

*Total Annual Costs (operating/maintaining systems or purchasing services): \$78,522.*

*Description:* Provides procedures for petitions for modification by which a mine operator, representative of miners, or independent contractor may request relief from mandatory safety standards.

**Ira L. Mills,**

*Departmental Clearance Officer.*

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### [Secretary's Order 3-2000]

#### Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Directives Affected.* This Order repeals Secretary's Order 6-96 (Occupational Safety and Health).

3. *Background.* This Order, which repeals and supersedes Secretary's Order 6-96, constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA). Specifically, this delegates and assigns responsibility to OSHA for enforcement of Section 519 (Protection of employees providing air safety information) of Public Law 106-81 (106th Cong.), the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 40101 note. Additionally, this Order includes an express delegation to the Assistant Secretary of the authority, implicitly delegated in prior Orders, to invoke appropriate claims of governmental privilege.

All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 6-96, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

#### 4. *Delegation of Authority and Assignment of Responsibility.*

##### a. *The Assistant Secretary for Occupational Safety and Health*

(1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health programs and activities of the Department of Labor,

except as provided in subparagraph 4.a.(2) below, under the designated provisions of the following statutes:

(a) The Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*

(b) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37-41, 43-45.

(c) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351-354, 356-357.

(d) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) The Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) The National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(i)(2).

(g) 5 U.S.C. 7902 and any Executive Order thereunder.

(h) Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") of February 26, 1980.

(i) 49 U.S.C. 31105, the whistleblower provision of the Surface Transportation Assistance Act of 1982.

(j) Section 211 of the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(k) Section 7 of the International Safe Container Act, 46 U.S.C. App. 1505.

(l) Section 1450(i) of the Safe Drinking Water Act, 42 U.S.C. 300j-9(i).

(m) Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(n) Section 110 (a)-(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a)-(d).

(o) Section 507 of the Federal Water Pollution Control Act, 33 U.S.C. 1367.

(p) Section 23 of the Toxic Substances Control Act, 15 U.S.C. 2622.

(q) Section 7001 of the Solid Waste Disposal Act, 42 U.S.C. 6971.

(r) Section 322 of the Clean Air Act, 42 U.S.C. 7622.

(s) Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 40101 note.

(t) Responsibilities of the Secretary of Labor with respect to safety and health provisions of any other Federal statutes except those related to mine safety and health, the issuance of child labor hazardous occupation orders, and Department of Labor employee safety and health, which are administered pursuant to Secretary's Orders 3-78, 5-96, and 5-95, respectively.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include

authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) field sanitation, 29 C.F.R. 1928.110; and

(b) temporary labor camps, 29 C.F.R. 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for OSHA is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege, arising from the functions of OSHA, following personal consideration of the matter, and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to OSHA in matters arising under an authority delegated or assigned in this paragraph): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) Interfere with an investigative or enforcement action taken by OSHA under an authority delegated or assigned to OSHA in this paragraph; (2) adversely affect persons who have provided information to OSHA; or (3) deter other persons from

reporting a violation of law or other authority delegated or assigned to OSHA in this paragraph.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in matters arising under this paragraph): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal OSHA's confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon OSHA's implementation of an authority delegated or assigned in this paragraph, by: (1) Disclosing investigative techniques and methodologies; (2) deterring persons from providing information to OSHA; (3) prematurely revealing the facts of OSHA's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation in which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

(4) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies having responsibilities in the occupational safety and health area.

b. The Assistant Secretary for Occupational Safety and Health and the

Assistant Secretary for Employment Standards are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see subparagraph 4.a.(2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

c. The Solicitor of Labor shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

d. The Commissioner of Labor Statistics is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with the provisions of Secretary's Orders 4-81 and 5-95.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretaries for Occupational Safety and Health and Employment Standards.

5. *Reservation of Authority and Responsibility.*

a. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed in subparagraph 4.a. above is reserved to the Secretary.

b. The commencement of legal proceedings under the statutory provisions listed in subparagraph 4.a. above, except proceedings before Department of Labor administrative law judges and the Administrative Review Board under the statutes identified in subparagraph 4.a.(1)(i) or subparagraphs 4.a.(1)(l-s) above, is reserved to the Secretary. The Solicitor will determine in each case whether such legal proceedings are appropriate and may

represent the Secretary in litigation as authorized by law.

c. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2-96 (April 17, 1996).

6. *Redelegation of Authority.* The Assistant Secretary for Occupational Safety and Health, the Solicitor of Labor, and the Commissioner of Labor Statistics may redelegate authority delegated in this Order.

7. *Effective Date.* This delegation of authority and assignment of responsibility shall be effective immediately.

Dated: July 18, 2000.

**Alexis M. Herman,**

Secretary of Labor.

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## DEPARTMENT OF LABOR

### Office of the Secretary

[Secretary's Order 2-2000]

### U.S. Department of Labor Internet Services

1. *Purpose.* To establish policy and assign responsibilities for the development, implementation, institutionalization, and continuing support of Department of Labor public Internet services.

2. *Authority and Relationship to Other Orders a. Authority.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; and sections 5122-5127 of the Clinger-Cohen Act [40 U.S.C. 1422-27].

b. *Relationship to Other Orders.*

(1) This Order does not affect Secretary's Order 2-82, which delegates responsibilities to the Assistant Secretary for Policy.

(2) This Order does not affect Secretary's Order 1-2000, which delegates responsibilities to the Chief Information Officer.

(3) This Order does not affect Secretary's Order 7-89, which delegates responsibilities to the Assistant Secretary for Congressional and Intergovernmental Affairs and the Assistant Secretary for Public Affairs.

(4) This Order does not affect Secretary's Order 6-83 which establishes procedures regulating departmental audiovisual activities.

3. *Background.* The Department of Labor (DOL) established a central public Internet web site in September 1995. By March 2000, thousands of documents had been published on the DOL site and