



The Secretary of Energy
Washington, D.C. 20585

May 5, 2011

MEMORANDUM FOR THOMAS P. D'AGOSTINO
UNDER SECRETARY FOR NUCLEAR SECURITY AND
ADMINISTRATOR OF THE NATIONAL SECURITY
ADMINISTRATION

STEVEN KOONIN
UNDER SECRETARY SCIENCE

ARUN MAJUMDAR
SENIOR ADVISOR/DIRECTOR ARPA-E

FROM:

STEVEN CHU

Handwritten signature of Steven Chu in black ink.

SUBJECT:

Authorize Changes to Workforce Restructuring Policy

This memorandum provides revised and consolidated policy and models intended to facilitate and expedite any necessary contractor workforce restructuring activities. Specifically, this memorandum addresses 1) policies applicable only to workforce restructuring at the Department's defense nuclear facilities and 2) the policies applicable to workforce restructuring at all Departmental facilities. This memorandum supersedes any prior policy and guidance that is inconsistent with this document. Sites that follow the policy and guidance below should be able to avoid delays in the approval process.

Work force restructuring actions will be managed in accordance with the Department's Collaborative Action Process. Accountability will be with the Under Secretaries unless otherwise delegated. Collaboration is expected with the Offices of General Counsel, Management, Congressional and Intergovernmental Affairs, and Public Affairs. It remains critical to ensure complete legal reviews of all workforce restructuring actions.

**I. REQUIREMENTS APPLICABLE ONLY TO DOE/NNSA DEFENSE
NUCLEAR FACILITIES**

Upon a determination that a change in the work force at a defense nuclear facility is necessary, the Department is obligated under section 3161 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 (section 3161) to prepare a workforce restructuring plan (herein referred to as the general plan) for submission to



Congress. A list of those facilities is provided in Attachment 1. The Department has interpreted section 3161 to trigger the requirement to develop a plan only where the change anticipated will affect at least 100 employees within a 12-month period. Section 3161(c)(1) requires that changes in the work force at a Department of Energy defense nuclear facility should be made only 120 days or more after the provision of notice of those changes to affected employees and communities.

General plans developed in accordance with section 3161 provide a framework for workforce restructuring actions at a particular DOE or NNSA site; these plans are not limited to a specific workforce restructuring action. Departmental policy on matters such as use of incentives and employee waivers has changed over time, and, accordingly, it is crucial to periodically review and update general plans.

The Department has developed a template for general plans to ensure consistency and accurate application of section 3161 and Departmental policy, as well as to expedite Departmental review. The template for the plan and the accompanying notice of intent to develop a plan for workforce restructuring is provided in Attachment 2. The template should be carefully reviewed and adapted to fit the circumstances of the particular site.

II. REQUIREMENTS APPLICABLE TO DEFENSE NUCLEAR FACILITIES AND NON-DEFENSE FACILITIES

I encourage all DOE/NNSA organizations to consult with communities, contractor employees, unions, and other affected stakeholders in developing plans to restructure the contractor work forces at all their facilities.

Each contractor that intends to reduce its workforce by 50 or more employees through involuntary separation or 100 or more employees through a voluntary/involuntary separation action must prepare a specific workforce restructuring plan (contractor's plan). The appropriate Under Secretary is charged with responsibility for approving workforce restructuring actions by its contractors. This approval authority may be delegated as determined by the Under Secretary. If, by the terms of the contractor's contract, it must obtain contracting officer approval to expend funds associated with a work force restructuring action, the approval thresholds stated above shall in no way be construed to abrogate the contracting officer's authority.

The contractor's plan provides detailed information regarding the contractor's proposed workforce restructuring activities and sets forth its business case for why the restructuring is required, e.g., the contractor's need to realign the workforce to ensure an appropriate employee skill mix and/or budget concerns. The contractor's plan should set forth the projected number of affected employees and the occupational classifications of the affected employees, the criteria it will use to select employees for termination, and the projected cost of the separation benefits, including severance and Displaced Worker Medical Benefits, and the anticipated cost savings that will result from the separation program. As set out in Attachment 3, contractors are encouraged to consider use of employee releases

and waivers, participation applications, or other such documents as appropriate in the circumstances, and to discuss use of these documents in their plans.

As you know, the contractor should carefully evaluate its personnel needs before commencing the workforce restructuring action. In particular, the contractor should avoid departures of employees with critical skills whose positions must then be “backfilled,” which would be inappropriate. Models for contractor’s plans have been developed for guidance and to facilitate accurate application of Departmental policy, as well as to expedite review, and are provided in Attachments 4 (voluntary program) and 5 (involuntary program).

Contractors are encouraged to implement a self-select program prior to conducting an involuntary separation program. Also, Congress has prohibited DOE/NNSA from reimbursing contractors for enhanced benefits, i.e., benefits in excess of those provided for under the parties’ contract, including those under any benefit plans approved by the Department unless the Department submits a reprogramming request to the relevant Congressional committees. Early retirement incentives that are funded through contractor pension plans will continue to be unallowable in order to avoid increasing the Department’s long term pension liabilities.

Where involuntary separations are to be conducted, the contractor’s plan should address the efforts the contractor will make to mitigate the impact of those separations on the individuals involved and their communities, while maintaining a workforce necessary to carry out the continuing missions and strategic objectives of DOE or NNSA. Such efforts often include providing internal transfers to open jobs for which an employee is qualified, providing retraining where funding is available, and providing affected employees the opportunity to self-select for termination.

Government contractors are prohibited from engaging in discrimination in the workplace and a diversity analysis may assist the contractor in ensuring compliance with Executive Order 11246, implemented through FAR clause 52.222.26. My predecessors required contractors to submit diversity analyses to the Office of General Counsel prior to the approval of a work force restructuring action impacting 50 or more employees in a rolling 12-month period.

It is my determination that contractors may choose not to submit their diversity analysis to the Office of General Counsel for approval. Contractors, however, must continue to perform a diversity analysis when the involuntary separation action affects 50 or more contractor employees within a rolling 12-month period. A copy of the analysis shall be provided to the DOE/NNSA site counsel (to protect Attorney-Client privilege) upon its completion to assist in determinations regarding cost allowability. Guidance on how to conduct a reliable and informative diversity analysis is Attachment 6.

The Office of the Assistant General Counsel for Labor and Pensions (GC-63) and NNSA GC have deep expertise in this arena and continue to be available to the Under Secretaries to consult on specific actions in order to avoid litigation. In this regard, contractors should

be aware of a recent development that significantly restricts the allowability of costs involved in settling legal claims. In *Geran v. Tecom, Inc.*, 566 F.3d 1037 (Fed. Cir. 2009), the Federal Circuit held that a government contractor's costs for settling an EEO case were not allowable contract costs unless the contracting officer determined that there was "very little likelihood of success on the merits." In analyzing contractor requests for reimbursement of costs associated with settlement of employment discrimination litigation, DOE will take into account the results of any Office of General Counsel review of the contractor's diversity analysis.

Contractors are strongly encouraged to start their workforce planning well in advance of submitting their plans for specific workforce restructuring actions for approval. In order to provide substantive and helpful comments and to work with the contractors on approaches to reduce risk, Under Secretaries or designees, in consultation with applicable staff offices, as appropriate, will review any work force restructuring action within 10 business days after submission of the plan unless the contractors are notified of issues necessitating an extension of time. In addition, DOE/NNSA notifications to Congress of the upcoming work force restructuring actions will occur with 48 hours (two business days) of approval of the contractor plan, or contractors will be provided with an estimate for completing notification, to allow appropriate planning to occur. This notification must occur prior to any public announcement by DOE/NNSA or the contractor.

Contractors are encouraged to provide as much advance notice to employees as possible of future workforce actions. The Worker Adjustment and Retraining Notice (WARN) Act requires 60-days notice of workforce restructuring actions that constitute mass layoffs and plant closings under the WARN Act, and provides for financial and other penalties for noncompliance. The DOE Office of General Counsel or NNSA Office of General Counsel, as appropriate, is available to support the Under Secretaries by reviewing a contractor's WARN Act notice, if such a notice is required, along with employee communications, to assist in avoiding liabilities that would generally not be allowable costs.

CONCURRENCES:

National Nuclear Security Administration (NNSA)/	T. D'Agostino	4/12/11
Office of Environmental Management/	K. Wnukoski f/Triay	4/4/11
Office of Management/	L. Morman f/Kolb	4/8/11
Office of Nuclear Energy/	D. Miotla f/Lyons	4/1/11
Office of Science/	W. Brinkman	4/6/11
Office of General Counsel/	S. Lev	4/4/11
Office of Congressional & Intergovernmental Affairs/		

Attachments

- 1) Listing of Defense Nuclear Facilities
- 2) 3161 Announcement and General Plan Template
- 3) Waivers and Releases
- 4) Model Contractor Plan for Self-Select Programs
- 5) Model Contractor Plan for Involuntary Separation Programs
- 6) Guidance on Conducting Diversity Analysis

ATTACHMENT 1

Listing of Defense Nuclear Facilities

The facilities listed below are considered DOE defense nuclear facilities for purposes of Section 3161.

Kansas City Plant
Pinellas Plant
Mound Facility
Fernald Environmental Management Project Site
Pantex Plant
Rocky Flats Environmental Technology Site, including the Oxnard Facility
Savannah River Site
Los Alamos National Laboratory
Sandia National Laboratory
Lawrence Livermore National Laboratory
Oak Ridge National Laboratory
Nevada Test Site¹
Y-12 Plant
East Tennessee Technology Park
Hanford Site
Idaho National Environmental Engineering Laboratory
Waste Isolation Pilot Project
Portsmouth Gaseous Diffusion Plant
Paducah Gaseous Diffusion Plant
Brookhaven National Laboratory
Argonne National Laboratory

¹ On August 23, 2010, the Nevada Test Site was renamed the Nevada National Security Site.

ATTACHMENT 2

SECTION 3161 ANNOUNCEMENT: New Draft Workforce Restructuring Plan for the [SITE]

The Department of Energy (DOE) [DOE/NNSA field office] is today posting for comment a draft workforce restructuring plan (Plan). The draft Plan being developed is prepared pursuant to [IN THE CASE OF NON-3161 FACILITIES, SUBSTITUTE] “consistent with the purposes and policies of”] Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 to mitigate the impact of any potential workforce reductions on contractor employees at [NAME SITE], and on the surrounding communities. It sets forth the Department’s approach for responding to the changing missions and contractor structure at the [site] for Fiscal Year [20__] and beyond. The draft Plan is available on the DOE _____ website (_____) for public comment through [2 weeks from posting of the plan]. The draft Plan will be finalized at the end of the comment period after any comments have been resolved.



U.S. Department of
ENERGY

Draft Workforce Restructuring Plan for the [Name Site]



WORKFORCE RESTRUCTURING PLAN For the [NAME SITE]

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I. INTRODUCTION

Executive Summary

Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Section 3161) directs the Secretary of Energy, upon a determination that a change in the work force is necessary at a Department of Energy (DOE) defense nuclear facility, to develop a plan for workforce restructuring in consultation with affected stakeholders. The objectives of such a plan are to minimize involuntary separations, reduce the social and economic impact of restructuring on individuals who are involuntarily separated, and mitigate the detrimental effects of restructuring on the surrounding communities.

This Workforce Restructuring Plan (Plan) covers [NAME SITE] Contractors that provide services to the [NAME SITE OFFICE] consistent with applicable contract clauses. The Plan establishes the general framework within which any restructuring of the work force at the [NAME SITE] would be implemented. Once approved, this Plan will establish the policy of the Department¹ for responding to the changing missions and the changing contractor structure at the [NAME SITE] for fiscal year 2011 and beyond. Further modifications to this Plan may be made if circumstances require.

The benefits described in this Plan are consistent with the authority granted in Section 3161, Departmental policy, and the appropriations provided by Congress. Specific contractor employment reductions, typically referred to as workforce restructuring programs will be developed as necessary, using this Plan as a guide and in light of the programmatic and other relevant factors of each restructuring.

As set out in detail below, the objective of this Plan is to minimize the impact of restructuring on affected employees and the community, to the extent practicable with available funding through:

- Reassignment to jobs open within each respective contractor's work force where employees can perform the work required, consistent with the hiring benefits discussed below.
- Retraining assistance for internal job opportunities.
- Rehiring preference for any involuntarily separated employees meeting eligibility requirements.
- Outplacement assistance for employees to maximize opportunities for external job placement when internal placement or retraining programs are not practicable.
- Consultation and coordination with the community and area stakeholders to ensure that affected workers are made aware of all available avenues of assistance.

The Department of Energy reserves the right to change the terms of this PLAN, there is no guarantee that benefits equal to or greater than those described in this PLAN will continue to be provided in the future. Modifications to this PLAN or to PLAN benefits may be required if circumstances change, e.g.,

¹ Unless specified otherwise, the terms "Department" and "DOE" are used herein to refer to the Department of Energy.

if there is a change in implementing policy or in funding constraints. It is not the intent of DOE [or DOE/NNSA as appropriate] in issuing or implementing this Workforce Restructuring Plan to create any private right of action or to modify obligations imposed upon Employers or Employee representatives by Law, Executive Order, or Contract. This PLAN replaces any previously published [NAME SITE] Workforce Restructuring Plans and their addendums.

Preface

DESCRIBE LOCATION, MISSION, AND ANY OTHER RELEVANT INFORMATION ABOUT THE SITE.

This Plan seeks to meet the objectives of Section 3161 consistent with budget and funding constraints and the mission needs of the Department. The objectives of the Plan are to:

- Minimize involuntary separations,
- Minimize the impact of restructuring on individuals who are involuntarily separated,
- Mitigate the detrimental impact of restructuring on the surrounding communities, and
- Maintain the integrity of the core competencies required to carry out the Departmental missions at the [NAME SITE] Site.

II. ROLES AND RESPONSIBILITIES

Stakeholder Input

Upon a determination that the workforce at a DOE defense nuclear facility may need to be restructured, Section 3161 requires DOE to develop a workforce restructuring plan in consultation with appropriate representatives of state and local governments, appropriate representatives of affected employees, and other affected [NAME SITE] stakeholders. DOE is committed to ensuring stakeholder involvement in developing policies regarding workforce restructuring for the [NAME SITE] and will:

- Notify stakeholders and make this draft workforce restructuring plan available on the [NAME SITE OFFICE] web sites for at least a 7-day comment period.
- Analyze comments received.
- Make changes to the draft plan in light of stakeholder comments, if appropriate.
- Send a copy of the final plan to DOE Headquarters offices for approval.
- Transmit the approved Plan to Congress.
- Distribute the approved Plan and post it on the [NAME SITE OFFICE] web sites.

DOE Responsibilities

DOE is responsible for establishing workforce restructuring policy and developing the Section 3161 Plan. Contractors shall notify the Contracting Officer in writing and obtain prior DOE approval for any workforce restructuring separation action. [NAME SITE OFFICE] will evaluate each contractor's implementation of this Plan.

The Role of [NAME SITE] Contractors

The Employers

While contractors are not identified specifically as stakeholders by Section 3161, contractors cannot clearly have a role in the process of developing workforce restructuring policy. The information contractors supply is used to evaluate the existing work force and to determine the need for restructuring. The contractors, not DOE, are the employers of the workers who may be affected by workforce restructuring activities and, as such, have responsibilities to those employees. The contractors must terminate the employment of employees and the contractors also must implement the Workforce Restructuring Plan developed by DOE. The contractors may also be parties to collective bargaining agreements covering some employees. The contractors are sponsors of pension and benefit plans and are responsible for the management and administration of pension and benefit plans covering their employees. Contractors will perform their own workforce planning consistent with this Plan.

Communications

Timely and accurate communication with employees is essential. Contractors are expected to comply in all respects with the requirements of any applicable DOE Orders and guidelines regarding announcement of workforce restructuring actions. No communications will occur until approval is received from the Contracting Officer. Once DOE approval is received, Contractors are expected to communicate information regarding workforce restructuring to the employees before releasing any information to the news media. Contractors will ensure that all information intended for release to internal or external audiences is consistent with all legal and contractual requirements, including any applicable personnel policies.

III. PLANNING

Plan Applicability

This is an open-ended Plan without a termination date. Unless amended, withdrawn, or replaced, it will provide the guidelines for all future workforce restructuring actions conducted by contractors reporting to the [NAME SITE OFFICE], consistent with each contractor's respective DOE contract. In accordance with the applicable contract with DOE, this Plan applies to all prime contractors reporting to [NAME SITE OFFICE] and their subcontractors. The benefits described in the Plan are subject to the availability of funds. It is DOE policy that Displaced Worker Medical Benefits (described below) are to be offered to all eligible displaced employees; however, changes in this policy may be made depending on the circumstances of the restructuring actions and availability of funds. Involuntarily separated employees who meet applicable requirements set forth in Section V.C.1 of the Plan will be entitled to the Section 3161 rehiring preference detailed below. Any "enhanced benefits" requested by the contractors (i.e., benefits above and beyond those set forth in their contracts with DOE) are subject to DOE approval and the availability of funds. Although this Plan applies to contractor and subcontractor employees, it does not necessarily provide all of them with the same benefits.

Timing of Notification of Workforce Restructuring

Contractors' requests to implement workforce restructuring actions should be provided to DOE as early as possible so that advance notice may be provided to the work force and the community, with an objective of 120 days notice to employees and the community for development of a workforce restructuring plan prior to the involuntary separations (other than for cause) of employees. Contractors are required to allow 48-hours following approval by Headquarters of the contractor's plan before implementing the plan. This "48hour hold" gives DOE time to notify Congress of the upcoming workforce restructuring actions prior to any public announcement by DOE or the contractor.

Any involuntary separation will also be conducted consistent with DOE Orders and guidelines, and applicable laws and regulations. If the Worker Adjustment and Retraining Notification (WARN) Act is applicable to a particular involuntary workforce restructuring action, the employer is responsible for given written notice to affected employees prior to their separation consistent with the applicable legal requirements.

The Department recognizes that any planned reduction in employment levels at the [NAME SITE] could cause a high level of anxiety within the work force. To minimize this anxiety, contractors conducting workforce reductions will communicate frequently, openly, and honestly with employees.

Workforce Planning

Assessment of Available Skills Relative to Skills Requirements

The contractors will prepare and maintain a workforce assessment reflecting: 1) projected workforce skills requirements; 2) current composition and inventory of the skills of the workforce and 3) the feasibility of retraining existing employees to meet changing mission workscope requirements. The assessment will cover three years: Current execution year (appropriated funds) plus two out-years (budget/planning year and formulation year). The current execution year will specifically address workforce skills requirements and the two out-years will be assessments at the workscope levels. Contractor employees should be encouraged to ensure that the information available accurately reflects all their education, retraining, certifications, etc.

Workforce Planning and Restructuring Strategy

[NAME SITE OFFICE] is responsible for determining overall workforce restructuring policy for its contractors. The contractors are responsible for implementation of DOE workforce restructuring policy and the oversight of restructuring programs conducted under this Plan. Normal attrition will be factored in as part of mitigation planning for involuntary separations. The contractors will identify, review, and document any skill mismatches, excesses or deficiencies in each skill classification prior to conducting a voluntary or involuntary separation program. **The Department strongly disapproves of hiring from the outside which has the effect of "backfilling" the positions of individuals separating as part of either a voluntary or involuntary separation program.**

IV. WORKFORCE RESTRUCTURING PROGRAMS

When a voluntary or involuntary separation program is planned, the contractors will be expected to satisfy fully their obligations toward any labor organization representing their employees. Prior to conducting a separation program, the contractors will give union officials representing affected bargaining units notice of the action contemplated and comply with any obligations under the National Labor Relations Act as it relates to bargaining in the situation, as well as with any procedures set out in applicable collective bargaining agreements.

General Procedures for Workforce Restructuring

When contractors determine that a reduction in force is necessary, the contractors shall notify the respective Contracting Officers and seek prior approval as set forth in applicable contract requirements. Contractors shall provide such information as directed by Contracting Officers to enable compliance with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993. Additionally, the following procedures will be followed:

- All requests must contain pertinent information such as reasons, costs, dates, and numbers.
- After DOE approval is granted, DOE will notify Congressional and other stakeholders.
- Any payment of enhanced benefits beyond those already approved in a contractor's contract must be approved by the appropriate DOE headquarters organizations, as coordinated through DOE's Office of Legacy Management.

Self-Select Voluntary Separation Program (SS VSP)

In order to minimize the number of involuntary separations, the contractors are strongly encouraged to consider the use of a Self-Select Voluntary Separation Program (SS VSP) before consideration is given to conducting an Involuntary Separation Program (ISP) when workforce restructuring is necessary. Contractor employees in skills classifications that have been identified as having more employees than needed or whose voluntary separation would prevent an involuntary separation may be offered the opportunity to volunteer for separation from employment. Contractors will reserve the right to decide whether to accept the applications that the contractors, in their discretion, determine to be in their best interest. Contractor employees who submit applications to participate in a SS VSP will be selected based upon their verified eligibility to participate, as well as continuing mission requirements and other factors. Contractor employees whose applications are accepted as being in the best interest of the employer will receive up to the same severance pay which they would have received had they been involuntarily separated, together with DOE Displaced Worker Medical Benefits, as described below. The application will reflect the understanding that if the employee becomes employed, within one (1) year from the date of the employee's separation, by a [NAME SITE] contractor or another contractor or subcontractor (as more fully specified in the application) to the DOE or National Nuclear Security Administration (NNSA) for work performed under a contract with the DOE or NNSA, the employee may be required to repay a portion or all of the severance benefits received pursuant to his or her participation in the VSP.

Involuntary Separation Program (ISP)

If it is necessary to conduct an involuntary separation, efforts will be made to minimize the number of employees involuntarily separated. Non-represented employees will be identified for involuntary separation consistent with applicable personnel policies and on the basis of neutral factors to be determined by the contractors at the time of the involuntary separation program. Examples of factors that may be relevant are: documented individual performance, seniority, the need for the individual's skills taking into account retraining possibilities, and the number of individuals with the required skills. Critical skills are not determined solely by job classification, but rather by the skills needed to accomplish continuing site missions. The transferability of skills across organizational entities, the impact of attrition, and the diversity of work experience as it relates to the overall strategic direction at the [NAME SITE] may also be considered, as appropriate. Employees who are not covered by collective bargaining agreements will receive severance pay in accordance with their employer's approved severance plan.

Represented employees covered by collective bargaining agreements will be identified for involuntary separation in accordance with any requirements in their collective bargaining agreements and will receive severance pay as provided by the severance provisions of those agreements.

Any selection or evaluation of employees which is associated with any workforce restructuring action must comply with all legal requirements, including those pertaining to equal employment opportunity and diversity, as discussed above.

V. ASSISTANCE AND BENEFIT PROGRAMS

Retraining Programs

It is DOE's position that retraining, where applicable, and subject to available funding, is vital to accomplishing many of the objectives of this Workforce Restructuring Plan, including: (1) minimizing loss of vital skills and knowledge, (2) minimizing negative impacts to the surrounding communities and affected employees, and (3) minimizing, to the extent practicable, the need for involuntary reductions in the workforce.

DOE Displaced Workers Medical Benefits Program

Contractor employees who separate from employment voluntarily or involuntarily (other than for cause) and who were eligible for medical insurance coverage under the contractor's plan at the time of separation from employment are eligible for medical coverage under the DOE Displaced Workers Medical Benefits Program (DWMBP), provided they are not eligible for coverage under another plan, e.g., another employer's group health plan, the contractor's Retiree Medical Plan, a spouse's medical plan, or Medicare. During the first year following separation, the contractor will continue to pay the employer portion of the medical premium share and the employee will be billed for the employee portion of the applicable monthly premium, depending on the type and level of coverage the employee has at separation. During the second year after termination, the separated employee will be responsible for one-half of the full Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

rate for this coverage and the contractor will pay the remainder. Beginning in the third year and continuing thereafter, the separated employee will be responsible for paying the full COBRA rate.

If an employee is eligible for coverage from another employer or a spouse's employer, but that employer's coverage contains a pre-existing condition limitation, the employee will be allowed to continue to receive benefits under the DWMBP for the pre-existing condition until the limitation period with the new employer is satisfied. Similarly, the employee may continue coverage under the DWMBP during any waiting period before coverage under a new plan is effective.

Alternatively, separated employees may elect to continue medical coverage under COBRA. Employees will be provided a separate notice of COBRA benefits.

Section 3161 Rehiring Preference for Eligible Separated Employees

To the extent practicable, eligible involuntarily separated contractor employees who meet the eligibility requirements contained in this Plan will receive a hiring preference with respect to vacancies for positions for which they are qualified, or, to the extent practicable in the circumstances, for which they may become qualified. Employees will not be considered to have involuntarily separated for purposes of Section 3161 rehiring preference if they are separated as a result of: (1) termination for cause; (2) voluntary separation from employment at [NAME SITE OFFICE] (3) the normal completion of a contract; or (4) privatization or outsourcing where the employees laid off are offered comparable compensation with the new contractor. Additionally, to retain eligibility for the preference, individuals must recertify annually by using the form at Appendix A. [NAME SITE] Contractor Preference in Hiring Procedures are included as Appendix B.

Eligibility for the Section 3161 rehiring preference will be consistent with the [Planning Guidance for Contractor Workforce Restructuring](#) dated December 1998:

Regular employees are individuals employed for an indefinite period with no specified ending date. Such employees include full-time and part-time employees. To be classified as a qualified, eligible employee under section 3161, regular employees must have been:

- Employed at a DOE defense nuclear facility on or before September 27, 1991;
- Employed at the [NAME SITE] in a full-time or part-time regular capacity on the date a workforce restructuring notice was given for a specific workforce reduction;
- Employed at a DOE defense nuclear facility full-time or on a regular part-time basis from September 27, 1991, through the date of notification; and
- Involuntarily separated (other than for cause).

Intermittent employees are individuals employed in situations that results in repeated periods of employment and unemployment, (e.g., most construction trades). To be qualified as eligible for the Section 3161 rehiring preference, intermittent employees must have been:

- Employed at any DOE defense nuclear facility on or before September 27, 1991;
- Must have worked at such a facility within the 180 days preceding an applicable workforce restructuring notification;
- Must have worked at a DOE defense nuclear facility a total time, including time worked prior to September 27, 1991, equivalent to having worked 40 hours per week from September 27, 1991, through the date of the notification, or have actually worked the industry standard of full-time from September 27, 1991, through the date of the notification; and
- Must have been adversely affected by the announced restructuring at the [NAME SITE] within a reasonable period of time (one year). This includes the interruption of a project before its anticipated completion, or the completion of the assignment or project without prospect for a follow-on assignment at the site where the employee had a reasonable expectation of a follow-on assignment.

The contractors engaged in operations at the [NAME SITE] will implement the Section 3161 rehiring preference in accordance with their respective hiring procedures. Websites such as the Job Opportunity Bulletin Board System (JOBBS) offer outplacement resources to assist eligible individuals in locating vacancies within the DOE complex for which they may be qualified. JOBBS can be found at: <https://www.jobbs.energy.gov/jobbs/bbs/index.cfm>.

Subcontracts and Implementation of the Section 3161 Rehiring Preference

Subcontractors and sub-tier contractors which (with any contract options) exceed \$500,000, except subcontracts for the purchase of supplies, equipment or property, will be required by contract language to accord hiring benefits to displaced employees consistent with this Plan and the requirements of applicable procurement laws.

Contractor who have the DEAR provision on 3161 48 CFR (DEAR) 952.226-74) in their contracts are required to flow down the clause to subcontracts expected to exceed \$500,000. Subcontractors are required to maintain adequate documentation to support hiring decisions, and insert hiring benefits requirements into their subcontracts.

Outplacement Services

To mitigate the impact of contractor employees at the [NAME SITE] losing jobs, local employees should seek assistance from the state employment service(s) at [STATE NAME, ADDRESS, PHONE NUMBER OF STATE SERVICE(S), AND IF AVAILABLE THE WEBSITE OF, AND RESOURCES AVAILABLE AT, THE SERVICE(S):

[provide appropriate information]

VI. CONCLUSION

This PLAN has been developed to meet the requirements and spirit of the National Defense Authorization Act for FY1993, and is being developed with an objective, among other things, of minimizing the need for involuntary separations in any Section 3161 workforce restructuring at the [NAME SITE]. This PLAN establishes the general framework within which any restructuring of the workforce at the [NAME SITE] would be implemented.

APPENDICES

Appendix A. Statement of Interest in Maintaining Section 3161 Employment Eligibility

Name: _____
FIRST Middle Last

Social Security Number: _____ - _____ - _____

Address: _____
Street/Apartment Number

_____ City State Zip Code

Telephone Number: (____) _____ - _____ (____) _____ - _____
HOME WORK

Date of Lay-Off resulting from Workforce Restructuring: _____
Month/Day/Year

Employer: _____

Position(s) held: _____

COCS Codes: (See attached form) _____

Education: (Last level completed and discipline) _____

Are you willing to relocate for employment? ____ YES ____ NO ____ MAYBE

I hereby request that I be designated as eligible for a hiring preference under Section 3161 for any job opportunities that may arise for which I am qualified. I also certify that I have not been terminated for cause from employment by a Department of Energy (DOE) contractor or subcontractor while performing work at a DOE Site. I understand that if I wish to be considered for a hiring preference for any other DOE Contractor in the DOE Complex that I am responsible for providing preference information to the DOE Contractor with my resume and/or applications.

I ALSO UNDERSTAND THAT IN ORDER TO RETAIN PREFERENCE IN HIRING STATUS, I AM REQUIRED TO COMPLETE A NEW FORM ANNUALLY TO MAINTAIN MY PREFERENCE STATUS.

 SIGNATURE DATE

Send completed form to: Manager, HR, (Insert Contractor Name and Address)

APPROVED:

(INSERT CONTRACTOR NAME) DATE HIRE DATE SEPARATION DATE

Appendix B. [NAME SITE] Contractor Preference in Hiring Procedure

Pursuant to the Planning Guidance for Contractor Workforce Restructuring, eligible employees involuntarily separated from employment (except if terminated for cause) from Prime Contractors (including pre-selected named team subcontractors) at the [NAME SITE] may be eligible for preference in hiring. Where qualifications are approximately equal, eligible individuals will be given preference in hiring consistent with applicable law, regulation, or executive order, and collective bargaining agreements.

Initially, and on an annual basis thereafter, eligible individuals must certify on the Statement of Interest in Maintaining Section 3161 Employment Eligibility, their desire to retain their hiring preference with the Contractor from whom they were involuntary separated. Web sites such as the Job Opportunity Bulletin Board System (JOBBS) will be utilized by the Contractor with whom the employee was separated and other outplacement sources to assist eligible individuals in locating vacancies within the DOE Complex for which they may be qualified. JOBBS can be found at <https://www.jobbs.energy.gov//>

In order to be eligible, individuals must meet the requirements as identified below:

Regular employees are individuals employed for an indefinite period with no specified ending date. Such employees include full time and part time employees. To be classified as a qualified, eligible employee under Section 3161, regular employees must have been:

- Employed at any DOE defense nuclear facility on or before September 27, 1991;
- Must have worked at such a facility within the 180 days preceding an applicable workforce restructuring notification;
- Must have worked at a DOE defense nuclear facility a total time, including time worked prior to September 27, 1991, equivalent to having worked 40 hours per week from September 27, 1991, through the date of the notification, or have actually worked the industry standard of full-time from September 27, 1991, through the date of the notification; and
- Must have been adversely affected by the announced restructuring at the [NAME SITE] within a reasonable period of time (one year). This includes the interruption of a project before its anticipated completion, or the completion of the assignment or project without prospect for a follow-on assignment at the site where the employee had a reasonable expectation of a follow-on assignment.

Waivers and Releases and other employee requirements –

I. Use of Waivers and Releases of Claims with Incentivized Voluntary Separation Programs

Where the Department has conducted incentivized voluntary separation programs, it has consistently been the Department's policy to require waivers and releases of claims from employees separating. A voluntary separation program is considered to be incentivized if severance above that provided to involuntarily separated employees is offered. The Department developed a sample waiver and release of claims for these purposes that has been quite successful and is set forth below. For such waivers to be binding, an employee must receive consideration greater than that to which the employee would otherwise be entitled upon separation from employment.

Waivers are mandatory bargaining subjects. Therefore, if the affected employees are represented for purposes of collective bargaining by a labor organization and the parties' collective bargaining agreement does not contemplate requirement of execution of a waiver as a condition for receiving severance pay, the employer must notify the union of its intent to use a waiver in connection with the separation program and give that union ample opportunity to bargain regarding that matter. If, as provided in the sample waiver, the employer seeks federal age discrimination waivers, employees must be given 45 days to consider the waiver and seven days after the date of execution of the waiver to revoke their agreement to be bound by the waiver. In such cases, the "census" data (regarding the ages and classifications of employees eligible to participate in the separation program and of employees not eligible to participate) required under the Older Workers Benefit Protection Act must also be provided. *See* 29 U.S.C. § 626(f)(1)(H).

Severance pay plans are also generally welfare benefit plans within the meaning of the Employee Retirement Income Security Act (ERISA). If there is a severance pay plan that does not provide that employees separating must execute a waiver in order to receive severance under the plan, the plan will have to be amended to provide notice to participants, consistent with the terms of the plan and applicable legal requirement, before employees can be required to execute a waiver in order to receive severance pay.

Voluntary Separation Program General Release and Waiver

The Voluntary Separation Program (VSP) General Release and Waiver (“Agreement”) is entered into by and between _____ (“Employee”) and [**COMPANY NAME**] as part of Employee’s voluntary election to terminate employment with the Employer.

IN EXCHANGE FOR THE PROMISES SET FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:

1. **Voluntary Termination and Agreement Not to Seek Employment:** Employee voluntarily terminates his or her employment with Employer effective _____. Absent the express written authorization of the U.S. Department of Energy (DOE) or the National Nuclear Security Administration (NNSA), Employee agrees not to be employed by the Employer or any other contractor or subcontractor to the DOE or NNSA for work performed under a contract with the DOE or NNSA for a period of one (1) year from the date of Employee’s separation. This includes, but is not limited to, temporary employment service contracts, general task order assignments, indefinite quantity contracts, basic ordering agreements, and consultant contracts. However, this does not preclude Employee from employment with a company which is providing goods or services for a DOE or NNSA facility under a fixed priced contract or purchase order and whose primary business activities are not in support of such DOE or NNSA facility.
2. **Waiver of Reemployment Preferences:** Employee agrees that the Employer has no obligation to reemploy Employee in the future and Employee waives any recall, rehire, or rehire preference rights under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.
3. **Claims Released and Waived:** Except as set forth in Paragraph 4 below, Employee, on behalf of himself or herself and any person or entity entitled to sue on Employee’s behalf, waives and releases Employer, its parents, subsidiaries, and affiliates, the DOE and NNSA, and their employees, officers, directors, shareholders, agents, and successors, from any causes of action or claims, whether known or unknown, that arise out of Employee’s resignation and separation from employment with Employer and any causes of action or claims that arise out of Employee’s employment with Employer, up to and including the date the Employee signs this Agreement under any federal, state or local law, including, but not limited to the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act of 1990, Title VII of the 1964 Civil Rights Act, the Equal Pay Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act, the Americans with Disabilities Act, and/or other applicable state or local laws. Employee will not assert any claim or cause of action released under this agreement in any judicial and/or administrative proceeding. Employee

waives the right to obtain any legal or equitable relief in, or as the result of, any administrative proceeding, or as the result of any judicial proceeding brought on the employee's behalf.

4. **Claims Not Waived:** Employee does not waive:
 - (a) any cause of action or claims that arise out of Employee's employment with Employer that have been asserted in writing and filed with the appropriate agency or court prior to the date on which the Voluntary Separation Program was announced,
 - (b) any rights or claims that "may arise" (as that term is defined under the Older Workers Benefit Protection Act) after the date this Agreement is executed,
 - (c) any claims relating to pension or retiree health benefits that may be currently accrued under the Employer's retirement program,
 - (d) any claims under applicable state worker's compensation laws,
 - (e) any claims for occupational injuries or illnesses, including but not limited to claims arising under the Energy Employees Occupational Illness Compensation Program Act,
 - (f) any other rights or claims Employer may not, by law, ask Employee to waive, including but not limited to, the right to seek judicial determination of the validity of this Agreement under the Older Workers Benefit Protection Act, or
 - (g) the right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission ("EEOC") or any other federal, state or local regulatory or law enforcement agency charged with investigation of employment discrimination claims. If Employee or anyone on Employee's behalf seeks any payment in connection with a claim released by this Agreement, Employee agrees that this Agreement precludes such payment.

5. **Continued Applicability of Employment Agreement:** The Employee agrees to continue to abide by all obligations and restrictions pertaining to:
 - a) the use and protection of intellectual property as set out in the employment agreement signed by the Employee at the beginning of his or her employment at the **[ADD SITE OR COMPANY NAME]** or in any other agreements, obligations, confidentiality provisions or policies pertaining to intellectual property and/or
 - b) non-disclosure of classified information as set out in any agreement between Employer and Employee or in any other obligations, non-disclosure

provisions or policies, or as otherwise mandated by applicable United States laws and/or DOE regulations and policies.

6. **Consideration:** In exchange for Employee's voluntary separation and execution of this Agreement, Employer will give Employee the consideration outlined in the description included with the Agreement. Employee agrees that the VSP separation pay is more than what the Employee is entitled to under the terms of Employer's existing compensation and benefits plans. Employer reserves the right to provide equivalent benefits in another form in the unlikely event that any aspect of the Program is improper under the law.
7. **Other Obligations Including Repayment:** Employee agrees to perform all steps required by Employer's policies and procedures at the separation of his or her employment. If Employee becomes employed as prohibited in Paragraph 1 or otherwise violates any provision of this Agreement, then, in addition to any other remedies Employer has under this Agreement, Employer may require Employee to repay a portion or all of the payments or any benefits under this Agreement, and Employee agrees to payment.
8. **Waiver of Forty-Five Day Right to Consider:** Employee is advised to consider this Agreement and to consult with an attorney of his or her choice, and Employee has had the opportunity to do so. Employee has had the right to consider this Agreement for a period of at least forty-five (45) days prior to entering into this Agreement. Employee has the right to rescind this Agreement for a period of seven (7) days following execution of this Agreement by giving written notice to [LIST HR PROFESSIONAL OR OTHER POINT OF CONTACT, INCLUDING ADDRESS/ROOM NUMBER]. If Employee rescinds the Agreement, it shall not be effective and enforceable, and Employee will not receive any of the benefits described in Paragraph 6. Should Employee sign this Agreement before the end of the 45-day period, Employee states that Employee voluntarily and knowingly waives any right to consider the Agreement for the full 45-day period, that Employee has not been pressured to waive the 45-day period by any employee of [COMPANY NAME] including by fraud, misrepresentation or threats. Employee further states that [COMPANY NAME] has not threatened to withdraw or alter the VSP prior to the expiration of the 45-day period and that Employee has not been offered any additional benefit in order to sign the Release before the 45-day period expires. Employee has read and understands the terms and contents of this Agreement, and Employee freely, voluntarily, and without coercion enters into this Agreement and agrees to be bound by its terms.
9. **Modification:** This Agreement can only be modified if both parties agree in writing.
10. **Disclosure of Required Information:** Employee has received all of the information required to be disclosed in these circumstances under the Age

Discrimination in Employment Act regarding who is covered by the Program, the eligibility factors, the time limits of the Program, the ages and job titles of everyone eligible for the Program, and the ages of ineligible employees in the same job classification or organizational unit.

11. **Severability.** If a court finds any part of this Agreement not valid, the other parts will remain valid and enforceable.

Clause headings are for convenience only. They do not change the meaning of any provision of this Agreement and may not be used to interpret the Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY AND CONSULT AN ATTORNEY. THIS AGREEMENT CONTAINS A RELEASE OF KNOWN AND UNKNOWN CLAIMS AS DESCRIBED IN PARAGRAPH 3, ABOVE, SUBJECT TO THE LIMITATIONS EXPRESSLY SET FORTH IN PARAGRAPH 4.

Agreed to:

Employee Name: _____ Number: _____
(Please Print)

Employee Signature: _____ Date: _____

Employer
Representative
Signature: _____ Date: _____

II. Self-Select Request for Separation

The Department has over the years moved away from use of incentivized voluntary separation programs. When employers require employees to sign full claims waivers in connection with voluntary separation programs, employees must be given 45 days to consider a waiver and 7 days after the date of execution of the waiver to revoke their agreement to be bound by the waiver if waiver of federal age discrimination claims is sought. In cases when Departmental contractors' voluntary separation programs involve provision of severance pay up to the amount that would be provided pursuant to an involuntary separation program, contractors may choose not to require employees to execute full waivers of all legal claims.

The Department developed an application form for employees participating in self-select separation programs that are not incentivized. By clearly establishing the voluntary nature of the employees' decision to participate in the separation program, the application has effectively prevented the assertion of any age or other discrimination claims without triggering the 45 and 7-day schedule required for waiver of federal age discrimination claims. The application form also sets forth the contractor employees' agreement to repay a portion or all severance if the individual becomes reemployed by a DOE/NNSA contractor within one year of separation of employment. No consideration beyond the severance pay itself is required, nor is any amendment of the severance pay plans required. When dealing with situations involving represented employees, the employers must give the unions representing those employees notice and the opportunity to request bargaining concerning implementation of the self-select program generally, but use of the application has not presented any additional practical concerns.

The model self-select application is set forth below.

SECTION 1 – APPLICATION FOR SELF-SELECT VOLUNTARY SEPARATION ADD WHERE APPROPRIATE: [IN CONJUNCTION WITH THE INVOLUNTARY SEPARATION PROGRAM]

I hereby VOLUNTARILY APPLY to be considered for termination from employment with [Contractor] (“Employer”) [ADD WHERE APPROPRIATE: “in conjunction with the Involuntary Separation Program”]. I am selecting this option of my own free will after having had an opportunity to review the terms, conditions and consequences of designating myself for the “self-select” process. IF APPROPRIATE, ADD: [I understand that if there are insufficient volunteers, then I may be considered for involuntary termination, and therefore, by voluntarily applying to be considered for termination, I will be assisting the Employer in determining who should be terminated.] **I agree** that the Employer has no obligation to reemploy me in the future and I understand that I do not have rehire preference rights under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

I understand that this Request is subject to the approval of the Employer and, if approved, my employment will be terminated subject to the same terms and conditions applicable to all other participants in the Self-Select Voluntary Separation [in Conjunction with the Involuntary Separation Program.] The separation package has been explained to my satisfaction.

I agree that, if I am selected by the Employer to participate in the Self-Select Request for Separation [ADD WHERE APPROPRIATE: “in Conjunction with the Involuntary Separation Program”] and I then become employed by the Employer or any other contractor or subcontractor to the Department of Energy or the National Nuclear Security Administration for work performed under a contract with the Department of Energy or the National Nuclear Security Administration within a period of one (1) year from the date of my separation, I may be required to repay a portion or all of the severance payments which I received pursuant to my participation in the Self Select Voluntary Separation [ADD WHERE APPROPRIATE: “in Conjunction with the Involuntary Separation Program, and I agree to such payment”]. Examples of employment that may require me to repay severance include, but are not limited to, work under contracts or subcontracts with the Department of Energy or the National Nuclear Security Administration such as temporary employment contracts, service contracts, general task order assignments, indefinite quantity contracts, basic ordering agreements, and consultant contracts. However, my obligation to repay severance would not be triggered by employment with a company that provides supplies, equipment, materials, commodities, or services for a Department of Energy facility under a fixed priced contract or purchase order and whose primary business activities are not in support of such Department of Energy facility.

I have read this Request to terminate employment as part of the Self-Select Voluntary Separation [ADD WHERE APPROPRIATE: “in Conjunction with the Involuntary Separation”] Program and agree to abide by the terms set forth herein if my Request is accepted:

Name: _____
(Print Last Name, First Name, MI)

**Employee
Number:** _____

Signature: _____

Date: _____

III. Use of Waivers and Releases of Claims with Involuntary Separation Programs

Where the contractor's work force is already covered by broader corporate personnel policies requiring the use of waivers and releases of claims by involuntarily separating employees in return for receipt of severance pay, waivers that comply with legal requirements can be used. Legally compliant waivers may also be used where the applicable severance pay policies or an applicable collective bargaining agreement anticipates that involuntarily separating employees must execute a waiver in order to receive severance. The Department also understands that contractors may wish to use waivers in other circumstances and encourages contractors to discuss their concerns in this regard in their specific plan for the separation program.

[Contractor]
Workforce Restructuring Plan:
Self-Select Voluntary Separation Plan

For

**U.S. Department of Energy or National
Nuclear Security Administration
[Insert Name of Site Office]**

Effective: [Insert Date]

Preface

Based upon a determination that a change in the work force is necessary at the [Insert Site Name] (Site Abbreviation), [DOE Site Office] developed a Work Force Restructuring Plan (Plan). The objectives of the Plan are to minimize involuntary separations, reduce the social and economic impact of restructuring on individuals who are involuntarily separated, and mitigate the detrimental effects of restructuring on the surrounding communities. One method of minimizing the impact of the Plan on employees is to allow employees to volunteer for participation in a Self-Select Voluntary Separation Plan (SS VSP). Employees who want to volunteer will submit a Self-Select Request for Separation form (Self-Select Request) as provided in this Plan. [Contractor] will exclude or limit participation in the SS VSP of employees who possess skills or who hold positions that are critical to the continued completion of the mission at the site/laboratory/plant. [Contractor] reserves the right in its sole discretion to determine whether to accept applications from individual employees to participate in the SS VSP. [Contractor] management will base its decisions on the ability of the employee's organization to adjust for the loss of the employee's knowledge, skills, and abilities.

[Contractor] anticipates the need to reduce headcount by up to [insert number] employees, see Appendix B. [IF APPROPRIATE:] All job groups, including management, technical, administrative, and bargaining unit jobs to the extent permitted by the parties' collective bargaining agreements and applicable law, will be affected. Involuntary separations may be required if the self-select process does not reduce employment levels sufficiently.

Announcing SS VSP

- The [President/Lab Director] of [Contractor] will make a formal announcement of an SS VSP and provide that [Contractor] employees will be eligible to be considered for participation in the SS VSP, with the exception of part-time, casual and co-op employees. Bargaining unit employees may participate consistent with their collective-bargaining agreements and applicable law.
- Employees will have about one week to apply for participation in the SS VSP, with specific dates to be provided in the announcement.
- Management will consider all requests to participate in the SS VSP, and has reserved the right in its sole discretion to approve or disapprove any request based on the requirements of the business.
- Information about severance, benefits, and retirement plans upon layoff (see below).
- Points of contact for questions.
- A copy of the Self-Select form (Appendix A).

Management should neither encourage nor discourage employees to volunteer. If an employee solicits his or her supervisor's opinion concerning whether the employee should request to participate in the SS VSP, the supervisor should make it clear that the decision is up to the employee and should not offer advice or opinions.

Approving/Disapproving Requests

Neutral and objective criteria will be used to determine whether to accept a request. Examples of factors that may be relevant are: documented individual performance, seniority, the need for the

individual's skills taking into account retraining possibilities, and the number of individuals with the required skills. [Contractor] Management will decide whether to accept an employee's request for the SS VSP based on the requirements of [Contractor] as determined by [Contractor] in its sole discretion, the anticipated budgets/funding, and the ability of [Contractor] to accommodate for the loss of the individual's knowledge, skills, and abilities. [Contractor] will consider the following:

- (a) Will [Contractor] have to fill the employee's position within one year? If the position must be filled, then the request should be disapproved unless the position can be filled pursuant to (b) below.
- (b) If another employee, who would be laid off pursuant to the Plan, can adequately fill the position of the employee, then the request should be approved.
- (c) Will the loss of the employee have a significant impact on [Contractor]'s ability to continue to adequately fulfill its missions? If there will be a significant impact and if that impact cannot be relieved by filling the position with an employee pursuant to (b) above, then the request should be disapproved.

The Department/Division Managers and Directors indicate their approval or disapproval on the Self-Select form. Justification for disapproval needs to be included (a separate page can be attached if necessary).

All SS VSP forms must be forwarded to [Contractor] Human Resources, including those that are disapproved.

NOTE: Positions that are eliminated during a SS VSP – like positions eliminated in an Involuntary Separation Program – cannot later be backfilled.

Human Resources Approval and Analysis

[Contractor] Human Resources Department (HR) will enter information from all SS VSP forms on a spreadsheet for recordkeeping and analysis. HR maintains the original SS VSP forms for one year. These forms are reviewed each time [Contractor] employees are laid off during that year. It is possible that a request is initially disapproved but may be approved at a later date if circumstances change.

The [Title of Manager] of HR, [Title of Manager] of Training, and [Title of Manager] of Labor Relations (LR) or their designees will review and approve or disapprove each request to participate in a SS VSP. When the [Title of Manager] of HR, Training, and LR or their designees disagree with the [Employee's Director/Manager's] decision, they discuss the situation to come to agreement. If they cannot agree, the [Indicate final decision maker] will decide whether the request is to be approved.

Notifying Employees

HR provides [Head of Offices – Directors/Managers] with their final list of employees who have been selected to participate in the SS VSP. HR (Employment) works with the [Directors/Managers] to determine the date that accepted employees will actually terminate employment and that information will be included in the letters to employees whose requests have been accepted. [Insert Title of whom will meet with employee] will meet with each requestor, tell them whether their request has been approved or disapproved, and hand the formal SS VSP letter to those who are approved. HR will

inform other [Contractor] organizations and applicable NSO security contractors of the upcoming terminations.

Rescinding the Self-Select Form

Employees may elect to rescind their Self-Select Request by doing so in writing (including notification by e-mail) to Human Resources, up until the effective date of their separation. The right to rescind a Request to participate will be set forth in the formal SS VSP letter prepared by HR.

Out Processing

On the day prior to their scheduled out processing appointment, applicants' supervisors and managers will take possession of company/government property, manuals, etc. from separating employees.

On their last day of work (which will also be their last day of employment), HR (Employment and Benefits) will out process employees participating in the SS VSP. An HR staff member will conduct an exit interview with each SS VSP employee according to a script. The script will specifically require each employee to verify that he or she has freely decided to terminate employment without any coercion or duress, and each separating employee will execute a form attesting to that fact.

Information about the Separation Package (benefits, retirement, etc.)

Severance Pay: Affected employees receive [insert proper severance pay, i.e., one week of base pay for each year of accredited service, up to a maximum of 15 weeks severance pay]. Employees with less than one year of accredited service receive [insert what amount, if any pay]. Employees must complete at least six months of accredited service in their final year of employment to receive severance pay for that year. Severance pay will not be given for any previous service for which severance was paid by a contractor or affiliate. Severance pay is not counted as pay or service in calculating retirement benefits. Affected employees who elect to separate as part of the SS VSP and retire still receive severance pay.

Health Care: Employees who are currently enrolled in a company-sponsored health plan, and who are not eligible for coverage under another employer's group health plan, contractor's retiree medical plan, or Medicare are eligible for the DOE Displaced Workers Medical Benefits Program (DWMBP). If an employee is eligible for coverage from another employer or a spouse's employer, but that employer's coverage contains a pre-existing condition limitation, the employee will be allowed to continue to receive benefits under the DWMBP for the pre-existing condition until the limitation period with the new employer is satisfied. Similarly, the employee may continue coverage under the DWMBP during any waiting period before coverage under a new plan is effective. Employee premiums for this program are:

- *First Year:* Current active employee rate
- *Second Year:* 50% of the appropriate COBRA rate
- *Third Year and beyond:* 100% of the appropriate COBRA rate

Alternatively, terminated employees may elect to continue medical coverage under COBRA. Employees will be provided a separate notice of COBRA benefits.

Short Term and Long Term Disability: Example: Coverage under these plans cease on the effective date of separation unless the employee is declared totally disabled by a physician before the employee's separation date. There are no conversion privileges.

Life Insurance: Example: Coverage ceases on the effective date of separation. Employees have [number] days to convert to an individual policy.

Flexible Spending Accounts (FSAs):

- *Health Care FSA Plan:* If an employee is enrolled in this Plan, contributions (which are made on a before-tax basis) stop on the employee's last day of employment and remain in the employee's account for ninety (90) days unless the employee elects to continue participation until the end of the current Plan year (December 31, [Year], under COBRA). **Note:** *If the employee elects not to continue this Plan through COBRA provisions, the employee is eligible to file claims against his or her current Health Care FSA election for services received prior to the employee's last day of work. These claims must be submitted within ninety (90) days of the employee's termination date.*
- *Dependent Care FSA Plan:* If the employee is enrolled in this Plan, contributions stop on the last day of employment, and remain in the account for 90 days. The employee is eligible to file claims against the account balance for services received prior to the employee's last day of work. These claims must be submitted within 90 days of the employee's separation date.

Voluntary Personal Accident Insurance: Voluntary Accident Insurance ceases on effective date of separation. There are no conversion privileges.

Retirement Plan: If the employee has [number] or more years of vested service at the time of the employee's separation date, the employee is vested in the Plan. Vested employees will receive a letter that will explain their status and provide the amount of their vested benefits.

If the employee does not have [number] years of total vesting service at the time of separation, the employee is not vested. [Insert other information applicable].

Thrift Plan (401(k)): Employees are vested in the employer matching contributions after [number] years of service, provided they worked at least 1,000 hours in each of those years. Employees may elect to withdraw, roll over, or defer distribution of their thrift plan funds.

[Company] will provide information to employees who have Thrift Plan loans outstanding so that they can continue to repay the loan, thereby avoiding taxes and penalties. If an employee chooses not to repay the loan, it will be considered to be "in default" and the unpaid balance will be deemed a taxable distribution.

Vacation Plan: Any hours earned and unused will be paid to the employee in the employee's final paycheck.

Employee Assistance Program (EAP): Employees and their eligible dependents may use the services of the Company-designated Employee Assistance Program (EAP) for up to three visits within the three-month period following the date of separation. Employees may contact the EAP directly at [Telephone Number] to set up an appointment.

Outplacement Services: The [State] Department of Employment, Training, and Rehabilitation's Rapid Response Team will provide information on job seeking skills and filing for unemployment. In addition, [Contractor] will offer additional assistance in resume writing, interviewing, and finding open positions.

Preference in Hiring:

[Insert Company Policy] Example: Voluntarily separated employees are not eligible for the Section 3161 preference in hiring. Such individuals may apply for open positions that they feel qualified to fill. They will be considered internal applicants (not external applicants) for 90 days after the effective date of their separation from employment under the SS VSP. However, individuals who separate from employment as part of the SS VSP and return to work for a DOE contractor or subcontractor during the first year after terminating their employment will be required to repay the pro rata portion of the severance pay they received attributable to the portion of that year they returned to work.

Self-Select Request for Separation

SECTION 1 – APPLICATION FOR SELF-SELECT VOLUNTARY SEPARATION

I hereby VOLUNTARILY APPLY to be considered for termination from employment with [Contractor] (“Employer”). I am selecting this option of my own free will after having had an opportunity to review the terms, conditions and consequences of designating myself for the “self-select” process. IF APPROPRIATE: [I understand that if there are insufficient volunteers, then I may be considered for involuntary termination, and therefore, by voluntarily applying to be considered for termination, I will be assisting the Employer in determining who should be terminated.] **I agree** that the Employer has no obligation to reemploy me in the future and I understand that I do not have rehire preference rights under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

I understand that this Request is subject to the approval of the Employer and, if approved, my employment will be terminated subject to the same terms and conditions applicable to all other participants in the Self-Select Voluntary Separation Program. The separation package has been explained to my satisfaction.

I agree that, if I am selected by the Employer to participate in the Self-Select Request for Separation Program and I then become employed by the Employer or any other contractor or subcontractor to the Department of Energy or the National Nuclear Security Administration for work performed under a contract with the Department of Energy or the National Nuclear Security Administration within a period of one (1) year from the date of my separation, I may be required to repay a portion or all of the severance payments which I received pursuant to my participation in the Self Select Voluntary Separation Program, and I agree to such payment. Examples of employment that may require me to repay severance include, but are not limited to, work under contracts or subcontracts with the Department of Energy or the National Nuclear Security Administration such as temporary employment contracts, service contracts, general task order assignments, indefinite quantity contracts, basic ordering agreements, and consultant contracts. However, my obligation to repay severance would not be triggered by employment with a company that provides supplies, equipment, materials, commodities, or services for a Department of Energy facility under a fixed priced contract or purchase order and whose primary business activities are not in support of such Department of Energy facility.

I have read this Request to terminate employment as part of the Self –Select Voluntary Separation Program and agree to abide by the terms set forth herein if my Request is accepted:

Name: _____
(Print Last Name, First Name, MI)

Employee Number: _____

Signature: _____

Date: _____

Self-Select Request for Separation

(Page 2 of 3)

Section 2 – Management Approvals

Department/Division Manager:

This Request to terminate employment as part of the Self –Select Voluntary Separation Program is:

APPROVED **DISAPPROVED**

Justification if disapproved: _____

Department/Division Manager's Name (Please Print) _____ Department Number: _____

Department/Division Manager's Signature _____ Date: _____

Director:

This Request to terminate employment as part of the Self –Select Voluntary Separation Program is:

APPROVED **DISAPPROVED**

Justification if disapproved: _____

Director's Name (Please Print) _____

Director's Signature _____ Date: _____

Self-Select Request for Separation

(Page 3 of 3)

SECTION 3 – Human Resources Approval

This Request to terminate employment as part of the Self –Select Voluntary Separation Program is:

APPROVED **DISAPPROVED**

Justification if disapproved: _____

Division Manager of Human Resources,
Training, and Labor Relations Name (Please Print) _____

Division Manager of Human Resources,
Training, and Labor Relations Signature _____ Date: _____

SECTION 4 – COO Approval (if necessary)

In the event the Director and Human Resources do not agree,
the COO determines whether the Self-Select request is approved.

This Application to terminate employment as part of the Self –Select Voluntary Separation Program is:

APPROVED **DISAPPROVED**

Justification if disapproved: _____

COO Name (Please Print) _____

COO Signature _____ Date: _____

[Enter Contractor name] FY 20XX [Enter year]
Specific Plan for
Workforce Restructuring:
Involuntary Separation Program for the
U.S. Department of Energy or
National Nuclear Security Administration
[Enter name of DOE or NNSA]

Effective: [Enter Month and Year]

May be exempt from public release under the Freedom of Information Act (5 USC 552) exemption number and category: #5, Privileged Information. Department of Energy review required before public release.

Executive Summary

During fiscal year (FY) 20 [enter year], [enter contractor name] anticipates eliminating the positions of up to a total of approximately [enter number] employees, [INCLUDE IF A SELF-SELCT PROGRAM HAS BEEN CONDUCTED: “___ employees through the Self-Select Program”] and the balance through an Involuntary Separation Program. This workforce restructuring plan has been prepared specifically to address the involuntary separations which may be needed in the workforce based on current FY20 [enter year] mission priorities. The maximum number of separations which could be necessary is approximately [enter number].

TO THE EXTENT A SECTION 3161 WAS DEVELOPED, ADD: All separations will be conducted consistent with the workforce restructuring strategies identified in the [Enter month/date, if available, of the DOE or NNSA Sec. 3161 Workforce Restructuring Plan], (hereinafter, the DOE/NNSA Plan). The intent of this program is to mitigate the impact of the reductions on the affected employees and on the surrounding communities and to implement the reductions as expeditiously as possible in order to minimize the actual number of required separations and maximize plant/laboratory/site [as appropriate] mission in FY20 [enter year].

The Need for Workforce Restructuring

Workforce restructuring is necessitated based on current FY20XX mission priorities and resultant budget targets. As shown in the following table, the greatest impact will be to [enter name of organization and/or units, e.g. indirect support services].

Estimated Headcount by Funding Source

Funding Source	Involuntary	Voluntary	Total
Indirect Support Services	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]
Total	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]

The following is a summary of how the specific job categories will be affected by the reprioritization of missions, by DOE’s Common Occupational Classification System (COCS), effective [Enter month and year].

Estimated Headcount by COCS

COCS Group	COCS Description	Headcount [enter date just prior to restructuring]	VSP Reductions FY[enter year]	Estimated ISP Reductions FY[enter year]	Post Reduction Headcount
M000	Supervisors, Managers & Program/Project Managers	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]
S000	Scientists	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]
E000	Engineers	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]
P000	Professional Administrative	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]
T000	Technicians	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]	[Enter # of employees]

		employees]	employees]	employees]	employees]
G000	General Administrative/Secretarial	[Enter # of employees]			
C000	Crafts	[Enter # of employees]			
R000	Operators	[Enter # of employees]			
L000	Laborers	[Enter # of employees]			
	Site Total	[Enter # of employees]			

A. Involuntary Separation Program (ISP)

[INCLUDE IF A SELF-SELCT PROGRAM HAS BEEN CONDUCTED: “As of [Enter date], [Enter # of employees] (of which, # of employees are covered by a collective bargaining agreement (CBA) will separate voluntarily as part of the Self-Select Program.”] Approximately [Enter # of employees] will have to be separated through an Involuntary Separation Program (ISP), approximately [Enter # of employees] of whom are employees covered by a CBA. The ISP will be implemented consistent with the policies set forth in the [DOE/NNS] Plan. Represented employees covered by CBAs will be identified for involuntary separation in accordance with the terms of the appropriate CBA. Employees not covered by a CBA will be selected for involuntary separation based on a number of objective and neutral factors. General guidelines for managers regarding implementation of a workforce restructuring program are included in Attachment A.

[Enter name of contractor] will provide DOE with an adverse impact analysis for proposed workforce restructuring actions involving fifty or more employees in a twelve-month period for possible disparate impact on minorities and other protected classifications of employees.

All employees who are involuntarily separated will be eligible for severance and outplacement assistance. Represented employees will receive severance pay in accordance with severance provisions in their collective bargaining agreements. Employees who are not covered by a collective bargaining agreement will receive severance pay in accordance with [enter contractor name’s] contract with DOE or NNSA. In addition, employees who qualify will be eligible for 3161 hiring preference (Attachment B) and employees who meet the criteria of the Displaced Worker Medical Benefit Program (DWMBP) will be eligible for medical benefits under the DWMBP.

Outplacement assistance will include [briefly describe outplacement services and identity of providers] on the day of separation and access to professional career assistance (such as skill assessments, workshops, assistance with resume creation and reproduction, interview techniques, job market information, resource libraries, automated job listings, etc.). State-specific information will be provided to affected employees in other locations, and career assistance will be offered.

The total cost for separating these employees is estimated at \$[enter amount] million, which includes the cost of severance and the DWMBP (Attachment C). The cost savings, including from salaries and benefits no longer paid, is estimated at \$[enter amount].

B. Communication Plan

This workforce restructuring action will require extensive internal and external communications. These communications will assure that interested parties are kept well informed at every stage of the

restructuring process.

Communications with employees will be structured to assure that employees receive consistent and legally appropriate messages relevant to their situation. These communications will include 1) general communications, such as newsletter articles, and 2) specific messages, such as employee information packets, and meetings with individual employees to notify employees of their status and responsibilities within the restructuring program.

[Enter contractor name] will address concerns raised by the community, the media, elected officials, and other stakeholders in external communications. A chart that outlines key communication activities is included below.

Action	Date
DOE or NNSA Approval of SS VSP, if applicable	
Employee Notification, Open Window for SS VSP Applications	
Submit Site Specific ISP to DOE or NNSA	
Close Window for SS VSP Applications	
Notify Employees of Approval/Disapproval of SS VSP Applications	
Employees May Rescind Application Until this Date	
Re-evaluate Involuntary Impacts After SS VSP	
Submit ISP Disparate Impact Evaluation for Review (optional but encouraged)	
Begin SS VSP Departures	
DOE or NNSA Approval of Site Specific ISP	
ISP Employees Separated	

ATTACHMENT A

GUIDELINES FOR INVOLUNTARY WORKFORCE RESTRUCTURING

Purpose

These guidelines are intended to assist management and leadership in conducting involuntary workforce restructuring programs. These guidelines do not apply to employees who resign or to employees who are terminated for cause or for performance issues.

Selection of Affected Employees

Employees should be selected for involuntary separation consistent with the criteria set forth below.

[CRITERIA]

A Rating Sheet (see Appendix i) should be used to document the selection process, subject to the following:

- (a) If a position is being eliminated and the duties of that position are no longer going to be performed by the department and there is only one employee who filled the position and that employee will be laid off, then documentation can be limited to the reasons the position was eliminated.
- (b) If a position is being eliminated and the duties of that position are being combined with the duties of a remaining position, then the documentation should show why the employee who is assuming the duties of the eliminated position should be retained and the employee whose position is being eliminated should be laid off.
- (c) If a department has more than one employee filling the same position and one or more of which is being laid off (i.e. there are two administrative assistants and one must be laid off), then the documentation should show why certain employees were retained and others were laid off.

Appendix i – Rating Sheet

Peer Group: Systems Engr.						
	Weight:		0.40	0.10	0.50	1.00
NAME	Job Classification	Salary Grade	Education, Knowledge and Skills Critical to [enter name of DOE or NNSA site] Mission	Length of Service	Avg. Last 3 Performance Reviews	Total Rating
Employee A						
Employee B						
Employee C						

ATTACHMENT B

HIRING PREFERENCE

Pursuant to the Interim Planning Guidance for Contractor Workforce Restructuring, eligible employees involuntarily separated from employment (except if terminated for cause) at the [enter name of DOE or NNSA site] or other DOE/NNSA sites may be eligible for preference in hiring. Where qualifications are approximately equal, eligible individuals will be given preference in hiring consistent with applicable law, regulation, or executive order, and collective bargaining agreements.

3161 Hiring Preference for Eligible Employees

Initially, and on an annual basis thereafter, eligible individuals must certify on the Statement of Interest in Maintaining Section 3161 Employment Eligibility form, their desire to retain their hiring preference through the contractor's employment department. This form is provided when the employee out processes.

As positions become available, Human Resources will review the qualifications of eligible former employees on the [enter name of DOE or NNSA site] Preference in Hiring List so individuals can be given preferential consideration when they meet the minimum qualifications for a position.

In order to be eligible, individuals must meet the requirements as identified below:

Regular full-time and part-time employees are qualified, eligible employees under section 3161, if they have been:

- Employed at a DOE defense nuclear facility on or before September 27, 1991, and
- Employed at [enter name of DOE or NNSA site] in a full-time or part-time regular capacity on the date a workforce restructuring notice was given for a specific workforce reduction, and
- Involuntarily separated (other than for cause).

Hiring Preference for Other Affected Employees (not 3161 eligible)

Affected employees are encouraged to apply for open positions that they feel qualified to fill.

ATTACHMENT 6

GUIDANCE ON CONDUCTING DIVERSITY ANALYSIS

The Uniform Guidelines for Employee Selection Procedures adopted by the Equal Employment Opportunity Commission (EEOC), Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), and U.S. Department of Justice in 1978 set out accepted statistical tests for assessing possible discriminatory impact of employment actions on protected classifications of employees. See 29 CFR Part 1607. Agencies and litigants commonly use statistical tools in any enforcement action or claim raised. Significantly, an enforcement agency may in fact draw an inference of adverse impact of the selection process where an employer has failed to use those statistical tools, if the employer actions have a statistically disproportionate impact on protected classifications of employees. In short, these Guidelines show that the use of statistics is not only a best practice, but the failure to make use of those tools presents a real risk in litigation and in federal enforcement proceedings.

Where a contractor proposes to involuntarily separate fifty or more employees in a 12-month period, these statistical tools should be used to review proposed contractor involuntary separation programs for potential adverse impact on protected classes such as race, age or sex. The most basic test, called the "two standard deviation" test approved in many Supreme Court decisions is generally quite useful. See, e.g., *Hazelwood School District v. United States*, 433 U.S. 299, 311 n. 17 (1977). This test compares the employee group tentatively selected for separation with the entire group of employees. If protected class participation in the proposed cohort of employees to be separated exceeds protected class participation in the entire employee population by more than two standard deviations, case law holds that there is a prima facie case that the selection procedure used to determine who will be separated has an unlawful disparate impact and we have found it to be very helpful in evaluating the risk of discriminatory treatment. The following are important points:

- Using this two standard deviation test has the great advantage of allowing for the anomalous characteristics of a predominately older or female work force, for example. Because the median age of the contractor work force at DOE/NNSA sites is slightly over age 50, it is especially useful to look at age by five-year bands (i.e., ages 50-54, 55-59, etc.); a simple over 40/under 40 comparison is not an adequate tool for measuring disparate impact for such a population.
- Represented employees covered by collective bargaining agreements requiring that they be separated according to seniority should be excluded from the diversity statistics, as are individuals separating as part of a self-select separation program.
- Where entire operational units are being eliminated and there is no individual selection among such employees involved, it may provide a more precise analysis of the contractor's selection of individual employees to separate out the individuals from the eliminated units in performing the statistical analysis.
- Operational units should be very carefully defined and should reflect selections made by the same management team using the same selection procedures.

- It is important to accurately define selection procedures – when operations are changing, individuals who decline offers of jobs that are considerably different with lower rates of pay will probably not be seen as having voluntarily quit, as opposed to involuntary separations.

In doing the diversity analysis, there will frequently be several categories of statistics that show disparate impact, and then the task is to show the business justification for those results. In such cases, it is especially important to ensure that the business case for the specific actions is well documented.

Use of the accepted statistical tests of discrimination facilitates expeditious review of the likelihood of discriminatory impact. Where there is statistical anomaly, additional statistical tools can also be used to more fully understand the impact and dispose of concerns about possible discriminatory treatment, e.g., to demonstrate that job classifications for work that is being eliminated were disproportionately populated by employees in protected classifications who may not possess the skills required for future mission needs.

An example of a diversity analysis is attached hereto. Another example of a statistical program can be found at <http://www.hr-software.net/EmploymentStatistics/DisparateImpact.htm>.

IMPACT RATIO ANALYSIS --- NEGATIVE PROCESSES

PROTECTED GROUP	NON-PROTECTED		DATA INPUT BLOCKS				NON-PROT. GROUP			STATISTICAL TESTS			EXPECT # OF PROT. SELS.	ACTUAL # OF PROT. SELS.	# OF PROT. AFFECT	AFFECTED JOB GROUP / DEPARTMENT	DEGREE ADVERSE IMPACT	UGESP Q&A Q-21 (PASS)
	POOL	SELS.	PROTECTED POOL	PROTECTED SELS.	TOTAL POOL	TOTAL SELS.	PROT. RATE	PROT. RATE	GROUP RATE	80 % RULE	FISHER EXACT	STD DEV						
	---B---	---C---	---D---	---E---	---F---	---G---	---H---	---I---	---J---	---K---	---L---	---M---						
(A)	(F-D)	(G-E)	(INPUT)	(INPUT)	(INPUT)	(INPUT)	(C/B)	(E/D)	(G/F)	(< 80%)	(< 0.025)	(>= 2.0)	(J*D)	(+E)	(N-O)	(+A)	(NOTE)	(NOTE)
FEMALES					0	0				N/A								
NON-WHITE					0	0				N/A								
BLACK					0	0				N/A								
HISPANIC					0	0				N/A								
ASIAN					0	0				N/A								
NATIVE AMERICAN					0	0				N/A								
40 AND OVER					0	0				N/A								
45 AND OVER					0	0				N/A								
50 AND OVER					0	0				N/A								
55 AND OVER					0	0				N/A								
60 AND OVER					0	0				N/A								
40-44					0	0				N/A								
45-49					0	0				N/A								
50-54					0	0				N/A								
55-59					0	0				N/A								
60-64					0	0				N/A								
65-69					0	0				N/A								
70-74					0	0				N/A								
75-80					0	0				N/A								
80-85					0	0				N/A								

Note: IF COLUMN K = N/A, THEN DISTRIBUTION OF SELECTIONS INDICATES NO EVIDENCE OF ADVERSE IMPACT.

IF COLUMN K < 80%, THEN COLUMNS L THROUGH P ARE CALCULATED FOR ADDITIONAL INFORMATION.

IF COLUMN R = (*) ADVERSE IMPACT IS NOT STATISTICALLY SIGNIFICANT (K < 80% & P >= 1.0);

(**) ADVERSE IMPACT IS OCCURRING UNLIKELY BY CHANCE (L < 0.025);

(**) ADVERSE IMPACT IS OCCURRING UNLIKELY BY CHANCE (M >= 2.0).

IF COLUMN S = PASS, THEN DISTRIBUTION OF SELECTIONS INDICATES NO EVIDENCE OF ADVERSE IMPACT.