



Department of Defense INSTRUCTION

NUMBER 1400.37
July 28, 2009

USD(P&R)

SUBJECT: Science and Technology Reinvention Laboratory (STRL) Personnel Demonstration Projects

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. In accordance with the authority in DoD Directive (DoDD) 5124.02 (Reference (a)), implements section 1107 of Public Law 110-181 (Reference (b)) as amended by section 1109 of Public Law 110-417 (Reference (c)) to utilize the authorities in section 342(b) of Public Law 103-337 (Reference (d)) as amended.

b. Establishes policies, responsibilities, and procedures to execute a process and plan to employ the DoD personnel management demonstration project authorities in section 4703 of title 5, United States Code (U.S.C.) (Reference (e)) at the STRLs enumerated in pages 73248 to 73252 of volume 73 of the Federal Register (Reference (f)) to enhance the performance of these laboratories.

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. POLICY. It is DoD policy that:

a. The STRL demonstration projects are the vehicles through which the laboratories and the Department of Defense will determine whether changes in personnel management concepts, policies, or procedures would result in improved laboratory performance and contribute to improved DoD or Federal personnel management.

b. The STRLs may adopt, as prescribed in Reference (f) and this Instruction, any of the flexibilities described in final STRL demonstration project Federal Register Notices (FRNs); amendments thereto published in FRNs; minor changes made within the authorities of a demonstration project plan, documented in laboratory internal issuances, and disseminated to employees; and official laboratory implementing issuances that have been distributed.

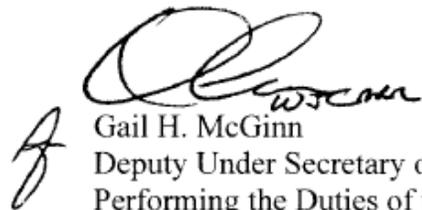
c. Periodic evaluations of the demonstration projects will be conducted to measure their results against expected outcomes and to identify successful practices as well as marginal or unsuccessful initiatives.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3 for procedures associated with adopting existing flexibilities as authorized by Reference (b), modifying demonstration project plans, and issuing omnibus FRNs for additional personnel management initiatives.

6. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This Instruction is effective immediately.


Gail H. McGinn
Deputy Under Secretary of Defense (Plans)
Performing the Duties of the
Under Secretary of Defense
(Personnel and Readiness)

Enclosures

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (b) Section 1107 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008," January 28, 2008
- (c) Section 1109 of Public Law 110-417, "Duncan Hunter National Defense Authorization Act for Fiscal Year 2009," October 14, 2008
- (d) Section 342(b) of Public Law 103-337, "National Defense Authorization Act for Fiscal Year 1995," October 5, 1994
- (e) Title 5, United States Code
- (f) Pages 73248 to 73252 of volume 73 of the Federal Register, as amended
- (g) Title 5, Code of Federal Regulations
- (h) Administrative Instruction 102, "Office of the Secretary of Defense (OSD) Federal Register (FR) System," November 6, 2006

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall have overall responsibility for the STRL personnel management demonstration projects. The USD(P&R) retains approval and disapproval authority for new initiatives or change requests not covered by Reference (b).

2. DEPUTY UNDER SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY (DUSD(CPP)). The DUSD(CPP), under the authority, direction, and control of the USD(P&R), shall:

a. Develop the policy and procedures governing the design, implementation, modification, and evaluation of personnel management demonstration projects authorized for the STRLs and subsequent study initiatives adhering to the tenets of section 4703 of Reference (e).

b. Coordinate with the Deputy Under Secretary of Defense for Laboratories and Basic Sciences (DUSD(LABS)) and consult with the Military Departments, the STRLs, and other Government agencies, as appropriate, to enhance the opportunities for experimentation, evaluation of results, and sharing of information.

c. With the DUSD(LABS), serve as a sponsor for new personnel management initiatives that may improve the effectiveness of the STRLs or have promise for DoD-wide application and would be appropriate for testing by the demonstration project STRLs.

d. Provide concurrence following the resolution of any issues concerning requests from STRLs to adopt the flexibilities of other STRLs.

e. Make recommendations for approval or disapproval of new demonstration projects, changes to existing demonstration projects not covered by Reference (b) and requiring an FRN, and requests to study additional initiatives.

f. Provide oversight, in coordination with the DUSD(LABS), of the conduct of laboratory personnel management demonstration program evaluations and review of results. Review reports and provide recommendations to the USD(P&R) based on the results of laboratory personnel demonstration project evaluations or DoD reviews and recommend courses of action that enhance the objective of Reference (b) to fully implement and use demonstration authorities.

g. Be the centralized resource repository on the DoD science and technology personnel management demonstration projects. Coordinate and/or respond to requests for information on the laboratory demonstration projects.

3. DUSD(LABS). The DUSD(LABS), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall:

a. Coordinate with the DUSD(CPP) and consult with the Military Departments, the STRLs, and other Government agencies, as appropriate, to enhance the opportunities to improve the performance and competitiveness of the laboratories. The DUSD(LABS) is supported on issues affecting personnel management demonstration project laboratory initiatives by the DoD Component headquarters for each of the STRLs and the laboratory directors, through their representatives on the Laboratory Quality Enhancement Program, Personnel Panel.

b. Review STRL requests for adoptions of flexibilities, changes to existing personnel demonstration project plans, and new initiatives providing comments, recommendations and, when appropriate, concurrence with the request.

c. Determine if new personnel management initiatives proposed by other organizations and that may have promise for DoD-wide application are appropriate for testing under the laboratory personnel management demonstration program.

d. With DUSD(CPP), serve as a sponsor for new personnel management initiatives that may improve the performance of the missions of the STRLs, may have promise for DoD-wide application, and would be appropriate for testing by the STRL demonstration projects.

e. In coordination with the DUSD(CPP), provide oversight of the conduct of laboratory personnel management demonstration program evaluations and reviews of the results of the evaluations to determine if the personnel initiatives result in improved laboratory performance and personnel management concepts.

4. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments shall ensure timely coordination and consultation with the STRLs, DUSD(LABS), and DUSD(CPP) on demonstration project initiatives and evaluation.

5. DIRECTORS OF THE STRLs. The STRL Directors shall:

a. Sponsor requests for modifications to existing demonstration projects for development and testing of additional personnel management initiatives and for adoption, if appropriate and consistent with this Instruction, of any of the flexibilities available to the STRLs.

b. Provide supplemental policy, direction, and resources as necessary to ensure the effective operation of their demonstration project consistent with section 2301 of Reference (e), this Instruction, and Reference (f).

c. Maintain oversight of the operation of their demonstration project.

d. Monitor published changes to Reference (e) and title 5, Code of Federal Regulations (Reference (g)) for impact on demonstration project waivers as well as program design and operation. Initiate steps to correct, modify, or request a waiver as needed based on changes to References (e) and (g).

e. Conduct internal evaluations and support DoD-wide laboratory personnel management demonstration project evaluations. Develop and sponsor project changes with appropriate stakeholders, to include union negotiations where appropriate.

f. Consult with the DUSD(CPP), DUSD(LABS), DoD Component, and other Government agencies, as applicable, to maximize the opportunities for personnel management experimentation to improve the performance of the missions of the laboratories and human resources management for the laboratories and the Department of Defense.

ENCLOSURE 3

PROCEDURES

1. ADOPTING FLEXIBILITIES

a. Section 1107(c) of Reference (b) authorizes that any flexibility available to any STRL shall be available for use at any other STRL.

(1) STRLs may adopt, as prescribed in Reference (f) and this Instruction, any of the flexibilities described in:

(a) Final STRL demonstration project FRNs.

(b) Amendments to final FRNs.

(c) Minor changes made to the flexibilities by the originating STRL within the authorities of that laboratory's demonstration project plan, Reference (f), and this Instruction.

(d) Policies, processes, and procedures for the flexibilities being adopted that are described in the originating STRL's demonstration project implementing issuances.

(2) To be adopted by another STRL, the flexibilities listed in paragraphs 1.a.(1)(a) through 1.a.(1)(d) of this enclosure must have been documented by the originating laboratory in internal documents distributed as appropriate.

(3) An adopting STRL may not make substantive changes or modifications to the FRN language describing the flexibility adopted without an FRN amendment; but it may design, develop, and modify internal implementation policy, plans, and processes within the parameters of its demonstration project plan to use the flexibility to meet the needs of its mission and organization. For instance, an STRL may adopt the Air Force Research Laboratory's Voluntary Emeritus Corps initiative for scientists and engineers and shortly thereafter decide to expand the program to cover administrative specialists. This would constitute a substantive change to the original program and would require an FRN.

(4) If the STRL owning the original flexibility makes a substantive change to that flexibility, the revisions do not automatically apply to the laboratories that adopted the original flexibility. If the adopting STRLs wish to incorporate the change into their program, they may:

(a) Adopt the flexibility once approved and published following the procedures found in this section; or

(b) In the case of another STRL proposing an FRN for a substantial modification to a flexibility, request to add its demonstration project to the proposing laboratory's FRN. This request will be made via memorandum to the DUSD(CPP) with simultaneous copies to the

DUSD(LABS), the STRL's Component Headquarters point of contact, and the originating laboratory director and would need to reach the DUSD(CPP) during the 30 days following submission of the draft FRN to DUSD(CPP).

(5) An STRL that has adopted a flexibility and wishes to make substantive changes to that flexibility will need to submit an FRN in accordance with section 2 of this enclosure. The modifications made by the adopting STRL do not automatically apply to other STRLs having the flexibility.

b. Once an STRL has decided to adopt a flexibility, developed its plan, and coordinated the plan through their various stakeholders, the Laboratory Director sends a notification to the DUSD(CPP) by memorandum, with simultaneous copies to DUSD(LABS) and the STRL's respective Component Headquarters point of contact. The notification must include the description of flexibilities being adopted, including any minor changes being made; the reference where the flexibility is described and a copy of the official documents describing the flexibility; the reason for the change; results expected; the evaluation methodology; information technology implications and cost; projected date of implementation; communication plan; and, as appropriate, bargaining unit status, draft FRN, and any other pertinent information needed to adhere to the tenets of section 4703 of Reference (e).

c. Normally, the DUSD(LABS) and the STRL's Component Headquarters will provide comments on and/or concurrence with the adoption request to the DUSD(CPP) with a copy to the STRL director within 30 calendar days of receipt of the adoption request unless there are unresolved issues.

d. The DUSD(CPP) will review each notification individually for adherence to process, consistency with existing FRN provisions, completeness and accuracy of waivers, and impact on DoD-wide initiatives, information technology, cost, and other relevant considerations; consider the concurrences and any comments from the DUSD(LABS) and the STRL's Component Headquarters before making a final decision; provide comments to the STRL; assist, when needed, to finalize notification; and provide concurrence with adoption following resolution of any issues. The DUSD(CPP) is responsible for ensuring that the notification includes only existing flexibilities, that the proposed flexibilities are not internally contradictory or inconsistent, and that the timing does not adversely affect other DoD initiatives.

e. The DUSD(CPP) will normally provide concurrence with an adoption request within 15 calendar days after receipt of the comments and/or concurrences of the DUSD(LABS) and the STRL's Component Headquarters unless there are unresolved issues. The concurrence will be documented in a memorandum to the Laboratory Director, with a copy to the DUSD(LABS) and the STRL's Component Headquarters point of contact.

f. The laboratory will document in its own official implementing issuances its internal policy, processes, and procedures for the use of any flexibility adopted from another demonstration laboratory and make the information available to employees and other interested parties. This may be done through a Freedom of Information Act reading room, via Web Site, or other suitable sources of communication for the type of information to be distributed.

2. MODIFYING INDIVIDUAL LABORATORY DEMONSTRATION PROJECT PLANS

a. STRLs and the USD(P&R) are required to document changes to existing FRNs not under the auspices of section 1107(c) of Reference (b). Normally, changes to existing FRNs not covered by section 1107(c) of Reference (b) are accomplished by issuing amendments to FRNs.

(1) To request a modification or change not covered by section 1107(c) of Reference (b) to an individual STRL personnel management demonstration project, the Laboratory Director sponsors a draft FRN that is forwarded to the DUSD(CPP) by memorandum with simultaneous copies to the DUSD(LABS) and the STRL's Component Headquarters point of contact. The format for the draft FRN is provided in paragraph 5 of this enclosure.

(2) The DUSD(LABS) and the STRL's Component Headquarters point of contact will normally provide their comments on and/or concurrences with the draft FRN to the DUSD(CPP) with a copy to the Laboratory Director within 30 calendar days of receipt of the draft FRN unless there are issues such as conflict with other DoD personnel initiatives. To expedite the review process, Laboratory Directors are strongly encouraged to coordinate their request with appropriate stakeholders prior to submitting the formal package.

(3) Laboratory Directors should share their individual draft FRNs with the other STRLs in the event another Laboratory Director would want to request the FRN serve as an amendment to their demonstration project plan for the purpose of adding a new provision or making a substantive change to an adopted flexibility. FRN changes to existing flexibilities do not automatically apply to the laboratories that adopted the original flexibility. If the adopting STRLs wish to incorporate the change into their program, they must follow the procedures described in paragraphs 1.a.(4)(a) and 1.a.(4)(b) of this enclosure.

(4) DUSD(CPP) will assess each FRN individually for adherence to procedures, any conflicts with existing FRN provisions and waivers, completeness and accuracy of new waivers, impact on existing DoD programs and plans, and compliance with section 2301 of Reference (e). The FRN, together with the DUSD(LABS) and the STRL's Component Headquarters concurrence and/or comments, will be coordinated internally with appropriate parties for review and recommendations. Any remarks and recommendations received may be supplied to the DUSD(LABS) and, as appropriate, to the Laboratory Director and the STRL's Component Headquarters point of contact for consideration and modification of the FRN as needed.

(5) The DUSD(CPP) may schedule a working session of subject matter experts, STRL representatives, and other appropriate individuals to address concerns, recommendations, and options to assist in finalizing the draft FRN.

(6) When a public comment period is necessary, the comments will normally be submitted to the DUSD(CPP) and forwarded to the designated STRL's Component Headquarters point of contact for consideration as the details of the demonstration project plan are finalized. Comments will be recorded in a standard format together with the original FRN language, and

the ultimate resolution. Comments should be arranged by subject matter categories to facilitate discussion and preparation of responses for publishing in the final FRN. The number of comments received is identified in the final FRN by commenter category (e.g., the Natick Soldier Research, Development, and Engineering Center received 100 comments, including 90 from the public, 5 from employee unions, and 5 from affected employees).

(7) To comply with Reference (b), all final FRNs will contain the statement, “Flexibilities published in this Federal Register shall be available for use by all STRLs listed in section 9902(c)(2) of title 5, United States Code, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, Federal Register; and the fulfilling of any collective bargaining obligations.”

(8) The DUSD(CPP) will forward the recommendation for approval of the final FRN to the USD(P&R) generally within 15 calendar days of receiving final concurrence by the STRL Director, the DUSD(LABS), and the STRL’s Component Headquarters on the final FRN.

(9) DUSD(CPP) will process approved FRNs through the OSD Federal Register Liaison Officer (FRLO) in accordance with Administrative Instruction 102 (Reference (h)).

b. Minor modifications to a demonstration project plan may be possible without an FRN if they can be made within the current demonstration project’s existing waivers, plan, policy, and procedures, and appropriate notice is given to interested parties, employees, and/or the public.

(1) An example of a minor modification would be one in which the flexibility being adopted may contain a procedure that allows only first-line supervisors to inform employees of their final performance assessment. The adopting laboratory may wish to implement a process that provides additional communication techniques for notifying employees. Additional examples of minor modifications include additions to or deletions from the occupational series covered by a pay schedule or in an occupational family; providing additional pay setting policy and options; revising membership or organizational structure of Personnel Management Boards due to reorganizations; and limiting pay pool decision authority on performance assessments for certain occupational categories as a result of external STRL direction, e.g., state bar rules prohibit a pay pool manager from making any changes to an attorney’s scores.

(2) Each STRL will document in its own official implementing issuances minor modifications and changes to its demonstration project plan and any associated revised internal procedures. These changes will be distributed to employees and other interested parties as appropriate. A copy of the documents used to distribute the information will be provided to the DUSD(CPP), the DUSD(LABS), and the STRL’s Component Headquarters point of contact.

3. ISSUING OMNIBUS FRNs. An omnibus FRN announces a new program, flexibility, or authority that applies to all STRLs; amends all existing demonstration project FRNs to add the new provision; and makes note that, pursuant to Reference (b), STRLs without a personnel demonstration project may adopt the flexibility using the procedures in section 1 of this enclosure.

a. Typically, an omnibus FRN would be sponsored by the DUSD(CPP) or the DUSD(LABS) on behalf of all the STRLs. An omnibus FRN may be prepared by either DUSD(CPP) staff, representatives of the STRLs, or a combined working group.

b. DUSD(CPP) will coordinate the review of an omnibus FRN with the STRLs' Component Headquarters liaisons, STRL representatives, the Office of the DoD General Counsel, and other appropriate commentators for consideration. Any coordinations received will be supplied to the DUSD(LABS) and, as appropriate, to the originator of the FRN and the STRLs' Component Headquarters points of contact for consideration and modification of the FRN as needed before publication.

c. The procedures in paragraph 2.a.(6) of this enclosure will be used to handle comments when a public comment period is necessary.

d. The DUSD(CPP) will coordinate the final FRN with the DUSD(LABS), the STRLs' Component Headquarters points of contact, and the Office of the DoD General Counsel before forwarding the FRN to the USD(P&R) for approval.

4. COLLECTIVE BARGAINING REQUIREMENTS AND EMPLOYEE NOTIFICATION

a. Prior to implementing any discretionary demonstration project flexibility or provision adopted pursuant to section 1107(c) of Reference (b) for employees within a unit for which a labor organization is accorded exclusive recognition under chapter 71 of Reference (e), participating organizations must fulfill any collective bargaining obligations to the unions that represent the employees to be covered by the demonstration project provisions. Section 4703 of Reference (e) provides additional information on the conditions under which employees within a bargaining unit may be covered by a demonstration project.

b. Information on the use of any flexibility adopted from another laboratory demonstration project or new provision included in the demonstration project plan must be officially documented and distributed to employees and other interested parties as appropriate.

5. FEDERAL REGISTER FORMAT

a. The Office of the Federal Register has specified formats and editorial requirements that must be followed when preparing Federal Register documents for publication. Additional details such as insertion of tables and appendixes may be found in the Federal Register Drafting Handbook and supplements on the Internet at www.archives.gov/federal-register/write/handbook/ddh.pdf. OSD Components shall adhere to Reference (i) when preparing and processing FRNs.

b. Draft FRNs submitted to the DUSD(CPP) for publication must adhere to the following basic guidance:

- (1) Document must be prepared and sent electronically. No particular application required.
- (2) A 1-inch margin shall be used.
- (3) Font will be Times New Roman, size 12.
- (4) Document must be double spaced.
- (5) All pages numbered, including first page, at bottom center.
- (6) All primary headings are in capitalized bold letters with subheadings in non-bold italics as shown in Table 1.
- (7) Appendixes, attachments, and tables are placed in a section for supplemental information.

Table 1. Basic Federal Register Format

<p>DEPARTMENT OF DEFENSE Office of the Secretary Science and Technology Reinvention Laboratory Personnel Management Demonstration Program</p> <p>AGENCY: ACTION: SUMMARY: (Note: Limited to two very short paragraphs or less.) DATES: ADDRESSES: FOR FURTHER INFORMATION CONTACT: SUPPLEMENTARY INFORMATION:</p> <ol style="list-style-type: none">1. Background2. Overview<ol style="list-style-type: none">I. Introduction<ol style="list-style-type: none">A. <i>Purpose</i>B. <i>Employee Notification</i>C. <i>Next subject heading. . . .</i>II. Personnel System Changes<ol style="list-style-type: none">A. <i>Staffing</i>B. <i>Next subject heading. . . .</i>

6. EVALUATION

a. Periodic Evaluations

(1) At a minimum, the STRLs will conduct summative evaluations of their demonstration projects at least every 5 fiscal years. The primary focus is to determine whether the flexibilities granted result in a more effective personnel system that enhances the laboratories' performance of their missions and which flexibilities have proved successful. Best practices as well as marginal or unsuccessful initiatives will be identified. Recommendations for any corrective actions will be included in the evaluations. The evaluations may be supplemented by a pulse survey conducted between summative evaluations. A working group of stakeholders, which may include employees, union representatives, managers, supervisors, and DoD and OPM representatives as appropriate, could be established to assist in the design, implementation, and interpretation of the evaluations.

(2) Data collected as part of the evaluation will include: workforce data; employee attitudes and feedback using surveys, structured interviews, and focus groups; comparison of desired results from the flexibilities implemented with actual results achieved; and measures of laboratory effectiveness.

(3) The report will be submitted to the DUSD(CPP) with simultaneous copies to the DUSD(LABS) and the STRL's Component Headquarters point of contact. Both the DUSD(LABS) and the DUSD(CPP) will consult with the STRL directors on the report findings and any recommended actions as necessary. The DUSD(CPP) will provide a synopsis of the report's salient points, best practices, recommendations, and required actions to the USD(P&R).

b. Evaluation for National Security Personnel System (NSPS) Coverage

(1) Reference (e) excludes 10 named STRLs from coverage by the NSPS until on or after October 1, 2011.

(2) Prior to October 1, 2011, the DUSD(CPP), jointly with the DUSD(LABS), will establish a task force that may include employees, union representatives, managers, supervisors, and DoD and OPM representatives. This task force, in coordination with the NSPS Program Executive Officer, will develop an assessment strategy with common indexes, methods, and data requirements; prepare a plan for the implementation of the evaluation required by section 9902(c) of Reference (e); conduct the evaluation; and prepare a report of findings. Included in the plan shall be the requirement for a strong validation of the findings of the evaluation by an outside panel of senior technical management officials.

(3) The evaluation for NSPS coverage, the subsequent report, and any recommendations will be submitted by the DUSD(CPP) to the USD(P&R) prior to October 1, 2011, for review and appropriate action.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DUSD(CPP)	Deputy Under Secretary of Defense (Civilian Personnel Policy)
DUSD(LABS)	Deputy Under Secretary of Defense (Laboratories and Basic Sciences)
FOIA	Freedom of Information Act
FRLO	Federal Register Liaison Officer
FRN	Federal Register Notice
NSPS	National Security Personnel System
STRL	Science and Technology Reinvention Laboratory
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
U.S.C.	United States Code

PART II. DEFINITIONS

STRL. For the purpose of this Instruction, those STRLs enumerated in pages 73248 to 73252 of volume 73, number 232, of the Federal Register published Tuesday, December 2, 2008.