

Chg 1 (MinChg): 9-10-2018

SUBJECT: MINOR CHANGE TO DOE ORDER 350.3, *LABOR STANDARDS COMPLIANCE, CONTRACTOR LABOR RELATIONS, AND CONTRACTOR WORKFORCE RESTRUCTURING PROGRAMS*

1. **EXPLANATION OF CHANGES.** This change updates contractor workforce restructuring policies to require notification of voluntary separation rather than approval; to increase DOE approval thresholds for contractor workforce restructuring actions; and to implement process improvements.
2. **LOCATIONS OF CHANGES:**

Page	Paragraph	Changed	To
	Throughout	Office of the Assistant General Counsel for Labor and Pension Law	Office of the Assistant General Counsel for Contractor Human Resources
	Throughout	BOP-003.0601R1, Contractor Human Resources (CHR) Policy and Approval of Actions Process, Attachment 1, Chapter 1	BOP-03.03, <i>Acquisition Coordination and Approval Processes</i>
	Throughout	BOP-003.0601R1	BOP-03.03
1	2.	Chapter I, <i>Labor Relations</i> , Chapter II, <i>Labor Standards</i> , Chapter III, <i>Reductions in Contractor Employment</i> , of DOE O 350.1 Chg 4, <i>Contractor Human Resource Management Programs</i> , dated 9-30-1996.	DOE O 350.3, Labor Standards Compliance, Contractor Labor Relations, and Contractor Workforce Restructuring Programs, dated 9-29-2014.
2	3.c.	DOE O 251.1C	DOE O 251.1D

Page	Paragraph	Changed	To
III-1	3.c.	Added.	DOE/NNSA will only require notification (not approval) of laboratory/contractor Self-Select Voluntary Separation Programs if consistent with the following parameters: 1) in accordance with approved laboratory and contractor policies and contract requirements; 2) no enhanced benefits (severance or pension); 3) no backfilling or re-employment of employees for a one-year period after severance is paid; 4) business case submitted 5 days in advance of notification date that includes maximum number of voluntary separations, maximum dollars, positions/skills impacted; reasons separations are needed, including how conducting a SSVSP will better position the contractor to conduct the mission work; copies of the self-select application (see 7(c)(5)) and any employee waivers or releases of claims, and a communication plan; and 5) voluntary separations offered to employees in a non-discriminatory and legally compliant manner. The contractor is responsible and accountable for conducting and defending all voluntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.

Page	Paragraph	Changed	To
III-2	Footnote to 3.c.	Added.	<p>There is no backfilling within the meaning of this Order where a separating employee is replaced by an internal candidate so long as:</p> <ul style="list-style-type: none"> • The separating employee is leaving voluntarily; • The internal replacement is a regular, permanent employee on the contractor's payroll, not a temporary hire, staff augmentee, or someone serving under a post-doctoral program, etc.; • The replacement results in a net reduction in headcount and costs of regular employees; and • The replacement is accomplished in an otherwise legally compliant manner, including no unlawful intent to discriminate based upon age.
III-2	3.c.	Renumbered.	3.d.
III-2	3.d.	DOE/NNSA will not approve contractor requests for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department, unless otherwise approved by the Secretary or Deputy Secretary.	DOE/NNSA will not approve contractor requests for enhanced benefits other than severance, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department, unless otherwise approved by the Secretary or Deputy Secretary.

Page	Paragraph	Changed	To
III-2	3e.	Added.	DOE/NNSA will not approve contractor requests for enhanced severance benefits (benefits that are not consistent with the approved laboratory and contractor policies and contract requirements), unless otherwise approved by the Under Secretary. Questions regarding what constitutes “enhanced” severance in particular circumstances should be directed to GC-63 or, for NNSA elements, NNSA OGC.
III-2	3.d.-f.	Renumbered.	3.f.-h.
III-2	4.a.	42 U.S.C. 2704	50 U.S.C. 2704
III-4	5.b.	<p>Each contractor is obligated by DOE contractor workforce restructuring policy to prepare a Specific Plan if either of the following conditions are met within a rolling 12-month period:</p> <p>(1) The contractor intends to reduce its work force by 50 or more employees through involuntary separation; or</p> <p>(2) The contractor intends to reduce its work force by 100 or more employees through a combination of voluntary and involuntary separation actions.</p>	<p>Each contractor is obligated by DOE contractor workforce restructuring policy to prepare a Specific Plan if the contractor intends to reduce its workforce by 100 or more employees through an involuntary separation action within a rolling 12-month period.</p>

Page	Paragraph	Changed	To
III-4	5.c.	In order to provide substantive and helpful comments and to work with the contractors on approaches to reduce risk, Under Secretaries/designees, in consultation with appropriate staff offices, will review any Specific Plan within 10 business days after submission of the plan, unless the contractor is notified of issues necessitating an extension of time.	In order to provide substantive and helpful comments and to work with the contractors on approaches to reduce risk, Under Secretaries/designees, in consultation with appropriate staff offices, will review and approve any Specific Plan, within 10 business days after submission of a complete package by the contractor unless the contractor is notified of issues necessitating an extension of time and the contractor responds to requests for additional information from DOE within 3 business days.

Page	Paragraph	Changed	To
III-4	5.d.	<p>The Specific Plan shall lay out how the contractor will conduct its workforce restructuring action at the site in a manner that meets the objectives of this Chapter. The Department has developed a template for Specific Plans to ensure consistency and accurate application of Section 3161 and Departmental policy, as well as to expedite Departmental review. The templates for the contractor Self-Select Voluntary Separation Plan and the contractor Involuntary Separation Plan, as well as the General Release and Waiver Form are available online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension. If the contractor believes it will be necessary to conduct a voluntary separation program followed by an involuntary separation, the contractor may combine the Self-Select Voluntary Separation Plan and the Involuntary Separation Plan into one Specific Plan for submission to the Department.</p>	<p>The Specific Plan shall lay out how the contractor will conduct its workforce restructuring action at the site in a manner that meets the objectives of this Chapter. The Department has developed a template for Specific Plans to ensure consistency and accurate application of Section 3161 and Departmental policy, as well as to expedite Departmental review. The templates for the contractor Involuntary Separation Plan, as well as the General Release and Waiver Form are available online at http://energy.gov/gc/services/technology-transfer-and-procurement/office-assistant-general-counsel-labor-and-pension.</p>

Page	Paragraph	Changed	To
III-5	5.g.	Government contractors are prohibited by law from engaging in discrimination in the workplace. Consistent with the contract clauses set forth in Section H, Special Contract Requirements, the contractor must perform an adverse impact analysis (also known as a diversity analysis) when the involuntary separation action affects 50 or more contractor employees within a rolling 12-month period. ... In analyzing contractor requests for reimbursement of costs associated with settlement of employment discrimination litigation, DOE/NNSA will take into account the results of any Office of General Counsel review of the contractor's adverse impact analysis.	Government contractors are prohibited by law from engaging in discrimination in the workplace. Consistent with the contract clauses set forth in Section H, Special Contract Requirements, the contractor must perform an adverse impact analysis (also known as a diversity analysis) when the involuntary separation action affects 100 or more contractor employees within a rolling 12-month period. ... In analyzing contractor requests for reimbursement of costs associated with settlement of employment discrimination litigation, DOE/NNSA will take into account the results of any Office of the Assistant General Counsel for Contractor Human Resources review of the contractor's adverse impact analysis. ... The contractor is responsible and accountable for conducting and defending all voluntary separation actions in compliance with applicable laws, regulations, and the contract terms and conditions.
III-5	6.a.(2)	Approve/disapprove contractor requests for enhanced benefits, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department.	Approve/disapprove contractor requests for enhanced benefits other than severance, i.e., benefits in excess of those provided for under the parties' contract, including benefits in excess of those provided for under any benefit plans approved by the Department.

Page	Paragraph	Changed	To
III-6	6.b.(4)	<p>Approve workforce restructuring actions conducted by contractors in a rolling 12-month period involving:</p> <p>(a) 50 or more employees through involuntary separation; or</p> <p>(b) 100 or more employees through a combination of voluntary and involuntary separation actions at a single site.</p> <p>This approval authority may be delegated as determined by the Under Secretary. All delegations must be in writing.</p>	<p>Approve workforce restructuring actions conducted by contractors in a rolling 12-month period involving 100 or more employees through an involuntary separation action at a single site.</p> <p>This approval authority may be delegated as determined by the Under Secretary. All delegations must be in writing.</p>
III-6	6.b.(5)	<p>Review for approval/disapproval any workforce restructuring action within 10 business days after submission of a Specific Plan, in consultation with applicable staff offices, as appropriate, unless the contractor is notified of issues necessitating an extension of time.</p>	<p>Review for approval/disapproval any workforce restructuring action within 10 business days after submission of a Specific Plan, in consultation with applicable staff offices, as appropriate, unless the contractor is notified of issues necessitating an extension of time, and the contractor responds to requests for additional information from DOE within 3 business days.</p>
III-6	6.b.(6)	Added.	<p>Approve/disapprove contractor requests to provide enhanced severance benefits (benefits that are not consistent with the approved laboratory and contractor policies and contract requirements).</p>
III-6-7	6.b.(6)-(11)	Renumbered.	6.b.(7)-(12)
III-8	6.e.(3)	Contractor	contractor

Page	Paragraph	Changed	To
III-9	6.e.(9)	In coordination with the CO/designee, submit for approval/disapproval to the Office of the Assistant General Counsel for Pension and Labor Law or NNSA-GC any contractor request to use any waiver of claims other than the model waiver and release of claims developed by Department for use in either a voluntary or involuntary contractor workforce restructuring action.	In coordination with the CO/designee, submit for approval/disapproval to the Office of the Assistant General Counsel for Contractor Human Resources or NNSA-GC any contractor request to use any waiver of claims other than the model waiver and release of claims developed by Department for use in an involuntary contractor workforce restructuring action.
III-9	7.b.	42 U.S.C. 2704 (2013)	50 U.S.C. 2704 (2017)
III-9	7.c.(4)	Section 3161 Rehiring Preference for Eligible Employees	Section 3161 Rehiring Preference for Eligible Separated Employees
III-9	7.c.(5)	Self-Select Voluntary Separation Plan Template	Self-Select Application
III-10	7.c.(7)	Use of Waivers and Releases of Claims	Separation Programs Releases and Waivers
III-10	7.c.(8)	Workforce Restructuring Adverse Impact Analysis Examples	Adverse Impact Analysis Guidance
III-10	7.c.(9)	Added.	Involuntary Separation Program General Release and Waiver
III-10	8	For general information on Departmental policies and practices regarding contractor benefits and compensation, contact the Contractor Human Resources Policy Division within the Office of Management at (202) 287-1330.	For general information on Departmental policies and practices regarding contractor benefits and compensation, contact the Contractor Human Resources Policy Division within the Office of Acquisition Management at (202) 287-1330.