

resources, however, have not permitted the same degree of specialization in the enforcement of certain whistleblower protection laws, delegated to it under Secretary's Order No. 1-93 (listed in section 4.a. of this Order). On the other hand, the Occupational Safety and Health Administration (OSHA) has developed considerable expertise in the administration and enforcement of whistleblower protection laws. Its resources, however, have not permitted the same degree of specialization in the enforcement of safety and health standards affecting the agricultural industry, delegated to it under Secretary's Order No. 1-90 (listed in section 4.b. of this Order). With a view toward better utilizing the respective agencies' program expertise, and thereby more effectively and efficiently utilizing the Department's resources, the Assistant Secretaries for ESA and OSHA have requested authority to conduct a pilot program for approximately one year to test the efficacy of a limited exchange of enforcement responsibilities for these whistleblower and agriculture safety and health programs. By this Order, I approve this request by granting to these Assistant Secretaries limited concurrent authority to enforce the whistleblower protections and agricultural safety and health laws enumerated in sections 4.a. and 4.b. of this Order.

As provided by section 7 of the Order, the pilot program will commence in the Dallas Region, Southwest Division (excluding New Mexico). However, section 7 also authorizes the two Assistant Secretaries to modify the geographic scope of the program by written agreement, approved by the Secretary. The delegation of authority and responsibility in this Order expires at the end of the calendar year 1995.

This pilot program will allow the Department to assess whether a permanent and complete transfer of enforcement responsibilities between ESA and OSHA for these whistleblower and agricultural safety and health programs would promote more effective enforcement of these programs. By this Order, I direct certain Department of Labor agencies to take steps to implement the pilot program and, if it proves successful, to assess whether action should be taken to implement the program on a wider, and possibly nationwide basis.

3. Directives Affected

Section 3.a. of Secretary's Order 1-93 (ESA) is amended with regard to the delegation of authority and assignment of responsibility to the Assistant Secretary for Employment Standards to

perform the additional statutory functions listed in section 4.a. of this order. The authority and responsibility to perform those statutory functions are thus delegated concurrently to the Assistant Secretary for Employment Standards and to the Assistant Secretary for Occupational Safety and Health, subject to the terms and conditions of sections 4., 5., 6., 7., and 8. of this Order.

Section 4.a.(1) of Secretary's Order No. 1-90 (OSHA) is amended with regard to the delegation of authority and assignment of responsibility to the Assistant Secretary for Occupational Safety and Health to perform the additional statutory functions listed in section 4.b. of this Order. The authority and responsibility to perform those statutory functions are thus delegated concurrently to the Assistant Secretary for Occupational Safety and Health and to the Assistant Secretary for Employment Standards, subject to the terms and conditions of sections 4., 5., 6., 7. and 8. of this Order.

4. Delegation of Authority and Assignment of Responsibilities

a. The Assistant Secretary for Occupational Safety and Health and the Assistant Secretary for Employment Standards, consistent with the terms of this Order and except as hereinafter provided, are hereby concurrently delegated the authority and assigned responsibility for carrying out the employment 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, arising under the following statutes:

- Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851;
- Safe Drinking Water Act, 42 U.S.C. 300j-9(i);
- Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610;
- Federal Water Pollution Control Act, 33 U.S.C. 1367;
- Toxic Substances Control Act, 15 U.S.C. 2622;
- Solid Waste Disposal Act, 42 U.S.C. 6971;
- Clean Air Act, 42 U.S.C. 7622.

Under the foregoing statutory provisions, the Secretary is charged with the responsibility of investigating and resolving allegations of discriminatory actions taken by employers against employees in violation of various environmental and public health related statutes (so called "whistleblower" protections). This

delegation to the Assistant Secretaries also encompasses such responsibilities as may arise under 29 CFR Part 24 and other responsibilities as may arise as the result of pertinent amendments to the statutory and regulatory provisions enumerated in section 4.a. The Secretary explicitly reserves the authority to issue final decisions under these provisions.

b. The Assistant Secretary for Employment Standards and the Assistant Secretary for Occupational Safety and Health, consistent with the terms of this Order and except as hereinafter provided, are hereby concurrently delegated the authority and assigned responsibility for carrying out the employment 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, arising under the following provisions:

—Under sections 8, 9 and 10 of the Occupational Safety and Health Act of 1970, to conduct inspections, issue citations and propose penalties to enforce compliance by agricultural employers with the standards on field sanitation, 29 CFR 1928.110, and temporary labor camps, 29 CFR 1910.142.

This delegation to the Assistant Secretaries also encompasses such responsibilities as may arise as the result of pertinent amendments to the statutory and regulatory provisions enumerated in section 4.b. The Secretary explicitly reserves the authority to issue final decisions under these provisions.

c. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutes listed in sections 4.a. and 4.b. and to legal issues arising under this order. The bringing of legal proceedings on behalf of the Secretary of Labor and/or other officials of the Department of Labor under the statutes listed in sections 4.a. and 4.b., the representation of Departmental officials in these proceedings, and the determination of whether such proceedings or representations are appropriate in a given case are delegated exclusively to the Solicitor of Labor.

d. *The Chief Financial Officer and the Assistant Secretary for Administration and Management* shall have the authority and responsibility to assure an appropriate allocation of costs and resources to the Assistant Secretaries, as required by law, to assure effectuation of this Order.