. The results, in terms of capabilities of this initiative, have been impressive, but a practical and affordable path towards improving protective force service as a career has not occurred.

Studies conducted in 2004 identified federalization of the Department's protective force as the preferred option, but acknowledged that no realistic path forward toward this goal existed. The National Council of Security Police (NCSP) came to support federalization as a means of advancing its program for improved career progression and retirement benefits, but there still seemed to be no viable and affordable means for the DOE to actually implement this concept.

Among the difficulties was the need for complex changes to legislation and regulations to enable a federalization process that would protect incumbents and/or classify personnel as law enforcement. At the time, congressional interest in making the complex legislative changes necessary was not apparent, so the Department felt that most of the major issues should be addressed in some manner under the current contract protective force model.

In 2009, I chartered a broad-base protective force career options study group to address protective force concerns, composed of experts and DOE security professionals and leaders from the NCSP. That group made 29 recommendations. The GAO's January 2010 study (GAO-10-275) of protective force personnel issues seemed to support the recommendations by recommending that the Department respond to each of them.

We have since created the Protective Force Career Options Committee to assist policy and line organizations in implementing the study group recommendations. The Department has drawn together its best expertise to develop an appropriate implementation plan for these recommendations.

I would like to take a moment here just to offer a special thank you to the NCSP and the protective force union leaders for their dedicated and cooperative efforts over the last year to not only help us identify the problems, but also the potential solutions.

Consistent with Secretary Chu's management principle to treat our people as our greatest asset, the Department's actions reflect a commitment to identify and promote efforts to ensure members of the protective forces are treated in a manner consistent with their vital role and in recognition of professional demands of that role entailing.

While the Department can cite gains in implementing security initiatives that provide more robust asset protection, we have not yet made similar progress in efforts to address all concerns of the protective force members regarding career prospects and related issues.

Much of the lack of progress actually speaks to the complexity and difficulty in resolving these issues. The DOE and NNSA are, in fact, addressing the recommendations associated with response planning, deployment strategy, force restructuring, training needs, and standardization of protective force weapons, equipment, and uniforms. Our national training center in Albuquerque is developing the curricula for protective force career progression and career transition training.

My office is also in the process of reviewing recommendations dealing with protective force physical fitness standards, medical requirements, and human reliability program.

Most of the remaining recommendations involve the very difficult issue of retirement, mobility among contractors, disability retirement, and retraining and placement outside the protective force. These areas are further complicated because they are mostly defined in collective bargaining agreements between the contractors and the unions.

The Department should explore ways to craft a comprehensive, standardized approach to protective force career progression and retirement issues that will ensure that protective force members, regardless of location, are treated equitably and with the assurance that neither age nor injury will unfairly disadvantage them, in comparison with the larger departmental workforce.

For example, Mr. Chairman, the Department could consider pursuing a program similar to the benefits allowed for beryllium workers under 10 CFR 850. That would provide retraining and transfer or 2 years' saved pay benefits to protective force personnel who are injured or are otherwise unable to meet physical standards.

While my office will continue to assist in resolving these complex issues, by their very nature and inherent cost and contractual implications, alternate resolution is clearly within the purview of the line management. In this regard, I should also emphasize that line management is also deeply engaged alongside HSS, my organization, in this task.

In conclusion, the protective force is critical to DOE's overall protection, and it is the Department's and the Nation's best interest to ensure that protective force personnel are treated equitably, and that their legitimate concerns are addressed to the greatest possible extent.

We conducted studies on this topic in 1992, 1997, 2004, and 2008. DOE is moving to address those issues that can be resolved within existing operation on resource constraints. Fair resolutions to the more complex and difficult issues will require cooperation and compromise by all the principals involved—line management, the unions, and Congress.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Podonsky follows:]

PREPARED STATEMENT BY GLENN S. PODONSKY

Mr. Chairman and members of the committee: thank you for inviting me to testify on the Department of Energy's (DOE) efforts to deal with the interdependence and complexity of protective force personnel issues, contracting requirements, and security needs at our national security facilities. Specifically, we must fairly address the reasonable concerns of protective force personnel for clear and attainable career paths to retirement, yet also balance those desires with the Department's need to maintain forces capable of securing our facilities in a cost effective manner. The Department has been pursuing ways to address these overlapping needs for many years.

BACKGROUND

As early as 2003, my office recognized a number of concerns associated with the Department's contractor protective force model. Some concerns were expressed by protective force members and their unions, and others by the Department's security and line managers. Personnel concerns included issues such as the lack of a career path that protective force personnel could reasonably be assured of until retirement, nominally at age 65, as well as the lack of alternative positions available to personnel who, due to job-related injuries, other disabilities, or advancing age, could no longer meet the physical standards required for armed positions. Management's concerns with the contractor force model included the very real potential for protective force strikes at the expiration of collective bargaining agreements and the inefficiencies associated with a lack of standardization among protective forces' weapons, equipment, and training.

The opportunity to consider and, hopefully, act on these issues was one factor in our efforts to have then Secretary Abraham include protective force upgrades prominently in his May 2004 comprehensive package of security initiatives. The protective force element of the security initiative was referred to at the time as the "elite force" initiative and recognized the need to respond to revised perceptions of the post-September 11 threat environment by transitioning some protective force elements toward a more combat-capable status that included mobile response and increased offensive combat capabilities.

In response to the Deputy Secretary's June 2004 direction to develop options to implement the elite force initiative—direction which specifically included examining possible federalization of protective forces—my office and the National Nuclear Security Administration (NNSA) tasked a Protective Force Working Group to study the inherent issues. The Working Group issued papers in August and October 2004, and their recommendations included federalization of the protective forces. The Working Group's federalization position was based on perceived principles associated with elevating protective forces to levels of equal status and capability with the nation's elite military units; it was not accompanied by a cost/benefit analysis or a plan for achieving federalization. Initial analysis of the federalization issue indicated that while federalization offered potential benefits, it also posed significant difficulties.

Based largely on the results of the working group, in January 2005 the Department identified its chosen path forward for implementing the elite force initiative. Phase I included actions to enhance policy, tactical planning, training and readiness, physical standards, and use of security technology. The issue of federalization was deferred, to avoid creating instability during a time of already profound change affecting the protective forces, and also because the Department had concluded that

the major benefits of federalization could be achieved within the contractor protective forces model so long as the contractors and the unions supported the effort to establish and maintain an elite force.

In March 2006, the Department promulgated major policy changes to implement the elite force concept, which had become known as the Tactical Response Force concept. Initial misinterpretation of these changes led to perceptions that a much larger proportion of protective force personnel would be compelled to meet the more demanding offensive combatant physical standard. This prospect caused concern among some protective force personnel and their unions; the changes were seen as exacerbating longstanding concerns regarding the ability of aging or disabled personnel to meet increased physical performance requirements, and hence to remain on the job until retirement age. Protective forces unions voiced increasing support for federalization in the belief that it would include provisions for an early retirement program as well as other benefits associated with existing Federal law enforcement programs. A strike by the Pantex Guard Union in the spring of 2007 was influenced in part by a narrow interpretation of the new requirements of the proposed Tactical Response Force.

In March 2008, NNSA received the results of a study—"Comparative Analysis of Contractor and Federal Protective Forces At Fixed Sites"—it had commissioned to examine the contract force/federalization issue. In June 2008 NNSA received a follow on "Cost Analysis and Modeling" supplement to the initial report. The study and supplement concluded that key union assumptions about federalization—such as 20 year retirement, automatic hiring of incumbents, and portability or grandfathering of retirement benefits—could not occur under current law; converting contract protective forces "en masse" to Federal forces would require extensive new legislation.

As the issue of federalization was examined, it became clear that federalization would be difficult and would potentially have negative consequences for many current protective force members. Federalization of the private sector contractor force would require more complex legislation, for example, than had an earlier successful effort to give nuclear materials couriers, who were already Federal employees, retirement benefits equivalent to law enforcement officers under the Civil Service Retirement System and the Federal Employees' Retirement System.

The NNSA-commissioned analyses also confirmed that many of the concerns associated with the contract force model could be addressed constructively within that model. DOE management including NNSA, decided not to pursue federalization, but rather to address identified problems within the private, contractor force model. In January 2009, the Deputy Secretary was informed of the proposed path forward—not to federalize the protective forces but to implement standardized procedures and practices at NNSA Category I facilities which would provide the major benefits of federalization while maintaining contractor protective forces.

Although the Department does not consider the federalization model the best option for meeting its security needs, it remains committed to addressing the major career path and retirement-related concerns of its contractor protective forces, as expressed through their unions and the National Council of Security Police, an umbrella organization made up of DOE protective force bargaining units. Consequently, in March 2009 the Office of Health, Safety and Security commissioned a Protective Force Career Options Initiative Study Group to examine realistic and reasonable options for improving the career opportunities and retirement prospects of protective force members while maintaining a robust and effective security posture. Response to this initiative was positive: representation on the Study Group included the National Council of Security Police (represented in the hearing today by Mike Stumbo), my office, NNSA, and other DOE headquarters program offices. In June of last year, the Study Group made 29 recommendations; 14 are considered to be cost neutral and achievable under existing governance structures while the other 15 involve additional program costs and/or changes to existing management and contractual approaches. The National Defense Authorization Act for Fiscal Year 2010 requires the Department to develop and submit to Congress by April 30, 2010, a comprehensive Department-wide plan to implement the Study Group recommendations. We intend to submit that plan on time.

In July 2009, and consistent with one of the Study Group recommendations, we created the Protective Force Career Options Committee as a standing committee tasked with continuing the work of the Study Group by assisting DOE in implementation of the Study Group's recommendations.

In January 2010, the Government Accountability Office (GAO) published the results of a Congressionally mandated study of the management of DOE protective forces. The GAO study recommends that DOE respond to the 29 recommendations of the DOE Study Group by developing and executing implementation plans for those recommendations identified as low- or no-cost, and by planning and con-

ducting research to identify the most beneficial and financially feasible options for implementing the remaining recommendations that may involve substantial costs or contractual and organizational changes. The Department has concurred with the findings and recommendations of the GAO report.

CURRENT STATUS

This brings us to the current status of our efforts to address the situation and my assessment of what we have accomplished and what remains to be accomplished. First, the Office of Health, Safety and Security remains committed to assisting the Department in providing levels of security at our facilities that are consistent with the assets in our custody and our understanding of the most current national threat environment. That commitment includes an effort to identify and promote the necessary actions to ensure that the protective forces are treated in a manner consistent with their vital role and the heavy professional demands it imposes.

The Department has made significant progress at considerable cost in its efforts to provide its protective forces with the tactical and technical tools required to implement the Tactical Response Force concept and ensure mission success; some of those efforts remain works in progress. The Department has made significant investments in physical security upgrades such as barriers, advanced sensor systems, and hardened defensive positions; in advanced, more capable and longer range weapons systems and tactical equipment; in defensive strategies and tactical planning to field the Tactical Response Force concept to advantage; and in tactical training to improve the skills of the personnel who will comprise the Tactical Response Force. These upgrades are designed to increase the tactical effectiveness of the protective forces while decreasing their vulnerability to adversary actions.

Implementation of the Tactical Response Force concept as well as the weapons and equipment upgrades and personnel training have varied from site to site, as expected; some sites continue to adjust their implementation efforts to better align with local conditions. This remains an ongoing process with more work to be done at some sites before they will have fully integrated the old and new approaches.

The Department has made clear gains in implementing security initiatives that provide more robust asset protection and mission-related advantages to protective force personnel. The Department has not made similar progress, however, in its efforts to address the concerns of protective force members regarding their career prospects and retirement issues. The Tactical Response Force concept includes a requirement for career progression planning for each protective force member, although many individual plans are still outstanding.

I would like to take a minute here to emphasize that our lack of progress in some areas does not reflect a lack of commitment or effort on our part, but rather reflects the complexity and difficulty of determining and maintaining the most appropriate and fair balance among issues which affect the well-being of the protective forces and the success of our mission to provide highest quality, cost effective security. The Department's efforts are and will continue to be aligned with the Study Group's 29 recommendations. The Study Group, in fact, has evolved into the Protective Force Career Options Committee, referenced earlier in this testimony.

The NNSA, in whose facilities most of the protective forces serve, began a Zero Based Security Review in July 2009. This review is developing detailed analyses of security programs and needs at each NNSA facility, and is expected to be completed by the end of 2010. It is expected to provide information and analyses directly applicable to many of the Study Group's recommendations.

In addition, DOE's National Training Center is currently conducting analyses and a curriculum development effort to support protective force career progression and career transition training. In conjunction with this effort, HSS is also working to modify an existing complex-wide job register to better accommodate the specific needs of protective force personnel.

Study Group recommendations dealing with protective force physical fitness standards, medical requirements, and the Human Reliability Program all involve requirements in the Code of Federal Regulations. To modify these requirements, the Department must go through a formal rulemaking process. The Office of Health, Safety, and Security has established a task team to oversee this process. The team is currently reviewing the physical fitness standards for proposed revision, has nearly completed a set of proposed revisions to the medical standards, and has a proposed revision of the Human Reliability Program regulation under review in the Department.

Action on a few recommendations—retirement and (financial) retirement planning, portability/mobility among contractors, disability retirement, retraining and

placement outside of protective forces, and various personnel services and actions—is proving difficult. While these recommendations pertain to issues of high importance to the protective forces and their unions, these are also issues covered in the collective bargaining agreements between the private sector contractors and the unions. Although the Department can establish the overall parameters for future contracts, the Department is prohibited by Federal Acquisition Regulations from interfering with collective bargaining agreements or dictating the terms of those agreements. Since each of the respective protective forces contractors and unions negotiate agreements based on their specific interests, significant differences exist in the terms and conditions of various contracts from site to site. The extent to which unions would be amenable to negotiating contracts with common clauses is unknown, although the Department would be willing to explore ways to accommodate such an effort through the parameters it establishes in future contracts. For example, the Department should consider establishing a program—similar to the benefits currently allowed for beryllium workers under 10 CFR 850—that would provide retraining and transfer or 2 year save pay benefits for protective force personnel who are injured or otherwise unable to meet physical standards. HSS is currently working with line management with the goal of crafting a comprehensive, standardized approach to protective force career progression and retirement issues.

CONCLUSION

Of the 29 recommendations, the Department is making good progress on those that can be resolved within DOE. We are also moving forward on those issues which can be addressed through rulemaking, although that process is slower. The Department is still seeking workable solutions to the more difficult problems which variously involve contracting and collective bargaining. As noted above, the Department intends to present a plan to implement all 29 recommendations to Congress in April. We recognize that the protective forces are a key element in the protection of our most sensitive national security assets. Fair resolution of the most difficult protective forces personnel issues will necessarily require cooperation and compromise by all parties. The Department also believes firmly that needed changes and improvements can be made within the contract protective forces model, and that it will benefit both the Department and protective forces personnel to work together to resolve all outstanding issues in as fair and fast a process as possible. The Department is committed to finding solutions that ensure the fair and equitable treatment of each protective force member.

Senator BEN NELSON. Mr. Stumbo.

STATEMENT OF MIKE STUMBO, PRESIDENT, NATIONAL COUNCIL OF SECURITY POLICE

Mr. STUMBO. Mr. Chairman and members of the subcommittee, my name is Mike Stumbo. I'm pleased to be here to testify, at your request, on issues relating to the Department of Energy Protective Force.

I proudly serve as a security police officer (SPO) at the Pantex site. Those of you that are not familiar with the Pantex site, it is the site of final assembly and disassembly of nuclear weapons here in the United States.

I consider my job, like many of my fellow DOE SPOs, as continuing service to my country, defending against adversaries who are organized to destroy this country.

I am also the president of the National Council of Security Police, commonly known as the NCSP. Our organization was formed by constituent unions as an active collective voice common to all DOE SPOs throughout the DOE enterprise. We provide unfiltered insight from the field. We call it the "boots-on-the-ground perspective."

For the past several years, we have focused on the question of Federalizing the protective force, which has been an area of extensive discussion and review within DOE for many years.

As highlighted in the recent GAO report, there are significant personnel issues affecting the ability of the protective forces to perform their mission that cannot be compromised.

On July 16, 1945, in the early morning hours, near Alamogordo, NM, a test code-named “Trinity” refashioned our world forever. The new weapon became the very fabric of our national defense and the primary deterrent of attack from our greatest enemies. Our government produces these weapons, and it is an inherent government function to protect them.

Currently, the security of our Nation’s nuclear weapons and weapons-grade material is contracted out to private security contractors. It is the private structure that has not allowed these exceptional men and women who protect these weapons of mass destruction the ability to enjoy terms and conditions of employment that support a shortened career, a career that demands the highest physical, medical, and training standards in any law enforcement arena.

Quite frankly, new hires coming out of the military see these jobs as a continuation of military service in the private sector. But, quickly they find out that there is no incentive to make this a career. After investing time, money, and clearances, many transition to the law-enforcement opportunities that are career-based. This is not a novel or new issue; the conflicts that exist between profit versus security, when private companies protect nuclear assets, are inherent.

It was identified in 1990, by the GAO (GAO/RC8D-91-12), to adopt federalization as a potential structure; again in 2004, by the Department of Energy, again to adopt federalization as potential structure. Shortly after that, the DOE chief health, safety, and security officer commissioned a team composed of DOE line management and NCSP leadership to address career opportunities and retirement prospects for SPOs. The recommended 29 options are captured in the 2010 GAO report. The NCSP commends HSS for having the courage to initiate this action among a great deal of controversy.

Our jobs require a vigorous physical security force that must maintain stringent training and medical standards. It will require the best 20 years of our lives. We must maintain the highest level of security to protect the most powerful weapons known to mankind. In that 20 years, our bodies begin to break down—knees, ankles; our reactionary skills, target-recognition skills start to decrease—it’s a natural order—not to mention the risk of exposure from radiation, chemicals, and beryllium. These hazards are not encountered by our other law-enforcement counterparts.

What I ask of you today is to recognize the uniqueness and nature of our work, and the paramount importance of our mission to this country. There are three entities that perform the mission of protecting nuclear weapons and nuclear weapon-grade material: the military, DOE nuclear couriers, and DOE SPOs. Only one of those entities is outside of the Federal structure, and that is the DOE SPOs.

Whether we choose to Federalize or maintain the private security contractor structure, we must adopt the Federal retirement compo-

nents that support this vital mission. DOE SPOs deserve nothing less. Too much time has passed. There have been plenty of studies.

In closing, I wish to thank the committee for giving me the opportunity to present our case on behalf of the NCSP. I'm prepared to answer any questions you may have.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Stumbo follows:]

PREPARED STATEMENT BY MIKE STUMBO

Mr. Chairman and members of the subcommittee, I am Mike Stumbo and am pleased to be here at your request to testify before you on issues relating to the Department of Energy (DOE) protective forces. I am one of them proudly serving as a security police officer at the Pantex Nuclear Site. I see my job as continuing service to my country by defending against adversaries who are organized to destroy our country. Today, I am here to represent all of the Protective Forces who proudly serve our country throughout the DOE Complex. I serve as the President of the National Council of Security Police, commonly known as the NCSP. Our organization was formed by constituent unions to act as a collective voice on matters that are common to all protective forces throughout the DOE Complex. Our mission is not to bargain on behalf of labor unions at the sites, but to speak on issues where we have first hand personal experience and provide unfiltered insight from the field. For the past several years, we have focused on the question of Federalizing the protective force which has been an area of extensive discussion and review within the DOE for many years. As highlighted in the recent Government Accountability Office (GAO) Report, there are significant personnel issues affecting the ability of the protective forces to perform their mission to standards that cannot be compromised. We believe the time is now to take the necessary steps to correct personnel issues which will insure a battle ready force; whether it is through federalization or some other form of legislative mandate which accomplishes the same results.

On July 16, 1945 in the early morning hours near Alamogordo, NM, a test code named "Trinity" refashioned our world forever. This new weapon ended a war and has become the very fabric of our national defense and the primary deterrent to an attack from our greatest enemies. Our Government produces these weapons of mass destruction as part of our defense posture. There is no greater mission than to assure these weapons, and their components, are secured and protected so that every American can be assured our adversaries have NO access to them. The consequences of an event at one of these sites are so dire as to be unthinkable. We believe the securing and protection of our nuclear arsenal is an inherent government function and must be treated as such. Anything less is compromising the proper role of our government and in our judgment potentially compromising the security of our nuclear assets.

Currently security of our Nation's nuclear weapons and weapons grade materials, which are stored at various facilities near population centers throughout the country, is contracted out to private security contractors. It is this private structure that has not allowed the exceptional men and women who protect this Nation to enjoy terms and conditions of employment commensurate with a shortened career resulting from the many requirements and demands of their jobs. In the field, this means many of the protective force become dissatisfied with their job as requirements increase and prospects for career progression or a secure retirement do not exist. As it relates to current employment, we are seeing a trend toward lowered job performance and increasing attrition rates. Quite frankly, new hires coming out of the military initially see these jobs as a continuation of military service in the private sector. However, once they have experienced the jobs, the jobs fall out of favor because there is very little incentive to make this a career. After investing all the time, money, and training necessary to attain full clearances, many of our qualified protective forces opt to transition to local law enforcement careers.

This is not a new or novel issue. The conflicts of interest, including profit versus performance that are inherent when a private security company protects nuclear assets has been the subject of ongoing discussion and review. As far back as 1990, a GAO report began to unveil problems with securing nuclear weapons and weapons grade material within a private structure. This report resulted in no action after identifying the inherent problems. Years later, in 2004, the topic was re-addressed by a working group. I quote from the memo issued by the 2004 DOE Protective Force Working Group:

Memorandum: “The world-changing events of September 11, 2001, decisively subordinated the old industrial security model to a “combat force” model. This new standard carries profound legal and practical implications, all of which tend to support adoption of the Federal force option.”

In 2004, the mandate was clear and the reasons were sound. Again, no action.

Inexplicably, in 2009 the department changed its position yet again with a Memorandum dated January 13, 2009 to the acting Deputy Secretary of DOE stating “that Federalizing the protective force is no longer a viable option”. The apparent overriding reasons were budgetary and the lack of any precedent of Federalizing a group which has been historically contracted out. What were not adequately addressed are the many serious security issues that relate to the decision to eliminate federalization as an option. In our view, the reasoning behind the change in direction is flawed. The time is now to right the ship and take corrective action to address the serious personnel issues faced by DOE.

Due, in part, to NCSP’s efforts, on March 31, 2009, the Chief Health, Safety, and Security Officer (HS-1) of the DOE commissioned a study to examine “realistic and reasonable options for improving the career opportunities and retirement prospects of protective force members. With the support of both DOE line management and the leadership of the National Council of Security Police (NCSP), a study team was assembled under the leadership of the Office of Health, Safety, and Security. The result of the report is captured in the January 2010 GAO report “Nuclear Security DOE Needs to Address Protective Forces’ Personnel System Issues.”

I commend the GAO and its staff who committed approximately 18 months of resources identifying the facts of the current private DOE structure. One point that stands out in my mind which is captured in the 2010 GAO report is the advantages and disadvantages of a contractor structure. Upon a careful reading of Table 7, you will be hard pressed to find any rational basis for concluding that the contractor model has any “real” advantage. At the core of Federalizing protective forces is imposing more direct management and standardization throughout the complex. No one can argue these objectives will not better prepare protective forces to defend against the enemy. Equally important to the men and women who serve at our sites, there are Federal benefits which better serve them for a shortened law enforcement type career. I know from experience how the current system impacts my brothers and sisters. It is not uncommon for one of us to reach an age, well before a normal retirement age, where we can no longer meet the demands of the job. This may be because of an injury where we cannot meet medical requirements. Or, it may be just middle age setting in and we cannot meet the physical fitness requirements. Many good men and women have found themselves without their job and without a real retirement option. After giving the best 15 to 20 years of their working lives, these men and women find it difficult to survive in today’s economy. We are looking for a way to give back to them, in some small way, what they have given to their country. We now do it for others serving our country and we should do it for our protective forces.

The current protective force is not alone in its struggle to achieve a reasonable career path. DOE, in years past had approached the U.S. Office of Personnel Management (OPM) to determine if “nuclear materials couriers” were eligible for coverage under the “law enforcement” category for enhanced retirement benefits under the special “20-Year” benefits under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). Nuclear couriers transport the nuclear materials we protect at the sites. The medical, physical training, and weapons requirements are nearly identical to the requirements and qualifications we must meet. The only significant difference in employment is nuclear couriers are Federal employees. OPM determined that nuclear materials couriers did not meet the definition of “law enforcement” for eligibility and coverage under the special 20-year retirement benefits.

Despite this decision, the Department pursued and acquired congressional support for including nuclear materials courier positions under the special 20-year retirement provisions. Congress acknowledged the uniqueness and nature of the work performed by nuclear materials couriers, and accepted the Department’s rationale for including this type of work under the enhanced special 20-Year retirement benefits. Consequently, a bill was introduced (1998 HR 3616) that later was passed and resulted in establishment of new legislation under Public Law 105–261. This law became effective on 10/17/98. The enactment of this law established a new category of positions, “Nuclear Materials Courier,” for inclusion under the enhanced retirement benefits for special 20-Year retirement under the CSRS and FERS retirement systems. The law authorized retroactive credit of service, for the purpose of establishing an entitlement to an annuity, back to the date the DOE was established. This date was October 1, 1977.

I come to you today to again acknowledge the uniqueness of and nature of the work performed by the current DOE Security Police Force. We are required to maintain the most stringent physical, medical and training standards in the law enforcement area. Like nuclear couriers, we should have our own Federal classification recognizing the important duties and functions we perform for the citizens of our great nation. Three entities perform the task of securing nuclear weapons and nuclear grade material. They are the military, OST couriers, and DOE Security Police Officers. However only one of those entities is outside of a Federal structure, the men and women I am here speaking on behalf of, DOE Security Police Officers throughout the United States. This is not right!

Our men and women are entrusted to protect the most powerful weapons known to mankind. Every workday, no matter how quiet it starts or how routine can turn, with or without warning into a terrorist attack. Our mission is to turn back and defend such an attack putting our lives on the line. There is no second line of defense. In addition to combat risks; working at nuclear sites exposes us to radiation, beryllium, and other chemicals that are potentially harmful to our health. We encounter daily risks not encountered by our counterparts in other law enforcement employment. My brothers and sisters who wear the DOE Protective Force badge are well aware of these risks and have chosen this service. We train, prepare, and are well equipped. We have wives, children, and parents who also know the risks and support us knowing how important the job we have is to our Nation. We simply are looking for a career path and retirement system which provides some reasonable measure of financial security when our job comes to an end.

The current career structure that DOE security police officers must be reformed. Over the last 20 years multiple studies demonstrate the system is broken. There is no need for more studies or reviews. The time has come to fix the system by imposing personnel policies that carry out the long-term objectives of our mission. We believe the correct fix is Federalizing the protective forces. If that cannot be accomplished through legislation, at the very least there needs to be a legislative mandate requiring private contractors provide pension and retiree health and welfare benefits that mirror Federal benefits. For many years, we have been told budgetary restraints drive decisionmaking in this area. We disagree that security in this area can be compromised because of funding. However, there is a current opportunity to use available stimulus money to fund benefits for the protective force. I believe that is exactly what President Obama has in mind by allocating stimulus monies to DOE. It would serve the dual purpose of working to raise the level of protection at nuclear sites and present better economic conditions to newly retired security police officers.

In closing, I wish to thank those men and women that serve as DOE security police officers and the privilege it has been to serve them as their spokesman in their efforts to secure a better career path. I also want to thank this committee for giving me the opportunity to present the case on behalf of the NCSF and look forward to answering any questions you may have or providing any additional information you may need.

Senator BEN NELSON. Thank you.

I think if we take a break to go and vote, we'll be right back. We apologize. That's one thing we have no control over. [Recess.]

Hearing will come back to order.

First, before the questions, Senator Vitter, any opening comments you might like to make?

Senator VITTER. Mr. Chairman, in the interest of getting to some questions before we're all pulled away, I will submit my opening statement for the record.

Senator BEN NELSON. Thank you.

[The prepared statement of Senator Vitter follows:]

PREPARED STATEMENT BY SENATOR DAVID VITTER

Thank you very much, Mr. Chairman, and I join you in welcoming our witnesses today. I welcome you to your first hearing as chairman of this subcommittee and I look forward to working with you to strengthen our ability to counter all threats, including potential terrorist threats to our defensive nuclear capabilities.

Today's hearing focuses on the personnel management of the Department of Energy's (DOE) Protective Force. Responsible for protecting some of our Nation's most sensitive materials, the more than 2,000 brave men and women who comprise this

force, represent some of the highest quality, best-trained, and best-equipped security personnel in the Nation. We are safer and more secure because of their service.

In its assessment of the challenges associated with the unique personnel management structure of the Protective Force, the Government Accountability Office (GAO) highlights a number of areas that require attention and resolution both at DOE and here in Congress and I look forward to beginning that discussion in our hearing today. The report identifies discrepancies in management, organization, staffing and training of the forces across the complex, as well as inconsistencies in pay and benefits. It also examines the costs and benefits associated with exploring the federalization of the force, to which I conclude is neither a prudent nor viable answer.

Both DOE and National Nuclear Security Administration (NNSA) recognize that the decentralized management of the protective forces creates inefficiencies that need to be addressed and that more needs to be done to resolve what GAO calls “systemic carrier and longevity issues” which are not being resolved through contractor actions at individual sites. This hearing presents an opportunity to acknowledge challenges, and I look forward to hearing more from DOE and NNSA on their path forward, as well as learning more about workforce concerns. But I remain firm in my belief that necessary workforce management improvement efforts can be effectively achieved by management and labor working together without federalizing the Protective Force, an approach that GAO acknowledges could result in negative consequences to the capabilities of the force.

According to GAO, the current privatized management model offers some significant advantages that must not be overlooked. While not perfect, the current model provides the flexibility necessary to tailor the forces to the diverse and distinct security requirements spanning the many different sites across the complex. It is a management model that, according to GAO, instills an “emphasis on cost-benefit analysis as a part of the decisionmaking process.” A model which GAO also cites as being superior to other government-wide models such as the Department of Defense.

In January 2009, the NNSA and the DOE Chief Health Safety and Security Officer jointly acknowledging the need for improvements in management of the current civilian contracted model but rejected the federalization of the Protective Forces. In the memo, the department concludes that the major benefits of federalization can be achieved through continued utilization of a contractual based approach; that federalization would not improve implementation nor increase the NNSA security protection posture; and that federalization in the short term would be undeniably costly without any indication in the long term of substantial cost savings.

I concur with the departments findings and agree that personnel management improvements must be achieved rapidly, in a spirit of cooperation, and in a cost-effective manner. Furthermore, such improvements must also be considered with fairness and equity for those employees who have served so honorably in the Department’s Protective Forces in the defense of our Nation.

The act authorizing this review requires DOE to issue a report on the management of its protective forces within 90 days after the issuance of GAO’s review and recommendations. I look forward to reviewing the department’s response and I also look forward to further discussing ways to address these issues outside of the context of federalizing the protective forces. The GAO report highlights some significant challenges and I look forward to hearing more from our witnesses.

Mr. Chairman, thank you.

Senator BEN NELSON. Please start off with some questions.

Senator VITTER. Right. Thank you very much.

Mr. Aloise—is that the correct pronunciation?

Mr. ALOISE. Yes, sir.

Senator VITTER. Yes. In the GAO report, you state that a federalized force offers no overall advantage to the current model, and that, basically, either option could result in effective and more uniform security, if it’s well managed. To that extent, do you assess that the cost of implementing a Federalized force, overall, would be higher than the cost of fixing the current model?

Mr. ALOISE. Cost was difficult to analyze. We didn’t come up with a cost estimate, because there are so many variables to consider, and we just don’t have that data. For example, would DOE hire more guards if they federalized, so they wouldn’t have to spend so much on overtime, or would they keep the number of

guards they have and utilize overtime? What would those overtime rates be? We didn't have that data, and we could not come up with a cost estimate.

Senator VITTER. Okay.

Mr. Podonsky, do you have any response to the same question?

Mr. PODONSKY. We also do not have hard data, in terms of the cost. But, what we looked at multiple times, as I said in my opening remarks, is, where there would be cost savings and/or effectiveness and security, and each time we've looked at it, as a department, we've come back in saying Federalizing was going to be more difficult than it would be if we cleaned up the current contracting situation that we currently have. So, one of the solutions, we believe, is to go to model contracts, with specific clauses in those contracts to take care of the concerns that the security forces are expressing and we agree with.

Senator VITTER. Okay. Let me ask all of you, in whatever order you choose. There are these 29 recommendations that have been identified jointly by the Department and the unions. We're working on those, to some extent. If all of those could be accomplished, in your opinions, what would be the remaining issues, if any, that were far less than ideal, in terms of correcting the current model?

Mr. PODONSKY. Well, I'll go ahead and start, if my colleagues agree.

The 29 recommendations was actually a product of the joint standing study group that was, as I said, both security professionals and the Department, contractors, and the union. So those 29 recommendations was the complete smorgasbord of what they felt—the complete group that the Department needed to do. My staff have told me, if, in fact, all 29 were completed, then there'd be very few, if any, issues remaining.

Senator VITTER. Okay.

Mr. Stumbo, what would your answer to the same question be?

Mr. STUMBO. I sit on that standing committee, and in our opinion, based on those 29 recommendations, we identified those areas that truly had fractured the structure, that had made it dysfunctional. If we were to implement all of those recommendations, it would certainly allow us to have a structure that would permit the DOE SPOs to have a livable retirement, respectful of the mission that they perform.

Senator VITTER. So, again, if we can check off those 29 items—and I'm not suggesting that's easy to do or we'd do it overnight—would there be any remaining significant categories, in your opinion, of real work to be done?

Mr. STUMBO. Not in my opinion, no, sir.

Senator VITTER. Okay.

Mr. Aloise.

Mr. ALOISE. We agree that the 29 recommendations, if implemented, would address concerns. The only point I'd like to make is, some of those recommendations, as you're aware, are potentially high cost.

Senator VITTER. Right.

Mr. Stumbo, as I appreciate it, a big part of your workforce's concerns are about retirement.

Mr. STUMBO. Yes, sir.

Senator VITTER. I've also heard, and I want to see if it's accurate, that a big portion of the workforce do not take full advantage of investment opportunities. Do you have a sense of what the facts are, with regard to the whole workforce? If nonparticipation is any significant factor, what can we do about it?

Mr. STUMBO. Well, the 401(k) system was to be introduced and utilized in our collective bargaining agreements as a supplement, and only a supplement. So, the baseline, based on the shortened careers that each one of our men and women have to endure, is really what needs to be focused on. 401(k) is great, as long as the markets achieve the success that they can achieve, but we all recognize, based on the history of our recent markets, that if all of our eggs were in that basket, regardless of the participation rate, there's no way that our men and women could have retired.

Senator VITTER. Well, what's the answer to my specific factual question about the participation rate? What is it or isn't it?

Mr. STUMBO. I don't have the exact numbers in front of me for you. But, I would say, based on the young men and women that come out of the military, the 401(k) is probably a 50-50-type percentage for those personnel.

Senator VITTER. What could we do, usefully, to push that a lot higher, do you think?

Mr. STUMBO. Well, I think that we are dealing with young men and women who, obviously, are not focused on the future. So, I believe that we continue to educate them, and try to place a system in place so that the decisions that they do not make as young men and women, we have a structure in place that will provide for them when they are mature enough and recognize the true need of the mission.

Senator VITTER. Okay.

Do either of you have a response to those two questions? Number one, what are the facts about participation rates? Number two, what can we be doing to significantly increase participation rates?

Mr. ALOISE. The only thing I would add is that it does vary from site to site, on the availability of defined benefits versus the contribution plan. We don't have good numbers on participation.

Mr. PODONSKY. I have nothing to add to that.

Senator VITTER. Okay.

That's all I have right now, Mr. Chairman.

Senator BEN NELSON. Thank you.

Mr. Podonsky, you've been involved with the oversight of security forces and development of security policy for several years, and, as such, I know you're aware of the contractual evolution from all the protective forces. Nothing is static; there are constant changes. As such, is there any advantage or any particular reason for having different contractual structures today, as opposed to the evolution into a common contract, so that there aren't, in fact, differences? Is there something advantageous about having them all separate and different?

Mr. PODONSKY. Mr. Chairman, my office is responsible for independent assessment of the Department's performance, and we also promulgate the policy. Clearly, the line functions are the ones who set up the contracts with the various structures that they have out there.

From my professional opinion, the only way there's an advantage to the contractors that are out there is if, in fact, we have a model contract. Right now we have a smorgasbord of contracts out there that grew up over many, many decades of the way the Department is structured. We believe, from an oversight perspective, as well as a policy perspective, that the line function should, in fact, take a look at a standardized approach; as I said in one of my previous answers, to have a model contract that has the contract language in there that has clauses to take care of these longstanding issues that the Department has been wrestling with since the 1990s.

Senator BEN NELSON. Mr. Aloise, what are your thoughts?

Mr. ALOISE. Well, our perspective is that DOE should go as far as it can toward standardization. We called for that several years ago, and we still believe that's the way to go.

Senator BEN NELSON. Mr. Stumbo?

Mr. STUMBO. I believe the approach to have a contract that will provide those provisions that are necessary for a solid retirement structure would obviously be the path that we could take, and I do believe that is possible.

Senator BEN NELSON. That should be a model—everybody treated the same? Or could it be different in each of the contracts?

Mr. STUMBO. I think it should be the same, based on the retirement structure itself, if we were mirroring something that the Federal law enforcement currently have.

Senator BEN NELSON. Okay.

Senator VITTER. Mr. Chairman, can I just pick up on that quickly?

Senator BEN NELSON. Yes. Please.

Senator VITTER. Maybe I'm missing something, Mr. Podonsky. Is that not within the power of the Department, to clearly, forcefully move in that direction?

Mr. PODONSKY. In all due respect, I'm going to have to defer to a second hearing that I understand is going to take place. Because we are not the implementers of policy, we create the policy for the Secretary. But the contractual piece is governed, clearly, by the Federal acquisition rules, as well as the standards of the contracting world, which is not ours. So, in my opinion, yes, I do believe it exists, but that would be better answered by the next panel in the next hearing.

Senator BEN NELSON. Now, my understanding was that the latitude of the contractors was limited by the Department of Energy to the amount, type, and nature of the pay and benefits available to the protective forces. Mr. Podonsky, are you saying that if DOE established a standardization, or, in your case, your words, a model policy, would it be possible to include those in the collective bargaining agreements if that was a requirement from the agency to the contractors?

Mr. PODONSKY. I can give you my personal view.

Senator BEN NELSON. Your personal opinion is all I'm after right now.

Mr. PODONSKY. Okay. I believe people make requirements, and people can make the requirements adapt to what the situation is. As I just told Senator Vitter, this is really something for the line to determine, together with the contracting officials in the Depart-

ment. But, when you look at the problem, as Mr. Stumbo and Mr. Aloise have articulated and we've also seen from our organization, this is a serious problem that has to be addressed now. It continues to be studied, and the actions that I'm sure we will be taking with the recommendations will help move the ball forward. But, we've wasted a lot of time on the same subject, and we haven't gotten to where we need to be.

So, specifically, to your question, I think anything's possible if we set our minds to it. As I said in my opening testimony, it's going to not only take the union and the line working together, but Congress, to make that happen.

Senator BEN NELSON. Mr. Aloise, are you aware of any particular stumbling block, other than just the challenges of getting something accomplished, but any legal impairment or inability of DOE to set the requirements to standardization or in model form for the contractors to meet with respect to the negotiations on the collective bargaining with the unions?

Mr. ALOISE. We'd have to look at that more closely. But, from the work we've done, we don't see anything that would preclude that. But, you're talking about six or more collective bargaining agreements right now, and many different sites, so it would be a challenge to get that done.

Senator BEN NELSON. Is that something that, in your opinion, you could accomplish over some period of time, recognizing the different contract dates and times for collective bargaining for new contracts?

Mr. ALOISE. It appears it could be done over a period of time.

Senator BEN NELSON. Would it be advisable to end up with a common time for the expiration of such contracts?

Mr. ALOISE. It would be helpful, but I'm not sure if it's achievable.

Senator BEN NELSON. Mr. Stumbo, do you think it's possible that some contracts could be for longer periods of time to shorter periods of time to achieve a standard timeframe, so that you would have standardization and a model approach for all of the contracts with the contractors for their employees?

Mr. STUMBO. Mr. Chairman, we have discussed that exact situation and we have assured the Department of Energy that we will do whatever is necessary; if we need to open up portions of our bargaining agreement now to ensure that we can implement that structure, we would do so.

Senator BEN NELSON. That could include the expiration date, so as long as your members were not in some way being disadvantaged in the process. Is that fair, too?

Mr. STUMBO. Yes, sir.

Senator BEN NELSON. Mr. Stumbo, how would your workforce react if, in this federalization effort, there was a decision where each position would be subject to open competition?

Mr. STUMBO. Obviously, that would be very negative to the men and women that have spent their careers and put their lives on the line for so long. Obviously, that would be, basically, a kick in the face to us, based on what we have done for this country.

Senator BEN NELSON. Mr. Podonsky, do you have any thoughts about that, from the standpoint of DOE?

Mr. PODONSKY. Mr. Chairman, we looked at both the improvement of the existing contracts, as well as the federalization. As I've said in my testimony, we felt that the negative side of the federalization, and all that comes with being compliant with OPM rules and what the current situation is, whether the Guards would be grandfathered in or not, what pay grade they would be coming in—it appears to us that the existing legislation governing federalization would be a deterrent for encouraging the existing guard force to come into the Federal force.

Senator BEN NELSON. Senator Begich, would you like to have some questions, please?

Senator BEGICH. Thank you, Mr. Chairman.

Just remind me again, how many bargaining units are there? Or, first, how many sites are there, again? Remind me.

Mr. PODONSKY. There are approximately 26 sites, and then those are broken up into facilities.

Senator BEGICH. Is there a certain amount of sites that have the highest volume of employees?

Mr. PODONSKY. What happens, Senator, is, each site has a different mission, and there are different categories of attractiveness and materials. You may have a site that's just manufacturing of parts, or you have a site, such as Pantex, that actually has full-up weapons. So, it runs the kaleidoscope.

Senator BEGICH. Gamut. About 26.

Mr. PODONSKY. Roughly, in terms of the sites that we're talking about, with security officers.

Senator BEGICH. Again, remind me, does each site have their own, then, contract for each site?

Mr. PODONSKY. No, sir.

Senator BEGICH. Some are wrapped together?

Mr. PODONSKY. There are three different approaches. Some security officers report directly to the Federal entity, some report to the management and operational contractor as a part of their company, and then a third one is where there's private security—

Senator BEGICH. Okay. Private security.

Mr. PODONSKY.—that is contracted with the M&O. So, there are three different elements in the model. Then there's the OST model that we've talked about, which is a Federalized force.

Senator BEGICH. Right, and then, how many different bargaining groups are there, within all these organizations?

Mr. STUMBO. I'd say, totally, between independents and internationals, you're probably looking at approximately five groups.

Senator BEGICH. Five groups.

Mr. STUMBO. Yes, sir.

Senator BEGICH. That's actually very good, if there's only five.

Mr. STUMBO. Yes, sir.

Senator BEGICH. As a former mayor, I had to deal with nine, plus another one had eight underneath its one. So, five is a piece of cake. So, why I say that is because your comment, "it may be difficult." To me, five is a dream. Senator Nelson, you were a former Governor, you know what I'm talking about.

Since we did this, in the city where I was mayor, we unified the contracts and timetable of expiration, mostly around healthcare issues; we weren't all under the same plan. We had multiple juris-

diction issues, and we just staggered out, on the back end; once they all got to a certain point, then we had a 3-year—in some cases, 5-year deals. So, it created consistency, and so forth.

Is that, when you say, “opening it up”—and I’ve wondered—I caught your words very carefully here, as a—I’ve been on both sides of the equation here, union and management, so certain parts of the contract that you could open up—would you mean how to get the timetables adjusted, so everyone can expire at the same time, and then get a unified system of when these contracts go in, or all the contract terms, meaning that you can start unifying systems, pay grades, other things? I want to make sure I heard what you said there, because there were very carefully picked words, and I want to make sure we’re on the same page.

Mr. STUMBO. Yes, sir. What I was trying to get across was that each of the collective bargaining agreements have certain provisions, particularly those that affect the retirement structure. Those particular articles could be opened up, and we could implement the correct structures, in our opinion, that would fix our problems.

Senator BEGICH. Okay.

Mr. STUMBO. So, by doing that, we could expedite the process without waiting for each contract to actually expire before we could make that happen.

Senator BEGICH. Do you believe the groups would allow that to occur without triggering any other aspects of the contract and awards? I know, sometimes when you go there, it starts a formal process. When you open up a contract for a condition, there are conditions within the contract that then start triggering timetables. Do you think you would be able to do it in such an informal, but yet still formal, way that you would not create other issues in the contract that would have to be dealt with?

Mr. STUMBO. Absolutely. Yes, sir, I believe we can.

Senator BEGICH. So you feel very confident that all bargaining groups would do that.

Mr. STUMBO. Yes sir, I do.

Senator BEGICH. Okay. The last, if I can—

Senator BEN NELSON. Yes, sure.

Senator BEGICH.—Mr. Chairman, and that is—and your comment that it seems like now’s the time—I’m new to this; I’ve been here a year-and-a-half. But, as you were, and others were, talking about the multiple years of this discussion, the question I have is, who will trigger the action to make this move forward? In other words, I know we’ll have another hearing. But, who within the DOE, I’ll use as first trigger point—who says, “we’re going. We’re going to do this,” and set the timetable to get going and sit down with the bargaining groups and say, “We’re going to try to figure out how to unify this system, create a career path, not in-and-out or, in some cases, some people who have been there a long time, but are kind of stalled out and not able to move forward. Who makes that decision?

Mr. PODONSKY. Well, that’s clearly, Senator, the prerogatives of the Secretary of Energy. But, let me say, with our partnership with the unions and the line functions that I mentioned, we’re already—those 29 recommendations—

Senator BEGICH. Right.

Mr. PODONSKY.—started solidifying some actions that the Department should start taking, and we're guardedly optimistic that the line functions will continue down that path. But, the ultimate decision is going to be the Secretary of Energy, as to how far that goes, in partnership with Congress.

Senator BEGICH. Okay. It just made me think of two other things, Mr. Chairman, if I can.

One, on the report, is there a timetable you have set that—not to just review and look at the actions, but actually implement these actions, and then the ones that you can't, clearly identify when and at what point you can make that decision? Have you set out a time schedule? Do you have a working time schedule that you are all using within the Department?

Mr. PODONSKY. Well, two things. We owe a report to Congress on April 30 for a comprehensive implementation plan for those recommendations.

Senator BEGICH. Yes.

Mr. PODONSKY. But, we're not waiting for that plan.

Senator BEGICH. Okay.

Mr. PODONSKY. We have a committee that was set up to address that, with the line functions. Out of the 29 recommendations, about 17 of them are already underway. The 12 that are remaining out of the 29 are those that are very difficult, having to do with the bigger issues of retirement and disability and pension and things of that nature.

Senator BEGICH. Well, I'm a believer—when I was mayor and when I was on the city council, we dealt with police and fire retirement issues, and there's nothing more complicated—medical liability, long-term retirement, multiple plans, you know survivor—the whole nine yards. We did it. It was no fun.

The last comment I'd say is, I do believe, and I want to echo through the questions that the chairman asked, that I do believe if you set the criteria for the contractors, they can do that. We did that with security within our community. When we had private security, we said, "Here's what we want. Here's the standards of living we want you to make sure are in those contracts." They were paying them 8 bucks an hour. You couldn't—the rollover rate was unbelievable. They had no benefits. We said, "Here's the standards we want you to adhere to." Of course, that cost, but that was then competitively bid to the contractors, and they figured it all out. But, at the end of the day, we knew the employee, who was working on behalf of the city, securing buildings in our issues, had a standard that we felt very confident was equal or close to if you were a municipal employee, but being in a private-sector environment.

So, I know there is some question if it can be done. If local governments can do it, sure to heck the Federal Government can do it, because you have a lot more power. So, I would just encourage you to look at that question and clearly define that. Because the contractors respond to what you put in the scope of services, and the scope of services said, "here's the 10 things we want you to do for these employees," and they have to adhere to it or they don't bid. So, I'm a believer in this.

I know you asked it as a question, but I believe that you can do it. We did it. Obviously it turned from about a 60-percent turnover rate down to 3 percent, and people saw opportunity rather than just a part-time job at night and then who knows what else they were doing. We wanted to focus on security. So, there's my two bits through your question. I apologize.

Senator BEN NELSON. Oh, no, that's quite okay. Thank you.

Mr. Stumbo, DOE has arranged the protective forces into various different categories. Three grades of security police officers are SPOs I through III and security officers. Do you have any data that shows, generally, when you begin to see an inability to meet the—let's say, the highest and most demanding grades—SPO II and SPO III?

Mr. STUMBO. Yes, sir, I can provide—

Senator BEN NELSON. The breakdown of the ability of the individuals in those positions to carry out their duties is what I'm—

Mr. STUMBO. I think the best data will represent that it's the collective years, as I identified in my oral statement. It's the collective years that actually break down the personnel. So, their best years are 20 years. So, probably half way into their career, they begin to realize and recognize that they cannot maintain that pace. So, from their 10th year to their 20th year, obviously they begin to think whether or not they should stay in the career, or not.

Senator BEN NELSON. As a result of that, one of the major concerns that both the DOE and the collective bargaining unit have would be early retirement and having retirement benefits commensurate with early retirement. Is that fair to say?

Mr. STUMBO. Yes, Sir. Based on the inability for us to maintain longer careers, that's absolutely true. Yes, sir.

Senator BEN NELSON. If you looked at, let's say, retraining or moving into new career opportunities, career fields, Mr. Podonsky and Mr. Aloise, what are the pros and cons of a career field that includes, let's say, a retraining option, so that we—as individuals who are no longer able to carry out the demanding work requirement for the highest grades, are there any contractual barriers to putting something like this together that would satisfy the concerns of being able to continue in employment until retirement at some standard age, consistent with the Federal Government employees? Anything contractual that would get in the way of that? Or is that really not a wise path to take for bringing the federalization of these employees into being?

Mr. PODONSKY. Specifically—and I don't want to sound like a broken record, but obviously some of your questions are very much geared towards the line, who are implementing and are letting out the contracts. I don't know if there's a contractual issue there.

Senator BEN NELSON. You're not aware, are you—

Mr. PODONSKY. I'm not aware of any. However, I would tell you, it's just good, sound management in my opinion, from the policy and oversight, if we have protective force individuals, they have clearances, they know the sites; we should be able to transition them to other positions. In fact, sir, that's part of the reason that we have the three categories of SPOs originally. It wasn't just for safeguards posturing, it was also to give a career path, so as people

were no longer, say, a SPOs III, which is a very offensive tactical group, they could perhaps go to a fixed post.

Senator BEN NELSON. It might be easier to show the career path going up than it is to get people to accept a career path going back. Is that a factor, Mr. Stumbo, with your group?

Mr. STUMBO. Yes, sir, it certainly is.

Senator BEN NELSON. Mr. Podonsky, I understand that, as circumstances change—health changes and what have you—but, that apparently is a big stumbling block.

Mr. STUMBO. Yes, sir.

Senator BEN NELSON. Is it because of salary, or is it just because of the nature of people not wanting to, let's say, move backwards, if they don't have to?

Mr. STUMBO. A lot of it has to do with a great deal of pride.

Senator BEN NELSON. That's what I mean.

Mr. STUMBO. A great deal of pride for what they feel like the commitment that they have made to the United States, risking, potentially, their lives, based on a terrorist attack. It is a great deal of pride.

Senator BEN NELSON. I understand. Okay.

Mr. Aloise, what did your findings reflect?

Mr. ALOISE. Well, we thought that a career path makes sense. Right now, if they do fall back to the SO, from a SPO I or II, they probably will take a pay cut in that lower position. But, a career path, training, and retraining is something that we think can be done. We've invested a lot of money in these people. They're well trained. They have the high level security clearances. They're valuable resources, and we should keep them as long as it makes sense to keep them.

Senator BEN NELSON. So, we have to deal with pride, as well as economic reality and a number of other things. That's typical of what we deal with, isn't it?

Well, I think one of the delicate questions is about the actual security of the sites, because that's what this is all about; the underlying security of the sites. Is there a concern about individuals, who have clearance and have knowledge, leaving the employment of the contractor, with that knowledge? Is that a major concern within DOE, Mr. Podonsky?

Mr. PODONSKY. There's always a concern of what we call the "insider threat."

Senator BEN NELSON. Yes.

Mr. PODONSKY. That's something that clearances are supposed to help us protect against, but you can never predict what the individual is going to do. We don't currently have a high concern about people leaving that have clearances to go on to other positions. But, occasionally we do have issues, through the clearance process, that we find, where people have shared classified when they shouldn't have after they left, or they kept classified. So, like with any organization, you're going to have people problems, and I have seen, in my short 26 years in the Department, not a great deal of that, for the numbers of people that we have employed.

Senator BEN NELSON. If we had this career path, which would obviously improve retention, would that also reduce the concerns about—what did you call it? The inside—

Mr. PODONSKY. The insider threat.

Senator BEN NELSON. Right.

Mr. PODONSKY. I believe that a career path for the protective force, as I said in my testimony, is something that we absolutely need to find. Relative to a insider threat, that's a whole different subject, as to what motivates people to do that. I don't believe that having a career path, or not, is going to add to that or take away from that.

Senator BEN NELSON. Mr. Stumbo, do you have any thoughts about the career path and retention?

Mr. STUMBO. Yes, sir, Mr. Chairman. I believe that, obviously, a career path is good business for the American taxpayer. But, we have to be realistic, as well, to understand and recognize that there's a limited amount of positions that can be made available at any given time. So, in my opinion, it is good business. We certainly will help facilitate, entertain any method of a career path. At the same time, based on the sensitivity and the significance of what takes place at these sites, obviously a large output of personnel with the knowledge base that they would have would, even in a limited scope, certainly be very damaging to the United States. So, yes, we'd be very sensitive of that, as well.

Senator BEN NELSON. Mr. Aloise, did the GAO have any opportunity to look at how DOD secures its nuclear weapons storage areas, to see if there are any lessons learned from DOD that would have some application here in the case of DOE?

Mr. ALOISE. We focused on the DOE protective forces for this review.

Senator BEN NELSON. So, any inconsistencies from your particular standpoint?

Mr. ALOISE. The DOE forces play a unique role, and it's hard to compare them to what the military does because they are guarding nuclear materials, nuclear weapons and components and full-up nuclear weapons.

Senator BEN NELSON. I think there was a question raised, as well, about the consistent training. Mr. Aloise, can you give us your thoughts on how well-trained individuals are, and whether there needs to be any improvement in the training of the security forces?

Mr. ALOISE. In general, DOE protective forces are a robust well-trained force. But, the training varies from site to site. Some have more or different training than others. During my visits to DOE sites the one thing protective forces were all asking for is more, more firearms and tactical training. So, it does vary from site to site, and in our view, should be standardized, to the extent that it can be.

Senator BEN NELSON. Mr. Podonsky, do you think that, as a result of that recommendation, that DOE can work toward standardization of the training?

Mr. PODONSKY. We're already doing that, Mr. Chairman. We have a Basic Security Police Officer Training course, we call "BSPOT," and it's run out of the National Training Center, out of Albuquerque, which is in my organization. When the officers then go back to their site of assignment, they get additional site-specific training. But, definitely, we never do enough training. One of the things that's not part of this hearing, but I will tell you, we try to

introduce technology into the Department for becoming what we call a “force multiplier,” to strengthen the security forces, not to take away security forces. Part of the advantages of the technology, it not only improves our effectiveness, but also gives us the opportunity to increase the training of the security officers that would have more time when we have the technology equipment, as well. So, there are a lot of advantages and there are a lot of complexities to this problem, but nothing that is insurmountable.

Senator BEN NELSON. Mr. Podonsky, DOE has also changed from a design basis threat (DBT) to a new term, graded security policy (GSP). How are these two policies different?

Mr. PODONSKY. Without getting into classified nature of the two policies, the graded security protection policy was created because the design basis threat was predicated on threat statements from the intelligence community, and, as a result of every year that we review this, we found that the intelligence community was no longer standing behind any particular threat statement, in terms of numbers. So, I instructed my policy people that we needed to come up with an approach that would allow the sites to be effectively protecting against scenarios, as opposed to a set number of adversaries.

So the basic difference is, it gives the sites much more flexibility for site-specific protection, as opposed to just the postulated threat that we had lived through previously.

I'd be happy to give you a classified briefing on that.

Senator BEN NELSON. Sure.

Mr. PODONSKY. We feel that it's a much more effective way to improve the security posture of the Department right now.

Senator BEN NELSON. Mr. Stumbo, do you agree with that?

Mr. STUMBO. Yes, I do agree with it, but you have to recognize and understand that our threats are in evolution; they evolve. As the terrorists become more desperate—and we've seen a lot of those events of recent times—we have to evolve and we have to increase our abilities to be able to defend those threats. So, as far as the protective force is concerned, we need to improve daily. It's not an achievement where we ever really ever get there. It's something that we work on every single hour of every day that we are at our sites, because the consequences are too great to our Nation to allow one slip-up at a site like Pantex.

Senator BEN NELSON. Mr. Aloise, what were your findings in conjunction with the changing of the threat approach and how it's being maintained and trained for at the present time?

Mr. ALOISE. DOE, over the years, has changed the DBT a number of times—it did so in 2003, 2004, 2005, and again in 2008. A lot of this is tied to money. It's very expensive to guard these sites. I understand that DOE believes its sites are at a level where DOD believes they should be.

GAO has done numerous reviews on DOE security, and made many recommendations, but, in the end, we have always come back to believe it was a very robust force, and still is.

Senator BEN NELSON. What question haven't I asked that I should be asking?

Each of you.

Mr. Podonsky?

Mr. PODONSKY. Actually, no other questions for us, but I'm looking forward to the questions that will be asked of the line, who actually implement the policies and the contracts of the Guard force and the security posture of the Department.

Senator BEN NELSON. Mr. Stumbo, have we not asked something that we should have?

Mr. STUMBO. No, Mr. Chairman. I believe that you have asked some very good questions. I think, in response from the protective force, that we have just waited a very, very long time. Many of the men and women are no longer with us, that waited for some resolution, based on the commitment they had to their country. So, those that are in the system right now, we continue to wait and feel like we are at the mercy of Congress to do whatever is necessary to ensure that we receive the appropriate restructure.

Senator BEN NELSON. That "being at the mercy of Congress" is not necessarily a very secure feeling, is it?

Mr. STUMBO. No, sir. [Laughter.]

No, sir, it is not.

Senator BEN NELSON. I understand.

Mr. Aloise, anything?

Mr. ALOISE. I would just add, Mr. Chairman, that the 29 recommendations DOE has come up with for improving protective forces causes is a step in the right direction, but it is going to take leadership from the Secretary of Energy to get this done.

Senator BEN NELSON. Any thoughts from any of you about a timeframe. If we said, "today we're going to do it," are we looking at, certainly not days, but months, and many months, to get it in place and implemented?

Mr. Aloise, do you have some thoughts on that?

Mr. ALOISE. We hope that they start almost immediately, because we want to avoid another strike at another site; DOE needs to take action now to make sure that doesn't happen.

Senator BEN NELSON. How long do you think it would take, once you make the decision to do it, how long would it take to implement it?

Mr. ALOISE. I believe it would take years, not months.

Senator BEN NELSON. Mr. Podonsky?

Mr. PODONSKY. I agree with Mr. Aloise, in terms of the actions that we're taking now need to be clear to the unions and the Guard forces out there, that the Department is taking action and that we're not just talking any longer. But because of contractual circumstances, it will take quite a long time. We didn't create this problem overnight; it's taken years for us to create this problem. That doesn't mean that it should take that long to unravel. But, clearly, again, as I said, and my colleagues at the witness table have said, in partnership, all together, with Congress, we can make this right.

Mr. Stumbo?

Mr. STUMBO. Mr. Chairman, the only portion that I would disagree from my colleagues is that the necessary resources that could be implemented within our collective bargaining agreements could be done much quicker if we're provided the resources to make that happen. You would have the full commitment from labor to ensure

that we could make that happen long before they have to worry about the next contract expiration.

Senator BEN NELSON. Well, as I was getting briefed for the hearing today, I have to admit that this is one of the most byzantine set of arrangements I have ever imagined could exist anywhere, let alone within the Federal Government. Usually we can find a pretty good way of doing things in a byzantine fashion with an awful lot of bureaucracy, but I must confess, I've never seen anything quite like this.

I understand that there are differences in sites and requirements—and so, obviously, there are some things that absolutely need to be patterned after the needs and be specifically tailored to what is done, but not everything. So I'm hopeful that, with the next hearing, we'll get more information, and perhaps, together, we'll find a way to make this happen for everyone.

Uncertainty benefits nobody, and I'm just certain that you've lived with that constant uncertainty for eons. So if it is possible to bring this to some sort of a conclusion or resolution for everybody's benefit, including the people of the United of America, we ought to be seeking to do that, and do so in a timely fashion.

So, I thank you for your participation today, for your candid answers. I thank you all for being here.

We stand adjourned.

Thank you.

[Questions for the record with answers supplied follow:]

QUESTIONS SUBMITTED BY SENATOR DAVID VITTER

FEDERALIZATION

1. Senator VITTER. Mr. Podonsky, in the January 2009 memo from you and the Administrator of the National Nuclear Security Administration (NNSA), you examined the costs and benefits associated with federalizing the protective force. The memo asserted that the "most important factor to consider when determining the best organizational structure for protective forces is which model will result in the most effective security for the facilities in a cost effective manner." Can you please address the role security and cost effectiveness played in reaching your conclusion in the 2009 memo that federalization of the protective forces is not a viable option?

Mr. PODONSKY. The most recent study of these issues, sponsored by NNSA in 2008, did not draw a conclusion regarding the relative merits of protective force federalization. A joint Department of Energy (DOE)/NNSA study in 2004 recommended that the best long-term organizational approach for achieving cost-effective and efficient security of our vital national assets was to convert the existing contractor protective forces to Federal status. The recommendation to federalize was focused explicitly on the provision of a combat-effective protective force, designed to defeat a well-armed and dedicated terrorist adversary at any DOE facility involved directly in the protection of nuclear weapons, special nuclear material (SNM), or other strategic national security assets. However, upon further consideration, concerns were identified regarding near-term consequences of federalization, including near-term instability within the existing force and substantial transition costs, while the most significant benefits derived from federalization could also be achieved within a contract force arrangement. Additional factors that militated against the conversion to a Federal force included the time required to convert, and the difficulty in reconciling the centralized Federal force model with the site-based management model used in the Department. Finally, we were sensitive to the possible adverse impact on those current members of the force who might not meet some of the Federal employment criteria, and, in general, the employment uncertainties that officers and their families would face during a protracted transition. In the final analysis—and in the absence of a clear-cut cost advantage in favor of federalization—the Department made its largely for reasons other than cost.

2. Senator VITTER. Mr. Podonsky and Mr. Aloise, in the Government Accountability Office (GAO) report you assert that a Federal force offers no overall advantage to the current model and that either option could result in effective and more uniform security if well-managed. To that extent, do either of you assess that the cost of implementing a federalized force would be higher than the cost of fixing our current model?

Mr. PODONSKY. Earlier cost analyses were limited in scope and, therefore, comprehensive data is lacking. We do not know, for example, what grade level could be assigned, or the extent of transitional costs as opposed to the implementation of a performance-based contract. It is also not known how many officers would not qualify for Federal positions, which would result in an increase in costs for recruiting and training new personnel. For a comprehensive answer to this question, additional study would be needed on a site-by-site basis.

Mr. ALOISE. We were unable to make the cost comparison needed to answer this question. Reliably estimating the costs to compare protective force options proved difficult and precluded our detailed reporting on it for two broad reasons. First, since contractor and Federal forces could each have many possible permutations, choosing any particular option to assess would be arbitrary. For example, a 2008 NNSA-sponsored study identified wide-ranging federalization options, such as federalizing all or some SPO positions at some or all facilities or reorganizing them under an existing or a new agency. Second, DOE will have to decide on the hypothetical options' key cost factors before it can reasonably compare costs. Either option could be implemented with more or less costly features. For example, adding the early and enhanced retirement benefits would increase costs for either contractor or Federal protective forces.

3. Senator VITTER. Mr. Podonsky and Mr. Aloise, I understand that if a federalization model were pursued the current forces would risk a loss in pay and perhaps their jobs as they would be required to recompile for the same job under a federalized structure. Could one assume that such a transition could have a significant destabilizing effect on the current force?

Mr. PODONSKY. Yes. These risks to individual officers are real. If each officer had to compete for what is in effect his or her own job, we would expect that uncertainty and instability in the workforce would be a major issue. Traditional union rules of seniority would not apply and certain requirements within the civil service system could further complicate hiring actions and contribute to destabilization.

Mr. ALOISE. Yes, transitioning to a Federal force could have a significant destabilizing effect on the current force. Under existing laws, not only would current force members risk a loss in pay and even their jobs, but they would not receive the enhanced and early retirement benefits that a coalition of their unions had hoped would come with federalization. As force members become aware of these likely unpalatable consequences, their morale might be significantly lowered-both in anticipation of federalization and after it occurs.

RETIREMENT BENEFITS

4. Senator VITTER. Mr. Podonsky, the current protective force is well paid, and in many cases is better paid than equivalent Federal positions. The current force enjoys generous retirement and health benefits including in almost all cases employers contributing to 401(K) retirement plans. I was troubled to hear that one issue unaddressed in the report may be that some within the protective force are not taking advantage and/or using the employer contributing vehicles to save for their retirement. I look forward to hearing from you what can be done to emphasize the importance of doing so; do you have statistics on the percentage of the force who take advantage of their 401(K) benefits?

Mr. PODONSKY. This has been one of our concerns as well. One of the primary concerns of the Protective Force Career Options study initiative that HSS chartered last year was how to encourage contractors to offer educational, financial, and career counseling opportunities to contractor workforces. One of the 29 recommendations generated by that group explicitly calls for a DOE-wide program of retirement counseling and training that would address such issues as early and consistent 401(k) participation. This recommendation builds upon similar individual programs that already exist at several sites, including classes on long-term financial planning in their initial new employee orientation and basic training with periodic refresher sessions. A notable example of such an existing program is found at the Savannah River Site. Additionally, the National Training Center is now engaged in the development of standardized methodologies for the delivery of these types of materials

and information at all sites. It should be further noted that available data on protective force member participation in 401(k) plans points to reasonably high levels of participation already.

5. Senator VITTER. Mr. Podonsky, if it is, in fact, correct that a vast majority are not contributing to their retirement plans, what can be done to emphasize the importance of doing so?

Mr. PODONSKY. The figures available to us indicate that a significant majority of protective force members are, in fact, currently contributing to their retirement plans. For example, at the Savannah River Site, one of the largest protective forces in the DOE complex, the DOE contractor employees have a 401(k) enrollment rate of 95 percent; Savannah River Site's protective force contractor has a highly-developed program to encourage participation. The Hanford Site contractor employees have an enrollment rate of about 91 percent, the Oak Ridge Complex contractor has a rate of 86 percent, the Idaho Complex contractor has a rate of 79 percent, and the Headquarters force contractor has a 72 percent rate. DOE and NNSA have asked several line management organizations to develop up-to-the-minute participation rate figures for contractors at all sites as part of DOE and NNSA current initiatives, but these preliminary data do not support the impression of widespread non-participation. As noted previously, however, we believe that participation can be maximized through the development and delivery of standardized materials that can be tailored to specific local programs along with more sites implementing mandatory initial participation by new hires.

6. Senator VITTER. Mr. Podonsky, the National Defense Authorization Act for Fiscal Year 2010 directs the Secretary of Energy and the Administrator of the NNSA to develop a comprehensive, Department of Energy (DOE)-wide plan to identify and implement the recommendations of the study group. Furthermore, the legislation cites that it is the lack of clear, uniform, and realistic guidance and policy from DOE to the various contractors who manage the protective forces that is at the root of the problems. Do you agree that the root of the problems with the protective force is the lack of clear, uniform, and realistic guidance and policy from DOE to the various contractors?

Mr. PODONSKY. DOE and NNSA do not believe that formal DOE protective force policy—or the lack thereof—is the primary source of these problems, but we do acknowledge that the multiple line management programs and individual sites in the implementation of policy has contributed to the problem. Additionally, the situation has also been affected by changes in other areas such as the administrative policies governing procurement. Also, some other important inconsistencies have evolved through the course of successive collective bargaining agreements at the sites, much of which is outside the purview of policy officials. Our recent contractor protective force career options study noted that these issues are not the result of anyone's overall intentions for protective force members and their careers, but instead as a result of the implementation, over time, of patchwork solutions to a wide range of individual issues. In this sense, we do agree that the time has come to establish clear and consistent performance standards for protective force performance, while still maintaining the necessary flexibility to permit adaptation to the special needs of line management programs and particular site environments.

STUDY GROUP RECOMMENDATIONS

7. Senator VITTER. Mr. Podonsky, does the DOE intend to pursue the implementation of all 29 recommendations cited in the June 2009 report on Enhanced Career Longevity and Retirement Options for DOE protective forces personnel?

Mr. PODONSKY. DOE has committed to pursuing a course of action that leads to satisfactory resolution of the issues that drove the recommendations. Achieving satisfactory solutions will depend upon close cooperation among all Departmental elements—line management, policy, contractors, unions.

8. Senator VITTER. Mr. Podonsky, what is the anticipated timeline for implementing those recommendations the Department has already agreed to apply?

Mr. PODONSKY. The timeline for implementation is one of the actions still being developed. This will be discussed as part of the implementation plan due to Congress no later than April 30, 2010. This plan and its due date are a result of the Government Accountability Office report of March 3, 2010, "DOE Needs to Fully Address Issues Affecting Protective Forces Personnel Systems."

9. Senator VITTER. Mr. Podonsky, has the Department fully estimated the cost implications of doing so, and if so, what is the estimated unbudgeted cost, and if not, when will you be able to provide those costs to Congress?

Mr. PODONSKY. Possible alternatives to address various options are still being developed in coordination with line management and, where completed, costs estimates will be reported in the implementation plan due to Congress by April 30, 2010. Where necessary, the April 30 submission will also identify cost analyses that may require additional time beyond that date for completion.

RECRUITMENT AND ATTRITION

10. Senator VITTER. Mr. Podonsky and Mr. Aloise, is the Department having any difficulty in the recruitment or quality of the protective force?

Mr. PODONSKY. DOE contractors do not experience difficulty attracting and recruiting qualified men and women to constitute our protective forces.

Mr. ALOISE. Preliminary data we collected on protective forces at the six sites we reviewed did not appear to show any systemic recruiting problems. In the absence of apparent problems, we did not pursue this issue further. We did not collect any specific information on the quality of protective forces or recruits, but note that armed DOE protective forces (Security Police Officers-I, -II, and III) must undergo extensive background checks and ongoing evaluation since they carry high-level security clearances and are enrolled in formal human reliability programs, complete extensive initial and annual refresher training, and regularly demonstrate that they can meet firearms and physical fitness qualifications.

11. Senator VITTER. Mr. Podonsky and Mr. Aloise, are the salaries and benefits of the protective force competitive?

Mr. PODONSKY. Our contractor firms consult Department of Labor wage tables in order to ascertain the prevailing local wages for protective force positions. DOE contractor protective forces are well paid in relation to other contractor protective forces, but pay is proportionate to the responsibilities inherent in the work.

Mr. ALOISE. Since comparing the salaries and benefits of the protective forces with those of similar positions in the private sector was not in the scope of our work, we cannot say whether their salaries and benefits are competitive. However, based on our review of protective forces' pay and benefits, we offer this observation that should be considered in such a comparison. Since protective forces' pay is often significantly increased by overtime hours, comparisons of annual salaries with private sector positions should consider potential differences in the number of hours worked annually.

12. Senator VITTER. Mr. Podonsky and Mr. Aloise, how do attrition rates for the protective forces compare to similar positions in the private sector?

Mr. PODONSKY. Attrition does not appear to be a problem for our protective force. Our data indicates that attrition rate for our DOE and NNSA contractor protective force officers is well below that of related jobs in the local areas where they reside.

Mr. ALOISE. Comparing attrition rates for protective forces and comparable private sector positions was not in our scope of work. However, the preliminary data on protective forces attrition we collected did not appear to show any systemic attrition issues. Protective forces at all sites, as well as Federal agents that work for the Office of Secure Transportation (OST), all experience attrition, but, on the basis of preliminary data, there did not appear to be any marked differences, and we did not pursue this issue further.

POTENTIAL FOR A FUTURE STRIKE

13. Senator VITTER. Mr. Podonsky, in the event of a potential future strike at one or more SNM I sites and in light of lessons learned during the security force strike at Pantex in 2007, what are the Department's current plans for ensuring continuity of security?

Mr. PODONSKY. From the shared DOE and NNSA perspective and based on lessons learned going back to the Rocky Flats protective force work stoppage in 1994, my office has developed and maintained a Contingency Protective Force guide. This document provides a model for any site that may have suffered a natural emergency or a protective force work stoppage on how to constitute a contingency protective force from onsite and offsite nonbargaining unit officers. This guide was utilized at Pantex when work stoppages occurred and at other locations while negotiations were ongoing but were subsequently concluded successfully. We ensure the docu-

ment is available to the responsible line management organizations and that it is revised based upon lessons learned from each work stoppage or potential stoppage.

14. Senator VITTER. Mr. Podonsky, does the Department foresee any scenarios where security at one or more sites could become an issue?

Mr. PODONSKY. DOE planners and our contractors are constantly attempting to identify potential vulnerabilities and seeking ways to mitigate them. Planning explicitly includes the security implications of strike contingency operations. More details or precision would require a separate classified submission.

DIFFERENCES BETWEEN THE PROTECTIVE FORCE AND THE DOE SECURE TRANSPORT
FORCE

15. Senator VITTER. Mr. Podonsky and Mr. Aloise, how do the protective force and the secure transport force differ?

Mr. PODONSKY. At the most basic level, the differences are that the protective forces are contractor employees who provide security at our fixed sites for special nuclear material and weapons, while the Office of Secure Transportation (OST) consists of Federal agents who transport nuclear weapons and special nuclear material on public roads around the United States. In addition, the Federal agents have a responsibility to liaise with Federal, State, and local law enforcement and intelligence agencies in the States through which they perform their transport mission. The multiplicity of jurisdictional interactions associated with this "over-the-road" mission is in direct contrast to the stable set of interactions required at fixed sites. Federal agent status for OST personnel is intended, among other things, to ensure that, in the event of an incident, the necessary lines of authority are clear.

Mr. ALOISE. Broadly speaking, protective forces and agents differ in the following respects:

Characteristics	OST Agents	Protective Forces
Numbers	363	2,339
Employer	Federal employees	Contractor employees
Management structure	Centralized Federal management	Varies based on different contractors and different contracts
Collective bargaining status	Cannot collectively bargain	Covered by different collective bargaining agreements (CBAs)
Pay	Single pay system	Varies with CBAs
Benefits	Federal Employee Health Benefit Program and Federal Employee Retirement System. Eligible for early retirement (at age 50 after 20 years of service)	Varies with CBA
Mission	Mobile, public roads	Fixed facilities

16. Senator VITTER. Mr. Podonsky and Mr. Aloise, are the requirements and stresses of the secure transport force more demanding than those of the protective force?

Mr. PODONSKY. The requirements and stresses of the job are different for the Federal agents in several areas. From a personal standpoint, they spend substantial time away from their homes and families. From an operational standpoint, they do not have the natural advantage enjoyed by officers at fixed sites, such as fixed barriers, hardened fighting positions, deployed technologies, video surveillance and assessment, and local terrain knowledge. The secure transport force is also subject to the stresses of a long distance trucking operation.

Mr. ALOISE. We found that OST Federal agents' mobile mission differs significantly from that of protective forces that guard fixed sites. OST agents operate convoys of special tractor trailers and special escort vehicles to transport Category I SNM. These agents travel on U.S. highways that cross multiple Federal, State, tribal, and local law enforcement jurisdictions. They also travel as many as 15 days each month. Agents may also provide security for weapons components that are flown on OST's small fleet of aircraft. In contrast to the public setting of agents'

work, protective forces that guard Category I SNM at fixed sites typically have elaborate physical defenses and tightly restricted and monitored public access. As such, OST agents operational environment appears to be more ambiguous and dynamic than the environment found at Category I SNM sites.

17. Senator VITTER. Mr. Podonsky and Mr. Aloise, is the secure transport force subjected to a higher level of training than the protective force?

Mr. PODONSKY. Yes. Federal agents must qualify under Department of Transportation regulations and maintain their ability to operate 18-wheeled secure transport vehicles. Both Federal agents and contractor protective forces must meet the same overall firearms and fitness requirements but tactical training for Federal agents is dissimilar due to the completely different operating environments. All Federal agent training must address the various types of terrain (rural and urban) a convoy travels through. This includes force-on-force; individual, small unit, and convoy tactics; advanced live fire; tactical driving; recapture/recovery ops; and Incident Command System.

Mr. ALOISE. We found (pg. 21–22 of GAO–10–275) that OST agents undergo longer, more frequent, and more diverse training than do most protective forces. For example, OST Federal agents:

- Undergo longer basic training (21 weeks) at OST’s academy in Fort Chaffee, AR;
- Must complete requirements for a commercial drivers license;
- Are required to meet DOE’s offensive combatant standard throughout their careers;
- Spend more of their time training, including tactical training, than do most contractor protective forces.

18. Senator VITTER. Mr. Podonsky and Mr. Aloise, does the notion that the secure transport force has to transport nuclear materials across State lines and in an inherently mobile fashion constitute any rationale for requiring that they have full Federal authorities?

Mr. PODONSKY. Yes. As discussed above, Federal agent authority must be transjurisdictional. The operating environment leads to the necessity for them to have Federal authority. They regularly interact with national, tribal, State, county, and local law enforcement authorities as well as various intelligence agencies as they seek knowledge of any potential threat to them and their cargoes in the operating environment.

Mr. ALOISE. OST officials told us that this is an important factor.

[Whereupon, at 4:15 p.m., the subcommittee adjourned.]

