

DEPARTMENT OF ENERGY
DELEGATION ORDER NO. 00-002.00P
TO THE UNDER SECRETARY (FOR MANAGEMENT AND PERFORMANCE)

1. DELEGATION. Under the authority vested in me as Secretary of Energy and pursuant to section 642 of the Department of Energy Organization Act (Public Law 95-91, 42 U.S.C. 7252), I delegate to the Under Secretary (for Management and Performance) authority to take the following actions:
 - 1.1 Initiate condemnation proceedings and execute declarations of taking, sign all correspondence and other documents in connection with such proceedings, and take all other necessary and appropriate actions to acquire, in connection with the Government's power of eminent domain, real or personal property or interests therein for the Department of Energy (Department or DOE). The authority to initiate condemnation proceedings and execute declarations of taking shall not be further delegated.
 - 1.2 Under section 643 of the Department of Energy Organization Act (42 U.S.C. 7253), establish, alter, consolidate or discontinue such second tier or below organizational units or components within the Under Secretary (for Management and Performance)'s assigned programs and organizational elements as the Under Secretary (for Management and Performance) may deem to be necessary or appropriate.
 - A. In exercising this authority, or as redelegated pursuant thereto, the Under Secretary (for Management and Performance) will be limited by approved budgets, staffing level allocations, and Senior Executive Service and other executive resource position allocations. Organizational changes shall not be announced or implemented until appropriate union coordination and other pre-release clearances have been obtained.
 - B. This authority does not include approval of additional, deletion, or transfer of mission and functions of or between Departmental Headquarters or Field Elements, which authority is reserved to the Secretary.
 - C. The authority to alter or consolidate second tier or below organizational elements may be redelegated, in whole or in part consistent with the terms of the Department of Energy Organization Act, to assigned Heads of Departmental Headquarters and Field Elements and to an official or officials one level below the Head of the Departmental Headquarters or Field Element.

- D. The authority to establish or discontinue organizational elements at the second tier or below may be redelegated only to the Head of the Departmental Headquarters or Field Element.
- 1.3 On a nonexclusive basis, assert the Federal Government's deliberative process privilege with respect to any Environmental Management matters arising under the Under Secretary (for Management and Performance)'s cognizance. This delegation is made to protect internal predecisional Department of Energy documents in judicial or administrative proceedings in situations where the court may require the claim to be formally asserted by an affidavit from an agency official.
- 1.4 Under section 624 of the Department of Energy Organization Act (P.L. 95-91; 42 U.S.C. 7234) and in accordance with the Federal Advisory Committee Act (5 U.S.C., App. 2), nominate, appoint, renew the term of, and terminate the service of members, convene meetings and make the determination to close all or part of a meeting closed in accordance with 5 U.S.C. 552b(c) for all committees organized pursuant to the Federal Advisory Committee Act administratively supported by an organization reporting to the Under Secretary (for Management and Performance). Pursuant to 18 U.S.C. 208(b)(3), after consultation with the Department's Designated Agency Ethics Official, issue conflict-of-interest waivers for special Government employees serving on a Federal Advisory Committee that is administratively supported by an organization that reports to the Under Secretary (for Management and Performance).
- 1.5 In reference to the sale or lease of real property at a Department of Energy defense nuclear facility, make the discretionary decision of whether to hold harmless and indemnify any eligible entity, pursuant to the conditions contained in 50 U.S.C. 2811. This authority may be exercised only after obtaining the concurrence of the General Counsel. This authority may be redelegated only to Department officials who have been appointed by the President with the advice and consent of the Senate who have oversight responsibilities for defense nuclear facilities, and may not be redelegated further.
- 1.6 Take all necessary actions to acquire, by purchase, lease, or otherwise, real property interests; take necessary additional action following the initiation of condemnation proceedings and the execution of declarations of taking; and exercise all authority of the Secretary regarding the management and disposal of Departmental real property. Any acceptance by donation of real property must be concurred in by the Department of Energy Office of the General Counsel.
- 1.7 In reference to the acquisition of easements for the Strategic Petroleum Reserve, acquire easements necessary for the construction and operation of the Strategic Petroleum Reserve, including the authority to acquire easements by condemnation, to exercise such authority as the Secretary has to condemn without prior negotiations, to execute all documents, including declarations of

taking, in connection with such proceedings, and to exercise the Secretary's authority to take such other actions in connection with such proceedings as may be necessary and appropriate, subject to the following limitations:

- A. For acquisition of easements in conjunction with the construction of pipelines and service roads for the enhancement of petroleum distribution from the Bryan Mound, West Hackberry, Big Hill, Bayou Choctaw, and Richton storage facilities of the Strategic Petroleum Reserve, the purchase price, or the appraised value in the event of condemnation, of each tract to be acquired may not exceed \$2,000,000; and
 - B. For the acquisition of all other easements in conjunction with the Strategic Petroleum Reserve, the purchase price, or the appraised value in the event of condemnation, of each tract to be acquired may not exceed \$250,000.
- 1.8 Enter into, approve, administer, modify, close-out, terminate, and take such other actions as may be necessary and appropriate with respect to any procurement transaction binding the Department of Energy to the obligation and expenditure of public funds, without redelegation (42 U.S.C. 7254, 7256).
- 1.9 Enter into, approve, administer, modify, close-out, terminate and take such other actions as may be necessary and appropriate to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.
- 1.10 Serve as deciding official for all appeals from an initial challenge decision under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270, 31 U.S.C. 501 note).
- 1.11 Administer the Departmental Directives System.
- 1.12 Designate the Department's Freedom of Information Act Officer.
- 1.13 Settle claims by employees for personal property losses as provided by 31 U.S.C. 3721.
- 1.14 Pursuant to 41 U.S.C. 1702(a), serve as the Chief Acquisition Officer (CAO). As CAO shall advise and assist the Secretary and other agency officials to ensure that the mission of the executive agency is achieved through the management of the agency's acquisition activities. As CAO, the Under Secretary (for Management and Performance) is responsible for:

- A. Monitoring the performance of acquisition activities and acquisition programs of the executive agency, evaluating the performance of those programs on the basis of applicable performance measurements, and advising the head of the executive agency regarding the appropriate business strategy to achieve the mission of the executive agency;
- B. Increasing the use of full and open competition in the acquisition of property and services by the executive agency by establishing policies, procedures, and practices that ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government's requirements (including performance and delivery schedules) at the lowest cost or best value considering the nature of the property or service procured;
- C. Increasing appropriate use of performance-based contracting and performance specifications;
- D. Making acquisition decisions consistent with all applicable laws and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making within the executive agency;
- E. Managing the direction of acquisition policy for the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency;
- F. Advising on the applicability of relevant policy on the contracts of the agency for overseas contingency operations and ensuring the compliance of the contracts and contracting activities of the agency with such policy;
- G. Developing and maintaining an acquisition career management program in the executive agency to ensure that there is an adequate professional workforce; and
- H. As part of the strategic planning and performance evaluation process required under 5 U.S.C. 306 and 31 U.S.C. sections 1105(a)(28), 1115, 1116, and 9703, assessing the requirements established for agency personnel regarding knowledge and skill in acquisition resources management and the adequacy of those requirements for facilitating the achievement of the performance goals established for acquisition management; developing strategies and specific plans for hiring, training, and professional development to rectify a deficiency in meeting those requirements; and reporting to the head of the executive agency on the progress made in improving acquisition management capability.

- 1.15 On a nonexclusive basis, perform the role of Senior Procurement Executive (as defined by 41 U.S.C. 1702 and Executive Order No. 12931 "Federal Procurement Reform," October 13, 1994) for all Departmental elements, except the National Nuclear Security Administration and the Federal Energy Regulatory Commission. As the Senior Procurement Executive you have agency-wide responsibility and authority to: provide overall management direction of the Administration's procurement system; oversee development of procurement goals, guidelines, and innovation; measure and evaluate procurement office performance against stated goals; and enhance career development of the procurement workforce. As Senior Procurement Executive, you are authorized to approve justifications for other than full and open competition in the case of a contract for an amount exceeding \$50,000,000. (41 U.S.C. 3304). As Senior Procurement Executive, the Under Secretary (for Management and Performance) may:
- A. Designate Contracting Officers (48 C.F.R. 1.601, 48 C.F.R. 1.603-1, 48 C.F.R. 901.601).
 - B. Designate a program manager to implement an electronic commerce capability for the Department who shall report directly to the Senior Procurement Executive (41 U.S.C. 4709).
 - C. Designate Heads of Contracting Activities, without further delegation subject to such thresholds and other limitations as may be appropriate (48 C.F.R. 1.601, 48 C.F.R. 901.601).
 - D. Designate a Senior Competition Advocate to perform the duties required by the Competition in Contracting Act of 1984, Public Law 98-369. This authority may not be redelegated (41 U.S.C. 1705, 48 C.F.R. 6.501, 48 C.F.R. 906.501).
 - E. Designate Contracting Activity Competition Advocates to perform the duties required by the Competition in Contracting Act of 1984, Public Law 98-369. This authority may be redelegated no lower than the Heads of Contracting Activities. A Contracting Activity Competition Advocate shall be appointed for each installation that has been delegated contracting authority (41 U.S.C. 1705, 48 C.F.R. 6.501, 48 C.F.R. 906.501).
 - F. Assign contracting functions and responsibilities to another agency, and create joint or combined offices with another agency to exercise acquisition functions, without further delegation (41 U.S.C. 3102, 48 C.F.R. 1.601, 48 C.F.R. 901.601).
 - G. Enter into, approve, administer, modify, close-out, terminate, and take such other actions as may be necessary and appropriate with respect to any procurement transaction binding the Department to the obligation and expenditure of public funds. Serve as Source Selection Authority (SSA) or

appoint another individual to serve as SSA for a particular acquisition or group of acquisitions (48 C.F.R. 15.303).

- H. Enter into, approve, administer, modify, close-out, terminate and take such other actions as may be necessary and appropriate with respect to any financial assistance agreement, sales contract, or similar transaction, whether or not binding DOE to the obligation and expenditure of public funds. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority. Serve as Selection Authority (SA) or appoint another individual to serve as SA for a particular financial assistance action or group of financial assistance actions.
- I. Approve extraordinary contractual actions, not to exceed \$65,000 to facilitate the national defense, pursuant to Public Law 85-804 and Executive Order No. 10789, as amended (48 C.F.R. 50.102-1).
- J. Sign applications for permits to procure tax-free spirits from a distilled spirits plant for nonbeverage purposes for use by the Department, as authorized by 26 U.S.C. 5271.
- K. Exercise the authorities under sections 101(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2071(a)) delegated to the Secretary in Department of Commerce (DOC) Defense Priorities and Allocations System (DPAS) Delegation 2, as amended, contained in the DOC DPAS regulation at 15 C.F.R. Part 700. The exercise of this authority is subject to the concurrence of the Department's General Counsel.
- L. Designate a task and delivery order ombudsman to perform the duties required by the Federal Acquisition Streamlining Act of 1994 (Title I, section 1054(a) of Public Law 103-355, as amended by Public Law 110-181, 41 U.S.C. 4106).
- M. Serve as my authorized representative to void and rescind contracts in relation to which there has been either: (1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement; or (2) You have determined, as my designee, that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal Agency procurement (18 U.S.C. 218 and 41 U.S.C. 2105).

- N. Subject to the direction of the Secretary or his/her designee, enter into, administer, modify, closeout, terminate and take such other actions as may be necessary and appropriate with respect to any other transaction agreement, whether or not binding DOE to the obligation and expenditure of public funds. Such actions shall include the rendering of determinations and decisions, except those required by law or regulation to be made by other authority.
- O. Enter into long-term utility contracts except area wide contracts, for total terms not to exceed ten (10) years, for all utility services; e.g., electric, natural gas, water, sewage, and steam, pursuant to Delegation of Authority to the Secretary of Energy from the General Services Administrator, reflected in 48 C.F.R. 41.103(b). (40 U.S.C. 501(b), 40 U.S.C. 121(d)).
- P. Pursuant to section 311 of title III of the Energy and Water Development and Related Agencies Appropriations Act, 2010 (P.L. 111-85), notify the Committees on Appropriations of the Senate and House of Representatives at least three full business days in advance of making a grant allocation, discretionary grant award, discretionary contract award, Other Transaction Agreement, or issuing a letter of intent totaling in excess of \$1,000,000 or to announce publicly the intention to make such an award, including a contract covered by the Federal Acquisition Regulation.
- Q. Consistent with the policy process set forth in the Memorandum on the Rulemaking Process issued to all Departmental elements by the Deputy Secretary on September 14, 2010, approve and issue all rulemaking and rule-related documents regarding Department acquisition and financial assistance regulations as required or authorized by applicable law. This includes in particular serving as my authorized representative to issue agency acquisition regulations that implement or supplement the Federal Acquisition Regulation (FAR) as provided for in 48 C.F.R. 1.301, and issuing agency regulations concerning financial assistance as provided in 2 C.F.R. Part 200. For those rules determined to be administrative/ informational or substantive/non-significant, the process involving the Regulatory Leadership Group described in the Deputy Secretary's Memorandum dated September 14, 2010 shall not apply and approval of those rulemakings is delegated to the Senior Procurement Executive. The process involving Regulatory Leadership Group described in the Deputy Secretary's memorandum remains in effect for those rules determined to be significant or for which there is a DOE policy required. This authority does not include the authority to issue rule and rule-related documents for the Title XVII Loan Guarantee or Advanced Technology Vehicles Manufacturing Incentive Programs.
- R. Make a determination to award a single source Blanket Purchase Agreement in excess of \$103M (48 C.F.R. 8.405-3(a)(3)(ii)).

- S. Make a determination to award a single source task or delivery order contract in excess of \$103M (48 C.F.R. 16.504(c)(1)(ii)(D)), and notify Congress within 30 days after making a determination pursuant to 48 C.F.R. 16.504(c)(1)(ii)(D)(1)(iv).
 - T. This authority may be redelegated only to the Director for the Office of Acquisition and Project Management.
- 1.16 Exercise the duties and responsibilities of the Secretary for authorizing and approving travel and establishing policies on behalf of the Secretary with respect to employees travel and relocation allowances under 5 U.S.C., chapter 57, and the Federal Travel Regulation.
 - 1.17 Under Title 5 U.S.C. 7114 (c) approve all Federal labor management agreements, including employee negotiated agreements, renegotiations, supplements, and other related agreements.
 - 1.18 Consult with and request determination of eligibility from the Office of Personnel Management for employment of an employee who has been removed from another agency under 5 U.S.C. 7312.
 - 1.19 Approve personnel actions involving positions at the GS-15 level and below or equivalent in the competitive and excepted service.
 - 1.20 Approve personnel actions involving positions above the GS-15 or equivalent level not requiring Executive Resources Board approval.
 - 1.21 Approve personnel actions relating to the appointment of experts and consultants pursuant to 5 U.S.C. 3109 (Schedule A Authority).
 - 1.22 Establish rates of basic pay and premium pay for Dispatchers of the Western Area Power Administration in accordance with the provisions of Title III of Public Law 99-141 and Dispatchers of the Southwestern Power Administration in accordance with the provisions of Title I of Public Law 100-71.
 - 1.23 Approve develop and evaluate training and development programs and associated procedures pursuant to 5 U.S.C. Chapter 41 and 5 CFR Part 410. As set forth in C.F.R. 410.302(b)(1), this authority does not include authorizing training for officials appointed by the President.
 - 1.24 Under 5 U.S.C. 2903, administer the oath of office and execute appointment affidavits for all appointments for DOE, including appointments in the National Nuclear Security Administration.

- 1.25 Under Public Law 101-12 (5 U.S.C. 3352), exercise the functions granted regarding giving preferences to employees who have had a prohibited personnel action taken against them.
- 1.26 Under Public Law 107-107 (5 U.S.C. 5547(b)), waive the biweekly limitation on General Schedule premium pay for emergency situations or work that is critical to the mission of DOE. If provided for by statute, waive the premium pay limitations in 5 U.S.C. 5547 on total compensation for an employee who performs work while in an overseas location in direct support of, or directly related to a military operation, including a contingency operation, or an operation in response to a national emergency declared by the President.
- 1.27 Approve dual compensation (salary off-set) waivers pursuant to section 1122 of the National Defense Authorization Act of Fiscal Year 2010 (Pub. L. 111-84; October 28, 2009).
- 1.28 Pursuant to 5 U.S.C. 3307 and DOE P 310.1, approve exemptions to the maximum entry age up to the age of 40 in cases where an organization can demonstrate critical needs or skill shortages, and grant exemptions from the mandatory separation age up to age 60 for special cases in which continuation of the employee's services promotes the needs of the organization and retention of the incumbent's services clearly serves the public interest.
- 1.29 Pursuant to 5 U.S.C. 5753(a)(1)(B) and 5 CFR Part 575, request that the Office of Personnel Management approve a category of employees to be eligible for recruitment and relocation incentives for pay plans other than GS.
- 1.30 Pursuant to 5 U.S.C. 5754(a)(1)(B) and 5 CFR Part 575, request that the Office of Personnel Management approve a category of employees to be eligible for retention incentives for pay plans other than GS.
- 1.31 Pursuant to 5 U.S.C. 7906(b), provide for the assignment of a post-combat case coordinator in the case of any employee of the agency who suffers an injury or disability incurred, or an illness contracted, while in the performance of such employee's duties, as a result of a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual.
- 1.32 Pursuant to 5 U.S.C. 3307(e)(2)(A), in the case of the conversion of an agency function from performance by a contractor to performance by an employee of the agency, in consultation with the Director of the Office of Personnel Management, waive any maximum limit of age, determined or fixed for positions within the agency under 5 U.S.C. 3307(e)(1), if necessary in order to promote the recruitment or appointment of experienced personnel.

- 1.33 Pursuant to 5 CFR 352.306, provide recommendations to the Secretary of State, who determines it to be in the national interest, to extend a detail beyond 5 years allowed for details. In such instances, details may be extended for up to an additional 3 years. This authority may be delegated only to the Deputy Chief Human Capital Officer.
- 1.34 Pursuant to 5 CFR 352.308, authorize the transfer of an employee to an international organization for any period not to exceed 5 years, except when the Secretary of State determines it to be in the national interest, a period of employment by transfer may be extended for up to an additional 3 years. This authority may be delegated only to the Deputy Chief Human Capital Officer.
- 1.35 Pursuant to 5 U.S.C. sections 8336a(b)(1) and 8412a(b)(1), 5 CFR Parts 831 and 848, and the DOE Executive Review Board and Senior Management Review Board Charter, concur on employees' requests to enter phased retirement status.
- 1.36 Under section 5123 of the Information Technology Management Reform Act of 1996, Public Law 104-106, "Performance and Results-Based Management," institutionalize performance and results-based management for information technology in coordination with the Senior Secretarial Officers of the Department of Energy (DOE or Department). In fulfilling this responsibility, the Under Secretary (for Management and Performance) shall:
 - A. Establish goals for improving the efficiency and effectiveness of DOE operations and, as appropriate, the delivery of services to the public through the effective use of information technology;
 - B. Prepare an annual report on the progress in achieving the goals;
 - C. Prepare, for issuance by me or by the Deputy Secretary, guidance in the form of directives (policy, orders, manuals, and guidelines) that:
 1. Provides guidelines for performance measurements for information technology used by, or to be acquired for, the Department that measure how effectively information technology supports programs of the Department;
 2. Where comparable processes exist in the public or private sectors, benchmarks DOE process performance against such processes to improve cost, speed, productivity, and quality of outputs and outcomes;
 3. Analyzes DOE missions and recommend revised DOE mission-related and administrative processes (business process

reengineering) before making significant investments in information technology; and

4. Ensures that the information security policies, procedures, and practices of the DOE are adequate.

1.37 Under section 5122 of Public Law 104-106, "Capital Planning and Investment Control," design and implement, in coordination with DOE Chief Financial Officer, a process for maximizing the value and assessing and managing the risks of DOE information technology investments. The process shall:

- A. Provide for the selection of information technology investments to be made by the Department, the management of such investments, and the evaluation of the results of such investments;
- B. Integrate the information technology (IT) investment process with the budget, financial, and program management decisions within the Department;
- C. Establish minimum criteria to be applied in considering whether to undertake a particular IT investment, including criteria related to the risk-adjusted return on investment and criteria for comparing and prioritizing alternative information technology investment projects;
- D. Provide for identifying information technology investments that would result in shared benefits or costs for other Federal agencies or State or local governments; and
- E. Provide the means for senior management of the Department to obtain timely information regarding the progress of an investment, including a system for measuring progress against planned major milestones, on an independently verifiable basis, in terms of cost, capability of the investment to meet specified requirements, timeliness and quality.

1.38 Under section 5124 of Public Law 104-106, "Acquisition of Information Technology," acquire information technology as authorized by law and to enter into a contract that provides for multi-agency acquisitions of information technology and guidance issued by the Director of the Office of Management and Budget.

1.39 Under section 5126 of Public Law 104-106, "Accountability," establish policies and procedures, in consultation with the Secretary of Energy and the Chief Financial Officer, to:

- A. Ensure that accounting, financial, and asset management systems and other information systems of the Department of Energy are designed, developed, maintained, and used effectively to provide financial or program performance data for financial statements of the Department; and
 - B. Ensure that financial and related performance data are provided on a reliable, consistent, and timely basis to DOE financial management systems.
- 1.40 Under section 5127 of Public Law 104-106, "Significant Deviations," identify in the strategic information resources management plan, any major information technology acquisition program, or any phase or increment of such a program, that has significantly deviated from the cost, performance, or scheduled goals established for the program.
- 1.41 Under section 301(b) of Public Law 107-347, "Federal Information Security Management Act of 2002" (FISMA), 44 U.S.C. 3544(a)(3), ensure compliance with the requirements of FISMA, including:
 - A. Designating a senior agency information security officer who shall carry out the CIO's responsibilities under FISMA; possess professional qualifications, including training and experience, required to administer the functions described in sub-sections B.-E. of this section; have information security duties as that official's primary duty; and head an office with the mission and resources to assist in ensuring DOE compliance with this section;
 - B. Developing and maintaining a DOE-wide information security program;
 - C. Developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under 44 U.S.C. 3543 and 40 U.S.C. 11331;
 - D. Training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and
 - E. Assisting senior DOE officials concerning their responsibilities to provide information security for the information and information systems that support the operations and assets under their control.
- 1.42 Under section 1062 of the National Security Intelligence Reform Act of 2004 (Publ. L. 108-458), as amended by section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53; 42 U.S.C. 2000ee-1), designate the Department's Privacy Act Officers.

- 1.43 Exercise the Secretary's authority to approve the use of persistent cookies for Department of Energy web sites in accordance with guidance issued by the Office of Management and Budget.
- 1.44 Under 44 U.S.C. 3102, establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.
- 1.45 Annually conduct reviews in accordance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) of at least 2 recipients of grants provided by the Department of Energy, pursuant to section 5010 of the America Competes Act of 2007, Public Law 110-69, 42 U.S.C. 16537).
- 1.46 Issue orders with respect to applications for an adjustment (exception) to any rule, regulation or order having the applicability and effect of a rule issued under the Federal Energy Administration Act (Public Law 93-275), as amended ("FEAA"), the Emergency Petroleum Allocation Act of 1973 (Public Law 93-159), as amended ("EPAA"), the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319), as amended ("ESECA"), the Energy Policy and Conservation Act (Public Law 94-163), as amended ("EPCA"), consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens.
- 1.47 Issue orders with respect to applications for exception or exemption to any rule, regulation or order having the applicability and effect of a rule issued under any statutory authority other than those listed above, vested in the Secretary, consistent with the other purposes of the relevant statutory authority, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens whenever such statutes or Departmental regulations provide for the issuance of such orders.
- 1.48 Issue appellate decisions as appropriate under the Freedom of Information Act (Public Law 89-487), as amended, the Privacy Act of 1974 (Public Law 93-579), as amended, the Nuclear Waste Policy Act of 1982 (Public Law 97-425), as amended, and the Energy Policy Act of 1992 (Public Law 102-486), as amended, consistent with the purposes of the relevant Act.
- 1.49 Issue decisions pursuant to regulations adopted by the Department of Energy (Department or DOE) with respect to the administrative appeal of any DOE order other than those appeals that are vested in or assigned to the Federal Energy Regulatory Commission (FERC).
- 1.50 Issue orders pursuant to Departmental procedures with respect to applications for modification or rescission of any DOE order.

- 1.51 Issue orders with respect to petitions for special redress, relief, or other extraordinary assistance.
- 1.52 Issue orders with respect to applications for stay of any order, rule, regulation, ruling or other generally applicable requirement as incident to the proceedings set forth in the other provisions of this Delegation Order.
- 1.53 Issue decisions, with the concurrence of the Deputy Secretary, with respect to requests made by organizations for financial assistance to participate in any regulatory or adjudicatory proceeding other than a FERC matter.
- 1.54 Conduct adjudications under section 11 of the Clayton Act (15 U.S.C. 21) as related to the transportation of oil by pipeline, pursuant to the provisions of section 306 of the DOE Act (42 U.S.C. 7155).
- 1.55 Conduct adjudicatory proceedings and issue orders in any instance in which a statute vesting authority in the Secretary requires an adjudication or appellate procedure and express Departmental procedures do not specify the manner in which the statutory authority is to be exercised.
- 1.56 Develop and adopt Guidelines for the evaluation of matters within the Director's jurisdiction.
- 1.57 Conduct investigatory and adjudicatory proceedings, and issue reports of investigation and initial and appellate agency decisions, pursuant to 10 C.F.R. Part 708, the "Criteria and Procedures for DOE Contractor Employee Protection Program," and make initial jurisdictional determinations, conduct investigatory proceedings, issue reports of investigation, and issue orders for remedial action pursuant to the "Whistleblower Protection Program" in section 3164 of the National Defense Authorization Act for Fiscal Year 2000. For purposes of this Delegation Order, proceedings arising under 10 C.F.R. Part 708 and section 3164 shall not be considered Federal employee personnel matters.
- 1.58 Conduct adjudicatory proceedings and issue opinions pursuant to 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." For purposes of this Delegation Order, proceedings arising under 10 C.F.R. Part 710 shall not be considered Federal employee matters.
- 1.59 Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986 (Public Law 99-509) ("PODRA"), adopt and administer special refund procedures for adjudicating claims made by injured persons for restitution from any oil overcharge funds made available to the Department of Energy as a result of enforcement actions; in the course of administering the claims process, take any

measures necessary or appropriate to reach equitable results in an expeditious manner.

- 1.60 When necessary and incidental to the exercise of the authority delegated hereby, request information, undertake investigations and conduct conferences, hearings or public hearings with respect to the functions delegated hereby; administer oaths and affirmations to any person, and suspend or disqualify any person appearing at such conferences or hearings; issue subpoenas and, if appropriate, direct that payment of witness fees and mileage be made to any witness appearing in response to such subpoenas.
- 1.61 Conduct such other proceedings and take such other action as the Secretary or his authorized delegate(s) may, from time to time, direct or authorize.
- 1.62 Sign documents (other than rulemaking) for publication in the Federal Register which are necessary and appropriate for the director to perform his functions.
- 1.63 Grant waivers for all employees granted an incentive under section 3136 (f)(3) of the National Defense Authorization Act for FY 2001.
- 1.64 Act as Senior Agency Official responsible for the direction and administration of the Department of Energy (DOE or Department) information security program pursuant to section 5.4(d) of Executive Order 13526 of December 29, 2009, "Classified National Security Information."
- 1.65 Establish controls to ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed only under conditions that will provide adequate protection and prevent access by unauthorized persons pursuant to Executive Order 13526, section 4.1(g). This authority may be delegated to the Associate Under Secretary for Environment, Health, Safety and Security; Deputy Associate Under Secretary for Environment, Health, Safety and Security; the Director, Office of Departmental Personnel Security; or the Director, Office of Security.
- 1.66 Originally classify information as Top Secret, Secret, and Confidential as provided in section 1.3(c) of Executive Order 13526. This authority is also delegated to (or, in their absence, those persons acting in their stead):
 - A. Associate Under Secretary for Environment, Health, Safety, and Security;
 - B. Deputy Associate Under Secretary for Environment, Health, Safety and Security; or
 - C. Director, Office of Classification.

This authority may not be further delegated, with the exception of the authority to classify information originally as Secret or Confidential which may be delegated by the Associate Under Secretary for Environment, Health, Safety and Security, consistent with the terms of Executive Order 13526.

- 1.67 Exercise all other authorities vested in the Secretary under Executive Order 13526 and in any implementing directives issued pursuant to section 5.2(b)(1), except for:
 - A. the authority specified in section 1.3(c)(2), pertaining to delegations of "Top Secret" original classification authority;
 - B. the authority specified in section 1.7(c)(1), pertaining to reclassification of information after it has been declassified and released to the public;
 - C. the authority specified in section 4.3(a) pertaining to establishment of special access programs;
 - D. the authority specified in section 4.3(b)(4) requiring the annual review of each special access program to determine whether it continues to meet the requirements of the Executive Order;
 - E. any authority which has been or may be delegated to me by the Secretary of Defense in furtherance of the provisions of section 3.5(f) pertaining to establishment of special procedures for systematic review for declassification of classified cryptologic information; and
 - F. the authority specified in section 6.2(c) to request of the Attorney General an interpretation of the Executive Order with respect to any questions arising in the course of its administration.
- 1.68 Act as Senior Agency Official responsible for the direction and administration of the DOE personnel security program pursuant to section 6.1(a) of Executive Order 12968 of August 2, 1995, "Access to Classified Information."
- 1.69 Act as Senior Agency Official responsible for the direction and administration of the DOE implementation and compliance with the National Industrial Security Program pursuant to section 203(a) of Executive Order 12829 of January 6, 1993, "National Industrial Security Program."
- 1.70 Exercise all authorities vested in the Secretary under section 145 of the Atomic Energy Act of 1954, as amended, including the authority to make determinations pursuant to section 145b. permitting an individual access to Restricted Data prior to completion of the background investigation required by section 145b., if such access is clearly consistent with the national interest. This authority may be

delegated to the Associate Under Secretary for Environment, Health, Safety and Security; Deputy Associate Under Secretary for Environment, Health, Safety and Security; the Director, Office of Departmental Personnel Security; or the Director, Office of Security Operations, who may not further delegate such authority.

- 1.71 Issue subpoenas in accordance with the provision of section 161c. of the Atomic Energy Act of 1954, as amended.
- 1.72 Classify, declassify, and transclassify Restricted Data; classify, declassify, and transclassify Formerly Restricted Data; and classify, declassify, and transclassify Transclassified Foreign Nuclear Information as provided in section 142 of the Atomic Energy Act of 1954, as amended, and section 3.3(g) of Executive Order 13526. This authority may be delegated to the Associate Under Secretary for Environment, Health, Safety and Security; Deputy Associate Under Secretary for Environment, Health, Safety and Security; or Director, Office of Classification who may not further delegate such authority.
- 1.73 For Headquarters and all non-National Nuclear Security Administration Field activities, authorize Department employees and contractor employees to carry firearms and make arrests without warrant pursuant to section 161k of the Atomic Energy Act of 1954, as amended.
- 1.74 Make the final determination concerning appeals involving the denial of requests made under the Freedom of Information Act for classified information or the denial of requests for information made under the Freedom of Information Act falling within the scope of section 148 of the Atomic Energy Act of 1954, as amended. The authority to make the initial denial of classified information may be delegated to the Associate Under Secretary for Environment, Health, Safety and Security; Deputy Associate Under Secretary for Environment, Health, Safety and Security; or Director, Office of Classification.

2. RESCISSION. Delegation Order No. 00-002.000 is hereby rescinded.

3. LIMITATION.

- 3.1 In exercising the authority delegated in this Order, a delegate shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).
- 3.2 Nothing in this Order precludes the Secretary from exercising any of the authority delegated by this Order.
- 3.3 Nothing in this Order shall be construed to supersede or otherwise interfere with the authorities provided to the Administrator for Nuclear Security by law or by delegation. Furthermore, nothing herein constitutes authority to exercise authority, direction, or

control of an employee of the National Nuclear Security Administration or its contractors.


- 3.4 The authorities delegated by this Order shall be exercised with regard to the Office of Environmental Management and the Office of Legacy Management employees, contractors, or activities.
- 3.5 Any amendments to this Order shall be in consultation with the Department of Energy General Counsel.

4. AUTHORITY TO REDELEGATE.

- 4.1 Except as expressly prohibited by law, regulation, or this Order, the Under Secretary (for Management and Performance) may delegate this authority further, in whole or in part.
- 4.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management, which manages the Secretarial Delegations of Authority system.

5. DURATION AND EFFECTIVE DATE.

- 5.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.
- 5.2 This Order is effective October 26, 2016.



Ernest J. Moniz
Secretary of Energy