U. S. Department of Labor

Office of Workers' Compensation Programs
Division of Longshore and
Harbor Workers' Compensation
200 Constitution Avenue, Room C-4319
Washington, DC 20210

WAIVER ISSUED UNDER SECTION 1651(e) OF THE DEFENSE BASE ACT

Issue Date: **July 8, 2015**
Expiration Date: **July 8, 2017**
Waiver Type: **General**
Country: **American Samoa**

A. Authority

The Defense Base Act, codified at 42 U.S.C. 1651(e), permits the Secretary of Labor, in the exercise of his discretion, upon the recommendation of the head of any department or other agency of the United States, to waive the application of the Defense Base Act with respect to any contract, subcontract or subordinate contract, work location under such contracts, or classification of employees.

B. Requesting Agency

A waiver has been requested by the Department of Defense.

C. Scope of Waiver

This waiver of the Defense Base Act applies to:

1. The classification of employees set forth in Section D below
2. All contracts, subcontracts or subordinate contracts;
3. All agencies of the United States;
4. Work to be performed at any location within the country specififed above;
5. Work which would have otherwise been covered by the Defense Base Act.

D. Classification of Employees

All employees covered under "COMPULSORY WORKERS' COMPENSATION LAWS" of the country specififed above.

The term "COMPULSORY WORKERS' COMPENSATION LAWS" means laws which provide at least for compulsory payment by an employer of compensation and medical benefits for an accidental injury (including occupational disease and death), arising out of or in the course of employment, to employees or their survivors without payment for or contribution to the cost of the insurance or benefits by the employee and without reduction for the employee's fault. The benefits must not cease if the employee is repatriated. The benefits for such injuries may not exclude any cause, including but not limited to injury or death resulting from war, hostilities, terrorist acts, or nuclear, biological, chemical or radiological exposure or contamination.

E. Conditions of Waiver

1. This Waiver **does not apply** to any employee who:
   a) Is a citizen of the United States of America; or,
   b) Is a lawful resident of the United States of America; or,
   c) Was hired in the United States of America.

2. This waiver covers only those employees who are covered under the laws of the country specified above relating to compulsory employer provided accidental injuries, illnesses and deaths as identified in Section D and where the employer is in full conformance in all respects with all requirements and regulations of those laws at the time of any injury, illness, or death.

3. This waiver excludes employers otherwise covered by the Defense Base Act, with respect only to the classification of employees specified in Sections D and E.2 above, from all rights and obligations under the Longshore and Harbor Workers' Compensation Act, as extended by the Defense Base Act, and in particular from:
   a. The exclusive liability provision under 42 U.S.C. 1651(c);
   b. The obligation to secure payment of compensation under 33 U.S.C. 932(a)(1);
   c. The penalties for failure to secure such payment under 33 U.S.C. 938(a);
   d. The penalties for failure to report claims under 33 U.S.C. 930(a); and,
   e. The provisions of 33 U.S.C. 905(a).

4. For any employees for whom the applicability of the Defense Base Act has been waived, the employer is responsible for providing for those employees the same protection as that provided by the War Hazards Compensation Act (42 U.S.C. 1701, et seq) except that the level of such benefits shall conform to any law or international agreement controlling the benefits to which those employees may be entitled.

F. <u>Separability and Termination</u>

If the applicability of this Waiver to any employer or employee is held to be invalid, the applicability to other employers or employees shall not be affected thereby. On expiration, modification, termination, suspension or revocation of this waiver all rights or obligations incurred under it shall continue for all injuries arising prior to that date.

G. <u>Previous Waivers</u>

All previous Waivers granted with respect to of the country specified above are hereby revoked and superseded by this Waiver. Any rights which may have accrued under previous waivers are covered under this Waiver.

H. <u>Grant of Waiver</u>

Pursuant to the authority granted to the Secretary of Labor under 42 U.S.C. 1651(e), waiver of the application of the Defense Base Act is hereby granted to **All United States Government Agencies** with respect to work performed in the country specified above, and subject to the conditions listed above, for a period of **two years** unless modified, terminated, suspended, or revoked earlier than that date.

Antonio A. Rios
Director, Division of
Longshore and Harbor Workers' Compensation