

DEPARTMENT OF LABOR**Office of the Secretary****[Secretary's Order 02–2012]****Delegation of Authority and Assignment of Responsibility to the Administrative Review Board**

1. *Purpose.* To delegate authority and assign responsibility to the Administrative Review Board, define its composition, and describe its functions.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Background.* The Secretary of Labor (“Secretary”) has the authority and responsibility to decide certain appeals from administrative decisions. The Secretary created the Administrative Review Board (“Board” or “ARB”) in Secretary’s Order 02–96, which delegated authority and assigned responsibilities to the Board. Secretary’s Order 01–2002 delegated this authority and assigned responsibility to the ARB, defined and expanded its composition, clarified ARB procedural authorities, and codified the location of the ARB in the Department’s organizational structure. Secretary’s Order 01–2010, then, created and designated a Vice-Chair to maintain and operate the Board during a Chair’s absence or vacancy. Additionally, S.O. 01–2010 delegated the responsibility for the operational management of the Board and its affairs to the newly created Vice-Chair. This Order would provide updates to the delegation of authority and assignment of responsibilities laid out in the previous orders.

4. *Directives Affected.* Secretary’s Order 01–2010 is hereby canceled.

5. *Delegation of Authority and Assignment of Responsibilities.* The Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in review or on appeal of the matters listed below, including, but not limited to, the issuance of final agency decisions. The Board shall report to the Secretary of Labor through the Deputy Secretary of Labor.

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, 40 U.S.C. § 3141 *et seq.*; any laws now existing or which may be subsequently enacted, providing for prevailing wages determined 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. § 3701 *et seq.* (except matters pertaining to safety); the Copeland Act, 40 U.S.C. § 3145; Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, Subpart C and D.

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and decisions of ALJs, arising under the McNamara-O’Hara Service Contract Act, as amended, 41 U.S.C. § 6701 *et seq.*; the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701 *et seq.* (except matters pertaining to safety) where the contract is also subject to the McNamara-O’Hara Service Contract Act; and 29 CFR 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–l; 29 CFR Part 31;

(3) Civil Service Reform Act of 1978, 5 U.S.C. § 7120; 29 CFR Part 458, sections 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 459.91, and 458.93;

(4) Clean Air Act, 42 U.S.C. § 7622; 29 CFR Part 24;

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

(6) Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); 29 CFR Part 458, sections 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 459.91, and 458.93;

(7) Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. § 5567, Public Law 111–203;

(8) Consumer Product Safety Improvement Act of 2008, 15 U.S.C. § 2087; 29 CFR Part 1983;

(9) Title IX of the Education Amendments of 1972, 20 U.S.C. § 1682; 29 CFR Part 36;

(10) Employee Polygraph Protection Act of 1988, 29 U.S.C. § 2005(a); 29 CFR Part 801, Subpart E;

(11) Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851; 29 CFR Part 24;

(12) Equal Access to Justice Act, 5 U.S.C. § 504; 29 CFR Part 16;

(13) Executive Order No. 11246, as amended, 3 CFR part 339 (1964–1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 CFR Parts 60–1 and 60–30;

(14) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 CFR Part 531, sections 531.4, 531.5;

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

(16) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c) 29 CFR Part 525, section 525.22;

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

(18) Fair Labor Standards Act of 1938, as amended by the Affordable Care Act, 29 U.S.C. 218C, Public Law 111–148, section 1558;

(19) Federal Railroad Safety Act, 49 U.S.C. § 20109; 29 CFR Part 1982;

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

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

(22) Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 CFR Part 24;

(23) Foreign Service Act of 1980, 22 U.S.C. § 4117; 29 CFR Part 458, sections 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 459.91, 458.92, and 458.93;

(24) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(m); 20 CFR Part 655, Subpart E;

(25) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(m); 20 CFR Part 655, Subpart M;

(26) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 20 CFR Part 655, Subpart I;

(27) Immigration and Nationality Act, as amended, 8 U.S.C. 1184(c)(14), 20 CFR Part 655, Subpart A, 29 CFR Part 503, Subpart C;

(28) Immigration and Nationality Act, as amended, 8 U.S.C. 1188(b)(2), 20 CFR Part 655, Subpart A, 29 CFR Part 503, Subpart C;

(29) Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c) and (d); 20 CFR Part 655, Subpart G;

(30) Immigration and Nationality Act, as amended, 8 U.S.C. 1188(g)(2); 29 CFR Part 501, Subpart C;

(31) Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 481(h); 29 CFR Part 417, sections 417.6, 417.7, 417.9(c), 417.13, 417.14, and 417.15;

(32) Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. 907(j)(2); 20 CFR Part 702;

(33) Migrant and Seasonal Agricultural Worker Protection Act, 29

U.S.C. § 1813, 1853; 29 CFR Part 500, Subpart F;

(34) Motor Vehicle and Highway Safety Improvement Act of 2012, Section 31307 of the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. § 30171;

(35) National Apprenticeship Act, 29 U.S.C. § 50; 29 CFR Parts 29 and 30;

(36) National Transit Systems Security Act of 2007, 6 U.S.C. § 1142; 29 CFR Part 1982;

(37) Notification of Employee Rights Under Federal Labor Laws, 29 CFR Part 471;

(38) Older Americans Senior Community Service Employment Program, 42 U.S.C. § 3056, 20 CFR 641.900;

(39) Part B of the Black Lung Benefits Act, 30 U.S.C. §§ 921–924; Section 3(d)(3) of the Black Lung Consolidation of Administrative Responsibility Act (2002); 20 CFR Part 410 (2011);

(40) Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; 29 CFR Part 1981;

(41) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3803; 29 CFR Part 22;

(42) Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5177(a) and 5189a; 20 CFR Part 625;

(43) Section 423(d)(1) of the Black Lung Benefits Act, 30 U.S.C. 933(d)(1); 20 CFR Part 726;

(44) Section 428 of the Black Lung Benefits Act, 30 U.S.C. § 938;

(45) Seaman's Protection Act, 46 U.S.C. § 2114;

(46) Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353, 21 U.S.C. 399d;

(47) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793; 41 CFR Part 60–741, Subpart B;

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

(49) Safe Drinking Water Act, 42 U.S.C. 300j–9(i); 29 CFR Part 24;

(50) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A, as amended by Sections 922 and 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 29 CFR Part 1980;

(51) Single Audit Act of 1984, as amended, 31 U.S.C. § 7501 et seq.; OMB Circular No. A–133, as amended; 29 CFR Part 96;

(52) Social Security Act, 42 U.S.C. § 503; 20 CFR Parts 601 and 602;

(53) Solid Waste Disposal Act, 42 U.S.C. § 6971; 29 CFR Part 24;

(54) Surface Transportation Assistance Act, 49 U.S.C. § 31105; 29 CFR Part 1978;

(55) Toxic Substances Control Act, 15 U.S.C. § 2622; 29 CFR Part 24;

(56) Trade Act of 1974, as amended, 19 U.S.C. § 2101–2321; 20 CFR Part 617;

(57) Unemployment Compensation for Federal Civilian Employees Program, 5 U.S.C. § 8501–8508; 20 CFR Part 609;

(58) Unemployment Compensation for Ex-Servicemembers Program, 5 U.S.C. § 8521–8525; 20 CFR Part 614;

(59) Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. §§ 4211, 4212; 41 CFR Part 60–250, Subpart B, and Part 60–300, Subpart B;

(60) Wagner-Peyser Act, as amended, 29 U.S.C. § 49; 20 CFR Part 658;

(61) Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. § 38; 41 CFR Part 50–203;

(62) Welfare to Work Act, 20 CFR 645.800(c);

(63) Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121; 29 CFR Part 1979;

(64) Workforce Investment Act of 1998, as amended, 29 U.S.C. § 2936; 20 CFR 667.830;

(65) Workforce Investment Act of 1998, as amended, 29 U.S.C. § 2938; 29 CFR Part 37 (see 37.110–112); and

(66) Any laws or regulation subsequently enacted or promulgated that provide for final decisions by the Secretary of Labor upon appeal or review of decisions, or recommended decisions, issued by ALJs, and any Federal law that extends or supplements unemployment compensation and provides for final decisions by the Secretary of Labor.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that 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 5(a), 5(b), and 5(c) of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent. The Board's authority includes the discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute.

6. *Composition and Panel Configuration.*

a. The Board shall consist of a maximum of five Members, one of whom the Secretary shall designate as Chair, and a second of whom the Secretary shall designate as Vice-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.

b. Except as provided in Section 6(c), the Board shall sit, hear cases, render decisions, and perform all other related functions in panels of two or three Members, as may be assigned by the Chair, unless the Chair specifically directs that an appeal or review will be decided by the full Board.

c. Except as otherwise provided by law or duly promulgated regulation (see, e.g., 29 CFR Parts 7 and 8), if the petitioner(s) and the respondent(s) (or the appellant(s) and the appellees(s)) consent to disposition by a single Member, the Chair may determine that the decision shall be by a single Member. Upon an affirmative determination, the Chair of the Board shall, in his or her discretion, designate himself, herself, or any other Member of the Board to decide such an appeal under Section 8.

d. The Vice-Chair shall preside at meetings in the absence of the Chair. In the event of the vacancy of the Chair's position, the Vice-Chair shall assume all of the Chair's authority and shall act as Chair.

e. The Vice-Chair shall be responsible for the operational management of the Board and its affairs.

7. *Terms of the Members.*

a. Members of the Board shall be appointed for a term of two years or less.

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

c. Vacancies 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 Board.

8. *Voting.* A petition for review may be granted upon the affirmative vote of one Member, except where otherwise provided by law or regulation. A decision in any matter, including the issuance of any procedural rules, shall be by a majority vote, except as provided in Section 6(c).

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

10. *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 (1) which are prescribed as of the date of this Order in 29 CFR Part 7 and Part 8 with respect to Sections 5(a) and 5(b), respectively, of this Order and (2) which apply as of the date of this Order to appeals and review described in Section 5(c) of this Order shall, until changed, govern the respective proceedings of the Board when it is deciding appeals described in Section 5 of this Order.

11. *Departmental Counsel.* The Solicitor of Labor shall have the responsibility for representing the Secretary, the Deputy Secretary, and other officials of the Department and the Board in any administrative or judicial proceedings involving agency decisions issued pursuant to this Order, including representing officials of the Department before the Board. In addition, the Solicitor of Labor shall have the responsibility for providing legal advice to the Secretary, the Deputy Secretary, and other officials of the Department with respect to decisions covered by

this Order, as well as the implementation and administration of this Order. The Solicitor of Labor may also provide legal advice and assistance to the Chair and/or Vice-Chair of the Board, as appropriate.

12. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: October 19, 2012.

Hilda L. Solis,
Secretary of Labor.

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