



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** ADM 4-0.3

**EFFECTIVE DATE:** March 6, 2003

**SUBJECT:** Redefinition of Authority and Responsibility of the Assistant Secretary for Occupational Safety and Health

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## ABSTRACT

- Purpose:** To redelegate authority within the Occupational Safety and Health Administration, consistent with the OSHA reorganization of August 27, 2002.
- Scope:** OSHA-wide
- References:** Secretary's Order 5-2002, of October 10, 2002. OSHA Instruction ADM 11-0.5, OSHA Mission and Function Statements of October 25, 2002.
- Cancellations:** ADM 4-0.2 of February 2, 1981
- State Impact:** This is not a Federal Program Change requiring State action.
- Action Offices:** All OSHA Directorates, Free-standing Offices and Regions
- Originating Office:** Office of Management Systems and Organization.
- Contact:** Office of Management Systems and Organization  
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202-693-2002

By and Under the Authority of

John L. Henshaw

Assistant Secretary

## **Executive Summary**

This Instruction cancels the 1981 redelegation, conforms to OSHA's updated organizational structure of August 27, 2002, and restates and updates the redelegation to the heads of OSHA Directorates, Free-standing Offices, and Regions of the authority delegated to the Assistant Secretary for Occupational Safety and Health, by Secretary's Order 5-2002.

## **Significant Changes**

This Instruction updates the delegations within OSHA, consistent with the OSHA organizational changes effective August 27, 2002 (See ADM 11-0.5 of October 25, 2002), of the authority and responsibility delegated to the Assistant Secretary of Labor for Occupational Safety and Health by Secretary's Order 5-2002 of October 10, 2002, which continued the delegations and assignments previously assigned to the Assistant Secretary by S. O. 3-2000, and additionally assigned responsibility to OSHA for enforcement of Section 806 (protection for employees of publicly-traded companies providing evidence of fraud) of Public Law 107-204, the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A, and other minor conforming modifications.



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- I. Purpose. This Instruction redelegates the authority and responsibility delegated by the Secretary of Labor to the Assistant Secretary for Occupational Safety and Health, to the OSHA Program Directors (heads of OSHA Directorates and free-standing Offices and Regional Administrators).
- II. Scope. This Instruction is effective OSHA-wide.
- III. Action Information. All OSHA Directorates, free-standing Offices, and Regions will operate within the scope of the authorities and responsibilities delegated to them by this Instruction.
- IV. State Plan Impact. This is not a Federal Program Change requiring State action.
- V. Cancellation. OSHA Instruction ADM 4-0.2 (4.2) of February 2, 1981 is cancelled by this Instruction.
- VI. References. Secretary's Order 3-2000. OSHA Instruction ADM 11-0.5, OSHA Mission and Functions.
- VII. Background. Since the issuance of OSHA Instruction ADM 4-0.2 (4.2) in 1981, the Secretary of Labor has on several occasions restated the delegations of authority and responsibility, or delegated new authorities and responsibilities to the Assistant Secretary for Occupational Safety and Health. These several delegations are enumerated in Secretary's Order 3-2000 (Appendix A. lists the delegated authorities). Within the scope of these delegations from the Secretary, and in conformity with OSHA's approved organizational structure, this Instruction redelegates authority and responsibility, as detailed below, to the heads of OSHA organizational components. In general, this instruction delegates each authority which is specifically mentioned in the Occupational Safety and Health Act (hereinafter referred to as the Act) and other authorities delegated by the Secretary of Labor. However, these delegations may not, in themselves, fully describe the missions and/or functions of a particular office, nor the duties and responsibilities of particular positions authorized in an office.
- VIII. Reservation of Authority. All authority delegated to the Assistant Secretary for Occupational Health and Safety that is not specifically redelegated to the heads of OSHA organizational components by this Instruction is reserved to the Assistant Secretary.
- IX. Redelegations of Authority and Responsibility.
  - A. Deputy Assistant Secretary. OSHA's Deputy Assistant Secretary shall report to the Assistant Secretary and is hereby redelegated authority to act on all matters within the Assistant Secretary's delegation.
  - B. Office of Equal Employment Opportunity. The Director of the Office of Equal

Employment Opportunity shall report to the Assistant Secretary and is hereby redelegated authority to advise and assist the Assistant Secretary in planning, establishing, implementing, and maintaining the OSHA Equal Employment Opportunity (EEO) Program.

- C. Office of Public Affairs. The Director of the Office of Public Affairs shall report to the Assistant Secretary and is hereby redelegated authority to advise the Assistant Secretary on program information and education matters relating to stakeholders, customers and the general public; external affairs of the Agency, communications policy goals and objectives; public hearings and advisory committee meetings; FOIA and Privacy Act administration and other related activities, in cooperation with the heads of OSHA Directorates, free-standing Offices, and Regions.
- D. Directorate of Evaluation and Analysis. The Director of the Directorate of Evaluation and Analysis shall report to the Assistant Secretary and is hereby redelegated authority to analyze, integrate, evaluate, and recommend OSHA program policies and to coordinate with other agencies under Section 4(b)(3) of the Act, and to advise the Assistant Secretary with respect to reconciling the views of Congress, Office of Management and Budget (OMB), the Secretary of Labor, and the public as to the role of the Occupational Safety and Health Administration (OSHA) into a consistent and coherent Agency policy, taking into consideration the economic, technical, and political consequences of Agency actions including the effects of Agency policies and actions with regard to small businesses.
- E. Directorate of Standards and Guidance. The Director of the Directorate of Standards and Guidance shall report to the Assistant Secretary and is hereby redelegated authority to develop and recommend to the Assistant Secretary the adoption of policies and the promulgation, modification, or revocation of occupational safety and health standards and/or guidance under the provisions of Section 6 of the Act.
- F. Directorate of Administrative Programs. The Director of the Directorate of Administrative Programs shall report to the Assistant Secretary and is hereby redelegated authority to plan, develop, and implement programs for administration and management of the Agency, including the areas of personnel management, program budgeting and planning, financial control, administrative management systems, and National Office administrative services.
- G. Directorate of Information Technology. The Director of the Directorate of Information Technology shall report to the Assistant Secretary and is hereby redelegated authority to plan, develop and implement a comprehensive, integrated management information, data collection and analysis, and networked communications program for the Occupational Safety and Health Administration (OSHA).



- H. Directorate of Enforcement. The Director of the Directorate of Enforcement shall report to the Assistant Secretary and is hereby redelegated authority to plan, develop, and implement a balanced program for enforcement of the Occupational Safety and Health Act; establishing and maintaining a comprehensive occupational safety and health compliance guidance program; establishing and maintaining discrimination complaint investigation programs by developing and recommending regulations and procedures regarding investigations in all covered industries and establishments under Section 8 of the Act, and other authority delegated to the Assistant Secretary; and promoting and assisting in the establishment of an occupational safety and health program in Federal Agencies, under Section 19 of the Act and in accordance with Executive Order 12196.
- I. Directorate of Construction. The Director of the Directorate of Construction shall report to the Assistant Secretary and is hereby redelegated authority to serve as the Occupational Safety and Health Administration's (OSHA's) principal source for standards, regulations, policy, programs, and assistance to OSHA Offices, other Federal agencies, the construction industry, and the general public with respect to construction safety and health, and for recommending workplace safety standards and regulations to ensure safe working conditions for the nation's construction workers, and coordinating with and providing assistance to other regulatory agencies on the implementation and enforcement of major construction safety and health laws and standards.
- J. Directorate of Cooperative and State Programs. The Director of the Directorate of Cooperative and State Programs shall report to the Assistant Secretary and is hereby redelegated authority to develop, evaluate, and analyze the performance of State occupational safety and health programs; for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe and unhealthful working conditions; for providing programs of consultation assistance and advice to employers and employees and their representative organizations as to effective means in preventing occupational injuries and illnesses; for assisting and advising small businesses on OSHA-related matters; coordinating the Agency's compliance assistance program, as well as developing a national program of outreach to increase awareness and implementation of safety and health best practices, and participation in cooperative programs and for developing, implementing and evaluating voluntary programs in cooperation with industry, labor and their representatives, by:
1. Conducting a program under Section 18 of the Act to encourage State participation in safety and health programs and for monitoring and evaluating their performance.
  2. Recommending approval or rejection of grants to the States under Section 23 of the Act.
  3. Assessing and auditing grant records under Section 25 of the Act.
  4. Developing and directing comprehensive occupational safety and health training and consultation programs under Section 21 of the Act.

- K. Directorate of Science, Technology and Medicine. The Director of the Directorate of Science, Technology and Medicine shall report to the Assistant Secretary and is hereby redelegated authority to serve as the principal source of Agency expertise with respect to scientific, engineering, and medical issues involved in the overall occupational safety and health field and to provide technical assistance and support to all other National Office and Regional Office organizations of the Agency, and to:
5. Recommend rules on permanent variances under Section 6(d) of the Act.
  6. Recommend rules on the protection of trade secrets under Section 15 of the Act.
  7. Recommend modifications of occupational safety and health roles to avoid impairment of the national defense under Section 16 of the Act.
  8. Consult with other Federal Agencies regarding research, recommending contract studies, and disseminating information under Section 20 of the Act.
- L. Regional Administrators. Each Regional Administrator shall report to the Assistant Secretary and shall have responsibility, within the assigned geographical area of responsibility, for operating an effective occupational safety and health program in the region consistent with the directives and policies of the Secretary of Labor and the Assistant Secretary for Occupational Safety and Health. Each Regional Administrator shall have authority, within the assigned geographical area of responsibility, to act for the Assistant Secretary under Section 8(a) and (b), 9, 10, and 17 of the Act for inspection and enforcement activities.
- X. Authority to Redelegate. The Program Directors and Regional Administrators may redelegate the authorities vested in them by this Instruction, consistent with OSHA Instructions and Directions and the application of customary and sound management practices.

## Appendix A.

### Delegations to the Assistant Secretary for Occupational Health (Secretary's Order 5-2002)

October 10, 2002

#### SECRETARY'S ORDER 5-2002

**SUBJECT:** 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. **Authorities and Directives Affected.**
  - a. **Authorities.** This Order is issued pursuant to 29 U.S.C. 551 et seq.; 5 U.S.C. 301; 5 U.S.C. 5315; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*; the Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37-41, 43-45; the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351-354, 356-357; the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333; the Maritime Safety Act of 1958, 33 U.S.C. 941; the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2); 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980); the Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. App.1506; the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a) - (d); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.
  - b. **Directives Affected.** Secretary's Order 3-2000 is cancelled.
3. **Background.** This Order constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA), superseding Order 3-2000. This Order delegates and assigns responsibility to OSHA for enforcement of Section 806 (protection for employees of publicly-traded companies providing evidence of fraud) of Public Law 107-204, the Sarbanes-Oxley Act of 2002, 18 U.S.C. ' 1514A, and makes other minor conforming

modifications. 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 3-2000, 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, and whistleblower, programs and activities of the Department of Labor, except as provided in paragraph 4.a.(2) below, under the designated provisions of the following laws:
  - (a) Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*
  - (b) Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37-41, 43-45.
  - (c) McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351-354, 356-357.
  - (d) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.
  - (e) Maritime Safety Act of 1958, 33 U.S.C. 941.
  - (f) National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2).
  - (g) 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 ("Occupational Safety and Health Programs for Federal Employees") (February 26, 1980).
  - (h) Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105.
  - (i) Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.
  - (j) International Safe Container Act, 46 U.S.C. App.1506.
  - (k) Safe Drinking Water Act, 42 U.S.C. 300j-9(i).
  - (l) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.
  - (m) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a) - (d).
  - (n) Federal Water Pollution Control Act, 33 U.S.C. 1367.
  - (o) Toxic Substances Control Act, 15 U.S.C. 2622.
  - (p) Solid Waste Disposal Act, 42 U.S.C. 6971.
  - (q) Clean Air Act, 42 U.S.C. 7622.
  - (r) Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121.
  - (s) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.
  - (t) Responsibilities of the Secretary of Labor with respect to safety and health, or whistleblower, provisions of any other Federal law except those responsibilities which are assigned to another DOL agency.

- (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 paragraph 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 is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order. 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 paragraph 4.a. above is reserved to the Secretary.
- b. The commencement of legal proceedings under the statutory provisions listed in paragraph 4.a. above, except proceedings before Department of Labor administrative law judges and the Administrative Review Board under the statutes identified in paragraph 4.a.(1)(h) or paragraphs 4.a.(1)(k-t) 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 1-2002 (September 24, 2002).

**6. Redlegation 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 is effective immediately.