



Billing Code: 4510-04-P

DEPARTMENT OF LABOR

Secretary's Order 01-2020-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, Secretary's Order 01-2010 delegated the responsibility for the operational management of the Board and its affairs to the newly created Vice-Chair. Secretary's Order 02-2012 provided updates to the delegation of authority and assignment of responsibilities laid out in the previous orders. Secretary's Order 01-2019 extended the term of membership of Board members from two years to four years. This Order allows for discretionary review by the Secretary of Board decisions.

4. **Directives Affected.** Secretary's Order 01-2019 – Delegation of Authority and Assignment of Responsibility to the Administrative Review Board is hereby canceled. Any Secretary's Order or other DOL document (including policies and guidance) that references Secretary's Order 01-2019 is deemed to refer to this Order instead.

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. This authority includes, but is not limited to, the issuance of final agency decisions, as provided for in Section 6 of this Order, except in those cases reviewed by the Secretary in accordance with that Section. The Board shall report to the Secretary through the Deputy Secretary of Labor and shall immediately transmit its decisions to the Deputy Secretary once they are issued.
 - 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.
 2. 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.
 3. Executive Order No. 13658, as implemented, 29 CFR 10.51 et seq.
 4. Executive Order No. 13706, as implemented, 29 CFR 13.51 et seq.
- b. 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 CFR part 31;
3. Civil Service Reform Act of 1978, 5 U.S.C. 7120; 29 CFR part 458, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, 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, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, 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, Pub. L. 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, §§ 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, § 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, Pub. L. 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, §§ 458.70, 458.72, 458.76, 458.81, 458.82, 458.88, 458.90, 458.91, 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, §§ 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, Pub. L. 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. Section 1405(b) of the Taxpayer First Act, 26 U.S.C. 7623(d);

50. Safe Drinking Water Act, 42 U.S.C. 300j-9(i); 29 CFR part 24;

51. Sarbanes-Oxley Act of 2002, 18 U.S.C. 514A, as amended by Sections 922 and 929A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. 111-203; 29 CFR part 1980;

52. 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;

53. Social Security Act, 42 U.S.C. 503; 20 CFR parts 601 and 602;

54. Solid Waste Disposal Act, 42 U.S.C. 6971; 29 CFR part 24;

55. Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978;

56. Toxic Substances Control Act, 15 U.S.C. 2622; 29 CFR part 24;

57. Trade Act of 1974, as amended, 19 U.S.C. 2101-2321; 20 CFR part 617;

58. Unemployment Compensation for Federal Civilian Employees Program, 5 U.S.C. 8501-8508; 20 CFR part 609;

59. Unemployment Compensation for Ex-Service Members Program, 5 U.S.C. 8521-8525; 20 CFR part 614;
60. 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;
61. Wagner-Peyser Act, as amended, 29 U.S.C. 49; 20 CFR part 658;
62. Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50-203;
63. Welfare to Work Act, 20 CFR 645.800(c);
64. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121; 29 CFR part 1979;
65. Workforce Investment Act of 1998, as amended, 29 U.S.C. 2936; 20 CFR 667.830;
66. Workforce Innovation and Opportunity Act, 29 U.S.C. 3246; 20 CFR 683.830;

67. Workforce Investment Act of 1998, as amended, 29 U.S.C. 2938; 29 CFR part 37 (see 37.110-112);
68. Workforce Innovation and Opportunity Act, 29 U.S.C. 3248; 29 CFR part 38 (see 38.112); and
69. Any laws or regulations 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) and 5(b) 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. Discretionary Review.

a. Finality of Board Decisions

1. Except as otherwise provided in this Section or by statute, a decision of the Board shall become the final action of the Department after the passage of 28 calendar days from the date on which the decision was issued.

2. In the case of a decision for which a petition has been filed under subsection (b)(1), but that the Board has not referred to the Secretary for review, such decision shall become the final action of the Department after the passage of 28 calendar days from the date on which the petition was filed.

3. In the case of a decision that the Board has referred to the Secretary for review under Subsection (b)(1), such decision shall become the final action of the Department either after the passage of 28 calendar days from the date on which the decision was referred, or on the date on which the Secretary declines review, whichever comes first, if the Secretary has declined review or if no action has been taken in response to the Board's referral.

4. In the case of a decision that the Secretary has directed the Board to refer to the Secretary under Subsection (b)(2), or in the case of a decision referred to and accepted by the Secretary under Subsection (b)(1), such decision shall not become the final action of the Department and shall have no legal force or effect, unless and until the Secretary adopts the Board's decision as his or her own.

b. Referral of Cases to the Secretary

1. At any point during the first 14 calendar days after the date on which a decision of the Board was issued, a party to the case may file a petition with the Board for further review by the Secretary. Such petition shall not exceed 15 pages in length and must begin with a statement of the legal issue or issues of which the party is seeking review and why the case involves a matter of exceptional importance. A brief in opposition to the petition may be filed within 10 calendar days after the filing of the petition, and shall not exceed 15 pages in length. Within 21 calendar days of the date on which the petition for further review was filed, if a majority of the Board determines that the petition presents a question of law that is of exceptional importance and warrants review by the Secretary, the Board shall advise the Secretary of such

determination in writing and explain why the Board believes review by the Secretary is warranted. The Secretary may, in his or her sole discretion, decline, accept, or take no action on the Board's referral as the Secretary deems appropriate.

2. At any point during the first 28 calendar days after the date on which a decision was issued, the Secretary may, in his or her sole discretion, direct the Board to refer such decision to the Secretary for review.

c. Review by the Secretary

1. When the Secretary undertakes the review of a decision of the Board, the Board shall promptly notify the parties to the case in writing of such action and supply the Secretary with the administrative record and the petition and briefs filed by the parties.
2. In any case the Secretary decides, the Secretary's decision shall be made solely based on the administrative record, the petition and briefs filed with the Board, and any amicus briefs permitted by the Secretary. The decision shall

be stated in writing and transmitted to the Board. The Board shall publish the decision and transmit it to the parties to the case.

3. The Secretary's decision shall constitute final action by the Department and shall serve as binding precedent on all Department employees and in all Department proceedings involving the same issue or issues.

d. Reservation of Authority – Nothing in this Section shall be construed as limiting the Secretary's power to supervise or direct the actions of the Board.

7. 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 7(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 9.
- 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.

8. Terms of the Members.

- a. Members of the Board shall be appointed for a term of four years or less. Term of service may be extended, if deemed necessary by the Secretary, to promote the efficiency of service, and will be considered on a case-by-case basis.

- 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 any Member at any time prior to the completion of the term, consistent with applicable law.
 - 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.
9. **Voting.** A petition for review by the Board may be granted upon the affirmative vote of one Member, or at the direction of the Secretary, 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 7(c).
10. **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.
11. **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 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 until changed, govern the respective proceedings of the Board when it is deciding appeals described in Section 5 of this Order.

12. 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, or his or her designee, 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, except that no individual involved in the investigation or prosecution of a case shall advise the Secretary on the exercise of the powers described in Section 6 of this Order with respect to such case or a case involving a common nucleus of operative facts. The Solicitor of Labor, or his or her designee, may also provide legal advice and assistance on the same terms to the Chair and/or Vice-Chair of the Board, as appropriate.

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

Dated: February 21, 2020.

Eugene Scalia,

Secretary of Labor.

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