

DEPARTMENT OF LABOR**Office of the Secretary**

[Secretary's Order 2-96]

Authority and Responsibilities of the Administrative Review Board

April 17, 1996.

1. *Purpose.* To establish the Administrative Review Board, delegate authority to it, define its composition, and describe its responsibilities.

2. *Background.* The Secretary of Labor (hereinafter referred to as the "Secretary") has been given by statute and regulation the authority and responsibility to decide certain appeals from administrative decisions. This authority and responsibility has been delegated to several entities within the Department of Labor which currently decide the categories of appeals assigned to them by Secretarial Orders. In particular, the Wage Appeals Board and the Board of Service Contract Appeals have both been given authority to decide certain administrative appeals. In addition, the Office of Administrative Appeals has been given the responsibility of advising and assisting the Secretary in the issuance of final agency decisions under a variety of laws. The current fragmented structure for carrying out these responsibilities of the Secretary has created inefficiencies. There have also been delays in the issuance of final agency decisions for which the Office of Administrative Appeals provided advice and assistance. To remedy these problems, the functions of the Wage Appeals Board, the Board of Service Contract Appeals and the Office of Administrative Appeals will be consolidated into the Administrative Review Board. This new Board will be given the authority to issue final agency decisions in cases in which the Office of Administrative Appeals has until now only provided assistance and advice.

3. *Directives Affected.*

a. Secretary's Order 3-90, delegating certain authority and assigning certain responsibilities to the Director of the Office of Administrative Appeals, is hereby canceled.

b. Secretary's Order 1-91, delegating certain authority and assigning certain responsibilities to the Wage Appeals Board, is hereby canceled.

c. Secretary's Order 3-92, delegating certain authority and assigning certain responsibilities to the Board of Service Contract Appeals, is hereby canceled.

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

The Administrative Review Board is hereby delegated authority and assigned

responsibility to act for the Secretary of Labor in issuing final agency decisions on questions of law and fact arising in review or on appeal of the following matters:

a. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and final decisions of Administrative Law Judges (ALJs), under the following:

(1) The Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-7); any laws now existing or which may be subsequently enacted, providing for prevailing wage findings by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 C.F.R. Parts 1, 3, 5, 6, Subpart C.

(2) The final decisions include those involving wage determinations, debarment, disputes and the assessment of liquidated damages under the Contract Work Hours and Safety Standards Act (except matters pertaining to safety).

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of Administrative Law Judges, arising under the McNamara-O'Hara Service Contract Act, as amended (41 U.S.C. 351 *et seq.*); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 C.F.R. Parts 4, 5, 6, Subparts B, D, E.

c. Decisions and recommended decisions by ALJs as provided for or pursuant to the following laws and implementing regulations:

(1) Age Discrimination Act of 1975, 42 U.S.C. 6103;

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1; 29 C.F.R. Part 31;

(3) Clean Air Act, 42 U.S.C. 7622; 29 C.F.R. Part 24;

(4) Comprehensive Employment and Training Act, 29 U.S.C. 801-999 (Supp. V 1981); 20 C.F.R. Part 676 (1990);

(5) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610; 29 C.F.R. Part 24;

(6) Title IX of the Education Amendments of 1972, 20 U.S.C. 1682;

(7) Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005; 29 C.F.R. Part 801, Subpart E;

(8) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 C.F.R. Part 24;

(9) Equal Access to Justice Act, 5 U.S.C. 504; 29 C.F.R. Part 16;

(10) Executive Order No. 11,246, as amended, 3 C.F.R. 339 (1964-1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 C.F.R. Parts 60-1 and 60-30;

(11) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 C.F.R. Part 531;

(12) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 C.F.R. Part 530, Subpart E;

(13) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c); 29 C.F.R. Part 525;

(14) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 C.F.R. Part 580;

(15) Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c);

(16) Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 C.F.R. Part 617;

(17) Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 C.F.R. Part 24;

(18) Immigration and Nationality Act, as amended, 8 U.S.C. 1188; 29 C.F.R. Part 501, Subpart C;

(19) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 29 C.F.R. Part 507, Subpart I; 20 C.F.R. Part 655, Subpart I;

(20) Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 29 C.F.R. Part 504, Subpart E; 20 C.F.R. Part 655, Subpart E;

(21) Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c); 29 C.F.R. Part 506, Subpart G; 20 C.F.R. Part 655, Subpart G;

(22) Immigration Act of 1990, Pub. L. 101-649 as amended, Sec. 221(a); 29 C.F.R. Part 508, Subpart K; 20 C.F.R. Part 655, Subpart K;

(23) Job Training Partnership Act, 29 U.S.C. 1576; 20 C.F.R. Part 627;

(24) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j)(2); 20 C.F.R. Part 702;

(25) Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 C.F.R. Part 500, Subpart F;

(26) National Apprenticeship Act, 29 U.S.C. 50; 29 C.F.R. Parts 29 and 30;

(27) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 C.F.R. Part 22;

(28) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 C.F.R. Part 60-741, Subpart B;

(29) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 C.F.R. Part 32;

(30) Safe Drinking Water Act, 42 U.S.C. 300j-9(i); 29 C.F.R. Part 24;

(31) Single Audit Act of 1984, 31 U.S.C. 7505; OMB Circular Nos. A-128 and A-110; 29 C.F.R. Part 96;

(32) Social Security Act, 42 U.S.C. 503; 20 C.F.R. Part 601;

(33) Solid Waste Disposal Act, 42 U.S.C. 6971; 29 C.F.R. Part 24;

(34) Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 C.F.R. Part 1978;

(35) Toxic Substances Control Act, 15 U.S.C. 2622; 29 C.F.R. Part 24;

(36) Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 C.F.R. Part 60-250, Subpart B;

(37) Wagner-Peyser Act, as amended, 29 U.S.C. 49 *et seq.*; 20 C.F.R. Part 658;

(38) Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 C.F.R. Part 50-203; and

(39) any laws subsequently enacted, which by statute, law or regulation provide for final decisions by the Secretary of Labor upon appeal or review of decisions or recommended decisions issued by ALJs.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations which has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions. In issuing its decisions, the Board shall adhere to the rules of decision and precedent applicable under each of the laws enumerated in Sections 4a., 4b., and 4c. of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent.

5. *Composition.* The Administrative Review Board shall consist of three public members, one of whom shall be designated Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board. The Secretary may also appoint one additional Senior or Alternate Member, who shall perform such duties as are assigned by the Chair. However, the Board shall sit, hear cases, render decisions and perform all other functions only in panels of 3 or fewer Members (whether or not including a Senior or Alternate Member) assigned by the Chair.

6. *Terms of the Members.*

a. Of the initial appointments of Members of the Administrative Review Board made pursuant to this Order, the Member designated Chair shall be appointed for a term not to exceed 2 years, one Member shall be appointed

for a term not to exceed 18 months and one Member shall be appointed for a term not to exceed 1 year. Thereafter each member shall be appointed for a term not to exceed 2 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the Member replaced.

b. A Senior or Alternate Member shall be appointed for a term not to exceed 2 years.

c. Appointment of a Member of the Board to a term not to exceed some time period shall not affect the authority of the Secretary to remove, in his or her sole discretion, any Member at any time.

d. A vacancy in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Administrative Review Board.

7. *Voting.* The Chair of the Board may, in his or her discretion designate himself, herself, or any other Member of the Board to decide any appeal under 29 C.F.R. Parts 7 and 8, provided the interested persons or parties in the appeal have consented to the disposition of the appeal in this manner. The Chair may also direct that any appeal or review may be decided by the full Board (but not to exceed panels of 3 Members). When an appeal is decided by more than one Member, a majority vote shall be necessary for a decision. Any decision in any other matter and the issuance of any procedural rules under section 8 shall also be by a majority vote, except that, where appropriate (see 29 C.F.R. Parts 7 and 8), a case will be heard upon the affirmative vote of one Member.

8. *Location of Board Proceedings.* The Board shall hold its proceedings in Washington, D.C., unless for good cause the Board orders that proceedings in a particular matter be held in another location.

9. *Rules of Practice and Procedure.* The Board shall prescribe such rules of practice and procedure as it deems necessary or appropriate for the conduct of its proceedings. The rules which are prescribed in 29 C.F.R. Part 7 as of the date of this Order shall, until changed, govern the proceedings of the Board when it is deciding appeals described in section 4a. of this Order. The rules which are prescribed in 29 C.F.R. Part 8 as of the date of this Order shall, until changed, govern the proceedings of the Board when it is deciding appeals described in section 4b. of this Order. The rules which applied to appeals and review described in section 4c. of this Order on the day of the issuance of this Order shall remain in effect until they are changed.

10. *Departmental Counsel.* The Solicitor of Labor shall have the responsibility for representing the Secretary, other officials of the Department, and/or the Administrative Review Board, in any administrative or judicial proceedings involving final agency decisions issued pursuant to this Order, including representing officials of the Department before the Administrative Review Board. The Solicitor of Labor shall have the responsibility for providing legal advice and assistance to all officials of the Department of Labor relating to the implementation and administration of this Order and to the Chair of the Board on all administrative matters.

11. *Effective Date.* This delegation of authority and responsibility is effective upon publication in the Federal Register.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96-9909 Filed 5-2-96; 8:45 am]

BILLING CODE 4510-23-P