DEPARTMENT OF ENERGY
DELEGATION ORDER NO. 00-003.00A
TO THE UNDER SECRETARY FOR NUCLEAR SECURITY

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) and by the National Nuclear Security Administration Act (Public Law 106-65, 50 U.S.C. 2401-2484), I delegate to the Under Secretary for Nuclear Security authority to take the following actions:

Security Activities

1.1 Under section 1.3 of Executive Order No. 12958, as amended, entitled "Classified National Security Information", originally classify information as Top Secret, Secret, and Confidential (which also includes the authority to derivatively classify documents or material based on classification guides or source documents). This authority may only be redelegated to the officials occupying the following positions (or, in their absence, those persons acting in their stead):

A. Deputy Administrator for Defense Programs

B. Deputy Administrator for Defense Nuclear Nonproliferation

C. Deputy Administrator for Naval Reactors

D. Chief of Defense Nuclear Security

E. Assistant Deputy Administrator for Research, Development, and Simulation

F. Assistant Deputy Administrator for Military Applications and Stockpile Operations

If redelegated to the above listed positions, this authority may not be further redelegated with the exception of the authority to classify information originally as Secret or Confidential which may be delegated by the Deputy Administrator for Naval Reactors and the Chief of Defense Nuclear Security, with respect to matters within their areas of responsibility respectively, consistent with the terms of Executive Order No. 12958, as amended.

1.2 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 (Executive Order No. 12958, as amended, section 4.2). The authority may be delegated to the Chief of Defense Nuclear Security, who may not further delegate such authority.

1.3 Issue subpoenas, in accordance with the provisions of section 161c. of the Atomic Energy Act of 1954, as amended (Public Law 83-703, 42 U.S.C. 2201(c).).

1.4 For NNSA field activities, authorize NNSA employees and contractor employees to carry firearms and make arrests without warrant in accordance with section 161k. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201(k)).

1.5 Act as Senior NNSA Official responsible for the direction and administration of the NNSA implementation and compliance with the National Industrial Security Program (Executive Order No. 12829, section 203(a)).

Defense Activities

1.6 Under section 3137 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190, 42 U.S.C. 7142):

A. Operate the National Atomic Museum in such a way as to recruit, train, and accept the services of individuals without compensation (except incidental expenses) as volunteers for the museum.

B. Accept and use donations of money or non-monetary gifts intended for the museum and to make determinations that such donations or gifts are suitable and beneficial for use by the museum.

C. Operate a retail outlet on the premises of the museum for the purpose of selling or distributing items of an informative, educational, and tasteful nature relevant to the contents of the museum.

D. Exhibit, perform, display, and publish information and materials concerning the holdings of the museum in any media or place at reasonable fees or charges where feasible and appropriate.

E. Authorize the use of the net proceeds from these activities for additional activities of the museum.

1.7 On a nonexclusive basis, assert the Federal Government's deliberative process privilege with respect to matters arising under the Under Secretary for Nuclear Security's cognizance. This delegation is made to protect defense activities documents from public disclosure in judicial or administrative proceedings in

situations where the court or other presiding official requires the assertion of privilege to be formally asserted by an affidavit from an agency official.

1.8 Under Executive Order No. 12958, as amended, sections 301 and 642 of the Department of Energy (DOE) Organization Act (Public Law 95-91, 42 U.S.C. 7151, 7252), and sections 141-143 and 145 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2161-2163 and 2165):

A. Approve access to classified weapons information (Atomic Energy Act of 1954, as amended, chapter 12 (42 U.S.C. sections 2161-2169)).

B. Provide oversight for NNSA's special access programs authorized and created under Executive Order No. 12958, as amended, section 4.3(a). This authority may be delegated to the Deputy Administrator for Defense Programs, the Chief of Defense Nuclear Security, and the Associate Administrator for Emergency Operations but may not be further delegated.

Naval Reactors Activities

1.9 Under section 91b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2121), and National Security Decision Directive Number 282 (September 30, 1987):

A. Authorize the transfer of special nuclear material to the Department of the Navy (except for the Navy Facilities Engineering Command) in such quantities and at such times as necessary for cores for new military reactors and for replacement cores for existing military reactors, and for miscellaneous purposes (other than use in atomic weapons), for which material, fabrication, and new reactors the Congress shall have authorized funds. This authority may be redelegated to the Deputy Administrator for Naval Reactors but may not be further delegated.

B. Authorize the Department of the Navy to manufacture, produce or acquire utilization facilities (nuclear powered ships) for which Congress shall have authorized funds. This authority may be redelegated to the Deputy Administrator for Naval Reactors but may not be further delegated.

Nuclear Nonproliferation Activities

1.10 Under the referenced sections of the Atomic Energy Act of 1954, as amended (Public Law 83-703) and on behalf of DOE:

A. Distribute special nuclear material abroad under section 54 (42 U.S.C. 2074).

B. Make any determination under section 54d.(2) (42 U.S.C. 2074(d)(2)).

C. Carry out inter-agency consultations, obtain the concurrence of the Secretary of State, and recommend appropriate action to the Secretary of Energy, as provided in section 57b. (42 U.S.C. 2077(b)(2)).

D. Distribute source material abroad as provided in section 64 (42 U.S.C. 2094) and distribute byproduct material abroad as provided in section 82 (42 U.S.C. 2112).

E. Consult with the Nuclear Regulatory Commission ("NRC") on export control as provided in section 109b. (42 U.S.C. 2139(b)).

F. Apply to the Nuclear Regulatory Commission for a license to distribute special nuclear material, source material, and byproduct material under section 111a. (42 U.S.C. 2141(a)).

G. Obtain the necessary concurrence and carry out the consultations required in section 111b. (42 U.S.C. 2141(b)).

H. Advise the NRC as to whether a proposed export would be inimical to the common defense and security of the United States, under section 109c. (42 U.S.C. 2139).

I. Determine whether a proposed distribution of special nuclear material or source material would be inimical to the common defense and security of the United States, as required by section 111b.(2) (42 U.S.C. 2141(b)(2)).

J. Make the findings, other than the "not inimical" determination, specified in section 111b.(2) (42 U.S.C. 2141(b)(2)).

K. Exercise the function of agreeing to the procedures contemplated under section 126a.(1) for the preparation of the Executive Branch judgment on export applications and, under those procedures, advise the Secretary of State as to whether a proposed export under section 126a.(1) would be inimical to the common defense and security of the United States (42 U.S.C. 2155(a)(1)).

L. Establish the administrative procedures required by sections 57b., 111b. and 131 (42 U.S.C. 2077, 2141, 2160).

M. Assist the Secretary of State as appropriate under section 123a. (42 U.S.C. 2153).

N. Determine under section 127(3) whether physical security measures of exports provide a level of protection equivalent to that required by applicable (NRC) regulations (42 U.S.C. 2156(3)).

O. Submit to the Congress any reports and accompanying documentation pursuant to section 128b.(1) (42 U.S.C. 2157(b)(1)).

P. Obtain the concurrence of the Secretary of State (or his delegate) and consult the Nuclear Regulatory Commission and the Secretary of Defense, (or their delegates) prior to entering into any proposed subsequent arrangements, as required by section 131a.(1) (42 U.S.C. 2160(a)(1)).

Q. Submit any proposed subsequent arrangement, following the concurrence and consultation described in subparagraph P above, to the Federal Register for publication, along with any required written determination that the arrangement will not be inimical to the common defense and security as required in section 131a.(1) (42 U.S.C. 2160(a)(1)).

R. Determine whether any proposed subsequent arrangement, including any approval contemplated in section 402(a) of the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242) would be inimical to the common defense and security, as required by section 131a.(1) (42 U.S.C. 2160(a)(1)).

S. Report to Congressional committees on a proposal to enter into a subsequent arrangement as required by section 131b.(1) (42 U.S.C. 2160(b)(1)).

T. Make the determinations for any proposed subsequent arrangement required under section 131b.(2) with the concurrence of the Secretary of State (or his delegate) (42 U.S.C. 2160(b)(2)).

U. Attempt to ensure, prior to undertaking any subsequent arrangement, the satisfaction of those conditions specified in section 131b.(3) (42 U.S.C. 2160(b)(3)).

1.11 Under the referenced sections of the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242; 22 U.S.C. 3201 et seq.):

A. Establish and operate a training program, in consultation with the Nuclear Regulatory Commission, pursuant to section 202 (22 U.S.C. 3242).

B. Consult with the Nuclear Regulatory Commission on its physical security regulations as provided in section 304(d) (42 U.S.C. 2156a).

C. Determine whether any additional commitments from foreign recipients of source or special nuclear material are necessary in accordance with the provisions of section 402(a) (42 U.S.C. 2153a.(a)).

Human Resources Administration Activities

1.12 Establish hours of duty and administrative work week.

1.13 Approve personnel actions involving positions at the GS-15 level and below, including wage grade or equivalent levels (except for EJ and EK excepted service positions), including the determination of qualifications of candidates, classification, pay, and suitability determinations for such positions.

1.14 Approve Intergovernmental Personnel Act agreements for NNSA employees in positions at GS-15 and below or equivalent levels (except EJ and EK excepted service positions).

1.15 Approve the detail of employees to assignments outside the Department of Energy (5 U.S.C 3341).

1.16 Under Public Law 107-107 (5 U.S.C. 5547(b)), waive the biweekly limitation on General Schedule premium pay for emergency situations, work that is critical to the mission of the agency, or, if provided for in the annual authorization act, waive the limitation on total compensation of an employee for work while in an overseas location in direct support of or directly related to a military operation (including a contingency operation).

1.17 Approve, on a nonexclusive basis, major Departmental honorary awards, except the Secretary's Awards; approve cash awards in excess of those amounts authorized to be approved by Heads of Departmental Elements; and recommend to the Office of Personnel Management cash awards in excess of $10,000 (5 U.S.C. 4502). This authority may not be redelegated.

1.18 Approve personnel actions relating to the appointment of experts and consultants pursuant to 5 U.S.C. 3109.

1.19 Administer oaths of office.

1.20 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. This authority may not be redelegated below the level of the Associate Administrator for Management and Administration.

1.21 For Senior Executive Service (SES), Senior Level (SL), and Scientific and Professional (ST) positions/appointees:

A. Establish an NNSA Executive Resources Board and appoint Board members to provide, at a minimum, review of career SES candidates' qualifications, and recommend to the Administrator of NNSA, highly qualified selectees, subject to the DOE's Executive Resources Board's approval, for submission and approval by the Office of Personnel Management.

B. Approve personnel actions, which do not require DOE's Executive Resources Board approval, for positions above the GS-15 or equivalent level.

C. Establish or abolish positions.

D. Establish new career or time limited appointments.

E. Make reassignments both inside and outside the NNSA.

F. Approve transfers from other agencies of current career employees.

G. Assign details to and from positions within the NNSA.

H. Approve reinstatements into the SES.

I. Determine initial pay setting and pay adjustments.

J. Determine recruitment, relocation, and retention incentives.

K. Approve sabbaticals and Intergovernmental Personnel Act assignments.

L. With respect to NNSA Act excepted service positions at Pay Bands IV and V, determine that those positions are not performing duties that require placement in the SES.

The authorities contained in subparagraph 1.21 may not be redelegated without

my prior written approval and must be exercised in accordance with all laws, regulations, U.S. Office of Personnel Management personnel polices and guidance covering these areas. I will retain authority over SES, SL, ST and non-NNSA excepted service allocations among the DOE organizations, and approve the nomination of NNSA executives for Presidential Rank Awards.

Procurement and Assistance Management Activities

1.22 On a nonexclusive basis, perform the role of Senior Procurement Executive (as defined by 41 U.S.C. 414 and Executive Order No. 12931 "Federal Procurement Reform," October 13, 1994) for the National Nuclear Security Administration, with 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, the Under Secretary for Nuclear Security may:

A. Designate Heads of Contracting Activities within the Administration, 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).

B. Designate Contracting Officers (48 C.F.R. 1.601, 48 C.F.R. 1.1603-1, 48 C.F.R. 901.601).

C. Designate a Senior Competition Advocate for the Administration to perform the duties required by the Competition in Contracting Act of 1984. This authority may not be redelegated (Public Law 98-369, 41 U.S.C. 418, 48 C.F.R. 6.501, 48 C.F.R. 906.501).

D. Designate Contracting Activity Competition Advocates to perform the duties required by the Competition in Contracting Act of 1984. 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 (Public Law 98-369, 41 U.S.C. 418, 48 C.F.R. 6.501, 48 C.F.R. 906.501).

E. 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), Public Law 103-355, 41 U.S.C. 253j(e)).

F. Designate a program manager to implement an electronic commerce

capability for the Administration who shall report directly to the Senior Procurement Executive (41 U.S.C. 252c).

G. 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. 261, 48 C.F.R. 1.601, 48 C.F.R. 901.601).

H. 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 Administration to the obligation and expenditure of public funds.

I. Approve extraordinary contractual actions, not to exceed $55,000, to facilitate the national defense, pursuant to Public Law 85-804 and Executive Order No. 10789 (48 C.F.R. 50.102).

J. Sign applications for permits to procure tax-free spirits from a distilled spirits plant for nonbeverage purposes for use by the Administration, as authorized by 26 U.S.C. 5271.

K. Determine whether to utilize the priority contracting authority contained in section 101(a) of the Defense Production Act of 1950, 50 U.S.C. App. 2071(a)(1994) to expedite procurement actions to promote the national defense of the United States. This determination will be made after consultation with the Department of Energy General Counsel and the Assistant Secretary for Policy and International Affairs.

L. Approve justifications for other than full and open competition in the case of a contract for an amount exceeding $50,000,000 without further delegation (41 U.S.C. 253(f)).

1.23 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 the Department of Energy 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.

1.24 Take all necessary actions to acquire, by purchase, lease, or otherwise, real property interests. 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; and exercise all authority of the Secretary regarding the management and disposal of Departmental real property, including the acceptance by donation of real property. The authority to initiate condemnation proceedings and execute declarations of taking shall not be further delegated.

1.25 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 only be exercised after consultation with the DOE General Counsel. This authority may only be redelegated 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.

1.26 Acquire, manage, and dispose of personal property held by the Administration for official use by its employees or contractors.

1.27 Serve as deciding official for all appeals from an initial challenge decision under the Federal Activities Inventory Reform Act of 1998, Commercial Activities Inventory Challenge Process.

1.28 Enter into long-term utility contracts except areawide 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 FAR 41.103(b).

1.29 Pursuant to section 1007 of the Energy Policy Act of 2005 (P.L. 109-58; 42 U.S.C. 7256(g)) and 10 CFR 603.115, approve the award of Technology Investment Agreements. This authority may only be exercised with the concurrence of a separate individual serving as the NNSA Senior Procurement Executive (e.g., the Director of the Office of Acquisition Supply and Management), on a transaction-by-transaction basis.

Subject to the direction of the Secretary or the Deputy Secretary, enter into, administer, modify, closeout, terminate and take such other actions as may be necessary and appropriate when a technology investment agreement (TIA) has been approved pursuant to 10 C.F.R. 603.115, and also to authorize the cognizant Head of Contracting Activity (HCA) to issue a new warrant of a contracting officer or to revise the current warrant of a contracting officer to authorize the award or administration of a TIA as required by 10 C.F.R. 603.120. This authority may only be exercised by the NNSA Senior Procurement Executive.

Financial Management Activities

1.30 Determine the existence and amount of employee indebtedness as provided by 5 U.S.C. 5514.

1.31 Exercise the authority of the Secretary related to the waiver of claims arising out of erroneous payments of pay or allowances or travel, transportation, or relocation allowances as provided in 5 U.S.C. 5584.

1.32 Exercise the duties and responsibilities of the Secretary for authorizing and approving travel following established policies and procedures with respect to employee travel and relocation allowances under 5 U.S.C., chapter 57, and the Federal Travel Regulation.

1.33 Certify vouchers and provide written authorization to NNSA employees to certify vouchers as provided in 31 U.S.C. 3325.

1.34 Carry out the responsibilities assigned to the Secretary with regard to the exchange of funds between the NNSA and the States (31 U.S.C. 6503) and written authorization to DOE employees to provide the timely disbursement of funds (31 U.S.C. 3335).

1.35 In accordance with the Department of Justice's Office of Legal Counsel opinion, Comptroller General's Authority to Relieve Disbursing and Certifying Officials From Liability, 15 Op. O.L.C. 80 (1991), grant relief from accountability for losses or deficiencies of disbursing officers, cashiers, or other accountable officers.

1.36 Process the payment of settled claims by employees for personal property losses as provided by 31 U.S.C. 3721.

1.37 Carry out the responsibilities assigned to the Secretary with respect to prompt payments as provided in 31 U.S.C., chapter 39.

1.38 Exercise the responsibilities assigned to the Secretary in 31 U.S.C. 3332(b)(1) with respect to the granting of waivers of the requirement to receive wage and salary payments electronically.

1.39 Exercise the responsibilities assigned to the Secretary in 31 U.S.C. 3332(e)(2) with respect to the granting of waivers of the requirement to make all recipient payments electronically.

1.40 Under section 988 of the Energy Policy Act of 2005 (P.L. 109-58; 42 U.S.C. 16352):

A. Approve requests for reduction or elimination of the cost sharing requirement for a research and development activity of an applied nature in accordance with section 988(b)(3);

B. Approve requests for reduction of the cost sharing requirement for the non-federal share of demonstration and commercial application activities in accordance with section 988(c)(2); and

C. Exclude research and development of a basic or fundamental nature from the cost sharing requirements, as described in section 988(b)(2).

These authorities may not be redelegated, and may only be exercised after providing notification to the Office of the Secretary. Furthermore, the approval authorities delegated in subparagraphs A and B can only be exercised in cases of exceptional need.

General Activities

1.41 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) and sections 3202 and 3212(a) of the National Nuclear Security Administration Act (Public Law 106-65), nominate, appoint, renew the term of, and terminate the service of members of the National Nuclear Security Administration Advisory Committee; nominate, appoint, renew the term of, and terminate the service of a Chairman of the NNSA Advisory Committee; convene meetings and determine that all or portions thereof shall be closed to the public in accordance with 5 U.S.C. 552b(c); and draft and post meeting announcements in the Federal Register. 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 Nuclear Security.

1.42 Direct a head of field organization to curtail or suspend the operation of nuclear reactors, nuclear facilities or related activities when, in the opinion of the Under Secretary for Nuclear Security, continuing operations might result in an undue risk to the environment and/or to the safety and health of Departmental or contractor employees or to the public. This authority may not be redelegated.

1.43 Under sections 102(10) and 642 of the Department of Energy Organization Act

(P.L. 95-91; 42 U.S.C. 7112(10) and 7252) and sections 103(9) and 107(a) of the Energy Reorganization Act of 1974 (P.L. 93-438; 42 U.S.C. 5813(9) and 5817(a)) and with respect to the functions of the National Nuclear Security Administration, the authority to negotiate and sign agreements on behalf of the Department of Energy with foreign governments, agencies of foreign governments, and intergovernmental organizations. This authority shall be exercised exclusively subject to the following conditions:

A. Prior to transmitting a draft agreement to the Department of State for inter-agency review under its Circular 175 procedures:

   i. Consult, by memorandum, with the DOE General Counsel; and

   ii. Provide 10 business days' advance written notification, by information memorandum, to the Secretary or the Deputy Secretary, the Assistant Secretary for Policy and International Affairs, and other affected departmental offices;

B. Consultation with the Department of State in accordance with the Case-Zablocki Act of 1972 (1 U.S.C. 112b), and the Department of State's implementing regulations (22 C.F.R. Part 181); and

C. Following the actions described in "A" and "B" above, and prior to signing the final text of any agreement:

   i. Consult, by memorandum, with the DOE General Counsel, the Assistant Secretary for Policy and International Affairs and other affected departmental offices; and

   ii. Provide 10 business days' advance written notification, by information memorandum, including the recommendation of the DOE General Counsel, the Assistant Secretary for Policy and International Affairs, and other affected departmental offices, to the Secretary or the Deputy Secretary.

2. RESCISSION. Delegation Order 00-003.00 dated December 6, 2001 is hereby rescinded.

3. LIMITATION.

3.1 In exercising the authority delegated in this Order, a delegate shall be governed by the applicable rules and regulations of the Department of Energy and the policies and procedures of the Secretary.

3.2 Nothing is this Order precludes the Secretary from disapproving any Administration-specific policy or exercising any of the authority delegated by this Order whenever in the Secretary's judgment the exercise of that authority is necessary or appropriate to administer the functions vested in the Secretary.

3.3 The authorities delegated by this Order shall only be exercised with regard to NNSA employees, contractors, or activities.

3.4 Any amendments to this Order shall be made 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 Nuclear Security 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 May 7, 2008.

Samuel W. Bodman
Secretary of Energy