

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 702 and 703

RIN 1215-AA92

Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Labor proposes to revise the regulations implementing the Longshore and Harbor Workers' Compensation Act to improve administration and clarify existing policy. The regulations as proposed would: provide that the jurisdictional boundaries will in the future be changed by direct notice to affected parties; eliminate the requirement for using certified mail in most circumstances; clarify that the Office of Workers' Compensation Programs fee schedule is the standard for determining what is a reasonable and customary medical charge where there is a dispute; and modify the requirement that an employer with geographically different work sites within one compensation district have only one insurance carrier.

DATES: Written comments must be submitted on or before July 7, 1995.

ADDRESSES: Send written comments to Joseph Olimpio, Director for Longshore and Harbor Workers' Compensation, Employment Standards Administrative, U.S. Department of Labor, Room C-4315, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219-8721.

FOR FURTHER INFORMATION CONTACT: Joseph Olimpio, Director for Longshore and Harbor Workers' Compensation, Telephone (202) 219-8721.

SUPPLEMENTARY INFORMATION: The Longshore and Harbor Workers' Compensation Act (LHWCA) at 33 U.S.C. 901, *et seq.*, establishes a federal

workers' compensation system for certain workers in covered employment. The Act establishes the general parameters of the compensation scheme, including the system for filing claims, the benefit levels to be paid, and how the liability of the employer is to be secured. In this connection the Secretary of Labor is given, among other things, general authority for initial adjudication of disputed claims, resolution of certain ancillary issues such as disputes involving the amount charged for medical treatment, and responsibility for authorizing private insurance carriers to underwrite coverage. These proposed rules address issues relating to these subjects by: (1) Clarifying that existing district office jurisdictional boundaries may be changed by notice to the affected parties; (2) eliminating certain requirements for using certified mail; (3) using the OWCP medical fee schedule as a tool to resolve disputes over the amount of medical bills; and (4) eliminating the requirement that an employer have only one insurance carrier for each compensation district.

Compensation Districts

The Act (section 39(b), 33 U.S.C. 939(b)) requires that compensation districts be established, and the regulations currently contain a listing of the districts and the states covered by them. These districts have jurisdiction over claims which arise in the states which fall within that district. The jurisdictional boundaries have changed periodically as work loads shift and other factors necessitate a change in the rules to reflect the boundary modifications. The modifications of the rules, however, have not always followed immediately after the actual change. For example, two districts were eliminated and the states therein incorporated into other districts (see 50 FR, January 3, 1985), and while the changes were purely administrative, only later were rules modified to reflect these changes.

With the increasing effort to streamline government, OWCP recognizes that the boundaries may need to be modified in the interest of efficiency of operation, and that the process for changing the boundaries should be flexible. By rescinding the existing description and providing that any changes in the future will be made

through direct notice provision, the proposed rules would allow changes in the boundaries to be made more efficiently (without requiring a republication in the **Federal Register**), and more effectively (since all interested parties will be notified directly).

The change represents no substantive change, nor should this proposal be read as an indication that changes in existing boundaries are presently being considered. It is merely an attempt to take advantage of this opportunity to clarify and simplify the process.

Certified Mail

The current regulations require that the Longshore district office, or Administrative Law Judges (ALJs), as appropriate, serve the notice of deficiency of settlement applications 702.243(b)), memoranda of the informal conference 702.316 and the notice of claim given to the employer 702.224 via certified mail. The proposed rules would drop these requirements for using certified mail.

While certified mail does not add significantly to the security of the mail process, the requirement does increase costs and the amount of staff time it takes to mail a document. Approximately 9,000 pieces of mail per year must now be sent certified mail under these rules, at a cost of over \$9,000 in extra mailing charges and more in staff time to complete the necessary Postal Service forms. The service to the recipients should not be significantly reduced; indeed because it will no longer be necessary for the staff to complete the mailing forms, the recipients should see an improvement in the level of service.

Use of OWCP Fee Schedule

The LHWCA provides to the Secretary significant authority for overseeing medical care of injured employees. The 1984 amendments to the Act expanded this authority to include ordering a change of physician or debaring a physician who submits bills for medical treatment where the charge exceeds the prevailing community rate for such service. The regulation implementing this provision (702.413) provides that, where a dispute arises as to whether a bill exceeds the prevailing community rate, it is resolved by the OWCP Director. The regulations provide that "state medical fee schedules for workers' compensation charges may be

used" (emphasis added) to determine what is the prevailing rate, but does not bind the Director or the parties to this methodology.

Since these regulations were put into effect, the OWCP itself has devised a medical fee schedule which the Department now proposes to use to determine the LHWCA prevailing rate. The OWCP fee schedule was enacted in 1986 and establishes a schedule of maximum allowable charges for most medical services provided to injured workers under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* See 20 CFR 10.410 and 10.411 and 51 FR 8276, for a complete explanation of the background and purpose of the schedule.

In brief, under the fee schedule and billing system, individual procedures are assigned a descriptor code using the Physicians' Current Procedural Terminology (CPT) scheme developed by the American Medical Association. Each code is then assigned a relative value unit (RVU) reflecting the relative skill, effort, risk, and time required to perform the procedure. The maximum allowable amount payable for a given service is calculated by multiplying the RVU by a conversion factor (CF). This product is in turn multiplied by a geographic index (GI) which allows for regional variations in medical costs (down to Metropolitan Statistical Areas) using the Urban Institute's Geographic Practice Cost Indices (GPCIs).

The OWCP fee schedule has proven itself over time as an efficient benchmark for determining the prevailing community rate. Indeed, it has in practice been used by district medical directors in determining prevailing community rates in LHWCA cases. This rule change, therefore, merely formalizes an existing practice.

Insurance Policies

The current rules require an employer operating within any one OWCP compensation district to insure all operations within that district through a single insurance carrier. Each LHWCA district is comprised of a number of different states (see current 20 CFR 702.101), the boundaries of which were drawn for internal administrative purposes. Insurance carriers, however, are regulated by the individual states and therefore may not do business or write LHWCA coverage in every state conforming to the LHWCA compensation districts in which an operator may have facilities. As a result, the rule requiring only one carrier severely limits the field from which an employer may choose a carrier, and could potentially leave an employer

uninsured for a portion of its operations (since, for example, where may be no single insurance carrier operating in all the states in a district in which the employer has facilities). See *Simpson & Brown, Inc. v. Travelers Insurance Company*. CA No. 93-5287 (D. N.J. 1994) (regulation places the burden of obtaining one carrier per compensation district upon the employer and not upon an insurer).

The genesis of the rule appears to be limitations on record keeping, limitations which have long since been overcome through data processing and other improvements. OWCP recognizes the difficulties the existing rule may present and therefore proposes to abolish the requirement.

Statutory Authority

Subsections 39(a) and 39(b) of the Act, 33 U.S.C. 939(a) and (b), provide the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Longshore and Harbor Workers' Compensation Act. 33 U.S.C. 907(a) provides that the Secretary of Labor may supervise the medical treatment and care, including determining the appropriateness of charges.

Classification

The Department of Labor has concluded that the regulatory proposal is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866.

Paper Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause any significant economic impact. The elimination of the requirement for insurance underwriting will provide increased flexibility and opportunity for covered employers to effect savings. The provision for determining medical charges is not expected to result in a significant difference in the outcome from that in the present method. The Secretary has so certified to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly,

no regulatory impact analysis is required.

List of Subjects

20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, and Workers' compensation.

20 CFR Part 703

Insurance, Longshoremen, Workers' compensation.

For the reasons set out in the preamble, parts 702 and 703 of chapter VI of title 20 of the Code of Federal Regulations are amended as follows:

SUBCHAPTER A—LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

1. The authority citation for parts 702 and 703 are revised to read as follows:

Authority: 5 U.S.C. 301, 8171 *et seq.*; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949-1953, Comp. p. 1004, 64 Stat. 1263; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; Secretary's Order 1-93, 58 FR 21190.

PART 702—ADMINISTRATION AND PROCEDURE

§ 702.101 [Removed and Reserved]

2. Section 702.101 is removed and reserved.

3. Section 702.102 is amended by revising the section heading and by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) and by adding a new paragraph (a) 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 shall notify all interested parties directly by mail of the modifications.

(b) * * *

(c) * * *

§ 702.224 [Amended]

4. Section 702.224 is amended by removing the word "certified."

§§ 702.243 and 702.316 [Amended]

5. Sections 702.243(b) and 702.316 are amended by removing the words "by certified mail."

6. Section 702.413 is revised to read as follows:

§ 702.413 Fees for medical services; prevailing community charges.

All fees charged by medical care providers for persons covered by this Act shall be limited to such charges for the same or similar care (including supplies) as prevails in the community in which the medical care provider is located and shall not exceed the customary charges of the medical care provider for the same or similar services. Where a dispute arises concerning the amount of a medical bill, the Director shall determine the prevailing community rate using the OWCP Medical Fee Schedule (as described in 20 CFR 10.411) to the extent appropriate, and where not appropriate, may use other state or federal fee schedules. The opinion of the Director that a charge by a medical care provider disputed under the provisions of § 702.414 exceeds the charge which prevails in the community in which said medical care provider is located shall constitute sufficient evidence to warrant further proceedings pursuant to § 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

7. In § 702.414, paragraphs (a) and (c) are revised to read as follows:

§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

(a) The Director may, upon written complaint of an interested party, or upon the Director's own initiative, investigate any medical care provider or any fee for medical treatment, services, or supplies that appears to exceed prevailing community charges for similar treatment, services or supplies or the provider's customary charges. The OWCP medical fee schedule (see § 702.413) shall be used by the Director, where appropriate, to determine the prevailing community charges for a medical procedure by a physician or hospital (to the extent such procedure is covered by the OWCP fee schedule). A claim by the provider that the OWCP fee schedule does not represent the prevailing community rate will be considered only where the following circumstances are presented: (1) Where the actual procedure performed was incorrectly identified by medical procedure code; (2) that the presence of a severe or concomitant medical condition made treatment especially difficult; (3) the provider possessed unusual qualifications (board certification in a specialty is not sufficient evidence in itself of unusual qualifications); or (4) the provider or service is not one covered by the OWCP fee schedule as described by 20 CFR

10.411(d)(1). These are the only circumstances which will justify reevaluation of the amount calculated under the OWCP fee schedule. The Director's investigation may initially be conducted informally through contact of the medical care provider by the district director. If this informal investigation is unsuccessful further proceedings may be undertaken. These proceedings may include, but not be limited to: An informal conference involving all interested parties; agency interrogatories to the pertinent medical care provider; and issuance of subpoenas duces tecum for documents having a bearing on the dispute.

(b) * * *

(c) After any proceeding under this section the Director shall make specific findings on whether the fee exceeded the prevailing community charges (as established by the OWCP fee schedule, where appropriate) or the provider's customary charges and provide notice of these findings to the affected parties.

PART 703—INSURANCE REGULATIONS**§ 703.121 [Removed]**

8. Section 703.121 is removed.

Signed at Washington, DC., this 1st day of May, 1995.

Ida L. Castro,

Deputy Assistant Secretary for Workers' Compensation Programs.

[FR Doc. 95-11149 Filed 5-5-95; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration**29 CFR Part 1926****Steel Erection Negotiated Rulemaking Advisory Committee**

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENTRAC). Notice is also given of the location of the meeting. This meeting will be open to the public. Information on room numbers will be available in the lobby of the designated building. A schedule of additional meetings will be provided in a future notice.

DATES: The meeting is scheduled for May 24-26, 1995. The meeting will begin at 9:00 a.m. on May 24th.

ADDRESSES: Hyatt Hotel at Dulles Airport—2300 Dulles Corner Boulevard, Herndon, VA 22071; telephone (703) 713-1234.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219-8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENTRAC) (59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENTRAC began negotiations in mid June, 1994, and has met seven times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Allocation of Responsibility, Construction Specifications and Scope. During subsequent meetings, foundations for negotiations were established and additional workgroups were formed. In addition, the resolution of issues and the drafting of a revised rule continues.

All interested parties are invited to attend the Committee meetings at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Persons with disabilities, who need special accommodations, should contact the Facilitator by May 17, 1995.

During the meeting, members of the general public may informally request permission to address the Committee.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N-2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 219-7894. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, NW, Washington, D.C. 20037; telephone (202) 887-1033, FAX (202) 887-1036.