

DEPARTMENT OF LABOR**[Secretary's Order 4-2008]****Order of Succession to the Secretary of Labor, Continuity of Executive Direction, Repositioning and Devolution of Departmental Governance, and Emergency Planning Under Circumstances of Extreme Disruption**

1. *Purpose.* To provide for succession to act as, or on behalf of, the Secretary of Labor in case of death or resignation of the Secretary, or if the Secretary is otherwise unable to perform the functions and duties of the office, including in case of absence or sickness; to provide lines of succession for executive continuity within the Department and its Agencies during vacancies arising in a period of national emergency or in the course of business; to provide for the repositioning and devolution of Departmental governance under circumstances of extreme disruption; and to identify the first assistant to those officers of the Department whose appointment to office is required to be made by the President, including those whose appointment is subject to the advice and consent of the Senate.

2. *Authority and Directives Affected.*

A. This Order is issued pursuant to Executive Order 13245; the Federal Vacancies Reform Act of 1998 (the FVRA) (codified generally at 5 U.S.C. 3345, *et seq.*); 29 U.S.C. 551 *et seq.*; Reorganization Plan No. 6 of 1950; Reorganization Plan No. 1 of 1958; Reorganization Plan No. 1 of 1973; Federal Civil Defense Act of 1950; Disaster Relief Act of 1974; 5 U.S.C. 301; 31 U.S.C. 1531 and 1533; Executive Order 12656; and Executive Order 12148. National Security Presidential Directive 51/Homeland Security Presidential Directive 20 (NSPD-51/HSPD-20) *National Continuity Policy* (May 2007); National Continuity Policy Implementation Plan (NCPIP) (Aug 2007); Federal Continuity Directive 1 (FCD-1) *Federal Executive Branch National Continuity Policy* (Feb 2008); Office of Personnel Management, *Handbook on Pay and Leave Benefits for Federal Employees Affected by Severe Weather Conditions or Other Emergency Situations* (July 2007).

B. Secretary's Order 4-2003, published at 68 FR 41048-01 on July 9, 2003, is hereby superseded and canceled, and all agency delegations in conflict with this Order and/or its Attachment are hereby superseded.

3. *Background.* Following the 1998 enactment of the Federal Vacancies Reform Act, the order of succession of

officers to act as Secretary of Labor in periods of vacancy was determined by Secretary's Order 2-2001, which was issued under the authority of Executive Order (E.O.) 10513 (January 19, 1954). On December 18, 2001, E.O. 13245 revoked E.O. 10513 and provided a new order of succession to the position of Secretary of Labor. The Department's plan for continuity of operations in the event of a need for relocation involves movement of National Office executive and other staff to a relocation center, currently the National Mine Health and Safety Academy (the "Relocation Site"). The Department's plan for devolution was established by Secretarial Memorandum dated December 20, 2006, wherein the Secretary selected Dallas, Texas as the National Office, Department of Labor devolution site (the "Devolution Site").

4. *Order of Governance.* In accordance with E.O. 13245 and the FVRA, in case of absence due to sickness, resignation, death or national emergency, the functions and duties of the officers of the Department of Labor and their respective responsibilities for operational management will be performed in an acting capacity or on behalf thereof by the incumbents of the positions designated in the following orders:

A. Succession to the Secretary of Labor

Sequence for identifying the Acting Secretary of Labor, who shall have all of the authorities and responsibilities of the Secretary:

- (1) Deputy Secretary of Labor;
- (2) Solicitor of Labor;
- (3) Assistant Secretary of Labor in charge of Administration and Management;
- (4) Assistant Secretary of Labor in charge of Policy;
- (5) Assistant Secretary of Labor in charge of Congressional and Intergovernmental Affairs;
- (6) Assistant Secretary of Labor in charge of the Employment and Training Administration;
- (7) Assistant Secretary of Labor in charge of the Employment Standards Administration;
- (8) Assistant Secretary of Labor in charge of the Employee Benefits Security Administration;
- (9) Assistant Secretary of Labor for Occupational Safety and Health;
- (10) Assistant Secretary of Labor for Mine Safety and Health;
- (11) Assistant Secretary of Labor in charge of the Office of Public Affairs;
- (12) Assistant Secretary of Labor for Veterans Employment and Training; and
- (13) Assistant Secretary of Labor in charge of the Office of Disability Employment Policy.

Provided that, no individual who is serving in an acting capacity in any of the above positions shall serve as Acting Secretary pursuant to this Order.

B. Identifying the Delegated Secretarial Designee on Behalf of the Secretary of Labor

In the event and for such time(s) that none of the Presidentially-appointed and Senate-confirmed positions (PAS) incumbents in the succession sequence set forth in Paragraph 4.A., above, are available to serve as Acting Secretary, the Delegated Secretarial Designee (DSD) shall fulfill, on an interim basis, the operational management of the Department except the Secretary's "functions and duties." The "functions and duties" of the Secretary are those non-delegable responsibilities (a) established by law (statute or regulation); and (b) required to be performed by, and only by, the Secretary. Except as determined otherwise by the President, whoever from time to time is highest in the following sequence and is available to serve shall be the Delegated Secretarial Designee:

- (1) The following PAS:
 - (a) Chief Financial Officer;
 - (b) Administrator of the Wage and Hour Division;
 - (c) Director of the Women's Bureau; and
 - (d) Commissioner of Labor Statistics.
- (2) The following "First Assistants," provided that, upon the issuance of a new "Memorandum to Provide for Order of Succession for Executive Community" to replace the attached Memorandum, the new listing in such Memorandum will then become the authoritative list of "First Assistants":
 - (a) Deputy Solicitor of Labor;
 - (b) Deputy Assistant Secretary for Operations within the Office of the Assistant Secretary for Administration and Management;
 - (c) Deputy Assistant Secretary for Policy;
 - (d) Deputy Assistant Secretary for Congressional Affairs;
 - (e) Deputy Assistant Secretary within the Office of Employment and Training (organizationally known as the DAS for the Workforce Investment System);
 - (f) Deputy Assistant Secretary for Policy within the Employee Benefits Security Administration;
 - (g) Deputy Assistant Secretary within the Occupational Safety and Health Administration;
 - (h) Deputy Assistant Secretary for Mine Safety and Health;
 - (i) Deputy Assistant Secretary within the Office of Public Affairs (serving as the primary advisor to the Assistant

Secretary in charge of the Office of Public Affairs);

(j) Deputy Assistant Secretary within the Veterans Employment and Training Service;

(k) Deputy Assistant Secretary within the Office of Disability Employment Policy;

(l) Deputy Chief Financial Officer;

(m) Deputy Wage and Hour Administrator;

(n) Deputy Director, Women's Bureau; and

(o) Deputy Commissioner of Labor Statistics.

(3) Specified DOL officials as follows:

(a) Regional Solicitor—Dallas;

(b) Dallas, Texas Office of the Assistant Secretary for Administration and Management (OASAM) Regional Administrator (who, upon becoming DSD by order of operation of this Succession Order, the Secretary hereby authorizes and pre-approves for an immediate, noncompetitive appointment to the Senior Executive Service (SES) under a limited-term appointment using a DOL SES allocation);

(c) Regional Administrator for ETA located in Dallas;

(d) OSHA Regional Administrator—Dallas.

Provided that, no individual who is serving in an acting capacity in any of the above positions shall serve as the Delegated Secretarial Designee pursuant to this Order.

C. To All Other PAS Positions and Heads of Other Principal Organizational Units

(1) There are offices and agencies within the Department of Labor headed by officers whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS). In the event of a vacancy in any of these PAS positions, the FVRA provides that, except in certain narrow circumstances, the "first assistant [to the PAS position] shall perform the functions and duties of the [PAS position] temporarily in an acting capacity" (subject to certain time limitations), unless and until the President makes an alternative designation under the FVRA. The functions and duties of the PAS officers of the Department and the operational management of the respective agency will be performed by the incumbent first assistant to the PAS position, as designated in the Secretarial Memorandum to Department of Labor Executive Staff (see, "Memorandum," attached to this Order).

(2) In the event that (a) there is a vacancy in the position of the first

assistant, or (b) the first assistant position is occupied by a person who is statutorily barred from serving as an acting officer, the operational management of the agency headed by the PAS shall be performed by the person whose designation closest follows that of the first assistant, unless and until the President makes an alternative designation under the FVRA. However, the "functions and duties" of the PAS may not be performed by any person other than the person serving in an acting capacity (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA). The "functions and duties" are those non-delegable responsibilities (a) established by law (statute or regulation); and (b) required to be performed by, and only by, the PAS.

(3) The Memorandum described in Paragraph 4.C.(1) above shall include succession to the heads of other Departmental organizational units that report to the Secretary.

(4) Nothing in this Order or the Memorandum shall: (1) be construed to override the provisions in the FVRA with respect to the Inspector General or the Chief Financial Officer (5 U.S.C. 3348(e)); or (2) limit the Secretary's authority to reassign functions or duties of officers unless otherwise precluded by law or regulation.

(5) The Memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. It is also subject to periodic revision by the Secretary, as necessary, and is effective upon signature unless otherwise specified.

5. Emergency Governance of the Department of Labor and Devolution of Authorities and Responsibilities

A. Secretary (or Acting Secretary) of Labor. Unless otherwise directed by the President (or designee), upon the occurrence of a national emergency entailing a wholesale disruption of the operations, structure, and leadership of the Department of Labor, the Secretary or Acting Secretary (as designated by the President or as provided in the order of succession set forth in Paragraph 4.A. above) shall activate the governing Continuity Plans and determine whether the National Office of the Department of Labor will remain in the then existing location, be repositioned organizationally to the Relocation Site, or be repositioned and reconstituted at the Devolution Site.

B. Except as otherwise directed by the President (or designee), if (1) a catastrophic event occurs in the Washington, DC metropolitan area; (2) the incumbents identified in Paragraph 4.A. are unavailable or unlikely to be

available promptly for succession; and (3) the incumbent(s) higher-situated to fill the role of Delegated Secretarial Designee (DSD) as provided in Paragraph 4.B. are unavailable or unlikely to be available promptly to assume the position of DSD, then consistent with the guidelines and operational plans of the Department and upon a review of the circumstances and Executive branch guidance, the incumbent in the next highest DSD-eligible position shall activate the governing Continuity Plans described in Paragraph 5.A. and, based upon those plans, determine whether the National Office of the Department of Labor will remain in the then existing location, be repositioned organizationally to the Relocation Site, or be repositioned and reconstituted in Dallas, Texas. If emergency circumstances exist that make identification of the DSD untenable, then the Regional Solicitor located in Dallas shall assume the duties and responsibilities described above in this Paragraph 5.B. unless and until the Secretary, Acting Secretary or a higher-situated official listed in Paragraph 4.B. above is identified and is available to serve.

6. General and Specific Delegations of Authority and Assignment of Responsibilities

A. *Acting Secretary*: Upon designation in accordance with the conditions and sequence set forth in Section 4.A. of this Order, the Acting Secretary shall have all of the authorities of the Secretary of Labor, whether statutorily-conferred or delegated by the President. The Acting Secretary shall provide for the full operational management of the Department of Labor, including, for example, the activation or modification of pre-existing Continuity Plans for the repositioning and reconstitution of the Department of Labor in the event of a national emergency.

B. *Delegated Secretarial Designee*: Upon designation in accordance with the conditions and sequence set forth above and subject to direction by the President or designee, the Secretary, or the Acting Secretary, the DSD shall fulfill interim operational management functions for the Department of Labor, performing all of the duties and responsibilities of the Secretary of Labor (except the "functions and duties" as defined in Paragraph 4.B. above) including, for example, the activation or modification of pre-existing Continuity Plans for the repositioning and reconstitution of the Department of Labor in the event of a national emergency.

C. *Assistant Secretary in charge of Administration and Management*

(ASAM) shall develop and provide on at least an annual basis a "duties and responsibilities" briefing to the designated Secretarial successors and DSDs and other key positions on their respective responsibilities, and on applicable relocation and reconstitution provisions, and shall establish (within 180 days from the date of this Order) and regularly thereafter update, in consultation with DOL Agency Heads, governing Continuity Plans for the repositioning and reconstitution of the Department of Labor upon the occurrence of national emergency scenarios entailing a wholesale disruption of the operations, structure, and leadership of the Department of Labor.

The governing Continuity Plans for the Department as approved by the ASAM shall reflect:

(1) The standards under a variety of scenarios for activation of the Continuity Plans;

(2) the determination of each agency head that the succession plans, delegations of authority and assignments of responsibility, emergency agency directives, standard operating procedures, and position descriptions needed to fulfill its mission, if devolved to or reconstituted in Dallas, are established, approved by the ASAM, and presented to the Dallas Regional Administrator (OASAM) for contingency activation by Secretary, Acting Secretary, or the Delegated Secretarial Designee;

(3) plans prepared by the Dallas Regional Administrator (OASAM) for receiving a devolved Department or for reconstituting the Department in the event of activation of the DOL Continuity Plans in Dallas, Texas; and

(4) the review by the Dallas Regional Administrator of each agency's succession plans, delegations of authority and assignments of responsibility, emergency agency directives, standard operating procedures, and position descriptions needed to fulfill its mission, if relocated to or reconstituted in Dallas, are established, and approved by the ASAM.

D. *The Chief Human Capital Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, a plan, consistent with applicable law, for managing, positioning and compensating DOL human resources in the event of a continuity of operations event, and shall assist with, and review the adequacy of, preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies. The Chief Human

Capital Officer shall also assure that the position descriptions of all DSD-eligible incumbents reflect their potential DSD service.

E. *The Chief Acquisition Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, appropriate plans for assuring that all stages of the Department's central contracting needs can be met with regional resources and that emergency powers, to the extent permitted by law, are ready for activation upon the occurrence of a national emergency or major disruption, and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

F. *The Chief Information Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, appropriate plans for assuring that all of the Department's information technology systems have sufficient redundancies to support the timely relocation of the Department's Primary Mission Essential Functions and Mission Essential Functions and the reconstitution of the all the Department's organizations and functions, and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

G. (1) *The Assistant Secretary in charge of Administration and Management* shall, develop and approve (within 180 days from the date of this Order) and regularly thereafter update, plans, consistent with applicable law, for the establishment of budget formulation for a relocated or reconstituted Department and for securing apportionment flexibilities that will permit functions to be transferred and redistributed among DOL agencies and their respective appropriation accounts, and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

(2) *The Chief Financial Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, plans consistent with applicable law, for the establishment of budget execution capabilities for a relocated or reconstituted Department and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

H. *The Chief Property Officer* shall assist with and review the adequacy of

preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

I. *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 and implementation of this Order and, if such an event arises, for a relocated or reconstituted Department. The bringing of legal proceedings, the representation of the Secretary and other officials of the Department, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively.

J. *Agency Heads* shall assure completion (within 180 days from the date of this Order, and on a regular basis thereafter) of the planning, support, and consultation required by authorized officers in connection with all aspects of the administration of this Order, including:

(1) Establishing appropriate succession plans, delegations of authority and assignments of responsibility, emergency agency directives, vital record identification and protection, standard operating procedures, and position descriptions to assure for the continuity of agency operations relocated to the Relocation Site or the Devolution Site, as appropriate;

(2) Engaging in specific transitional planning with the ASAM, including provisions for appropriate transfer of staff and programs as appropriate, in order to create devolution plans for DOL Agencies whose Offices do not currently have staff and space available at the Devolution Site; and

(3) In consultation with the Office of the Solicitor, identifying, compiling, and reporting to the ASAM regarding those emergency authorities and responsibilities that may not be suspended, or are activated, during national emergencies of any type.

K. *The Dallas Regional Administrator (OASAM)* shall prepare and approve (within 180 days from the date of this Order) and regularly thereafter update, plans for receiving a relocated Department or for reconstituting the Department in the event of activation of the DOL Continuity Plans in the Devolution Site.

L. All employees of the Department shall be responsible for knowing their individual responsibilities in any continuity situation, for contacting DOL as soon as possible after a major incident consistent with applicable guidance and for being available to work during emergencies to the extent deemed necessary and appropriate and

consistent with OPM guidance. All employees shall also comply with such further directions as may be published from time to time in the Department's internal regulations or otherwise distributed relating to their duties and responsibilities during emergency circumstances.

7. *Reservations of Authority*

A. Except to the extent stated in this Order, this Secretary's Order does not affect the authorities and responsibilities of the Inspector General under the Inspector General Act of 1978, as amended, or Secretary's Order 04-2006 (February 21, 2006).

B. This Order does not affect any authorities and responsibilities of the Chief Financial Officer under the Chief Financial Officers Act of 1990, any other Federal law or regulation, or any Office of Management and Budget, Government Accountability Office, or U.S. Department of the Treasury policies and publications governing the fiscal responsibilities of Federal departments and agencies.

8. *Effective Date.* This Order is effective immediately.

Dated: August 4, 2008.

Elaine L. Chao,
Secretary of Labor.

Attachment

MEMORANDUM FOR DEPARTMENT OF LABOR EXECUTIVE STAFF

FROM: ELAINE L. CHAO

SUBJECT: To Provide for the Order of Succession for Executive Continuity

This memorandum is issued pursuant to Secretary's Order 4-2008 and the authorities cited therein, in order to provide lines of succession in case of absence, sickness, resignation, or death of agency heads and during periods of national emergency declared by the President and to provide for ongoing operational management of agency programs and personnel.

Functions and duties and ongoing operational management responsibilities of the officers of the Department whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS), will be performed in an acting capacity by the below designated "first assistants," unless and until the President makes an alternative designation under the Federal Vacancies Reform Act of 1998 (FVRA). Functions and duties are those non-delegable responsibilities established by law (statute or regulation) and required to be performed by, and only by, the PAS.

In the event that the first assistant does not serve or is barred from serving, unless and until the President makes an

alternative designation under the FVRA, the person whose designation closest follows that of the first assistant shall perform the operational management of the agency. However, the functions and duties of the PAS may not be performed by any person other than the person serving in an acting capacity, in accord with FVRA (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA).

The Office of the Chief Information Officer and the Bureau of International Labor Affairs, which are not covered by the statute, (because they are not headed by PAS positions) are included in this memorandum for the purpose of consolidating the presentation of the Department's program for establishing orderly internal succession in the event of vacancies.

This memorandum supersedes all prior inconsistent agency delegations. Agency Heads shall assure that agency delegations, position descriptions, and other pertinent documents are maintained consistently with the designations provided below. Any modifications to the Order of Succession specified in this memorandum are solely reserved to the Secretary.

This memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. This memorandum is subject to periodic revision by the Secretary, as necessary, and is effective on the date indicated above.

DESIGNATION OF AGENCY FIRST ASSISTANT¹ AND ORDER OF SUCCESSION

A. PAS Positions Under the Secretary of Labor

Deputy Secretary of Labor:

Designation to be made by Presidential direction, as provided in 5 U.S.C. § 3345.

Solicitor of Labor:

Deputy Solicitor

Deputy Solicitor (National Operations)

Deputy Solicitor (Regional Operations)

Assistant Secretary in charge of Administration and Management: *Deputy Assistant Secretary for Operations*

Deputy Assistant Secretary for Budget and Performance Planning

Deputy Assistant Secretary for Security and Emergency Management

¹ The first assistants are designated in the list that follows as the position designated immediately below the PAS or non-PAS agency head position title.

Assistant Secretary of Labor in charge of Policy:

Deputy Assistant Secretary for Policy²
Deputy Assistant Secretary for Policy (Operations and Analysis)

Assistant Secretary in charge of the Office of Congressional and Intergovernmental Affairs:

Deputy Assistant Secretary for Congressional Affairs

Deputy Assistant Secretary for Intergovernmental Affairs

Assistant Secretary in charge of the Employment and Training Administration:

Deputy Assistant Secretary³

Deputy Assistant Secretary for Employment and Training⁴

Assistant Secretary in charge of the Employment Standards Administration:

Administrator of the Wage and Hour Division

Deputy Assistant Secretary for Employment Standards

Deputy Assistant Secretary for Federal Contract Compliance

Deputy Assistant Secretary for Labor-Management Programs

Deputy Assistant Secretary for Operations

Director, Office of Workers' Compensation Programs

Assistant Secretary in charge of the Employee Benefits Security Administration:⁵

Deputy Assistant Secretary for Policy

Deputy Assistant Secretary for Program Operations

Assistant Secretary for the Occupational Safety and Health Administration:

Deputy Assistant Secretary⁶

Deputy Assistant Secretary

Assistant Secretary for the Mine Safety and Health Administration:

Deputy Assistant Secretary for Mine

² This Deputy Assistant Secretary serves as liaison to the Executive Office of the President to assure Departmental policies, goals, objectives and strategies reflect the Administration's positions.

³ This Deputy Assistant Secretary position is responsible for the formulation of policies and development of multi-year goals, objectives and strategies, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for the Workforce Investment System.

⁴ This Deputy Assistant Secretary position is responsible for providing leadership and direction to ETA operations with specific direction provided to administrative and management systems and activities. Organizationally, this position is known as the Deputy Assistant Secretary for Administration and National Activity.

⁵ Described as Assistant Secretary of Labor in charge of the Pension and Welfare Benefits Administration in Executive Order 13245. This agency was renamed Employee Benefits Security Administration in Secretary's Order 1-2003.

⁶ This Deputy Assistant Secretary position is responsible for Congressional and Intergovernmental liaison activity, among other responsibilities.

*Safety and Health*⁷
Deputy Assistant Secretary for Mine
Safety and Health⁸
Assistant Secretary in charge of the
Office of Public Affairs:
*Deputy Assistant Secretary*⁹
Deputy Assistant Secretary¹⁰

⁷ This Deputy Assistant Secretary is responsible for the formulation of policies and development of multi-year goals, objectives, and strategies, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for Policy.

⁸ This Deputy Assistant Secretary is responsible for the day-to-day management of internal operations, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for Operations.

⁹ This Deputy Assistant Secretary serves as the primary adviser to the Assistant Secretary and other DOL officials on public affairs aspects of policy and program development, among other responsibilities.

¹⁰ This Deputy Assistant Secretary develops marketing and public outreach campaigns for

Assistant Secretary for the Veterans'
Employment and Training Service:
Deputy Assistant Secretary
Deputy Assistant Secretary for
Operations and Management
Assistant Secretary in charge of the
Office of Disability Employment
Policy:
Deputy Assistant Secretary
Chief Financial Officer:
Deputy Chief Financial Officer
Administrator of the Wage and Hour
Division:
Deputy Wage and Hour Administrator
Deputy Wage and Hour Administrator
(Operations)
Deputy Wage and Hour Administrator
for Enforcement

programs or issues and serves as the primary spokesperson for the Secretary and the Department, among other responsibilities.

Director of the Women's Bureau:
Chief of Staff¹¹
Commissioner of Labor Statistics:
Deputy Commissioner
Inspector General:
Deputy Inspector General
Non-PAS Agency Head Positions
Deputy Under Secretary for
International Affairs of the Bureau
of International Labor Affairs:
Associate Deputy Under Secretary for
International Affairs
Chief Information Officer:
Deputy Chief Information Officer

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¹¹ This position is first assistant, pursuant to 29 U.S.C. 14.