

DEPARTMENT OF ENERGY
DELEGATION ORDER NO. 00-016.00
TO THE DIRECTOR OF THE OFFICE OF HEARINGS AND APPEALS

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 Director of the Office of Hearings and Appeals authority to take the following actions:
 - 1.1 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.
 - 1.2 Issue orders with respect to applications for exception 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.
 - 1.3 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.
 - 1.4 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 the Board of Contract Appeals or assigned to the Federal Energy Regulatory Commission (FERC).
 - 1.5 Issue orders pursuant to Departmental procedures with respect to applications for modification or rescission of any DOE order.

- 1.6 Issue orders with respect to petitions for special redress, relief, or other extraordinary assistance.
- 1.7 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.
- 1.8 Conduct adjudicatory proceedings with respect to and issue final Remedial Orders, Remedial Orders for Immediate Compliance and Orders of Disallowance.
- 1.9 Advise FERC whenever a recipient of a Remedial Order, Remedial Order for Immediate Compliance or Order of Disallowance notifies the Director that the recipient intends to contest the Order.
- 1.10 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.
- 1.11 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).
- 1.12 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.
- 1.13 Develop and adopt Guidelines for the evaluation of matters within the Director's jurisdiction.
- 1.14 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.

- 1.15 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.
 - 1.16 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.
 - 1.17 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.
 - 1.18 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.
 - 1.19 Sign documents (other than rulemaking) for publication in the Federal Register which are necessary and appropriate for the director to perform his functions.
2. RESCISSION. Delegation Order 0204-24, Amendment No. 1, 2, and 3 to Delegation Order 0204-24, and Delegation Memorandum of November 2, 1978, "Authority to Formulate and Implement Refund Process" are 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 orders described in Paragraphs 1.1 and 1.2 (including proposed exception decisions) as well as Paragraph 1.6 shall be issued only with the concurrence of the Administrative Review Committee, the Senior Review Committee or the Deputy Secretary as appropriate. Orders in the nature of an exception issued pursuant to Paragraphs 1.12 and 1.18 shall require the concurrence of the appropriate Review Committee unless otherwise specified by the Deputy Secretary. However, the concurrence of the Review Committee shall not be required for any interlocutory orders, extensions of relief previously provided, summary dismissals, dismissals of a matter without prejudice to resubmission, or supplemental orders generally contemplated by a prior order.
- 3.5 The authority delegated to the Director by Paragraphs 1.3 and 1.4 of this Delegation Order does not include the authority to order any office of the Department to take or refrain from taking any action except in the context of a pending proceeding before the Office of Hearings and Appeals or with respect to issues involving practice or procedure before the Office of Hearings and Appeals. Prior to taking any action pursuant to Paragraph 1.13, the Director shall consult with the General Counsel and any program office that is directly affected by the proposed action.
- 3.6 The authority delegated to the Director by this Delegation Order does not include the authority to decide any matter that is within the jurisdiction of the FERC, or that has been assigned or delegated to the Board of Contract Appeals, or that involves Federal employee personnel matters, or to issue determinations that pertain solely to the internal administration of the Department.
- 3.7 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 Director of the Office of Hearings and Appeals 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 and Operations Support, 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 December 6, 2001.



Spencer Abraham
Secretary of Energy