thereof, if such person and such person's sponsor:

(1) Certifies that he:

(i) Is licensed or otherwise authorized to do business and in good standing with another federal financial regulatory authority or a foreign financial regulatory authority with which the Commission has comparability arrangements under Part 30 of this chapter and the sponsor, if applicable, has received Part 30 relief;

(ii) Has filed his fingerprints with such other regulatory authority;

(iii) Is not subject to a statutory disqualification from registration under section 8a(2) of the Act; and

(iv) Will restrict his activities subject to regulation under the Act to section 4(c) contract market transactions; and

(2) Complies with any special temporary licensing, registration or principal listing procedures applicable to persons whose activities are limited to those specified in paragraph (b)(1)(iv) of this section that have been adopted by the National Futures Association and approved by the Commission.

§ 36.7 Risk disclosure.

(a) A futures commission merchant or, in the case of an introduced account, an introducing broker, may open an account for a customer with respect to an instrument governed by this Part without furnishing such customer the disclosure statements required under §§ 1.55, 1.65, 33.7, and 190.10 of this chapter: *Provided, however,* that the futures commission merchant or, in the case of an introduced account, the introducing broker, does furnish the customer, prior to the customer's entry into the first section 4(c) contract market transaction with respect to a particular instrument, with disclosure appropriate to the particular instrument and the customer.

(b) This section does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

§ 36.8 Suspension or revocation of section 4(c) contract market transaction exemption.

The Commission may, after notice and opportunity for a hearing, suspend or revoke the exemption of any section 4(c) contract market transaction if the Commission determines that the exemption is no longer consistent with the public interest and the purposes of the Act.

§ 36.9 Fraud and manipulation in connection with section 4(c) contract market transactions.

(a) *Fraud.* The requirements of sections 4b(a) and 4*o* of the Act and § 33.10 of this chapter shall apply to section 4(c) contract market transactions. In any event, it shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered into pursuant to this Part—

(1) To cheat or defraud or attempt to cheat or defraud any other person;

(2) Willfully to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof;

(3) Willfully to deceive or attempt to deceive any other person by any means whatsoever.

(b) *Manipulation.* The requirements of sections 6(c), 6(d), and 9(a) of the Act and § 33.9(d) of this chapter shall apply to section 4(c) contract market transactions.

Issued in Washington, D.C., this 21st day of September, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–23940 Filed 9–29–95; 8:45 am]

BILLING CODE 6351–01–P

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: Final rule.

SUMMARY: On May 8, 1995, the Department of Labor published a proposal to amend the regulations implementing the Longshore and Harbor Workers' Compensation Act. The amendments are designed to improve administration and clarify existing policy by: Providing that the district jurisdictional boundaries would be changed by direct notice to affected parties; eliminating the requirement for using certified mail in most circumstances; clarifying that the Office of Workers' Compensation Programs fee schedule would be used to determine the reasonable and customary medical charge where there is a dispute; and modifying the requirement that an employer with geographically different work sites within one compensation district have only one insurance carrier. The final rules are being published essentially unchanged from the proposal.

EFFECTIVE DATE. The rule is effective on November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Olimpio, Director for Longshore and Harbor Workers' Compensation, Employment Standards Administration, U.S. Department of Labor, Room C–4315, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219–8721.

SUPPLEMENTARY INFORMATION:

Introduction

The Longshore and Harbor Workers' Compensation Act (LHWCA; 33 U.S.C. 901, *et seq.*) establishes a federal workers' compensation system for certain workers in covered employment and sets forth 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. The preamble to the proposed rule published May 8, 1995 (60 FR 22537) sets forth in detail the bases for the changes to the existing rules, which streamline and improve certain administrative functions under the LHWCA.

The authority for the administration of the LHWCA granted to the Secretary of Labor has been delegated to the Office of Workers' Compensation Programs (OWCP). This authority includes 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. In brief, the changes to the rules affect:

Compensation Districts

The rules will now provide that changes in the administrative compensation districts can be made by notice to all affected parties and not through a change in the regulations. This will ensure that, in this period of rapid change in the way government performs its functions, the program can rapidly reposition its resources as needed.

Certified Mail

The rules remove the requirement that the appropriate office (either the Longshore district office or the Administrative Law Judges (ALJs)) serve via certified mail 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). This is an expensive and time consuming process which has been proven to be unnecessary.

Use of OWCP Fee Schedule

The rules make clear what has been the practice since the 1984 amendments to the Act: that the OWCP fee schedule may be used in determining the prevailing community rate for the purposes of enforcing the provision that authorizes OWCP to-direct a change of physician or the debarment of the physician who submits bills for medical treatment where the charge exceeds the prevailing community rate for such service.

Insurance Policies

The rule requiring an employer operating within any one OWCP compensation district to insure all operations within that district through a single insurance carrier has been eliminated. Each LHWCA district is comprised of a number of different states (see current 20 CFR 702.101), while insurance carriers, which are regulated by the individual states, may not do business or write LHWCA coverage in every state conforming to the LHWCA compensation districts in which an operator may have facilities. The result is that an employer's choice in carriers is limited and the employer could potentially be left uninsured for a portion of its operations.

Analysis of Comments

Two comments were received. One employer objected to the elimination of the certified mail requirement, and an individual raised general concerns with the rules and requested that they be made effective only prospectively.

The employer commented that the use of certified mail helps ensure that the employer is not subject to the fines and penalties provided in the LHWCA for failure to conform with various time requirements. The commentor suggests that if the Department is removing this requirement, then it should be the Director's burden to demonstrate when notice was accomplished.

Contrary to the implication in this comment, the LHWCA does not condition the employer's obligation to pay benefits (section 14(e)) or to controvert entitlement to compensation (section 14(d)), on its receiving written notice of the filing of a claim. Quite to the contrary, those obligations arise as soon as the employer has knowledge of the injury or death. Our experience indicates that receipt or non-receipt of written notice from the district directors, has little to do with an employer's timely compliance with the statutory obligations.

Further, our experience does not support the assertion that certified mail is necessary to protect an employer from an unjustified or unwarranted decision requiring it to pay claimant's attorney fees. An employer can protect itself from this liability by paying compensation no later than 30 days after receiving the written notice from the district director. Prior to receipt of such notice, an employer cannot be held liable. *See*: *Watkins* v. *Ingalls Shipbuilding, Inc.*, 26 BRBS 179 (1993), *appeal dismissed* No. 93–4367 (5th Cir. December 9, 1993).

In general, the postmark showing the date of mailing (and/or date-stamp showing receipt) may be used to establish a general time frame within which correspondence was received, if this is necessary to resolve disputes where time is relevant. For example, we are not aware of such penalties incurred as a result of not having the conference recommendation sent by certified mail. The commentor argues that receipt of notice of a deficiency in a settlement application must be timely, or the employer could pay the settlement, then not be able to recoup it. The scenario painted by the commentor (that the deficiency notice is not received in a timely manner because it is not sent by certified mail) simply is not relevant. Any delay could exist, whether or not certified mail is used, and the same problem with recoupment would exist, whatever the reason for the delay in receipt of notice of deficiency.

The remotely possible scenarios used to support the employer's objections are not sufficient to overcome the distinct advantages, particularly the savings in staff resources and mailing costs, associated with dropping this requirement. As noted in the preamble to the proposed rule, 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 recipients should see an improvement in the level of service as resources now dedicated to certified mailings can be used elsewhere.

The individual, in his comments, requested that the regulatory changes be applicable only prospectively and that they not apply to injuries sustained or claims filed before the proposed rules were published in the Federal Register. It is not the intent of the Director, that the changes deleting the certified mail requirement be applied to relieve a party of liability already incurred or to impose liability where none existed. However, the Director does believe that it will be appropriate to apply the OWCP fee schedule to pending claims where such application will assist in resolving outstanding issues. For these reasons, no change needs to be made to the rules as written.

Conclusion

For the reasons set out in the preamble to the proposed rule, as amplified by these comments, the Department has determined to finalize the rule.

Statutory Authority

Subsections 39(a) and 39(b) of the Act, 33 U.S.C. 939 (a) & (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.

Paperwork Reduction Act

The information collection requirements entailed by the 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, part 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 Part 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]

2. Section 702.101 removed and reserved.

3. Section 702.102 is amended by revising the section heading, and paragraphs (a) and (b) are redesignated as paragraphs (b) and (c) and a new paragraph (a) is added 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 [Amended]

§ 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 section 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 section 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

7. In section 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 section 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). 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.

(1) 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:

(i) where the actual procedure performed was incorrectly identified by medical procedure code;

(ii) that the presence of a severe or concomitant medical condition made treatment especially difficult;

(iii) the provider possessed unusual qualifications (board certification in a specialty is not sufficient evidence in itself of unusual qualifications); or

(iv) the provider or service is not one covered by the OWCP fee schedule as described by 20 CFR 10.411(d)(1).

(2) The circumstances listed in paragraph (a)(1) of this section are the only ones which will justify reevaluation of the amount calculated under the OWCP fee schedule.

(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

§ 703.12 [Removed]

8. Section 703.121 is removed.

Signed at Washington, DC, this 22d day of September 1995.

Ida L. Castro,

Deputy Assistant Secretary for Workers' Compensation Programs.

[FR Doc. 95–24078 Filed 9–29–95; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Hearing Examiner Review Function

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is changing the title of the agency official who is charged, by regulation,