



## **DEPARTMENT OF LABOR**

### **Office of Workers' Compensation Programs**

#### **20 CFR Parts 702 and 703**

#### **RIN 1240-AA09**

### **Longshore and Harbor Workers' Compensation Act: Transmission of Documents and Information**

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** Parties to claims arising under the Longshore and Harbor Workers'

Compensation Act and its extensions (LHWCA or Act) and entities required to have insurance pursuant to the Act frequently correspond with the Office of Workers' Compensation Programs (OWCP) and each other. The current regulations require that some of these communications be made in paper form via a specific delivery mechanism such as certified mail, U.S. mail or hand delivery. As technologies improve, other means of communication—including electronic methods—may be more efficient and cost-effective. Accordingly, this proposed rule would broaden the acceptable methods by which claimants, employers, and insurers can communicate with OWCP and each other.

**DATES:** Comments on this proposed rule must be received by midnight Eastern Standard Time on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE- FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments, identified by RIN number 1240-AA09, by any of the following methods.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the web site for submitting comments. To facilitate receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.
- Fax: (202) 693-1380 (this is not a toll-free number). Only comments of ten or fewer pages, including a Fax cover sheet and attachments, if any, will be accepted by Fax.
- Regular Mail: Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Suite C-4319, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.
- Hand Delivery/Courier: Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Suite C-4319, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT**: Antonio Rios, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Suite C-4319, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 693-0038 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 for further information.

## **SUPPLEMENTARY INFORMATION:**

### **I. Proposed Rule Published Concurrently with Companion Direct Final Rule.**

In the Final Rules section of this Federal Register edition, OWCP is simultaneously publishing an identical rule as a “direct final” rule. In direct final rulemaking, an agency publishes a direct final rule in the Federal Register with a statement that the rule will go into effect unless the agency receives significant adverse comment within a specified period. The agency concurrently publishes an identical proposed rule. If the agency receives no significant adverse comment in response to the direct final rule, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the direct final rule and treats such comment as submissions on the proposed rule. An agency typically uses direct final rulemaking when it anticipates the rule will be non-controversial.

OWCP has determined that this rule, which modifies the existing regulations to facilitate the exchange of documents and information, is suitable for direct final rulemaking. The rule expands the methods by which employers, claimants, insurers, and OWCP can transmit documents and information to each other; the rule does not eliminate current methods. Thus, OWCP does not expect to receive significant adverse comment on this rule.

By simultaneously publishing this proposed rule, notice-and-comment rulemaking will be expedited if OWCP receives significant adverse comment and withdraws the direct final rule. The proposed and direct final rules are substantively identical, and their respective comment periods run concurrently. OWCP will treat comment received on the proposed rule as comment regarding the companion direct final rule and vice versa. Thus, if OWCP receives significant adverse comment on either this proposed rule or the companion direct final rule, OWCP will

publish a Federal Register notice withdrawing the direct final rule and will proceed with this proposed rule.

For purposes of the direct final rule, a significant adverse comment is one that explains: (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, OWCP will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how the direct final rule would be ineffective without the addition.

OWCP requests comments on all issues related to this rule, including economic or other regulatory impacts of this rule on the regulated community. All interested parties should comment at this time because OWCP will not initiate an additional comment period on this proposed rule even if it withdraws the direct final rule.

## **II. Background of this Rulemaking**

The LHWCA, 33 U.S.C. 901-950, establishes a comprehensive federal workers' compensation system for an employee's disability or death arising in the course of covered maritime employment. Metropolitan Stevedore Co. v. Rambo, 515 U.S. 291, 294 (1995). The Act's provisions have been extended to: (1) contractors working on military bases or U.S. government contracts outside the United States (Defense Base Act, 42 U.S.C. 1651-54); (2) employees of nonappropriated fund instrumentalities (Nonappropriated Fund Instrumentalities Act, 5 U.S.C. 8171-73); (3) employees engaged in operations that extract natural resources from the outer continental shelf (Outer Continental Shelf Lands Act, 43 U.S.C. 1333(b)); and (4)

private employees in the District of Columbia injured prior to July 26, 1982 (District of Columbia Workers' Compensation Act of May 17, 1928, Pub. L. No. 70-419 (formerly codified at 36 D.C. Code 501 et seq. (1973) (repealed 1979)). Consequently, the Act and its extensions cover a broad range of claims for injuries that occur throughout the United States and around the world.

The Department's regulations implementing the LHWCA and its extensions (20 CFR Parts 701-704) currently contemplate that private parties and OWCP file and exchange documents only in paper form and, in some instances, require transmission via specific methods such as certified mail, U.S. mail, or hand delivery. Because many of these procedural rules were last amended in 1985 and 1986, see 51 FR 4270 (February 3, 1986); 50 FR 384 (January 3, 1985), they do not address whether the parties or OWCP may use electronic communication methods (e.g., facsimile, e-mail, web portal) or commercial delivery services (e.g., United Parcel Service, Federal Express). These communication methods have now become ubiquitous and are routinely relied upon by individuals, businesses, and government agencies alike.

Recently, OWCP has been employing electronic technology to improve the program's administration. In 2009, OWCP began accepting reports of insurance coverage electronically. See Notice from Chief, Branch of Financial Management, Insurance and Assessments (December 2, 2009) <http://www.regulations.gov> (docket folder for RIN 1240-AA09); Industry Notice No. 138 (January 3, 2012) <http://www.dol.gov/owcp/dlhwc/lsindustryntices/industryntice138.htm>. In 2013, OWCP began creating electronic case files for all new LHWCA cases. See LHWCA Bulletin No. 14-03 (November 26, 2013), <http://www.dol.gov/owcp/dlhwc/LSBulletin14-03.pdf>. And in 2014, OWCP launched SEAPortal, a web-based electronic portal that parties may use to submit case-

specific documents to OWCP. See Industry Notice No. 148 (October 31, 2014), <http://www.dol.gov/owcp/dlhwc/industry notices/industry notice148.pdf>. These advancements have enhanced claims administration within OWCP and the parties' ability to submit documents to OWCP. But they do not adequately expand the methods employers, claimants, insurers, and OWCP may use to transmit documents and information to each other.

Consistent with other workers' compensation schemes, the LHWCA provides "limited liability for employers" and "certain, prompt recovery for employees." Roberts v. Sea-Land Servs., Inc., \_\_\_ U.S. \_\_\_, 132 S.Ct. 1350, 1354 (2012). These goals are advanced through efficient and effective communications between the private parties and OWCP. The Department thus proposes to revise the regulations to: (1) remove bars to using electronic and other commonly used communication methods wherever possible; (2) provide flexibility for OWCP to allow the use of technological advances in the future; and (3) ensure that all parties remain adequately apprised of claim proceedings.

Because the proposed revisions are procedural in nature, the Department intends to apply the rules to all matters pending on the date the rule is effective as well as those that arise thereafter. This will not work a hardship on the private parties or their representatives since, as explained below, the revisions either codify current practice or broaden the methods by which documents and information may be transmitted.

### **III. Legal Basis for the Rule**

Section 39(a) of the LHWCA, 33 U.S.C. 939(a), authorizes the Secretary of Labor to prescribe all rules and regulations necessary for the administration and enforcement of the Act and its extensions. The LHWCA also grants the Secretary authority to determine by regulation how certain statutory notice and filing requirements are met. See 33 U.S.C. 907(j)(1) (the

Secretary is authorized to “make rules and regulations and to establish procedures” regarding debarment of physicians and health care providers under 33 U.S.C. 907(c)); 33 U.S.C. 912(c) (employer must notify employees of the official designated to receive notices of injury “in a manner prescribed by the Secretary in regulations”); 33 U.S.C. 919(a) (claim for compensation may be filed “in accordance with regulations prescribed by the Secretary”); 33 U.S.C. 919(b) (notice of claim to be made “in accordance with regulations prescribed by the Secretary”); 33 U.S.C. 935 (“the Secretary shall by regulation provide for the discharge, by the carrier,” of the employer’s liabilities under the Act). The rules proposed below fall well within these statutory grants of authority.

In developing these rules, the Department has also considered the principles underlying two additional statutes: the Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504, and the Electronic Signatures in Global and National Commerce Act (E-SIGN), 15 U.S.C. 7001 et seq. GPEA requires agencies, when practicable, to store documents electronically and to allow individuals and entities to communicate with agencies electronically. It also provides that electronic documents and signatures will not be denied legal effect merely because of their electronic form. Similarly, E-SIGN generally provides that electronic documents have the same legal effect as their hard copy counterparts and allows electronic records to be used in place of hard copy documents with appropriate safeguards. 15 U.S.C. 7001. Under E-SIGN, federal agencies retain the authority to specify the means by which they receive documents, 15 U.S.C. 7004(a), and to modify the disclosures required by Section 101(c), 15 U.S.C. 7001(c), under appropriate circumstances. The rules proposed below are consistent with and further the purposes of GPEA and E-SIGN.

## **IV. Proposed Rule**

### **A. General Provisions**

The Department is proposing several general revisions to advance the goals set forth in Executive Order 13563 (January 18, 2011). That Order states that regulations must be “accessible, consistent, written in plain language, and easy to understand.” 76 FR 3821; see also E.O. 12866, 58 FR 51735 (September 30, 1993) (“Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.”). Accordingly, the Department proposes to remove the imprecise term “shall” throughout those sections it is amending and substitute “must,” “must not,” “will,” or other situation-appropriate terms. These changes are designed to make the regulations clearer and more user-friendly. See generally Federal Plain Language Guidelines, <http://www.plainlanguage.gov/howto/guidelines>.

Executive Order 13563 also instructs agencies to review “rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.” As a result, the Department proposes to cease publication of two rules that are obsolete or unnecessary. These rules are set forth in the Section-by-Section Explanation below.

### **B. Section-by-Section Explanation**

#### 20 CFR 702.101 Exchange of documents and information.

This proposed section is new. It sets out general rules for transmitting documents and information that apply except when another rule or OWCP requires a specific form of communication.

Paragraph (a) specifies the methods by which documents and information must be sent to OWCP. Paragraph (a)(1) specifies that hard copy documents and information must be submitted

by postal mail, commercial delivery service, or delivered by hand. Paragraph (a)(2) specifies that electronic documents and information must be submitted through an electronic system that has been authorized by OWCP. OWCP's SEAPortal is an example of such a system. Paragraph (a)(3) recognizes that occasions may arise where transmission methods other than those enumerated would be preferable and provides that additional methods may be used when allowed by OWCP.

Paragraph (b) specifies the methods by which documents and information must be sent from OWCP to parties and their representatives or exchanged between parties and party representatives. Paragraph (b)(1) specifies that hard copy documents must be sent or exchanged by postal mail, commercial delivery service, or hand delivery. Paragraph (b)(2) specifies that documents and information can be sent or exchanged electronically, but only if they are sent through a reliable method and the receiving party agrees in writing to accept electronic transmission by the particular method used. Requiring written confirmation protects all parties and representatives from misunderstandings about service and ensures that the recipient has the technology necessary to receive documents by the selected method. The Department does not intend that this process be overly formalistic; a letter, e-mail or other writing memorializing the receiving party's agreement would be sufficient to satisfy the regulatory requirement. A party's agreement to receive documents or information electronically, although required before a sender can elect to use an electronic transmission method, does not obligate the sender to use an electronic transmission method. Finally, paragraph (b)(3) specifies that documents and information can be sent or exchanged through any OWCP-authorized electronic system that allows for service of documents. Although not currently available, this provision is added for use in the event OWCP adopts such a system in the future.

Paragraph (c) provides a non-exhaustive list of reliable electronic transmission methods.

Paragraph (d) specifies that parties or representatives who agree to receive documents electronically in accordance with paragraph (b)(2) can revoke their agreement by giving written notice to the person or entity with whom they initially agreed to receive documents electronically. For example, if a claimant's legal representative no longer wishes to receive documents electronically from the employer's attorney, the representative can revoke the agreement by simply notifying opposing counsel in writing. Similarly, if a pro se claimant initially agrees to receive documents electronically from OWCP, he or she may terminate that agreement by sending a letter or some other form of writing to OWCP. As with the procedure for agreeing to electronic service, the Department does not intend this procedure to be overly formalistic.

Paragraph (e) recognizes that the Longshore regulations use various terms to describe the process of exchanging documents and information with OWCP and between parties. It provides that paragraphs (a) through (d) apply when those terms are used.

Paragraph (f) clarifies that references to documents include both electronic and hard copy documents.

Paragraph (g) explains that a requirement that something be in writing, signed, certified, or executed does not presuppose that the document must be in hard copy.

Paragraph (h) states that an entity's address may include its electronic address or web portal.

Finally, paragraphs (i)(1) and (2) clarify that when a document must be sent to a particular district director's office or a district director must take an action with respect to a document in his or her office, the physical or electronic address or file location provided for that

district director's office by OWCP rather than that district director's physical location controls. These provisions accommodate the Department's current and anticipated future plans to have most mail for district offices sent to a central mail receipt location and eventually to an electronic location and to handle documents in an electronic case file environment.

20 CFR 702.102 Establishment and modification of compensation districts, establishment of suboffices and jurisdictional areas.

Current § 702.102(a) explains that the Director has established compensation districts as required under the Act and specifies that the Director must notify interested parties "by mail" of changes to the compensation districts. Proposed § 701.102(a) removes the phrase "by mail" to broaden the methods by which the Director may notify interested parties of a change to the compensation districts.

20 CFR 702.103 Effect of establishment of suboffices and jurisdictional areas.

Current § 702.103 explains that the Director may require claims-related materials to be filed in suboffices. Proposed § 702.103 changes the phrase "at the suboffice" to "with the suboffice" to reflect that documents being filed with a suboffice will not necessarily be filed at that suboffice per se, but rather will be filed at the physical or electronic address provided by OWCP.

20 CFR 702.104 Transfer of individual case file.

Current § 702.104(b) provides that the district director who is transferring a case to a different district office may give advice, comments, or suggestions to the district director receiving the case. The regulation also specifies that the transfer must be made by registered or certified mail. District directors now have the capacity to transfer many cases by secure electronic means, or may prefer to use a commercial delivery service such as Federal Express or

the United Parcel Service. Accordingly, proposed § 702.104 removes the requirement that cases be transferred by registered or certified mail to broaden the methods by which district directors may transfer cases between offices.

20 CFR 702.174 Exemptions; necessary information.

Current § 702.174(b)(1) provides that in cases where the Director approves an employer's application for an exemption from coverage under the Act, the Director shall notify the employer of its exemption by certified mail, return receipt requested. This non-statutory requirement limits the Director's ability to take advantage of other efficient means of service that may be less costly. Accordingly, proposed § 702.174(b)(1) removes the certified mail requirement to broaden the methods by which the Director may notify employers that their application for exemption has been approved. The proposed rule also includes a technical amendment to § 702.174(b)(2) to conform the language regarding notification of a denial of exempt status to the language in revised subsection (b)(1).

20 CFR 702.203 Employer's report; how given.

Current § 702.203 provides that employers must submit their injury reports by delivering or mailing an original and one copy to the office of the district director. The rule implements the statutory directive to employers to "send to the Secretary a report" of injury and "a copy of such report" to the district director within ten days of an employee's injury or death. 33 U.S.C. 930(a), (b). Although not reflected in the current regulation, the Act also provides that "mailing" a report "in a stamped envelope" within the ten-day time period satisfies the statute's requirements. 33 U.S.C. 930(d).

Proposed § 702.203 revises the current rule in two ways. First, proposed paragraph (a) eliminates the requirement that employers provide an original and a copy of their injury reports.

OWCP has instituted a policy of storing documents electronically; thus, there is no continuing need to submit multiple copies of the same document. Instead, submission of one report to the district director will satisfy the employer's statutory obligation to notify both the Secretary and the district director. Second, proposed paragraph (b) modifies the current regulation to address what actions satisfy the ten-day time period for filing the injury report. Consistent with Section 30(d), proposed paragraph (b) specifies that when sent by U.S. postal mail, an employer's report of injury will be deemed filed on the date mailed. The proposed rule extends this same statutory concept—that an employer meets the reporting obligation when it sends the report, not when the report is received by OWCP—to commercial delivery services and electronic filings. Thus, the rule provides that the report will be considered filed on the date given to a commercial delivery service or, when sent by permissible electronic means, the date the employer completes all steps necessary for electronic delivery.

20 CFR 702.215 Notice; how given.

Current § 702.215 provides that an employee's notice of injury or survivor's notice of death must be given to the employer by hand delivery or by mail. It further provides that notice of an injury may be given to the district director by hand delivery, mail, orally in person, or by telephone. Proposed § 702.215 modifies the current section to allow the use of additional means of providing notice to the employer and to the district director.

For employer notice, the proposed rule allows an employee or survivor to provide notice at the physical or electronic address supplied by the employer. Using the broader "physical" address term encompasses the current hand and mail delivery, and expands it to other methods such as a commercial delivery service. And by allowing notice to be delivered to an electronic address, employers will be able to adopt electronic systems (e.g., e-mail, web portal) that may

speed the injury reporting process. For district director notice, the proposed regulation provides that the employee's or survivor's notice of injury may be given to the district director by submitting the correct form. Using the word "submitting" brings this document within the general transmission rule set forth in proposed 20 CFR 702.101(a), thus implementing the statutory directive that notice be given to the district director "by delivering it to him or sending it by mail addressed to his office." 33 U.S.C. 912(c). The proposed rule retains the option of reporting injuries to the district director either in person or by telephone.

20 CFR 702.224 Claims; notification of employer of filing by employee.

Current § 702.224 requires the district director to give the employer or insurance carrier written notice of claims for compensation served "personally or by mail." This regulation implements the statutory requirement that the district director provide notice of claims to interested parties, which "may be served personally upon the employer or other person, or sent to such employer or person by registered mail." 33 U.S.C. 919(b). Proposed § 702.224 deletes the current rule's reference to specific service methods. Using the phrase "give notice" brings the notice within the general transmission rule set forth in proposed 20 CFR 702.101(a), which allows for methods of service beyond mailing and what is traditionally considered personal service. Because the statute uses the permissive term "may" in addressing service methods for this notice and does not mandate any particular method, the revision to the proposed rule is also consistent with the statute.

20 CFR 702.234 Report by employer of commencement and suspension of payments.

Current § 702.234 provides that the employer shall immediately notify the district director having jurisdiction over the place where the injury or death occurred when it makes its first payment of compensation or suspends payment of compensation. The Department

recognizes that cases are not always adjudicated by the district director who has jurisdiction over the place where the injury or death occurred. For example, cases may be transferred to a district other than the district where the injury occurred if a worker moves his or her residence to a different compensation district. 20 CFR 702.104. Thus, proposed § 702.234 removes the reference to the district director having jurisdiction over the place where the injury or death occurred and instead directs the employer to notify the district director who is administering the claim.

20 CFR 702.243 Settlement application; how submitted, how approved, how disapproved, criteria.

Current § 702.243(a) requires that settlement applications be sent to the adjudicator by certified mail, return receipt requested, submitted in person, or sent by any other delivery service with proof of delivery to the adjudicator. The Department proposes a modification to this subsection that will explicitly allow parties to submit settlement applications via commercial delivery service with tracking capability or electronically through an OWCP-authorized system.

Current § 702.243(c) requires that when the adjudicator disapproves a settlement application, he or she must serve a disapproval letter or order on the parties by certified mail. This requirement both limits the adjudicator's ability to take advantage of more efficient means of service and imposes an unnecessary expense. Accordingly, the Department proposes to remove the requirement that notice be sent by certified mail in order to broaden the methods by which adjudicators may notify parties that their settlement applications have been disapproved.

20 CFR 702.251 Employer's controversion of the right to compensation.

Current § 702.251 requires that employers notify the district director of their election to controvert a claim by sending the "original notice" of controversion form to the district director

and a copy to the claimant. By requiring the “original” form, the regulation implies that the employer must deliver a hard copy form bearing its authorized signature in ink. There is no statutory requirement that an employer submit an original form in that manner and requiring the employer to do so by regulation unduly limits the means by which the employer would otherwise be permitted to submit the form. For example, OWCP has instituted a policy of accepting case-related documents electronically through its web portal. Further, OWCP now scans and electronically stores the documents it receives, so the “original” document submitted by the employer would not be retained in hard copy. For these reasons, there is no need to require employers to send an “original” document to the district director. Thus, proposed § 702.251 omits the requirement that an original document be provided.

20 CFR 702.261 Claimant’s contest of actions taken by employer or carrier with respect to the claim.

Current § 702.261 provides that a claimant who contests a reduction, termination, or suspension of benefits by the employer or carrier must notify the office of the district director having jurisdiction either in person or in writing and explain the basis for his or her complaint. Proposed § 702.101 specifies the methods by which the claimant can provide documents or information to OWCP, and there is no statutory requirement pertaining to claimants’ contests of employer or carrier action that justifies treating transmission of this type of information differently. Accordingly, proposed § 702.261 eliminates the requirement that notice be given in person or in writing. In addition, the proposed rule substitutes the phrase “the district director who is administering the claim” for the phrase “the district director having jurisdiction.” As noted, claims are not always handled by the district director for the district where the injury or death occurred. See 20 CFR 702.104. To clarify the regulation, proposed § 702.234 directs the

claimant to notify the district director who is administering the claim when he or she wishes to contest the employer's or carrier's actions.

20 CFR 702.272 Informal recommendation by district director.

Current § 702.272 concerns informal recommendations by the district director regarding claims of improper discharge or discrimination against employees who seek compensation under the Act or testify in a compensation claim under the Act. Paragraph (a) provides that where the employee and employer agree to the district director's recommendation, that recommendation shall be incorporated into an order and mailed to the parties. The Department proposes to remove the reference to service by mail and instead indicate that service should be accomplished under the same procedures that govern service of compensation orders under § 702.349.

Current § 702.272(b) provides that where the parties do not agree to the district director's recommendation, the director must "mail" a memorandum to the parties that summarizes the disagreement. This requirement precludes the Director from using other methods of service. Accordingly, the Department proposes to delete the word "mail" and replace it with the word "send" so that delivery of the memorandum is governed by the general rule in proposed § 702.101.

20 CFR 702.281 Third party action.

Current § 702.281(b) provides that in order for an employee to settle a claim with a third party for an amount less than the employee would receive under the Act, the employee must first receive prior written approval from the employer and the employer's carrier. That approval must be filed with the district director with jurisdiction where the injury occurred. As noted, claims are not always handled by the district director for the district where the injury or death

occurred. See 20 CFR 702.104. Thus, proposed § 702.281(b) directs that the approval be filed with the district director who is administering the claim.

20 CFR 702.315 Conclusion of conference; agreement on all matters with respect to the claim.

Current § 702.315(a) provides that when an informal conference results in a formal compensation order, the order must be “filed and mailed in accordance with § 702.349.” This rule also provides that when the problem considered is resolved by telephone or by exchange of written correspondence, the parties shall be notified by the same method through which agreement was reached, and the district director will also issue a memorandum or order setting forth the agreed terms. Proposed § 702.315(a) revises the rule in two ways. First, the proposed rule substitutes the phrase “filed and served” for “filed and mailed” to conform the language to the proposed addition of § 702.349(b), which would allow parties and their representatives to waive registered and certified mail service of compensation orders. Second, to allow more flexibility, proposed § 702.315(a) eliminates the requirement that the district director use the same method to communicate the results of the conference but preserves the authority to communicate those results by telephone.

20 CFR 702.317 Preparation and transfer of the case for hearing.

Current § 702.317 provides rules for transferring a case from the district director’s office to the Office of Administrative Law Judges (OALJ) for hearing. When the district director receives pre-hearing statement forms from the parties and determines that no further conferences will help resolve the dispute, § 702.317(c) instructs the district director to transmit the pre-hearing statements, a transmittal letter, and certain other evidence to OALJ. Paragraph (c) excepts from this requirement materials “not suitable for mailing.” To avoid any implication that these documents must be mailed between the district director and OALJ rather than transmitted

by some other method (e.g., commercial delivery service, electronically), the Department proposes to substitute the term “transmission” for “mailing” in paragraph (c).

20 CFR 702.319 Obtaining documents from the administrative file for reintroduction at formal hearings.

Current § 702.319 provides that upon receipt of a request for a document from the administrative file, the district director shall give the original document to the requester and retain a copy in the file. OWCP has instituted a policy of storing documents electronically rendering it unable to send requesters original documents. A properly reproduced copy of the electronically stored document can be used in adjudicative proceedings. See United States v. Hampton, 464 F.3d 687, 690 (7th Cir. 2006) (holding that copies of documents are admissible to the same extent as the original documents unless there is an issue with the authenticity of the original); United States v. Georgalis, 631 F.2d 1199, 1205 (5th Cir. 1980) (“A duplicate may be admitted into evidence unless . . . there is a genuine issue as to the authenticity of the unintroduced original, or as to the trustworthiness of the duplicate. . .”). Accordingly, proposed § 702.319 specifies that the district director will send a copy of the requested document(s) to the requester and retain a copy of the record request and a statement of whether it has been satisfied in the administrative file.

20 CFR 702.321 Procedures for determining applicability of section 8(f) of the Act.

Current § 702.321(a)(1) requires employers or carriers who file applications under Section 8(f) of the Act to file those applications in duplicate. As OWCP has instituted a policy of storing documents electronically, there is no continuing need to file multiple copies of the same document. Accordingly, the Department proposes to delete this requirement from § 702.321(a)(1). The Department also proposes eliminating the mid-paragraph numbering in this

provision. This technical change is made to conform to the current formatting rules of the Office of the Federal Register.

20 CFR 702.349 Formal hearings; filing and mailing of compensation orders; disposition of transcripts.

Current § 702.349 provides that at the conclusion of the administrative hearing, the administrative law judge shall deliver the administrative record “by mail or otherwise” to the district director that had original jurisdiction over the case. As noted above, cases are not always administered by the district director who has “original” jurisdiction over the controversy. For example, cases may be transferred to a district other than the district where the injury occurred if a worker moves his or her residence to a different compensation district. See 20 CFR 702.104. Thus, the Department proposes removing the reference to the district director that had original jurisdiction and instead directing the administrative law judge to forward the record to the district director who administered the case.

The proposed rule makes two additional revisions to the existing language designed to accommodate transmission of decisions and case records electronically between OWCP and the Office of Administrative Law Judges. First, the proposed rule eliminates the language that the case record be sent to the district director “together with” a signed compensation order. Currently, the Office of Administrative Law Judges does not always transmit the full case record at the same time as the compensation order. Moreover, OWCP also anticipates that, as an intermediate step to transitioning to a full electronic case file environment, a system may be adopted for administrative law judge decisions to be transmitted electronically to OWCP for filing and service. Second, the proposed rule eliminates reference to the “original” compensation order in anticipation of future expansion of the electronic case file system. The term “original”

implies that the district director must file a paper copy of a compensation order. This process may not be required in a full electronic case file environment.

The Department also proposes adding a new paragraph (b) to this section that allows parties and their representatives to receive compensation orders by other service methods in cases where they explicitly waive service by registered or certified mail. Under Section 19(e) of the Act, 33 U.S.C. 919(e), all parties have the right to be served with a compensation order via registered or certified mail (at OWCP's option). By practice, OWCP has extended this service to the parties' representatives. See 20 CFR 702.349. Service via registered or certified mail has many benefits, but unlike electronic service, it cannot be accomplished immediately. Several days will generally elapse between the date that an order is mailed by the district director and the date the parties receive it. Some parties and their representatives have requested that the Department begin serving compensation orders immediately by electronic means.

The right to registered or certified mail service of compensation orders is a personal right that is conveyed by the Act. But there is no indication in the Act that the right to registered or certified mail service cannot be waived, contra 33 U.S.C. 915(b), 916, and it is generally presumed that statutory rights can be knowingly and voluntarily waived. See New York v. Hill, 528 U.S. 110, 114 (2000). Accordingly, proposed § 702.349(b) institutes a procedure allowing parties and their representatives who are entitled to registered or certified mail service to waive their right to such service. The waiver applies only to service of compensation orders and does not extend to other documents or information transmitted by OWCP.

Proposed § 702.349(b) provides that a party or their representative can waive registered or certified mail service of compensation orders by filing the appropriate form with the district director that is administering the party's case. Waivers will only be accepted if they are

submitted on the proper form, and a separate form must be submitted for each party or representative. Paragraph (b) emphasizes that submission of a completed form constitutes a knowing and voluntary waiver of registered or certified mail service.

Proposed § 702.349(b)(1)-(b)(5) flesh out important details related to the waiver of service by registered or certified mail. Paragraph (b)(1) provides that all parties and representatives must provide a valid electronic address on the waiver form for the service waiver to be effective.

Proposed paragraph (b)(2) provides that parties and their representatives must submit a separate waiver form for each case in which they intend to waive service. Although it is common for certain employers, carriers, and attorneys to have an interest in several Longshore Act cases pending at the same time, the district director will not accept blanket service waivers. This will ensure that the party or representative has in fact waived registered or certified mail service in the particular case. Similarly, proposed paragraph (b)(3) prohibits a party's representative from signing the waiver form on the party's behalf. Instead, to ensure that waivers are knowing and voluntary, the parties themselves must sign the waiver forms.

Proposed paragraph (b)(4) provides that all compensation orders issued after the service waiver form is received will be served in accordance with the instructions on the form provided by the party or representative. This includes supplementary compensation orders and orders on modification. This paragraph also specifies that individuals must submit another waiver form to change their service address or to revoke the waiver.

Finally, proposed paragraph (b)(5) provides that the district director will serve parties and their representatives by certified mail despite the existence of a waiver form if there is some problem with the service method selected. Thus, for example, the district director will effect

service by certified or registered mail if he or she receives an error message when trying to serve a party or representative via e-mail.

20 CFR 702.372 Supplementary compensation orders.

Current § 702.372(b) requires that supplementary compensation orders declaring amounts of compensation in default be served by certified mail on the parties and their representatives. This provision implements Section 18(a) of the Act, which requires that supplementary orders “be filed in the same manner as the compensation order.” 33 U.S.C. 918(a). As discussed above, Section 19(e) of the Act requires that compensation orders be filed in the office of the district director, and then served by registered or certified mail. 33 U.S.C. 919(e). The Department proposes redrafting § 702.372(b) to incorporate the filing provisions found in proposed § 702.349. This revision will clarify that supplementary compensation orders must be treated like any other compensation order for purposes of filing and service. In addition, by cross-referencing § 702.349, the Department intends to extend the provisions allowing voluntary waiver of registered or certified mail service in proposed § 702.349(b) to supplementary compensation orders.

20 CFR 702.432 Debarment process.

Current § 702.432(b) provides that when the Director determines that debarment proceedings are appropriate against a physician, health care provider or claims representative, he or she will notify the individual by certified mail, return receipt requested. Similarly, current § 702.432(e) requires that the Director send a copy of his or her decision regarding debarment to the individual by certified mail, return receipt requested. This method of service is not required by the statute in either instance. And requiring certified mail service both limits the Director’s ability to take advantage of electronic means of service and imposes an unnecessary expense.

Accordingly, to broaden the methods by which the Director may notify individuals of debarment proceedings and decisions rendered in them, the Department proposes removing the requirement that notice be sent by certified mail with return receipt requested from paragraphs (b) and (e).

20 CFR 702.433 Requests for hearing.

Current § 702.433(b) requires that the administrative law judge who will conduct a hearing regarding debarment serve a copy of a notice of hearing on the individual who may be subject to debarment via certified mail, return receipt requested. This method of service is not required by the statute, and it both limits the administrative law judge's ability to take advantage of electronic service methods and imposes an unnecessary expense. Accordingly, proposed § 702.433(b) eliminates the certified mail requirement so as to broaden the means by which the administrative law judge may notify individuals of hearings regarding debarment.

20 CFR 703.2 Forms.

Current § 703.2(a) provides that information sent by insurance carriers and self-insured employers to OWCP pursuant to Part 703 must be submitted on Forms specified by the Director. In order to facilitate the most efficient processing of Part 703 information, proposed § 703.2(a) specifies that the forms must be submitted to OWCP in the manner it specifies.

20 CFR 703.113-703.120 and 703.502 Reporting related to insurance coverage.

This set of regulations governs how matters related to insurance coverage are reported to OWCP and the consequences of those reports. In the past, insurance companies reported issuance of policies and endorsements by filing a Form LS-570 (Carrier's Report of Issuance of Policy) in hard copy with the district director in whose compensation district the insured employer operated. These hard copy reports of insurance were retained in the compensation district because that was the district most likely to use the record. OWCP now stores insurance

information electronically in a system maintained by the Division of Longshore and Harbor Workers' Compensation (DLHWC) in OWCP's national office. This system is accessible to the district offices. Thus, there is no continuing need for carriers to report insurance information to individual district directors.

To facilitate reporting of insurance information, OWCP began instituting an electronic system for such reports in 2009. See Notice from Chief, Branch of Financial Management, Insurance and Assessments (December 2, 2009) <http://www.regulations.gov> (docket folder for RIN 1240-AA09); Industry Notice No. 138 (January 3, 2012) <http://www.dol.gov/owcp/dlhwc/industry notices/industry notice138.htm>. Many insurance companies now report coverage, including policy cancellations, to industry data collection organizations (e.g., New York Compensation Rating Board, National Council on Compensation Insurance, Inc.) that, in turn, report the information to DLHWC on the carriers' behalf. DLHWC receives that information via a daily electronic data interchange with the data collection organizations and places it in a centralized electronic repository that the individual district directors can access immediately. It is common practice in the insurance industry to provide this sort of information electronically, and many carriers have been voluntarily reporting coverage under the Act and its extensions to DLHWC electronically for several years now. The system has proven to be efficient and preferable for both OWCP and the reporting carriers who use it. Centralized reporting also reduces the recordkeeping burden on the district offices, thereby freeing up resources for claims administration.

For these reasons, the proposed rule eliminates those provisions that require insurance companies to report coverage to individual district directors. In addition, the proposed rules are drafted broadly to accommodate future methods of electronic reporting that OWCP may choose

to adopt. Although OWCP prefers receiving insurance information electronically, the proposed rules do not require carriers to report electronically. Carriers can still fulfill their reporting obligations by submitting Form LS-570 to DLHWC.

Section 703.113 allows for a longshoremen's policy or endorsement to specify the particular vessel(s) to which it applies. It provides that the carrier shall send the report of issuance of a policy or endorsement that is required by § 703.116 to the district director for the compensation district where the vessel(s)' home port is located. To conform this regulation to the centralized reporting system, proposed § 703.113 replaces references to the district director with references to DLHWC.

Section 703.114 provides that cancellation of a contract or policy of insurance will not be effective unless done in compliance with Section 36(b) of the Act, which requires that insurance providers send a notice of cancellation to the district director and the employer 30 days prior to the date that a policy termination is effective. See 33 U.S.C. 936(b). The Act also requires that the notice be in writing and given to the district director "by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business." 33 U.S.C. 912(c); see also 33 U.S.C. 936(b).

The proposed rule specifies the methods an insurer can use to give notice of cancellation. For notice to the district director, the proposed rule allows insurers to report cancellations to DLHWC either in a manner prescribed under proposed § 702.101(a) or in the same manner as they report coverage under § 703.116 (including, where applicable, through industry data collection organizations). Reporting through these established channels satisfies the statutory requirement that notice be delivered to the district director. For notice to the employer, the

proposed rule requires that the cancellation notice be sent in accordance with the methods set forth in proposed § 702.101(b). Complying with proposed § 702.101(b) satisfies the statutory requirement that the cancellation notice be delivered to the employer. Importantly, an electronic report made to DLHWC does not relieve the carrier of its obligation to also provide written notice of cancellation to the employer. Moreover, the proposed rule retains the statutory requirement that notice to both DLHWC and the employer must be provided 30 days before the cancellation is intended to be effective.

Section 703.116, as currently written, requires insurance carriers to report all policies and endorsements issued by them to employers carrying on business within a compensation district to that particular district director. To conform this regulation to the centralized reporting system, proposed § 703.116 replaces references to the district director with references to DLHWC. In addition, proposed § 703.116 specifically acknowledges that reports made through an OWCP-authorized electronic system, such as an industry data collection organization, satisfy the carrier's reporting obligation. Instructions for submitting coverage information to DLHWC electronically will be posted on OWCP's website at <http://www.dol.gov/owcp/dlhwc/carrier.htm>.

Section 703.117 specifies that the report required by § 703.116 must be sent by the insurance carrier's home office or authorized agent. The regulation assumes that such reports will be made to the district director in the compensation district where the employer is located, and requires the carrier to tell the district director which agency is authorized to issue reports on its behalf. To conform this regulation to the centralized reporting system, proposed § 703.117 replaces references to the district director with references to DLHWC.

Section 703.118 provides that all applicants for authority to write insurance under the Act shall be deemed to have agreed to accept full liability for the insured's obligations under the Act.

The current regulation presumes that the district director for the compensation district where an insured employer carries on operations will receive and accept the carrier's report of insurance. To conform this regulation to the centralized reporting system, proposed § 703.118 replaces references to the district director with references to DLHWC.

Section 703.119 governs the situation where an employer that is carrying on operations covered by the Act in one compensation district plans to begin operations in a second. The regulation provides that the carrier may submit the report required by § 703.116 to the district director in the new compensation district before the employer has an address in the new district. Because carriers will no longer be expected to provide notice regarding insurance coverage to individual district directors, there is no longer any need for the procedure set forth in current § 703.119. Accordingly, the Department proposes deleting this section.

Section 703.120 provides that a separate report required by § 703.116 must be made for each employer that is covered by a policy. DLHWC is able to automatically extract employer-specific coverage information from most electronic reports that it receives, so this requirement is often unnecessary when coverage is reported electronically. Accordingly, proposed § 703.120 is limited to reports made on Form LS-570 (Carrier's Report of Issuance of Policy.) The current regulation also presumes that the district director for the compensation district where an insured employer carries on operations will receive and accept the carrier's report of insurance. To conform this regulation to the centralized reporting system, proposed § 703.120 replaces references to the district director with references to DLHWC.

Section 703.502 provides that district directors who receive a report of the issuance of a policy that is authorized by current § 703.119 shall file the report until they receive an address for the employer in the new compensation district, at which point they shall issue a certificate of

compliance. The Department is deleting current § 703.119 because carriers will no longer be expected to provide notice regarding insurance coverage to individual district directors. Thus, there is no further need for the special procedure laid out in § 703.502. Accordingly, the Department proposes deleting this section.

## **V. Administrative Law Considerations**

### **A. Information Collection Requirements (Subject to the Paperwork Reduction Act)**

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., and its attendant regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

If adopted in final, the Transmission of Documents and Information Rule will allow parties to voluntarily waive their statutory right to receive compensation orders by registered or certified mail and to instead receive them by e-mail. See 20 CFR 703.349. To implement the waiver process, this rule imposes two new collections of information, OWCP Form LS-801, Waiver of Service by Registered or Certified Mail for Claimants and Authorized Representatives, and OWCP Form LS-802, Waiver of Service by Registered or Certified Mail for Employers and/or Insurance Carriers. The Department has submitted an Information

Collection Request (ICR) for both of these new forms under the emergency procedures for review and clearance contained in 5 CFR 1320.13.

The Transmission of Documents and Information Rule does not materially change any other ICR with regard to the information collected, but does change the manner in which forms that collect information may be submitted. Instead of mandating the transmission of information by postal mail, the rule allows OWCP and private parties to use electronic and other commonly used communication methods. It also provides flexibility for OWCP to allow submission of information using future technologies.

The collection of information requirements are contained within ICRs assigned OMB control numbers: 1240-0003, 1240-0004, 1240-0005, 1240-0014, 1240-0025, 1240-0026, 1240-0029, 1240-0036, 1240-0040, 1240-0041, 1240-0042 and 1240-0043. The regulatory sections specifying the submission procedures are found in paragraphs: 20 CFR 702.111, 702.121, 702.162, 702.174, 702.175, 702.201, 702.202, 702.221, 702.234, 702.235, 702.236, 702.242, 702.251, 702.285, 702.317, 702.321, 702.407, 702.419, 703.116, 703.203, 703.204, 703.205, 703.209, 703.210, 703.212, 703.303 and 703.310.

Although the rule does not eliminate any current methods of submission for these collections, because its allowance of electronic submission will result in mailing cost savings (envelopes and postage), OWCP anticipates some savings for the public. Given the response rate for each of the existing collections, current combined mailing costs are estimated at \$113,977. Once the rule becomes final, the Department anticipates a 13% rate of electronic submission, an accompanying reduction in postal mail submission, and a resulting cost savings of \$14,817. In the future, as electronic transmission submission options increase and are used more frequently, this savings will likely increase. The Department has submitted a request for a non-substantive

change for each existing ICR cited above in order to obtain approval for the changed cost estimate resulting from the availability of electronic submission methods.

The submitted ICRs for the two new collections imposed by this rule will be available for public inspection for at least thirty days under the “Currently Under Review” portion of the Information Collection Review section [reginfo.gov](http://www.reginfo.gov) website, available at:

<http://www.reginfo.gov/public/do/PRAMain>. The Department will publish a separate notice in the Federal Register that will announce the result of the OMB reviews. Currently approved information collections are available for public inspection under the “Current Inventory” portion of the same website.

Request for Comments: As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed. Comments on the information collection requirements may be submitted to the Department in the same manner as for any other portion of this rule.

In addition to having an opportunity to file comments with the agency, the PRA provides that an interested party may file comments on the information collection requirements in a proposed rule directly with the Office of Management and Budget, at Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OWCP Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by e-mail: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are

encouraged, but not required, to send a courtesy copy of any comments to the general addressee for this rulemaking. The OMB will consider all written comments that agency receives within 30 days of publication of this NPRM in the Federal Register. In order to help ensure appropriate consideration, comments should mention at least one of the control numbers mentioned in this rule.

The OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collections in this rule may be summarized as follows:

1. Title of Collection: Employer's First Report of Injury or Occupational Disease, Employer's Supplementary Report of Accident or Occupational Illness

OMB Control Number: 1240-0003

Total Estimated Number of Responses: 28,829

Total Estimated Annual Time Burden: 7,208 hours

Total Estimated Annual Other Costs Burden: \$14,126

2. Title of Collection: Exchange of documents and information  
OMB Control Number: 1240-0004  
Total Estimated Number of Responses: 5,000  
Total Estimated Annual Time Burden: 83 hours  
Total Estimated Annual Other Costs Burden: \$2,650
3. Title of Collection: Securing Financial Obligations Under the Longshore and Harbor Workers' Compensation Act and its Extensions  
OMB Control Number: 1240-0005  
Total Estimated Number of Responses: 668  
Total Estimated Annual Time Burden: 454 hours  
Total Estimated Annual Other Costs Burden: \$344
4. Title of Collection: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act  
OMB Control Number: 1240-0014  
Total Estimated Number of Responses: 130,036  
Total Estimated Annual Time Burden: 44,955 hours  
Total Estimated Annual Other Costs Burden: \$46,866
5. Title of Collection: Request for Earnings Information  
OMB Control Number: 1240-0025  
Total Estimated Number of Responses: 1,100  
Total Estimated Annual Time Burden: 275 hours  
Total Estimated Annual Other Costs Burden: \$528
6. Title of Collection: Application for Continuation of Death Benefit for Student

OMB Control Number: 1240-0026

Total Estimated Number of Responses: 20

Total Estimated Annual Time Burden: 10 hours

Total Estimated Annual Other Costs Burden: \$10

7. Title of Collection: Request for Examination and/or Treatment

OMB Control Number: 1240-0029

Total Estimated Number of Responses: 96,000

Total Estimated Annual Time Burden: 52,000 hours

Total Estimated Annual Other Costs Burden: \$2,088,960

8. Title of Collection: Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement

OMB Control Number: 1240-0036

Total Estimated Number of Responses: 3,100

Total Estimated Annual Time Burden: 527 hours

Total Estimated Annual Other Costs Burden: \$1,612

9. Title of Collection: Certification of Funeral Expenses

OMB Control Number: 1240-0040

Total Estimated Number of Responses: 75

Total Estimated Annual Time Burden: 19 hours

Total Estimated Annual Other Costs Burden: \$39

10. Title of Collection: Notice of Final Payment or Suspension of Compensation Benefits

OMB Control Number: 1240-0041

Total Estimated Number of Responses: 21,000

Total Estimated Annual Time Burden: 5,250 hours

Total Estimated Annual Other Costs Burden: \$16,590

11. Title of Collection: Notice of Controversion of Right to Compensation

OMB Control Number: 1240-0042

Total Estimated Number of Responses: 18,000

Total Estimated Annual Time Burden: 4,500 hours

Total Estimated Annual Other Costs Burden: \$9,013

12. Title of Collection: Payment of Compensation Without Award

OMB Control Number: 1240-0043

Total Estimated Number of Responses: 16,800

Total Estimated Annual Time Burden: 4,200 hours

Total Estimated Annual Other Costs Burden: \$8,736

**B. Executive Orders 12866 and 13563 (Regulatory Planning and Review)**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has considered this proposed rule with these principles in mind and has concluded that the regulated community will greatly benefit from this regulation.

This rule's greatest benefit is that it provides the Longshore Program and the affected public the flexibility to make greater use of technology as it exists today and as it may be

developed in the future. In some instances, the current regulations restrict the means of delivery or receipt when not required by the statute's terms. See, e.g., 20 CFR 702.215 (notice effected by "delivery by hand or mail"); 20 CFR 702.104(b) (case transfers must be accomplished by "registered or certified mail"). Eliminating these restrictions where appropriate and consistent with the statute will broaden available transmission methods. From the Department's view, this rule will allow easier and more efficient transmission of critical documents and information to OWCP, and allow OWCP to take advantage of more efficient means of delivery to parties. And the regulated community, which has asked the Department to allow more modern transmission methods to be used, will be able to use electronic technologies that they routinely employ when communicating with other entities.

All currently used methods of submitting documents will remain available to OWCP, the parties, and the parties' representatives. OWCP will continue to accept documents delivered by hand or routine mail and the parties may communicate with each other in the same way. Thus, a party or representative may continue to send and receive claim-related documents and information in the same manner as it currently does. But the rule will in many cases give the parties additional transmission options.

In addition, allowing parties and representatives to waive their right to registered or certified mail service of compensation orders will expedite compensation payments. This is an important benefit to the proposed rule: faster delivery of compensation orders via electronic transmission will result in more expeditious payment of benefits to injured workers.

The Department has also considered whether the parties will realize any monetary benefits or incur any additional costs in light of this rule. The rule expands opportunities for parties and their representatives to submit and receive documents and does not require deviation

from current practice. So the rule imposes no additional expense. To the contrary, the Department anticipates that the rule will provide some savings because an electronically transmitted document does not require postage or reproduction of multiple hard copies. Although difficult to quantify, the Department estimates that initial usage of electronic means of transmission will be approximately 13%, with increased usage possible in the future.

Finally, because this is not a “significant” rule within the meaning of Executive Order 12866, the Office of Management and Budget has not reviewed it prior to publication.

### **C. Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 et seq., directs agencies to assess the effects of Federal Regulatory Actions on State, local, and tribal governments, and the private sector, “other than to the extent that such regulations incorporate requirements specifically set forth in law.” 2 U.S.C. 1531. For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, tribal governments, or increased expenditures by the private sector of more than \$100,000,000.

### **D. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)**

The Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 et seq. (RFA), requires agencies to evaluate the potential impacts of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions and to prepare an analysis (called a “regulatory flexibility analysis”) describing those impacts. See 5 U.S.C. 601, 603-604. But if the rule is not expected to “have a significant economic impact on a substantial number of small

entities[,]” the RFA allows an agency to so certify in lieu of preparing the analysis. See 5 U.S.C. 605.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. Many Longshore employers and a handful of insurance carriers may be considered small entities within the meaning of the RFA. See generally 77 FR 19471-72 (March 30, 2012); 69 FR 12222-23 (March 15, 2004). But this rule, if adopted, will not have a significant economic impact on these entities for several reasons. First, the revisions do not impose mandatory change on the employers. Instead, employers may choose to transmit documents and related information in the same manner as they do under the current rules. Second, although the proposed rules allow insurance companies to report the issuance of policies and endorsements electronically, these companies—virtually without exception—have been voluntarily reporting coverage in the manner the proposed rule allows for several years. No change in their conduct will be required. Third, because the proposed rule provides more flexibility for employers and insurers in transmitting documents and information, the Department anticipates that these entities could see some economic savings by having the freedom to choose the most cost-effective transmission method for their businesses.

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small Longshore employers or insurers. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. See 5 U.S.C. 605.

#### **E. Executive Order 13132 (Federalism)**

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” E.O. 13132, 64 FR 43255 (August 4, 1999). The proposed rule will not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” *Id.*

#### **F. Executive Order 12988 (Civil Justice Reform)**

This proposed rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **List of Subjects**

##### 20 CFR Part 702

Administrative practice and procedure, Claims, Health professions, Insurance companies, Longshore and harbor workers, Reporting and recordkeeping requirements, Workers’ compensation.

##### 20 CFR Part 703

Insurance companies, Longshore and harbor workers, Reporting and recordkeeping requirements, Workers’ compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR parts 702 and 703 as follows:

#### **PART 702—ADMINISTRATION AND PROCEDURE**

1. The authority citation for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.*; 33 U.S.C. 901 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1333; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary’s Order 10-2009, 74 FR 58834.

2. Add § 702.101 to subpart A to read as follows:

§ 702.101 Exchange of documents and information.

(a) Except as otherwise required by the regulations in this subchapter, all documents and information sent to OWCP under this subchapter must be submitted—

(1) In hard copy by postal mail, commercial delivery service (such as Federal Express or United Parcel Service), or hand delivery;

(2) Electronically through an OWCP-authorized system; or

(3) As otherwise allowed by OWCP.

(b) Except as otherwise required by the regulations in this subchapter, all documents and information sent under this subchapter by OWCP to parties and their representatives or from any party or representative to another party or representative must be sent—

(1) In hard copy by postal mail, commercial delivery service (such as Federal Express or United Parcel Service), or hand delivery;

(2) Electronically by a reliable electronic method if the receiving party or representative agrees in writing to receive documents and information by that method; or

(3) Electronically through an OWCP-authorized system that provides service of documents on the parties and their representatives.

(c) Reliable electronic methods for delivering documents include, but are not limited to, e-mail, facsimile and web portal.

(d) Any party or representative may revoke his or her agreement to receive documents and information electronically by giving written notice to OWCP, the party, or the representative with whom he or she had agreed to receive documents and information electronically, as appropriate.

(e) The provisions in paragraphs (a) through (d) of this section apply when parties are directed by the regulations in this subchapter to: advise; apply; approve; authorize; demand; file; forward; furnish; give; give notice; inform; issue; make; notice, notify; provide; publish; receive; recommend; refer; release; report; request; respond; return; send; serve; service; submit; or transmit.

(f) Any reference in this subchapter to an application, copy, filing, form, letter, written notice, or written request includes both hard-copy and electronic documents.

(g) Any requirement in this subchapter that a document or information be submitted in writing, or that it be signed, executed, or certified does not preclude its submission or exchange electronically.

(h) Any reference in this subchapter to transmitting information to an entity's address may include that entity's electronic address or electronic portal.

(i) Any requirement in this subchapter that a document or information—

(1) Be sent to a specific district director means that the document or information should be sent to the physical or electronic address provided by OWCP for that district director; and

(2) Be filed by a district director in his or her office means that the document or information may be filed in a physical or electronic location specified by OWCP for that district director.

3. Revise § 702.102 to read as follows:

§ 702.102 Establishment and modification of compensation districts, establishment of suboffices and jurisdictional areas.

(a) The Director has, pursuant to section 39(b) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 939(b), established compensation districts as required for

improved administration or as otherwise determined by the Director (see 51 FR 4282, Feb. 3, 1986). The boundaries of the compensation districts may be modified at any time, and the Director will notify all interested parties directly of the modifications.

(b) As administrative exigencies from time to time may require, the Director may, by administrative order, establish special areas outside the continental United States, Alaska, and Hawaii, or change or modify any areas so established, notwithstanding their inclusion within an established compensation district. Such areas will be designated “jurisdictional areas.” The Director will also designate which of his district directors will be in charge thereof.

(c) To further aid in the efficient administration of the OWCP, the Director may from time to time establish suboffices within compensation districts or jurisdictional areas, and will designate a person to be in charge thereof.

4. Revise § 702.103 to read as follows:

§ 702.103 Effect of establishment of suboffices and jurisdictional areas.

Whenever the Director establishes a suboffice or jurisdictional area, those reports, records, or other documents with respect to processing of claims that are required to be filed with the district director of the compensation district in which the injury or death occurred, may instead be required to be filed with the suboffice, or office established for the jurisdictional area.

5. Revise § 702.104(b) to read as follows:

§ 702.104 Transfer of individual case file.

\* \* \* \* \*

(b) The district director making the transfer may by letter or memorandum to the district director to whom the case is transferred give advice, comments, suggestions, or directions if appropriate to the particular case. All interested parties will be advised of the transfer.

6. In § 702.174, revise the introductory text of paragraph (a), paragraph (b), and the introductory text of paragraph (d) to read as follows:

§ 702.174 Exemptions; necessary information.

(a) Application. Before any facility is exempt from coverage under the Act, the facility must apply for and receive a certificate of exemption from the Director or his/her designee. The application must be made by the owner of the facility; where the owner is a partnership it must be made by a partner and where a corporation by an officer of the corporation or the manager in charge of the facility for which an exemption is sought. The information submitted must include the following:

\* \* \* \* \*

(b) Action by the Director. The Director or his/her designee must review the application within thirty (30) days of its receipt.

(1) Where the application is complete and shows that all requirements under § 702.173 are met, the Director must promptly notify the employer that certification has been approved and will be effective on the date specified. The employer is required to post notice of the exemption at a conspicuous location.

(2) Where the application is incomplete or does not substantiate that all requirements of section 3(d) of the Act, 33 U.S.C. 903(d), have been met, or evidence shows the facility is not eligible for exemption, the Director must promptly notify the employer by issuing a letter which details the reasons for the deficiency or the rejection. The employer/applicant may reapply for certification, correcting deficiencies and/or responding to the reasons for the Director's denial. The Director or his/her designee must issue a new decision within a reasonable time of

reapplication following denial. Such action will be the final administrative review and is not appealable to the Administrative Law Judge or the Benefits Review Board.

\* \* \* \* \*

(d) Action by the employer. Immediately upon receipt of the certificate of exemption from coverage under the Act the employer must post:

\* \* \* \* \*

7. Revise § 702.203 to read as follows:

§ 702.203 Employer's report; how given.

(a) The employer must file its report of injury with the district director.

(b) If the employer sends its report of injury by U.S. postal mail or commercial delivery service, the report will be considered filed on the date that the employer mails the document or gives it to the commercial delivery service. If the employer sends its report of injury by a permissible electronic method, the report will be considered filed on the date that the employer completes all steps necessary for the transmission.

8. Revise § 702.215 to read as follows:

§ 702.215 Notice; how given.

Notice must be effected by delivering it to the individual designated to receive such notices at the physical or electronic address designated by the employer. Notice may be given to the district director by submitting a copy of the form supplied by OWCP to the district director, or orally in person or by telephone.

9. Revise § 702.224 to read as follows:

§ 702.224 Claims; notification of employer of filing by employee.

Within 10 days after the filing of a claim for compensation for injury or death under the Act, the district director must give written notice thereof to the employer or carrier.

10. Revise § 702.234 to read as follows:

§ 702.234 Report by employer of commencement and suspension of payments.

Immediately upon making the first payment of compensation, and upon the suspension of payments once begun, the employer must notify the district director who is administering the claim of the commencement or suspension of payments, as the case may be.

11. In § 702.243, revise paragraphs (a) and (b), the first two sentences of paragraph (c), the introductory text of paragraph (f), and paragraph (g) to read as follows:

§ 702.243 Settlement application; how submitted, how approved, how disapproved, criteria.

(a) When the parties to a claim for compensation, including survivor benefits and medical benefits, agree to a settlement they must submit a complete application to the adjudicator. The application must contain all the information outlined in § 702.242 and must be sent by certified mail with return receipt requested, commercial delivery service with tracking capability that provides reliable proof of delivery to the adjudicator, or electronically through an OWCP-authorized system. Failure to submit a complete application will toll the thirty day period mentioned in section 8(i) of the Act, 33 U.S.C. 908(i), until a complete application is received.

(b) The adjudicator must consider the settlement application within thirty days and either approve or disapprove the application. The liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a compensation order issued by the adjudicator. However, if the parties are represented by counsel, the settlement will be deemed approved unless specifically disapproved within thirty days after receipt of a complete application. This thirty day period does not begin until all the information described in §

702.242 has been submitted. The adjudicator will examine the settlement application within thirty days and must immediately serve on all parties notice of any deficiency. This notice must also indicate that the thirty day period will not commence until the deficiency is corrected.

(c) If the adjudicator disapproves a settlement application, the adjudicator must serve on all parties a written statement or order containing the reasons for disapproval. This statement must be served within thirty days of receipt of a complete application (as described in § 702.242) if the parties are represented by counsel. \* \* \*

\* \* \* \* \*

(f) When presented with a settlement, the adjudicator must review the application and determine whether, considering all of the circumstances, including, where appropriate, the probability of success if the case were formally litigated, the amount is adequate. The criteria for determining the adequacy of the settlement application will include, but not be limited to:

\* \* \* \* \*

(g) In cases being paid pursuant to a final compensation order, where no substantive issues are in dispute, a settlement amount which does not equal the present value of future compensation payments commuted, computed at the discount rate specified below, must be considered inadequate unless the parties to the settlement show that the amount is adequate. The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation will be determined according to the most current United States Life Table, as developed by the United States Department of Health and Human Services, which will be updated from time to time. The discount rate will be equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price

for the last auction of 52 weeks U.S. Treasury Bills settled immediately prior to the date of the submission of the settlement application.

12. Revise § 702.251 to read as follows:

§ 702.251 Employer's controversion of the right to compensation.

Where the employer controverts the right to compensation after notice or knowledge of the injury or death, or after receipt of a written claim, he must give notice thereof, stating the reasons for controverting the right to compensation, using the form prescribed by the Director. Such notice, or answer to the claim, must be filed with the district director within 14 days from the date the employer receives notice or has knowledge of the injury or death. A copy of the notice must also be given to the claimant.

13. Revise § 702.261 to read as follows:

§ 702.261 Claimant's contest of actions taken by employer or carrier with respect to the claim.

Where the claimant contests an action by the employer or carrier reducing, suspending, or terminating benefits, including medical care, he should immediately notify the office of the district director who is administering the claim and set forth the facts pertinent to his complaint.

14. In § 702.272, revise the last two sentences of paragraph (a) and paragraph (b) to read as follows:

§ 702.272 Informal recommendation by district director.

(a) \* \* \* If the district director determines that no violation occurred he must notify the parties of his findings and the reasons for recommending that the complaint be denied. If the employer and employee accept the district director's recommendation, within 10 days it will be incorporated in an order, to be filed and served in accordance with § 702.349.

(b) If the parties do not agree to the recommendation, the district director must, within 10 days after receipt of the rejection, prepare a memorandum summarizing the disagreement, send a copy to all interested parties, and within 14 days thereafter, refer the case to the Office of the Chief Administrative Law Judge for hearing pursuant to § 702.317.

15. In § 702.281, revise the introductory text of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 702.281 Third party action.

(a) Every person claiming benefits under this Act (or the representative) must promptly notify the employer and the district director when:

\* \* \* \* \*

(b) \* \* \* The approval must be on a form provided by OWCP and must be filed, within thirty days after the settlement is entered into, with the district director who is administering the claim.

16. Revise § 702.315 to read as follows:

§ 702.315 Conclusion of conference; agreement on all matters with respect to the claim.

(a) Following an informal conference at which agreement is reached on all issues, the district director must (within 10 days after conclusion of the conference), embody the agreement in a memorandum or within 30 days issue a formal compensation order, to be filed and served in accordance with § 702.349. If either party requests that a formal compensation order be issued, the district director must, within 30 days of such request, prepare, file, and serve such order in accordance with § 702.349. Where the problem was of such nature that it was resolved by telephone discussion or by exchange of written correspondence, the district director must prepare a memorandum or order setting forth the terms agreed upon and notify the parties either by

telephone or in writing, as appropriate. In either instance, when the employer or carrier has agreed to pay, reinstate or increase monetary compensation benefits, or to restore or appropriately change medical care benefits, such action must be commenced immediately upon becoming aware of the agreement, and without awaiting receipt of the memorandum or the formal compensation order.

(b) Where there are several conferences or discussions, the provisions of paragraph (a) of this section do not apply until the last conference. The district director must, however, prepare and place in his administrative file a short, succinct memorandum of each preceding conference or discussion.

17. Revise § 702.317 to read as follows:

§ 702.317 Preparation and transfer of the case for hearing.

A case is prepared for transfer in the following manner:

(a) The district director will furnish each of the parties or their representatives with a copy of a prehearing statement form.

(b) Each party must, within 21 days after receipt of such form, complete it and return it to the district director and serve copies on all other parties. Extensions of time for good cause may be granted by the district director.

(c) Upon receipt of the completed forms, the district director, after checking them for completeness and after any further conferences that, in his or her opinion, are warranted, will transmit them to the Office of the Chief Administrative Law Judge by letter of transmittal together with all available evidence which the parties intend to submit at the hearings (exclusive of X-rays, slides and other materials not suitable for transmission which may be offered into evidence at the time of the hearing); the materials transmitted must not include any

recommendations expressed or memoranda prepared by the district director pursuant to § 702.316.

(d) If the completed pre-hearing statement forms raise new or additional issues not previously considered by the district director or indicate that material evidence will be submitted that could reasonably have been made available to the district director before he or she prepared the last memorandum of conference, the district director will transfer the case to the Office of the Chief Administrative Law Judge only after having considered such issues or evaluated such evidence or both and having issued an additional memorandum of conference in conformance with § 702.316.

(e) If a party fails to complete or return his or her pre-hearing statement form within the time allowed, the district director may, at his or her discretion, transmit the case without that party's form. However, such transmittal must include a statement from the district director setting forth the circumstances causing the failure to include the form, and such party's failure to submit a pre-hearing statement form may, subject to rebuttal at the formal hearing, be considered by the administrative law judge, to the extent intransigence is relevant, in subsequent rulings on motions which may be made in the course of the formal hearing.

18. Revise § 702.319 to read as follows:

§ 702.319 Obtaining documents from the administrative file for reintroduction at formal hearings.

Whenever any party considers any document in the administrative file essential to any further proceedings under the Act, it is the responsibility of such party to obtain such document from the district director and reintroduce it for the record before the administrative law judge. The type of document that may be obtained will be limited to documents previously submitted to

the district director, including documents or forms with respect to notices, claims, controversions, contests, progress reports, medical services or supplies, etc. The work products of the district director or his staff will not be subject to retrieval. The procedure for obtaining documents will be for the requesting party to inform the district director in writing of the documents he wishes to obtain, specifying them with particularity. Upon receipt, the district director must promptly forward a copy of the requested materials to the requesting party. A copy of the letter of request and a statement of whether it has been satisfied must be kept in the case file.

19. In § 702.321, revise paragraphs (a)(1), (b), and (c) to read as follows:

§ 702.321 Procedures for determining applicability of section 8(f) of the Act.

(a) Application: filing, service, contents. (1) An employer or insurance carrier which seeks to invoke the provisions of section 8(f) of the Act must request limitation of its liability and file a fully documented application with the district director. A fully documented application must contain a specific description of the pre-existing condition relied upon as constituting an existing permanent partial disability and the reasons for believing that the claimant's permanent disability after the injury would be less were it not for the pre-existing permanent partial disability or that the death would not have ensued but for that disability. These reasons must be supported by medical evidence as specified in this paragraph. The application must also contain the basis for the assertion that the pre-existing condition relied upon was manifest in the employer and documentary medical evidence relied upon in support of the request for section 8(f) relief. This medical evidence must include, but not be limited to, a current medical report establishing the extent of all impairments and the date of maximum medical improvement. If the claimant has already reached maximum medical improvement, a

report prepared at that time will satisfy the requirement for a current medical report. If the current disability is total, the medical report must explain why the disability is not due solely to the second injury. If the current disability is partial, the medical report must explain why the disability is not due solely to the second injury and why the resulting disability is materially and substantially greater than that which would have resulted from the subsequent injury alone. If the injury is loss of hearing, the pre-existing hearing loss must be documented by an audiogram which complies with the requirements of § 702.441. If the claim is for survivor's benefits, the medical report must establish that the death was not due solely to the second injury. Any other evidence considered necessary for consideration of the request for section 8(f) relief must be submitted when requested by the district director or Director.

\* \* \* \* \*

(b) Application: Time for filing. (1) A request for section 8(f) relief should be made as soon as the permanency of the claimant's condition becomes known or is an issue in dispute. This could be when benefits are first paid for permanent disability, or at an informal conference held to discuss the permanency of the claimant's condition. Where the claim is for death benefits, the request should be made as soon as possible after the date of death. Along with the request for section 8(f) relief, the applicant must also submit all the supporting documentation required by this section, described in paragraph (a) of this section. Where possible, this documentation should accompany the request, but may be submitted separately, in which case the district director must, at the time of the request, fix a date for submission of the fully documented application. The date must be fixed as follows:

(i) Where notice is given to all parties that permanency will be an issue at an informal conference, the fully documented application must be submitted at or before the conference. For

these purposes, notice means when the issue of permanency is noted on the form LS-141, Notice of Informal Conference. All parties are required to list issues reasonably anticipated to be discussed at the conference when the initial request for a conference is made and to notify all parties of additional issues which arise during the period before the conference is actually held.

(ii) Where the issue of permanency is first raised at the informal conference and could not have reasonably been anticipated by the parties prior to the conference, the district director must adjourn the conference and establish the date by which the fully documented application must be submitted and so notify the employer/carrier. The date will be set by the district director after reviewing the circumstances of the case.

(2) At the request of the employer or insurance carrier, and for good cause, the district director, at his/her discretion, may grant an extension of the date for submission of the fully documented application. In fixing the date for submission of the application under circumstances other than described above or in considering any request for an extension of the date for submitting the application, the district director must consider all the circumstances of the case, including but not limited to: Whether the claimant is being paid compensation and the hardship to the claimant of delaying referral of the case to the Office of Administrative Law Judges (OALJ); the complexity of the issues and the availability of medical and other evidence to the employer; the length of time the employer was or should have been aware that permanency is an issue; and, the reasons listed in support of the request. If the employer/carrier requested a specific date, the reasons for selection of that date will also be considered. Neither the date selected for submission of the fully documented application nor any extension therefrom can go beyond the date the case is referred to the OALJ for formal hearing.

(3) Where the claimant's condition has not reached maximum medical improvement and no claim for permanency is raised by the date the case is referred to the OALJ, an application need not be submitted to the district director to preserve the employer's right to later seek relief under section 8(f) of the Act. In all other cases, failure to submit a fully documented application by the date established by the district director will be an absolute defense to the liability of the special fund. This defense is an affirmative defense which must be raised and pleaded by the Director. The absolute defense will not be raised where permanency was not an issue before the district director. In all other cases, where permanency has been raised, the failure of an employer to submit a timely and fully documented application for section 8(f) relief will not prevent the district director, at his/her discretion, from considering the claim for compensation and transmitting the case for formal hearing. The failure of an employer to present a timely and fully documented application for section 8(f) relief may be excused only where the employer could not have reasonably anticipated the liability of the special fund prior to the consideration of the claim by the district director. Relief under section 8(f) is not available to an employer who fails to comply with section 32(a) of the Act, 33 U.S.C. 932(a).

(c) Application: Approval, disapproval. If all the evidence required by paragraph (a) of this section was submitted with the application for section 8(f) relief and the facts warrant relief under this section, the district director must award such relief after concurrence by the Associate Director, DLHWC, or his or her designee. If the district director or the Associate Director or his or her designee finds that the facts do not warrant relief under section 8(f) the district director must advise the employer of the grounds for the denial. The application for section 8(f) relief may then be considered by an administrative law judge. When a case is transmitted to the Office of Administrative Law Judges the district director must also attach a copy of the application for

section 8(f) relief submitted by the employer, and notwithstanding § 702.317(c), the district director's denial of the application.

\* \* \* \* \*

20. Revise § 702.349 to read as follows:

§ 702.349 Formal hearings; filing and mailing of compensation orders; waiver of service; disposition of transcripts.

(a) An administrative law judge must, within 20 days after the official termination of the hearing, deliver by mail, or otherwise, to the district director that administered the claim, the transcript of the hearing, other documents or pleadings filed with him with respect to the claim, and his signed compensation order. Upon receipt thereof, the district director, being the official custodian of all records with respect to claims he administers, must formally date and file the transcript, pleadings, and compensation order in his office. Such filing must be accomplished by the close of business on the next succeeding working day, and the district director must, on the same day as the filing was accomplished, serve a copy of the compensation order on the parties and on the representatives of the parties, if any. Service on the parties and their representatives must be made by certified mail unless a party has previously waived service by this method under paragraph (b) of this section.

(b) All parties and their representatives are entitled to be served with compensation orders via registered or certified mail. Parties and their representatives may waive this right and elect to be served with compensation orders electronically by filing the appropriate waiver form with the district director responsible for administering the claim. To waive service by registered or certified mail, employers, insurance carriers, and their representatives must file form LS-801 (Waiver of Service by Registered or Certified Mail for Employers and/or Insurance Carriers),

and claimants and their representatives must file form LS-802 (Waiver of Service by Registered or Certified Mail for Claimants and/or Authorized Representatives). A signature on a waiver form represents a knowing and voluntary waiver of that party's or representative's right to receive compensation orders via registered or certified mail.

(1) Waiving parties and representatives must provide a valid electronic address on the waiver form.

(2) Parties and representatives must submit a separate waiver form for each case in which they intend to waive the right to certified or registered mail service.

(3) A representative may not sign a waiver form on a party's behalf.

(4) All compensation orders issued in a claim after receipt of the waiver form will be sent to the electronic address provided on the waiver form. Any changes to the address must be made by submitting another waiver form. Individuals may revoke their service waiver at any time by submitting a new waiver form that specifies that the service waiver is being revoked.

(5) If it appears that service in the manner selected by the individual has not been effective, the district director will serve the individual by certified mail.

21. Revise § 702.372 to read as follows:

§ 702.372 Supplementary compensation orders.

(a) In any case in which the employer or insurance carrier is in default in the payment of compensation due under any award of compensation, for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 1 year after such default, apply in writing to the district director for a supplementary compensation order declaring the amount of the default. Upon receipt of such application, the district director will institute proceedings with respect to such application as if such application

were an original claim for compensation, and the matter will be disposed of as provided for in § 702.315, or if agreement on the issue is not reached, then as in §§ 702.316 through 702.319.

(b) If, after disposition of the application as provided for in paragraph (a) of this section, a supplementary compensation order is entered declaring the amount of the default, which amount may be the whole of the award notwithstanding that only one or more installments is in default, a copy of such supplementary order must be filed and served in accordance with § 702.349. Thereafter, the applicant may obtain and file with the clerk of the Federal district court for the judicial district where the injury occurred or the district in which the employer has his principal place of business or maintains an office, a certified copy of said order and may seek enforcement thereof as provided for by section 18 of the Act, 33 U.S.C. 918.

22. In § 702.432, revise the introductory text of paragraph (b), and paragraphs (b)(6) and (e) to read as follows:

§ 702.432 Debarment process.

\* \* \* \* \*

(b) Pertaining to health care providers and claims representatives. If after appropriate investigation the Director determines that proceedings should be initiated, written notice thereof must be provided to the physician, health care provider or claims representative. Notice must contain the following:

\* \* \* \* \*

(6) The name and address of the district director who will be responsible for receiving the answer from the physician, health care provider or claims representative.

\* \* \* \* \*

(e) The Director must issue a decision in writing, and must send a copy of the decision to the physician, health care provider or claims representative. The decision must advise the physician, health care provider or claims representative of the right to request, within thirty (30) days of the date of an adverse decision, a formal hearing before an administrative law judge under the procedures set forth herein. The filing of such a request for hearing within the time specified will operate to stay the effectiveness of the decision to debar.

23. In § 702.433, revise paragraphs (a), (b), (e) and (f) to read as follows:

§ 702.433 Requests for hearing.

(a) A request for hearing must be sent to the district director and contain a concise notice of the issues on which the physician, health care provider or claims representative desires to give evidence at the hearing with identification of witnesses and documents to be submitted at the hearing.

(b) If a request for hearing is timely received by the district director, the matter must be referred to the Chief Administrative Law Judge who must assign it for hearing with the assigned administrative law judge issuing a notice of hearing for the conduct of the hearing. A copy of the hearing notice must be served on the physician, health care provider or claims representative.

\* \* \*

(e) The administrative law judge will issue a recommended decision after the termination of the hearing. The recommended decision must contain appropriate findings, conclusions and a recommended order and be forwarded, together with the record of the hearing, to the Administrative Review Board for a final decision. The recommended decision must be served upon all parties to the proceeding.

(f) Based upon a review of the record and the recommended decision of the administrative law judge, the Administrative Review Board will issue a final decision.

## PART 703—INSURANCE REGULATIONS

24. The authority citation for part 703 is revised to read as follows:

Authority: 5 U.S.C. 301, and 8171 et seq.; 33 U.S.C. 901 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1333; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10-2009, 74 FR 58834.

25. In § 703.2, revise the introductory text of paragraph (a) to read as follows:

### § 703.2 Forms.

(a) Any information required by the regulations in this part to be submitted to OWCP must be submitted on forms the Director authorizes from time to time for such purpose. Persons submitting forms may not modify the forms or use substitute forms without OWCP's approval. These forms must be submitted, sent, or filed in the manner prescribed by OWCP.

\* \* \* \* \*

26. Revise § 703.113 to read as follows:

### § 703.113 Marine insurance contracts.

A longshoremen's policy, or the longshoremen's endorsement provided for by § 703.109 for attachment to a marine policy, may specify the particular vessel or vessels in respect of which the policy applies and the address of the employer at the home port thereof. The report of the issuance of a policy or endorsement required by § 703.116 must be made to DLHWC and must show the name and address of the owner as well as the name or names of such vessel or vessels.

27. Revise § 703.114 to read as follows:

### § 703.114 Notice of cancellation.

Cancellation of a contract or policy of insurance issued under authority of the Act will not become effective otherwise than as provided by 33 U.S.C. 936(b); 30 days before such cancellation is intended to be effective, notice of a proposed cancellation must be given to the district director and the employer in accordance with the provisions of 33 U.S.C. 912(c). The notice requirements of 33 U.S.C. 912(c) will be considered met when:

(a) Notice to the district director is given by a method specified in § 702.101(a) of this chapter or in the same manner that reports of issuance of policies and endorsements are reported under § 703.116; and

(b) Notice to the employer is given by a method specified in § 702.101(b) of this chapter.

28. Revise § 703.116 to read as follows:

§ 703.116 Report by carrier of issuance of policy or endorsement.

Each carrier must report to DLHWC each policy and endorsement issued by it to an employer whose employees are engaging in work subject to the Act and its extensions. Such reports must be made in a manner prescribed by OWCP. Reports made to an OWCP-authorized intermediary, such as an industry data collection organization, satisfy this reporting requirement.

29. Revise § 703.117 to read as follows:

§ 703.117 Report; by whom sent.

The report of issuance of a policy and endorsement provided for in § 703.116 or notice of cancellation provided for in § 703.114 must be sent by the home office of the carrier, except that any carrier may authorize its agency or agencies in any compensation district to make such reports, provided the carrier notifies DLHWC of the agencies so duly authorized.

30. Revise § 703.118 to read as follows:

§ 703.118 Agreement to be bound by report.

Every applicant for the authority to write insurance under the provisions of this Act, will be deemed to have included in its application an agreement that the acceptance by DLHWC of a report of insurance, as provided for by § 703.116, binds the carrier to full liability for the obligations under this Act of the employer named in said report, and every certificate of authority to write insurance under this Act will be deemed to have been issued by the Office upon consideration of the carrier's agreement to become so bound. It will be no defense to this agreement that the carrier failed or delayed to issue the policy to the employer covered by this report.

§ 703.119 [Removed and Reserved]

31. Remove and reserve § 703.119.

32. Revise § 703.120 to read as follows:

§ 703.120 Name of one employer only in each report.

For policies that are reported to DLHWC on Form LS-570 (Carrier's Report of Issuance of Policy), a separate report of the issuance of a policy and endorsement, provided for by § 703.116, must be made for each employer covered by a policy. If a policy is issued insuring more than one employer, a separate form LS-570 for each employer so covered must be sent to DLHWC in the manner described in § 703.116, with the name of only one employer on each form.

§ 703.502 [Removed and Reserved]

33. Remove and reserve § 703.502.

Signed at Washington, DC, this 25<sup>th</sup> day of February, 2015.

Leonard J. Howie III

Director, Office of Workers' Compensation Programs

Billing Code 4510-CR-P

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