

report the number of personnel employed and needed in the provision of special education and related services. Data are obtained from state and local education agencies, and are used to assess the implementation of the Individuals with Disabilities Education Act (IDEA) and for monitoring, planning and reporting to Congress.

Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Report of Children and Youth with Disabilities Exiting Special Education During the 1996-97 School Year.

*Frequency:* Annually.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.

*Reporting Burden and Recordkeeping:* Responses: 58; Burden Hours: 16,124.

*Abstract:* This package provides instructions and a form necessary for States to report the settings in which children with disabilities served under Individuals with Disabilities Education Act (IDEA)-B receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor SEAs and for Congressional reporting.

Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Number and Type of Personnel Employed and Contracted and Additional Personnel Needed to Provide Early Intervention Services for Infants and Toddlers with Disabilities and Their Families.

*Frequency:* Annually.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.

*Reporting Burden and Recordkeeping:* Responses: 58; Burden Hours: 13,596.

*Abstract:* This package provides instructions and forms necessary for States to report the number of personnel employed and needed in the provision of early intervention services for infants and toddlers with disabilities served under Individuals with Disabilities Education Act (IDEA), Part H. Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title:* Forms Clearance Package for the Projects with Industry Program.

*Frequency:* Annually.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Reporting Burden and Recordkeeping:* Responses: 101; Burden Hours: 4,040.

*Abstract:* The purpose of collecting compliance indicator data on the Projects with Industry program is to comply with the Congressional mandate to assess project performances based on evaluation standards as established under the 1986 Rehabilitation Act Amendments.

Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Report of Infants and Toddlers Receiving Intervention Services in Accord with Part H and Report of Early Intervention Services on IFSPS Provided to Infants and Toddlers and Their Families in Accord with Part H.

*Frequency:* Annually.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs.

*Reported Burden and Recordkeeping:* Responses: 58; Burden Hours: 2,378.

*Abstract:* This package provides instructions and forms necessary for States to report the number of infants and toddlers with disabilities served under Individuals with Disabilities Education Act (IDEA), Part H receiving early intervention services and the services provided as indicated on the Individualized Family Service Plan (IFSP). Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* Report of Program Settings Where Early Intervention Services are Provided to Infants and Toddlers with Disabilities and Their Families.

*Frequency:* Annually.

*Affected Public:* State, local or Tribal Gov't, SEAs or LEAs. *Reported Burden and Recordkeeping:* Responses: 58; Burden Hours: 928.

*Abstract:* This package provides instructions and forms necessary for States to report program settings where early intervention services are provided to infants and toddlers with disabilities served under Individuals with Disabilities Education Act (IDEA), Part H. Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Postsecondary Education

*Type of Review:* New.

*Title:* Quick Response Information System (QRIS).

*Frequency:* One-time.

*Affected Public:* Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

*Annual Reporting and Recordkeeping Hour Burden:* Responses: 4,308; Burden Hours: 3,228.

*Abstract:* This is a request for system clearance of the QRIS survey system which consists of the Fast Response Survey System (FRSS) and, as of Fall 96, the Postsecondary Education Quick Information System (PEQIS). FRSS primarily conducts surveys of the elementary/secondary sector and public libraries while PEQIS focuses on the postsecondary education sector. The FRSS and PEQIS were established (in 1975 and 1991 respectively) to meet quick turnaround data requests of Department of Education and others with requirements for education data that are not available elsewhere and are needed to formulate policy; to make legislative, budgeting, and planning decisions for existing programs; and to develop new programs. The surveys are characterized by short survey forms with short response time and typical sample sizes of around 1,000. It is anticipated that about five surveys will be conducted under QRIS this year.

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## DEPARTMENT OF ENERGY

### Planning Guidance for Contractor Work Force Restructuring

**AGENCY:** Department of Energy.

**ACTION:** Notice of Interim Planning Guidance.

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**SUMMARY:** The Department of Energy today publishes for public comment interim Planning Guidance that has been issued to Department of Energy field organizations and other components responsible for planning and implementing contractor work force restructuring at defense nuclear facilities and other DOE facilities. The Guidance includes procedures, interpretations, and policies that the field organizations should use in developing site-specific plans consistent with section 3161 of the National Defense Authorization Act for Fiscal Year 1993. The Secretary has decided that the section 3161 planning process should apply, to the extent practicable and allowed by law, to work force restructuring at all Department of Energy facilities.

**DATES:** Written comments (7 copies) are due on or before May 6, 1996. The Guidance is effective upon publication in the Federal Register.

**ADDRESSES:** Comments must be submitted to: U.S. Department of Energy, Office of Worker and Community Transition, WT-1, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Sullivan, U.S. Department of Energy, Washington, D.C. 20585, phone: 202-586-0452.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Energy (Department or DOE) has broad authority to develop generally applicable policies covering all aspects of defense nuclear facilities. The Atomic Energy Act, 42 U.S.C. 161(i)(3) and 2201(p). In addition, section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 U.S.C. 7274h, requires the Department to develop a plan for restructuring the work force at a defense nuclear facility whenever the DOE determines that a change in the work force is necessary. Defense nuclear facilities within the meaning of section 3161 include facilities conducting atomic energy defense activities involving production or utilization of special nuclear material, nuclear waste storage or disposal facilities, testing and assembly facilities, and atomic weapons research facilities. The Department has issued the Guidance published in this notice to assist field organizations in developing site-specific plans consistent with section 3161 and other applicable laws and is voluntarily publishing this Guidance for public comment. The Department intends to revise the Guidance periodically as appropriate in light of public comments and experience. Various inadvertent errors and possible ambiguities in the Guidance distributed on April 5, 1995, have been corrected and clarified in this version. One significant respect in which the Guidance has been clarified is to make it clear that all notices of involuntary reductions in force of more than 100 employees at a single site require specific Secretarial approval. Secretarial approval of a work force restructuring plan does not authorize a site to give involuntary separation notices without specific Secretarial approval for the involuntary separations, although specific Secretarial approval of the involuntary separations may be provided at the same time as approval of the plan. Section 3161 furthers President Clinton's

"Putting People First" policy, which emphasizes the importance of conserving and efficiently redirecting the Government's valuable human resources from pursuit of the Cold War to new missions. Some DOE defense nuclear facilities are being downsized as a result of decisions to reduce the nuclear weapons stockpile and terminate production of nuclear weapons. Another major change at DOE defense nuclear facilities has been the increase in recent years in environmental restoration and waste management activities. At other defense nuclear facilities, work force modification is needed because of different kinds of shifts in the mission of the facility. Still other work force changes are the consequence of reductions in the Department's budget. The essential requirement of section 3161 is that the DOE must develop work force restructuring plans to minimize the social and economic impacts of work force changes at defense nuclear facilities.

Section 3161(c) sets forth six objectives that shall guide the Department in preparing a work force restructuring plan for a defense nuclear facility. First, changes in the work force at a DOE defense nuclear facility: (1) should be accomplished so as to minimize social and economic impacts; (2) should be made only after the provision of notice of such changes not later than 120 days before the commencement of such changes to such employees and the communities in which such facilities are located; and (3) should be accomplished, when possible, through the use of retraining, early retirement, attrition, and other options that minimize layoffs.

Second, employees whose employment in positions at such facilities is terminated shall, to the extent practicable, receive preference in any hiring by the DOE (consistent with applicable employment seniority plans or practices of the DOE and with section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1682)). Third, employees shall, to the extent practicable, be retrained for work in environmental restoration and waste management activities at DOE facilities.

Fourth, the Department should provide relocation assistance to employees who are transferred to other DOE facilities as a result of the plan.

Fifth, the Department should assist terminated employees in obtaining appropriate retraining, education, and reemployment assistance (including employment placement assistance).

Sixth, the Department should provide local impact assistance to communities that are affected by the restructuring plan and coordinate the provision of such assistance with (1) programs carried out by the Department of Labor pursuant to the Job Training Partnership Act (29 U.S.C. 1501 et seq.); (2) programs carried out pursuant to the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990 (Part D of Public Law 101-510; 10 U.S.C. 2391 note); and (3) programs carried out by the Department of Commerce pursuant to title IX of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3241 et seq.).

In establishing the Task Force on Worker and Community Transition on April 21, 1993, the Secretary of Energy directed that, for reasons of fairness, the planning process set forth in section 3161 should be applied, to the extent practicable and permitted by law, wherever work force restructuring takes place in the Department. On April 23, 1993, the Task Force issued draft General Planning Guidelines for Work Force Restructuring.

The formulation and execution of any work force restructuring plan is subject to the availability of appropriations, and differences in benefits provided at different sites or to defense and non-defense workers may reflect different levels of available funding.

**II. Stakeholder Participation in Work Force Restructuring Planning**

Pursuant to section 3161, all aspects of a defense nuclear facility work force restructuring plan, including the mix and level of benefits offered, shall be developed in consultation with affected DOE employees (including employees of Department contractors and subcontractors), representatives of collective-bargaining units of Department employees, interested Federal, State, and local government agencies, educational institutions and other institutions and groups in communities that will be affected by restructuring.

The Guidance provides that draft plans shall be distributed for stakeholder comment at appropriate points during the planning process. The Department will not approve Plans developed by field organizations unless there is a showing of meaningful stakeholder involvement in the planning process. The Guidance also identifies specific methods field organizations may use to obtain stakeholder input in the development of site-specific plans.

In addition to site-specific stakeholder involvement, the Department has involved stakeholders in work force restructuring policymaking at the national level. The Guidance published today reflects this extensive dialogue with stakeholders. Shortly after section 3161 was enacted, the Secretary of Energy established a Task Force on Worker and Community Transition to implement the new law and to address more generally the impacts of defense conversion. The Task Force held a National Stakeholders meeting on June 11, 1993, and published a report on July 29, 1993, that summarized issues raised by the stakeholders.

Based on continued stakeholder input and lessons learned from the ongoing development of site work force restructuring plans, the Department issued revised draft planning guidelines on March 24, 1994. Additional policy guidelines were subsequently included in a Report on the Department's Worker and Community Transition Program, issued by the Under Secretary on August 24, 1994. In September 1994, the Office of Worker and Community Transition replaced the Task Force and held a second National Stakeholders meeting on November 15-16, 1994. A third National Stakeholders meeting was held in Denver on April 20-21, 1995, and a fourth was held in Albuquerque on September 13-15, 1995. Another National Stakeholders meeting will be held in March 1996 in Atlanta.

### III. The General Purpose of the Interim Guidance

The interim Guidance published today was prepared by the Department's Office of Worker and Community Transition to plan for and mitigate the impacts of changes in the Department's contractor work force. The Guidance was developed to assist DOE field organizations that are primarily responsible for developing section 3161 plans. The Guidance sets forth generally non-prescriptive procedures for coordinating Department activities related to section 3161 planning, and contains interpretations and policy statements to help DOE field organizations implement section 3161 consistently with applicable contract provisions and other laws and obligations of the Department.

### IV. Request for Public Comment

Although not required by law, the Department has chosen to publish this revised interim Guidance for public comment so that all stakeholders and the general public have an opportunity to influence the general policies the

Department is following during the section 3161 planning process. The Department will publish final Guidance with appropriate revisions in light of the public comments and experience with the interim Guidance.

Although the public is invited to comment on all aspects of the Guidance, the Department is especially interested in receiving views on the following provisions:

#### A. The "Trigger" or Threshold for Section 3161 Planning

Section 3161 directs the Department to develop a plan when it is determined that "a change in the work force at a defense nuclear facility is necessary," and to submit the plan to Congress. The Department has interpreted section 3161 to apply only where a change in the nature or structure of the work force may affect 100 or more employees at a site within a 12-month period. While a formal plan is not required below this threshold, the Department will consider the objectives of section 3161 during the planning process in such cases.

#### B. Hiring Preference for "Employees Who Participated in Efforts To Maintain the Nation's Nuclear Deterrent During the Cold War"

The Guidance lists several benefits which field organizations should consider offering displaced workers, taking into account the skills of the workers at the affected site, overall budget constraints, contractual provisions, applicable pension and other benefits plans, and other legal requirements and obligations. However, the Guidance directs field organizations to provide a specific benefit—a hiring preference—to employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War. This class of employees, in whom the Department has invested heavily to develop skills important to the Nation, is defined as employees who were working for a DOE contractor on September 27, 1991, the day the first unilateral reduction of the Nation's nuclear weapons stockpile was announced, and who have continued to work for DOE since that date, as set forth in greater detail in the attached Appendix D of the Guidance, which has been revised to correct inadvertent omissions in Appendix G as originally distributed on April 5.

The Guidance provides that employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War, whose employment is terminated involuntarily (except those terminated for cause) and who are qualified for the job at the time

the work is to begin, shall receive preference in any hiring conducted by the DOE and its contractors and subcontractors (whose contracts equal or exceed \$500,000 in value) to fill vacancies, to the extent practicable and consistent with veterans' preference, other applicable law, employment seniority plans, and other legally binding preferences or practices, as set forth in greater detail in Section V.A. of the Guidance.

Nothing in the Guidance is intended to obligate a contractor to hire an employee who is not qualified to perform the work. The preference is not applicable in situations where positions become available and existing employees are offered a right of first refusal to those positions, e.g., where one contractor has replaced another and existing employees are offered a right of first refusal to employment with the replacement contractor.

#### C. Retraining for New Missions Including Cleanup

Section 3161 directs the Department, to the extent practicable, to retrain employees for environmental restoration and waste management activities at the site of their employment or at other DOE facilities. Eligibility for retraining benefits is not limited to employees who have been terminated during a work force restructuring.

The Guidance provides, in the "General Guidance" section, that early in the planning process, an analysis should be made of the facilities' future mission and the work force skills and capabilities that will be needed to fulfill that mission. The analysis should compare those future requirements with the skills and capabilities of current workers at the facility to identify workers who possess critical skills that will be needed for the future mission and to determine the retraining that will be necessary to provide existing employees with these skills.

Accordingly, the "Specific Benefits for Consideration" section provides that work force planning should identify training needs and provide the training to prepare the existing work force for the DOE's new missions (including environmental restoration and waste management). Furthermore, this section recommends a standard for determining whether retraining of employees for new missions, including cleanup, should be considered "practicable" under section 3161(c)(3). The recommended standard is that the training should be aimed at jobs for which (1) vacancies are expected in the near term and (2) training of current employees to fill those vacancies can be completed

within not more than six months at a cost of not more than \$10,000. (This training is different from the educational assistance provided for separated employees.)

#### V. Opportunity for Public Comment

Interested persons are invited to participate in this proceeding by submitting data, views, or comments with respect to today's notice.

Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the documents themselves with the designation "Contractor Work Force Restructuring Guidance." In the event any person wishing to provide written comments cannot provide 7 copies, alternative arrangements can be made in advance with the Department.

All comments received will be available for public inspection as part of the administrative record on file for this matter in the Department of Energy Freedom of Information Office Reading Room, IE-090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on February 1, 1996.

Robert W. DeGrasse, Jr.,  
*Director, Office of Worker and Community Transition.*

### Interim Planning Guidance for Contractor Work Force Restructuring

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### Interim Planning Guidance for Contractor Work Force Restructuring

#### I. Introduction

This planning guidance was prepared by the Department of Energy's Office of Worker and Community Transition (the Office) to plan for and mitigate the impacts of changes in the Department's contractor work force. The Office is directed to assure fair treatment of all concerned, while at the same time recognizing the unique conditions at each site and in each contract.

This guidance replaces guidelines issued by the Task Force on Worker and Community Transition on March 24, 1994. It is a product of the Department's experience over the past 2 years, and an extensive process of stakeholder and public involvement in shaping our worker and community transition policies. This process included national meetings on June 11, 1993, and on November 15 and 16, 1994. Comments were solicited from the public on a report, issued by Under Secretary Charles B. Curtis on August 24, 1994. Comments were also solicited on earlier versions of this guidance issued on April 22, 1993, and March 24, 1994. Additional stakeholder meetings were held on April 20 and 21, and September 13 through 15, 1995.

This guidance contains revisions and technical corrections to the document originally distributed on April 5, 1995. The Office intends to revise this interim guidance from time-to-time as warranted, based on comments received through notice and publication in the Federal Register, and other stakeholder comments and consultation.

Except where otherwise noted, this guidance is not prescriptive. Cognizant field organizations have responsibility for planning work force restructuring. The Department's field organizations are in the best position to conduct full consultation with affected stakeholders on these plans and to understand the unique needs of work force restructuring at field facilities. Points-of-contact at each field organization are listed in Appendix A.

#### II. Legislative Provisions

On April 21, 1993, Secretary of Energy Hazel R. O'Leary created a task force "to coordinate worker and community transition assistance as the Department goes through periods of changing priorities." In large measure, the task force was created to implement section 3161 of the National Defense Authorization Act (the Act) for Fiscal Year 1993. For reasons of fairness, the Secretary directed that the process set forth in section 3161 should be applied to the extent practicable wherever work force restructuring takes place in the Department.

Section 3161 requires the Secretary of Energy to develop a plan for restructuring the work force for a defense nuclear facility whenever there is a determination that a change in the work force is necessary. The plan is to be developed in consultation with local, state, and national stakeholders, and submitted to Congress 90 days after notice of a planned work force restructuring has been given to the affected employees and communities. A work force restructuring plan must be updated annually and should include an evaluation of the implementation of the plan during the preceding year.

Section 3161 of the Act provides specific objectives to guide the preparation of the plan to minimize worker and community impacts. The plan should provide at least 120 days notice to employees and communities prior to beginning any involuntary separations. Reductions should be accomplished, when possible, through use of retraining, early retirement, attrition, and other options that minimize layoffs. To the extent practicable, the Department should offer a hiring preference to involuntarily separated employees. Employees should, to the extent practicable, be retrained for work in environmental restoration and waste management. Employees transferred to other Department facilities should receive relocation assistance. Terminated employees should be assisted in obtaining reemployment assistance, including Out placement services,

appropriate retraining and education opportunities. The Department should provide local impact assistance to affected communities. Relevant sections of the Act are available from the sources listed in Appendix B.

Pursuant to section 3163, "defense nuclear facilities" for the purposes of section 3161 include the following types of facilities under the control or jurisdiction of the Secretary of Energy: atomic energy defense facilities involving production or utilization of special nuclear material; nuclear waste storage or disposal facilities; testing and assembly facilities; and atomic weapons research facilities. Department of Energy facilities that have been determined to be defense nuclear facilities for the purposes of section 3161 are listed in Appendix C.

### III. General Guidance

All work force changes, regardless of cause, should be managed by the cognizant field organization consistent with the objectives of section 3161 of the Act, and DOE Order 3309.1A covering Reductions in Contractor Employment.<sup>1</sup> Each plan should be developed by the field organization consistent with budget constraints, contractual provisions or other obligations. All aspects of a plan, including the mix and level of benefits offered, should be developed in consultation with the stakeholders at the affected facility, and other appropriate stakeholders to ensure, among other things, the judicious expenditure of public funds. The Office encourages field organizations to utilize the combination of work force restructuring mechanisms that will most effectively accomplish the restructuring objectives.

#### A. Threshold for Plans

Work force restructuring plans should be developed where changes in the nature or structure of the work force may affect 100 or more employees at a site within a 12-month period. Even when a full plan is not required, the objectives of section 3161 should be followed, to the extent practicable within available resources. While the objectives of section 3161 should be considered in cases of smaller reductions, the formal process required by the law is not necessary. Approval from the Office and the responsible program and funding office should be received before any work force change is implemented.

<sup>1</sup> Order 3309.1A is being revised to incorporate the requirements of section 3161 of the Act and the organizational changes resulting from the creation of the Office of Worker and Community Transition.

#### B. Timing of Plans

Upon determining that a change in the work force is necessary, the appropriate field organization should immediately begin planning for the restructuring, and develop a schedule for preparing a work force restructuring plan, if required. One of the objectives of the Act is to give at least 120 days notice to the employees before involuntary layoffs begin. Although a 120-day advance notification may not always be possible, every effort should be made to meet or exceed this important objective. Field organizations should work with the Office to develop a schedule for plan development that meets the needs of the site. The work force planning described below should occur on a timeline that supports this advanced notification objective, to the extent practicable.

#### C. Work Force Planning

The Office is developing an integrated process for a work force planning system, pursuant to the Secretary's direction. In the interim, we will employ the best possible work force planning practices available, consistent with the objectives set forth below.

Developing a baseline assessment of the skills and capabilities of the current work force should be the initial step in the work force planning process. Field organizations should then consider the future missions and budget estimates to project the required work force skills needed to achieve the desired outcomes. Strategies should be developed for making the transition from the current baseline to the projected need, including retraining, voluntary separation incentives, and reductions-in-force. Particular attention should be directed to ensuring that workers with critical skills are retained.

#### D. Local Impact Assistance to Communities

The work force restructuring plan should be developed in coordination with, and in support of, the economic development objectives of nearby communities. Therefore, local officials and institutions involved in mitigating social and economic impacts anticipated to be caused by the Department's actions should be consulted in development of the plan. The plan should provide demographic and skills information about the affected work force, as well as other data that could help frame the community's economic development challenges and options. It should also discuss benefits, such as education and training, that will be provided to eligible employees that

can augment community-based economic development initiatives. Finally, it should address ways the Department can support local business creation, expansion, and attraction activities. Separate guidance was issued August 24, 1994, on economic development efforts that may be supported by the Worker and Community Transition Program. Copies of this guidance may be obtained from the Office.

#### E. Stakeholder Input to Plans

Consultation with local, State, and national stakeholders, as well as State and local Government officials, is an essential element of the work force restructuring process. Input should be solicited and given consideration at appropriate points throughout the development of plans for work force restructuring. When possible, the Office recommends that field organizations make this Interim Planning Guidance available to their stakeholders in advance of the 120-day notification. This will give stakeholders a perspective on the parameters within which plans are prepared.

#### F. Role of Counsel

Work force restructuring raises many legal issues under a wide variety of statutes. Failure to comply with applicable laws can have significant consequences for both the Department and its contractors. It is therefore essential that counsel be involved in the formation and execution of the plans. Failure to present properly structured plans to the Office can result in delay and increased cost. Therefore, field organizations should include counsel as a member of the planning team.

#### G. The Role of DOE Contractors

While the Department may seek the assistance of its contractors in developing work force restructuring plans, the plans are Department of Energy products. In general, it is the Department's policy to make information available to the public that is available to the operating contractors and has bearing on the plans, unless such information is protected by law or regulation.

Department contractors are not identified by section 3161 of the Act as stakeholders who must be consulted in the preparation of work force restructuring plans. The exclusion of these contractors would be inappropriate, however, as they may be the principal resource of institutional knowledge on many restructuring issues, and may be the only source for certain information necessary for

preparing a plan. They are the employers of the affected employees and are generally the administrators of the pension and other benefit plans involved. They are responsible for fulfilling their obligations to bargain with the collective-bargaining representatives of their employees regarding changes in contracts, pension plans, other benefits, and any other mandatory bargaining issues necessitated by the restructuring plan, as well as for obtaining any waivers of claims or reemployment appropriate in any given situation. However, the Department is responsible for developing the plans.

#### *H. Approval of Plans*

By law, the Secretary submits work force restructuring plans to Congress, and thus is the official responsible for final approval. Involuntary separations should be carried out consistent with DOE Order 3309.1A, which requires prior notification to Headquarters. All notices of involuntary separation that affect more than 100 management and operating (M&O) employees at a single site require Secretarial approval. Early retirements and other voluntary separations may begin before final plan approval, after written approval by the Office, in order to reduce the number of involuntary layoffs. Draft plans should be submitted to the Office for concurrence prior to their release to stakeholders.

#### *I. Plan Updates*

Within a year of a work force restructuring plan's submission to Congress, or earlier if events suggest that it would be appropriate, the cognizant field organization should submit an update of the plan to the Office for the Secretary's approval and submission to Congress. The plan update, which is required by law, should evaluate the plan's implementation, including the number of workers receiving each benefit and the overall cost, and cost per participant of that benefit, together with information on retraining of retained employees, and subsequent reemployment of displaced workers. These plan updates should be provided to the Office for submission to the Congress even when a new plan is under development.

#### *J. Funding for Plans*

Limited funds are available for implementing the objectives of section 3161 of the Act for defense nuclear facilities, including economic development assistance. Funding for work force restructuring plans at facilities other than defense nuclear

facilities should be sought from the program responsible for the activities subject to the work force restructuring. Likewise, benefits for workers at defense nuclear facilities affected by the changes due to business or efficiency decisions should be sought from the appropriation of the program making the change. These decisions include initiatives such as privatization, commercialization and reductions aimed at achieving improved efficiency.

The allocation of funds to mitigate the impact of restructuring on the workers decreases the funds available for continuing program responsibilities and economic development. No "standardized" allocation of funds is contemplated as it is highly unlikely that the needs of any two work forces and communities undergoing a restructuring would be the same.

#### *IV. Specific Benefits for Consideration*

After work force planning has identified the classifications of workers at risk, consideration of specific benefits to mitigate involuntary separations should take into account available funding and the status of affected employees. In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who were employed before September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's nuclear weapons stockpile, and the date the Department has chosen as the end of the Cold War. Appendix D contains the job attachment test that has been developed for determining those employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War.

In developing a work force restructuring plan, the following benefits may be considered for affected workers. If adopted, specific offers and conditions should be described in the plan.

##### *A. Early Retirement*

The potential loss of employees with skills critical to achieving Departmental missions is a primary consideration in determining the appropriateness of early retirement incentives. When early retirement incentives are offered, it has generally been the Department's practice that the incentives are made available to all eligible employees. It is legally permissible to limit benefits by reasonable, objective categories such as job classification if such limitations do not give rise to unlawful discrimination or disparate impact of any kind.

Enumeration of employees by name, or criteria having substantially the same effect, is not generally considered reasonable, unless the employer has utilized written, objective and neutral criteria in the selection process. Early retirement incentive programs must be consistent with applicable contracts.

All proposed retirement incentives including lump sum payments, additional years of service or reduction in age penalties, should be analyzed with respect to the likely candidates to accept, and potential effects on critical skills. Employee Retirement Income Security Act (ERISA), Age Discrimination In Employment Act (ADEA), and other related legal concerns must be considered and resolved early in the process. It is essential that proposed early retirement programs receive appropriate actuarial validation establishing that they do not result in discrimination in favor of highly compensated employees within the meaning of the Internal Revenue Code, or in discrimination on the basis of any protected category of employees with respect to employment laws such as ADEA, Title VII of the Civil Rights Act, and the Americans with Disabilities Act.

Employees receiving an incentive to retire should not receive educational assistance or relocation assistance. It is anticipated that the value of early retirement incentives will exceed the value of the benefits provided to other separating employees. Any lump sum incentives paid to retirees in lieu of pension formula enhancements may not exceed his or her previous year's salary consistent with Department of Energy Acquisition Regulation Part 970.3102-2(1)(6) and Federal Acquisition Regulation Part 31.205-6(j)(7).

The cognizant field organization should adopt as part of its plan mechanisms to ensure that individuals accepting an early retirement incentive are not inappropriately rehired. Such mechanisms could include post-employment restrictions, requiring repayment of the incentive, and limiting the number of waivers of any such restrictions for critically skilled individuals.

##### *B. Voluntary Separation Incentives*

Voluntary separations may be encouraged by offering severance, or enhanced severance payments. Applications for voluntary separation may be refused in order to preserve critical knowledge or skills. Those volunteering for separation may be offered educational assistance, and relocation assistance, and they may

receive Displaced Workers Medical Benefits.

The cognizant field organization should adopt as part of its plan mechanisms to ensure that individuals accepting a voluntary separation incentive are not inappropriately rehired. Such mechanisms could include post-employment restrictions and require repayment of the incentive upon rehire. Individuals with critical skills should not be offered voluntary separation incentives unless sufficient personnel are available to fulfill mission requirements.

#### *C. Educational Assistance for Separated Employees*

Educational assistance should be considered for employees being voluntarily or involuntarily separated, except for employees accepting early retirement incentives. It is recommended that tuition assistance, and other reasonable and necessary educational expenses, be limited to not more than a total of \$10,000 over a period of not more than 4 years.

#### *D. Relocation Assistance*

Relocation assistance should be considered for workers being terminated and for those voluntarily separating, except for employees accepting early retirement incentives. Such assistance should particularly be considered for employees involuntarily separated who are hired at other Department facilities, but who do not qualify for relocation assistance under the hiring contractor's policies. It is recommended that relocation assistance include actual and reasonable expenses for transportation, movement of household goods, and temporary living accommodations within a range of \$2,000 to \$5,000.

#### *E. Retraining for New Missions Including Cleanup*

Work force planning should identify training needs and provide such training to transition the existing work force to new missions as early in the process as possible. The Office recommends that all retraining for cleanup or other missions meet the following practicability test: the training should be aimed at jobs for which vacancies are expected in the near term; and the training should be able to be completed within a reasonable time-frame in relationship to those vacancies (not more than 6 months), and at a reasonable cost (not to exceed \$10,000). The suggested \$10,000 cap includes tuition, course materials and related instructional costs, but not trainee salaries.

#### *F. Displaced Workers Medical Benefits*

Displaced Workers Medical Benefits, while not specifically mentioned in the objectives of section 3161 of the Act, should be offered to all employees of M&O or other prime contractors to the Department as an extension of current medical benefits eligibility. Department of Energy Acquisition Letter No. 93-4, dated April 7, 1993, establishes guidelines for implementing this program.<sup>2</sup>

Eligible employees include voluntarily and involuntarily separated employees of M&O contractors who are not otherwise eligible for such coverage under another program. Under certain circumstances, an employee may be able to continue coverage, at the employee's expense, for pre-existing medical conditions excluded from coverage under another plan for which he or she becomes eligible. Retirees who are provided medical coverage through retirement programs or Medicare are not eligible for this program.

During the first year following separation, the contractor will continue to pay its portion of the former worker's medical premium, and the former employee will pay his or her normal share. During the second year, the former employee will pay half of the Consolidated Omnibus Budget and Reconciliation Act (COBRA) rate. During the third and subsequent years, the former employee will pay the full COBRA rate.

#### *V. Mandatory Benefits*

The benefits described below must be offered to eligible employees:

##### *A. Preference in Hiring*

Section 3161 of the Act provides that, to the extent practicable, terminated employees at a defense nuclear facility should receive preference in filling vacancies in the work force of the Department of Energy and its contractors and subcontractors. The Department has determined that employees must be identified as having helped maintain the Nation's nuclear deterrent during the Cold War in order to qualify for this preference. The preference should be honored by all prime contractors, and by

<sup>2</sup> Subsequent to the issuance of Acquisition Letter No. 93-4, the Displaced Medical Benefits Program was expanded by memoranda to field organizations dated August 12, and December 2, 1993. The Department is currently revising Acquisition Letter No. 93-4 based on these memorandums. All separating employees of M&O contractors who were eligible for medical benefits prior to their separation from employment are eligible for continued coverage under the Displaced Workers Medical Benefits Program regardless of whether they meet the section 3161 job attachment test.

subcontractors whose contracts with the Department equal or exceed \$500,000 in value.

The Department has established the following criteria for determining eligibility for the hiring preference: the individual must be a former employee (1) who was involuntarily terminated (except if terminated for cause); (2) who meets the eligibility standards in Appendix D; and (3) who is qualified for the job at the time the work is to begin. Where qualifications are approximately equal, eligible individuals will be given preference in hiring. However, the preference will be administered consistent with applicable law, regulation, or executive order, and collective bargaining agreements. This preference is not immediately applicable in situations where positions become available through an outsourcing action or follow-on contract in which the current employees should first be offered their same or similar job with the replacement contractor in order to avoid a layoff.

An individual's hiring preference continues until termination by the action (or inaction) of that individual. Initially, and on an annual basis thereafter, eligible individuals must certify their desire to retain their hiring preference. The Office has developed a Preference in Hiring Eligibility Form for this purpose (Appendix E) which eligible individuals should submit to their DOE field organization. Actions that would terminate an individual's hiring preference include: voluntary termination or termination for cause from a position that was obtained through the exercise of the preference, or failure to comply with the annual certification requirement.

The Department developed the Job Opportunity Bulletin Board System (JOBBS) to simplify implementation of the hiring preference by eligible individuals, and by contractors and subcontractors. Those individuals who have applied for and have been determined to be eligible for the preference may have their résumés entered into JOBBS where they will be specifically identified as job seekers with hiring preference. Companies doing new hiring for Department of Energy work should place job announcements into JOBBS. Contractors and designated subcontractors (those whose DOE contracts equal or exceed \$500,000 in value) will be instructed by the cognizant field organization to first seek eligible workers among those with the hiring preference listed in JOBBS. All other subcontractors should be encouraged to use JOBBS when hiring for DOE work. Eligible individuals who



do not want to enter their résumés into JOBBS are responsible for informing potential employers of their preference.

Each field organization should develop procedures to ensure that the hiring preference is being honored by all prime contractors and designated subcontractors. The procedures should state that eligible individuals have the responsibility to: (1) Apply for the preference by submitting the Preference in Hiring Eligibility Form to the DOE field organization along with any necessary documentation for verification of their eligibility; (2) inform potential employers of their preference status; and (3) certify their continuing status through annual submission of the Preference in Hiring Eligibility Form. Field organization procedures should also describe how JOBBS can be used by eligible individuals to help fulfill these responsibilities and to aid their search for job openings that should honor the preference. The procedures may establish criteria for use by hiring contractors who must choose among eligible workers who are equally qualified for the same job opening. One example would be assigning a higher priority to candidates within commuting distance of the new job. The procedures should also describe how potential disputes will be resolved. The Office will review the field organization procedures. The procedures should be posted where other material of worker interest is normally posted, such as employee bulletin boards.

The Department encourages negotiation to incorporate the hiring preference by agreements for division of work and arrangements for accommodations of internal union rules that might otherwise be obstacles to implementation of flowdown of the hiring preference to applicable subcontracts. Field organizations may facilitate implementation of the hiring preference by developing subcontract award criteria or performance measures and related fee incentives based on the hiring preference.

#### *B. Construction Worker Benefit*

Construction wage rates and benefits are structured to take into account the intermittent nature of construction work. In recognition of this, early plans generally limited benefits for construction workers to tuition assistance, outplacement support, preference in hiring and relocation assistance. However, it has been noted that many construction workers have maintained long-term relationships with the Department, and structured their lives around work at our facilities. Many

of these relationships, which had been expected to continue, have been terminated as the general level of construction work declined following the end of the Cold War.

The Department has determined that construction workers who meet the job attachment test (Appendix D) may elect to receive a one-time benefit. In return for that benefit, these construction workers, like other employees, may be required to waive the hiring preference. The one-time benefit should be consistent with the employer's established separation pay benefit, if applied, but should not exceed 6 weeks at base pay rates. The specific amount of this benefit, as well as other benefits for construction workers should be defined during the plan development and stakeholder consultation process. The Office does not suggest that special payments should be made into either pension or health and welfare benefits funds for these workers. The Office does not view this special benefit as a precedent-setting action for the construction industry since this benefit carries out the intent of legislation that uniquely applies to the Department of Energy's Federal, contractor and subcontractor work force.

Construction workers who receive the special benefit should be restricted from employment at a Department facility for a period not less than the period equal to the salary value of the benefit without specific approval of the Department or pro rata repayment of this benefit.

#### *VI. Administrative Procedures*

This section describes the administrative procedures that should be followed in developing a new work force restructuring plan or for modifying an existing plan.

##### *A. 120-Day Notification*

Field organizations should notify workers and communities of impending work force restructuring at least 120 days prior to making any involuntary separations. The cognizant field organization should issue a general announcement to all employees, employee representatives, and to the community at large that work force changes are required at the facility. The draft announcement should be coordinated with the Office. We will seek concurrence from Congressional, Public, and Intergovernmental Affairs and the appropriate program offices. Field organizations should allow at least 1 week for Headquarters approval of 120-day announcements.

It is important that the notice emphasize that the estimate of employees affected set out in the 120-

day notice is a good faith estimate based on the information available at the time. The notice is the beginning of a downsizing process; this process and the related budget issues are necessarily fraught with uncertainties, making it difficult to predict the exact number of employees that will be affected. It is recognized that a 120-day notification may not be practicable under certain extraordinary circumstances; however, as much advance notice should be given as possible.

##### *B. Develop Baseline Data*

Field organizations should establish and maintain a baseline employment database that categorizes the total number of personnel employed on-site by contractor, program funding source and skill mix. As a basis for categorizing skills, the Office encourages field organizations to utilize the Common Occupational Classification System to ensure consistency across the Department. The baseline should also contain the number of people employed on a temporary or intermittent basis, and by subcontractor or support service contractors. Field organizations should provide this information to the Office on a quarterly basis. Field organizations are responsible for carrying out the data collection and analysis. Once the baseline information is established, the Office intends to conduct an independent audit to ensure data reliability, as appropriate in particular circumstances.

##### *C. Analyze Mission Requirements*

Field organizations should analyze, and revise as necessary, future mission requirements and the work force skills required to carry out those missions. Appropriate program offices are responsible for defining the parameters of the future missions. New or modified work force restructuring plans should include a detailed description of the methodology and analysis used to define the work force necessary to execute the missions.

##### *D. Identify Positions Excess to Future Requirements*

Based on the current work force, and the work force necessary to carry out future missions, the plan should identify the classification of employees that should be:

1. Retained because they possess critical skills;
2. Retained with little or no retraining;
3. Retained with appropriate retraining; and
4. Considered for voluntary separation incentives.



The analysis should also identify those job skills that are unlikely to be satisfied by existing workers.

#### *E. Stakeholder Involvement*

Early involvement of stakeholders in developing a work force restructuring plan is essential to identify and address issues and concerns that might impede the implementation of the plan. Stakeholders should also be given appropriate opportunity to comment on drafts of any new or modified work force restructuring plan as soon as the draft plan has been cleared by the Office for release to the public. The Office will endeavor to concur on draft plans within 2 weeks of submission.

Stakeholder input may be received at public meetings, or through written or oral comments. Comments and suggestions of all stakeholders are important and should be considered in developing the final plans and incorporated where appropriate. For those comments and suggestions not incorporated in the draft plans, a brief explanation of the reason for not doing so should be documented. Every effort should be made to make the plan approved by the Secretary available to each stakeholder who commented on an earlier draft of the plan. A discussion of stakeholder involvement should be included as part of each plan.

#### *F. Develop Voluntary Separation Program*

After appropriate work force planning has been completed, field organizations should consider voluntary separation incentives to facilitate work force transition. Voluntary incentives must be approved in writing by the Office. Such approval can be sought, and the incentive can be offered, prior to completion of any new or modified work force restructuring plan.

Retirement incentives, accompanied by the appropriate analysis, should be presented for approval to the Office. The Office will coordinate analysis and evaluation of proposals with the Office of Procurement and Assistance Management, the Office of General Counsel, and the program office. Employees being offered early retirement or voluntary separation incentives must receive sufficiently specific information to satisfy ERISA requirements.

Early retirement incentives will be evaluated for their consistency with maintaining critically needed skills and any request should include a full justification in conformance with this requirement. Field organizations should provide an assessment of the costs and benefits of the proposed voluntary

incentives, particularly in work force transitions designed to increase organizational efficiency. Field organizations should plan to provide at least 2 weeks for review by the Office and appropriate headquarters organizations.

Voluntary separation programs should not be offered to employees at the same time as early retirement programs, except in special circumstances and with prior approval. Voluntary incentive programs should be completed prior to any involuntary separations.

In exchange for the enhanced benefits employees receive in a voluntary separation program, it is the Department's policy to obtain from employees who separate under such a program a release of claims related to their employment and separation. The Department has adopted a model form of release, which is provided in Appendix F. Variations from the model may be required by state law or other special circumstances. However, departures from the model will require Department approval, including from the Office of General Counsel.

#### *G. Plan Approval*

The Office will coordinate the appropriate review by other Headquarters offices before concurring with plans or approving requests to implement voluntary incentive programs. In general, the Office will seek review from the affected program office, General Counsel, Field Management, and Human Resources and Administration. Field organizations should allow 1 month for Secretarial approval of final Work Force Restructuring Plans.

Thirty copies, plus 1 reproducible master, of the final plan should be submitted to the Office for subsequent submission by the Secretary to the appropriate Congressional committees and delegations from affected States. The responsible field organization should also make distribution to interested local stakeholders, and to the points-of-contact at each cognizant field organization. The Office will make additional copies, if necessary, from the master for distribution within Headquarters and to interested national stakeholders.

#### *H. Involuntary Separation*

In general, involuntary separation notices may not be given until after Secretarial approval. The notices should identify the specific numbers and job titles to be laid off. Each affected individual should be notified of his or her termination. Involuntarily separated

employees shall be fully advised of any benefits or services for which they are eligible. Appropriate labor representatives should be notified and letters prepared for local, county and state governments.

If layoffs are required that fall under the provisions of the Worker Adjustment and Retraining Notification Act (WARN), the employers must give the affected employees written notice of the layoffs at least 60 days prior to the date of the intended layoff. Employers may conduct the involuntary layoff by providing written notice to the affected employees that their termination date will occur 60 days thereafter. Compensation will continue during the 60-day period following the notice and where appropriate, employees may be excused from some or all duties during that period. If, during the 60-day period, an employee successfully obtains new employment, the employee must terminate the current employment relationship before beginning the new job, at which time the remaining salary payments shall cease. If this salary was paid in a lump sum, the pro rata share attributable to the period after the employee commences the new employment should be repaid. Repayment terms should be established within the restructuring plan and explained to employees during the exit interview process.

As a goal, all affected employees should receive their individual notification 60 days before layoff. When this is not possible, and the work force change is not subject to the provisions of the WARN Act, affected workers should receive as much layoff notice as practicable, but not less than 14 days. Intermittent workers are terminated when their work is completed.

#### *I. Outplacement Assistance*

Field organizations may provide Outplacement assistance (including training and education) to voluntarily separated employees as soon as they exercise that option, and to involuntarily separated employees as soon as they are notified. Appropriate outplacement assistance can also be made available to employees who may be at risk after the 120-day announcement has been made. Outplacement assistance should be planned in advance and should be appropriate in light of the number of employees expected to need such assistance. Field organizations are encouraged to track the employment, education, and insurance status of displaced workers for at least 1 year after separation.

*J. Budgeting for Plans*

Plans must include a budget estimate for each initiative or benefit planned for mitigating impacts on workers. Budget estimates should be based on a realistic projection of the number of workers who will participate in each initiative and reflect the best cost estimates available. Estimated incremental costs to pension funds for early retirements should be based on actuarial estimates. It is not acceptable to request funds based simply on maximum possible participation in each initiative or benefit. For planning purposes, an average cost of \$15,000 to \$25,000 per position eliminated is a reasonable range for guiding decisions about the range of benefits offered. Where work force restructuring is justified by business efficiency decisions, the budget estimates should be accompanied by savings estimates and the proposed use of those savings. In general, funding authorizations will be made following final approval of a plan. Funding authorizations for certain initiatives, such as those encouraging voluntary separations, may be made earlier.

## Appendix A—Office of Worker and Community Transition Contacts

## Director:

Bob DeGrasse—202-586-7550, FAX 586-8403

## Deputy Director:

Terry Freese—202-586-5907, FAX 586-8403

## Work Force Restructuring:

Terry Freese—202-586-5907, FAX 586-8403

Lew Waters—202-586-4010, FAX 586-8403

## Work Force Planning:

Debby Swichkow—202-586-0876, FAX 586-8403

Lew Waters—202-586-4010, FAX 586-8403

## Labor Relations:

Lyle Brown—202-586-0431, FAX 586-8403

Deborah Sullivan—202-586-0452, FAX 586-1540

## Community Transition:

Bob Baney—202-586-3751, FAX 586-1540

Mike Mescher—202-586-3924, FAX 586-1540

Debby Swichkow—202-586-0876, FAX 586-8403

## Public Participation:

Laurel Smith—202-586-4091, FAX 586-8403

## Work Force Restructuring Field Contacts

Felix Ortiz, Albuquerque Operations Office—505-845-4207, FAX 845-4715

Elaine Kocolowski, Chicago Operations Office—708-252-2334, FAX 252-2919

Luella Bennett, Idaho Operations Office—208-526-1913, FAX 526-5969

Bob Agonia, Nevada Operations Office—702-295-1005, FAX 295-1876

Bill Truex, Oak Ridge Operations Office—423-576-0662, FAX 576-6964

Harry Printz, Oakland Operations Office—510-637-1829, FAX 637-2008

Ken Briggs, Ohio Field Office—513-865-4267, FAX 865-4312

Dom Sansotta, Richland Operations Office—509-376-7221, FAX 376-5335

Lenora Lewis, Rocky Flats Field Office—303-966-4263, FAX 966-3321

Dave Hepner, Savannah River Operations Office—803-725-1206, FAX 725-5968

Gil Gilyard, Savannah River Operations Office—803-725-7645, FAX 725-7631

Pat Lillard, Kansas City Area Office—816-997-3348, FAX 997-5059

Alan Goetz, Pinellas Area Office—813-541-8114, FAX 541-8370

Gene Gillespie, Portsmouth Site Office—614-897-2001, FAX 897-2982

Jimmie Hodges, Paducah Site Office—502-441-6800, FAX 441-6801

## Appendix B—Statement of Availability

Sections 3161 and 3163 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484, October 23, 1992) are available from the Superintendent of Documents, the Government Printing Office, the Office of the Federal Register, by contacting Laurel Smith from the Office of Worker and Community Transition, Department of Energy or on the Office of Worker and Community Transition Home Page under "Documents for Review and Comment." (<http://www.stat-usa.gov/owct.html>)

## Appendix C—Listing of Defense Nuclear Facilities

The list below reflects facilities receiving funding for Atomic Energy Defense activities of the Department of Energy, with the exception of activities under Naval Reactor Propulsion. It is recognized that these facilities have varying degrees of defense activities, ranging from a total defense dedication to a very small portion of their overall activity. This may cause certain difficulties in implementing the intent of the section 3161 legislation. Regardless, this listing will be used by the Office for possible application of funding received for defense worker assistance and community transition purposes.

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

Argonne National Laboratory

Brookhaven National Laboratory

Lawrence Livermore National Laboratory

Oak Ridge National Laboratory

Nevada Test Site

Y-12 Plant

K-25 Plant

Hanford Site

Idaho National Engineering Laboratory

Waste Isolation Pilot Project

Portsmouth Gaseous Diffusion Plant

Paducah Gaseous Diffusion Plant

## Appendix D—Job Attachment Test

In implementing the objectives of section 3161 of the Act, the Department recognizes a special responsibility to minimize the impact of work force restructuring on employees who participated in efforts to maintain the Nation's nuclear deterrent during the Cold War. September 27, 1991, the day President Bush announced the first unilateral reduction of the Nation's stockpile, has generally been recognized by this Department as the end of the Cold War.

In general, employees who meet the job attachment test discussed below should be eligible for most benefits offered in a work force restructuring plan. However, the benefits offered at a specific site should be tailored to specific conditions, to the demographics of the workers at that site, and must be practicable and reasonable with respect to budget constraints, contractual provisions, and other obligations. Thus, those who meet the job attachment test are not likely to be offered exactly the same benefits at all sites.

To identify employees who helped maintain our nuclear deterrent during the Cold War, the criteria listed below should be followed at all sites:

## A. Regular Employees

1. Must have been working at a defense nuclear facility on September 27, 1991;

2. Must have worked full-time (or regular part-time) at a facility from that date through the date of the 120-day notification; and

3. Must accept a voluntary separation incentive or have been involuntarily separated.

## B. Intermittent Workers, Including Construction Workers

1. Must have worked at a defense nuclear facility on or before September 27, 1991;

2. Must have worked at a facility within 180 days preceding the work force restructuring notification;

3. Must have worked at a facility a total time, including time worked prior to September 27, 1991, equivalent to an employee having worked full-time from September 27, 1991 to the date of the 120-day notification, or have actually worked the industry standard of full-time from September 27, 1991 through the date of the 120-day notification; and

4. Must have been affected by the announced restructuring within a reasonable period of time (1 year is suggested). For an intermittent worker,

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.

**Appendix E—Example of Form for Establishing Preference in Hiring**

**Statement of Interest in Maintaining Section 3161 Employment Eligibility**

Name: \_\_\_\_\_  
 First Middle Last  
 Social Security Number: \_\_\_\_\_-\_\_\_\_-\_\_\_\_  
 Address: \_\_\_\_\_  
 Street \_\_\_\_\_

Apartment No. \_\_\_\_\_

City State Zip  
 Telephone No. (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_  
 Date of Lay-off resulting from Work Force Restructuring: \_\_\_\_\_ (Month/Day/Year)

Occupational Classifications held: \_\_\_\_\_

I hereby request that my name be placed, or retained, on the Section 3161 Preference in Hiring List for the (*site name*) and be considered for any job opportunities that may arise for which I am qualified at this or any other Department of Energy site. I also certify that I have not been terminated for cause from employment by a Department of Energy Contractor or Subcontractor while performing work at a Department of Energy site.

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Appendix F—Sample Release for Use in Work Force Restructuring Programs**

**Voluntary Separation Payment Program General Release and Waiver**

This Voluntary Separation Payment Program, General Release and Waiver ("Agreement") is entered into by and between \_\_\_\_\_ ("Employee") and \_\_\_\_\_ ("Employer"), 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. Employee voluntarily terminates his/her employment with Employer effective \_\_\_\_\_, 1995. Employee agrees not to seek employment with or become employed at the \_\_\_\_\_ Site by the Employer or any other future or current contractor or subcontractor at the Site for a period of \_\_\_\_\_ year(s) from the date of Employee's resignation. 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 providing supplies, equipment, materials, or commodities to the Site under a fixed-price contract or purchase order.

2. Employee agrees that the Employer has no obligation to reemploy Employee in the future, and Employee waives any recall, rehire, or rehire preference rights, such as those that may arise under Section 3161 of the National Defense Authorization Act for Fiscal 1993. Employee agrees to perform all steps required by Employer's policies and procedures at the separation of his/her employment.

3. Except as set forth in paragraph 4 below, Employee, on behalf of himself/herself and any person or entity entitled to sue on Employee's behalf, waives and releases Employer, its parents, subsidiaries, and affiliates, the Department of Energy, and their employees, officers, directors, shareholders, agents, and successors from any causes of action or claims, whether known or unknown, that arise out of the Employee's resignation and separation of 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 of Employee's resignation, 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, and the Americans with Disabilities Act, or applicable state or local law. Employee will not assert any claim or cause of action released under this agreement in any administrative or judicial proceeding.

However, Employee does not waive:  
 (i) Any causes of action or claims that arise out of Employee's employment with Employer, up to and including the date of Employee's resignation, that have been asserted in writing and filed with the appropriate agency or court prior to the date on which this Program was announced,<sup>1</sup>

(ii) Any rights or claims that may arise after the date this Agreement is executed,

(iii) Any claims relating to pension or retiree health benefits that currently may be accrued under the Company's standard retirement program,

(iv) Any claims under any applicable state worker's compensation laws, or

(v) Any claims for occupational injuries or illnesses arising from Employee's employment with Employer that are not known or reasonably knowable by the Employee at the time of the execution of this Agreement.

5. In exchange for Employees' voluntary separation and execution of this Agreement, Employer will give Employee the consideration and benefits outlined in the description attached to this Agreement. The identification number or other designation for the document describing the benefits constituting consideration for this Agreement should be inserted at this point.<sup>2</sup>

6. 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 payments or other benefits under this Agreement, and Employee agrees to such repayment.

7. Employee has been advised to consider this Agreement and to consult with an attorney of his/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 revoke this Agreement for a period of seven (7) days following execution of this Agreement by giving written notice to the local Human Resources representative. If Employee revokes the Agreement, it shall not be effective and enforceable and Employee will not receive any of the benefits described in paragraph 5. 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.

8. This Agreement constitutes the entire understanding and agreement of Employee and Employer and can only be modified in writing agreed to by both parties.

9. 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.

Please Read This Agreement Carefully. It Contains a Release of Known and Unknown<sup>3</sup> Claims as Described in Paragraph 3, Above, Subject To The Limitations Expressly Set Forth in Paragraph 4.

Agreed to:

\_\_\_\_\_  
 Employee/date

\_\_\_\_\_  
 {Employer}/date

Notes:

1. The issuing organization should insert at this point a *specific date* on which the Separation Program involved was first announced. In determining this date, the issuing organization should consider the specificity of information provided to the public in work force restructuring plans issued pursuant to section 3161, as well as the announcement of the individual separation program involved.

2. When this Agreement is used in association with early retirement programs, the following language should be added here: "Employer reserves the right to provide equivalent benefits in another form in the unlikely event that any aspect of the Program is improper under law."

3. Counsel should check to be sure that this aspect of the Model Release fully comports with applicable state or local law.

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