Friday,
June 6, 2008

Part IV

Department of Labor

Office of the Secretary

Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration; Notice
DEPARTMENT OF LABOR
Office of the Secretary
[Secretary’s Order 01–2008]
Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration

1. Purpose. To delegate authorities and assign responsibilities to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration.

2. Authorities. This Order is issued under the authority of 5 U.S.C. 301 (Departamental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); National Apprenticeship Act of 1937 (29 U.S.C. 50); 29 CFR part 30.

3. References. Secretary’s Order 10–60; Secretary’s Order 14–77; and Secretary’s Order 9–75.

4. Directives Affected. Secretary’s Order 4–2007 is hereby canceled (Employment Standards). Secretary’s Order 9–75 is superseded to the extent that it is inconsistent with section 7a.(29) of this Order.

5. Background. This Order, which supersedes Secretary’s Order 4–2007, constitutes the generic Secretary’s Order for the Employment Standards Administration (ESA). Specifically, this Order delegates authorities and assigns responsibilities to the Assistant Secretary for Employment Standards and other officials in ESA.

This Order clarifies the leadership role of the Inspector General with respect to organized crime and labor racketeering investigations under the Labor-Management Reporting and Disclosure Act of 1959 for which both the Inspector General and the Assistant Secretary for Employment Standards have investigative authority.

6. Delegation to the Assistant Secretary for Employment Standards. A. Paragraph 7a.(29) of this Order contains the delegation of authority and the assignment of responsibility for section 211(a) of the LMRA, 29 U.S.C. 181(a) (“Compilation of Collective Bargaining Agreements, etc., Use Data”).

B. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for Employment Standards and other officials in the Employment Standards Administration in Secretary’s Order 4–2001, and this Order retains delegations and assignments in full force and effect, except as expressly modified herein.

7. Delegation of Authority and Assignment of Responsibility. A. The Assistant Secretary for Employment Standards is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq. (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President’s Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 et seq., except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Assistant Secretary for Employment Standards includes subpoena authority under 41 U.S.C. 39.


(4) The Davis-Bacon Act, as amended, 40 U.S.C. 276a et seq., and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 276c; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 et seq., except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title I of the Consumer Credit Protection Act, 15 U.S.C. 1671 et seq.

(7) The labor standards provisions contained in sections 5(i) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.


(11) The Longshore and Harbor Workers’ Compensation Act, as amended and extended, 33 U.S.C. 901 et seq., except: 33 U.S.C. 918(d), with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b), as it applies to the Benefits Review Board; and activities pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.


(16) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 et seq. (INA): Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification (H-
agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, 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 Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(22) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 et seq. If, in the course of investigations under the Labor-Management Reporting and Disclosure Act, there appear to be indications of organized crime and labor racketeering, the Assistant Secretary for Employment Standards shall promptly notify the Inspector General, who also has statutory authority to investigate such issues. The Inspector General shall have the power to assume the lead in further investigative activities arising from such case with respect to issues involving organized crime and labor racketeering.


(25) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(26) The employee protection provisions certified under section 405(a), (b), (c), and (d) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e).

(27) Executive Order 13201, ("the Notification of Employee Rights Concerning Payment of Union Dues or Fees") of February 17, 2001.


(29) Section 211(a) of the Labor Management Relations Act, 1947, 29 U.S.C. 181(a) ("Compilation of Collective Bargaining Agreements, etc.; Use of Data").

(30) Such additional Federal acts that from time to time may assign to the Secretary the enforcement and responsibilities similar to those listed under subparagraphs (1)—(29) of this paragraph, as directed by the Secretary.

B. The Wage and Hour Administrator of the Employment Standards Administration is hereby delegated authority and assigned responsibility to:


D. The Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health 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 section 7.a. (21) 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.
E. The Assistant Secretary for Administration and Management is delegated authority and assigned responsibility to assure that any transfer of resources affecting this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by this exchange of responsibilities is conducted. The Assistant Secretary for Administration and Management is also responsible for providing or assuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

F. The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, 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.

8. 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 above is reserved to the Secretary.
   B. 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).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary’s Order 4–2006 (Office of Inspector General).

9. Redelegation of Authority. The Assistant Secretary for Employment Standards, the Assistant Secretary for Administration and Management, and the Solicitor of Labor may re-delegate authority delegated in this Order.

10. Effective Date. This order is effective immediately.


Elaine L. Chao, Secretary of Labor.

[FR Doc. E8–12700 Filed 6–5–08; 8:45 am]

BILLING CODE 4510–23–P