

DEPARTMENT OF LABOR**Office of the Secretary****[Secretary's Order 1–2012]****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. 80507; 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; the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; the National Transit Systems Security Act, 6 U.S.C. 1142; the Federal Railroad Safety Act, 49 U.S.C. 20109; the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; the Affordable Care Act amendment to the Fair Labor Standards Act, 29 U.S.C. 218C and the associated Fair Labor Standards Act authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations; Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection

Act, Public Law 111–203; the Seaman's Protection Act, 46 U.S.C. 2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281; and Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353.

B. *Directives Affected.* Secretary's Order 4–2010 is hereby superseded by this Order.

3. *Background.* This Order constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA), superseding Order 4–2010. This Order amends the delegation and assignment of responsibility to OSHA for enforcement of Section 18C (protection of employees under Title I of the Affordable Care Act) of the Fair Labor Standards Act (29 U.S.C. 218C), as added by Section 1558 of the Affordable Care Act of 2010, Public Law 111–148, to clarify that OSHA's authority under Section 18C of the Fair Labor Standards Act includes the associated Fair Labor Standards Act authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations. This delegation and assignment of responsibility to OSHA under Section 18C of the Fair Labor Standards Act, along with the associated subpoena and investigations authority, is also set forth in Secretary's Order 5–2010, Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division, Sept. 2, 2010. This Order also delegates and assigns responsibility to OSHA for enforcement of (1) the Seaman's Protection Act, 46 U.S.C. 2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281; and (2) Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353. 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 4–2010, 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. 80507.

(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) Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129.

(u) National Transit Systems Security Act, 6 U.S.C. 1142.

(v) Federal Railroad Safety Act, 49 U.S.C. 20109.

(w) Affordable Care Act amendment to the Fair Labor Standards Act, 29 U.S.C. 218C. Authority and responsibility for section 18C of the FLSA (29 U.S.C. 218C) and the associated FLSA authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under section 18C are delegated and assigned to the Assistant Secretary for Occupational Safety and Health.

(x) Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act., Public Law 111–203.

(y) Section 40 of the Consumer Product Safety Improvement Act, 15 U.S.C. 2087.

(z) Seaman's Protection Act, 46 U.S.C. 2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111-281.

(aa) Section 402 of the FDA Food Safety Modernization Act, Public Law 111-353.

(bb) 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 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 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 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 *Administrator, Wage and Hour Division* 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 applicable law and Secretary's orders.

(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 Secretary for Occupational Safety and Health.

E. *The Regional Administrators for Occupational Safety and Health* are also hereby delegated authority and assigned responsibility to issue subpoenas and conduct investigations under Sections 9 and 11 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209 and 211, in cases arising under section 18C of the FLSA, 29 U.S.C. 218C.

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. No delegation of authority or assignment of responsibility under this order will be deemed to affect the Secretary's authority to continue to exercise or further delegate such authority or responsibility.

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 1-2010 (January 15, 2010).

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

Dated: January 18, 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012-1448 Filed 1-24-12; 8:45 am]

BILLING CODE 4510-23-P