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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 702

RIN 1240-AA13

Longshore and Harbor Workers' Compensation Act: Electronic Filing, Settlement, and Civil Money Penalty Procedures

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and its extensions. To improve program administration, OWCP proposes to amend its existing regulations to require parties to file documents electronically, unless otherwise provided by statute or allowed by OWCP, and to streamline the settlement process. Additionally, to promote accountability and ensure fairness, OWCP proposes new rules for imposing and reviewing civil money penalties prescribed by the Longshore Act. The new rules will set forth the procedures to contest OWCP's penalty determinations.

DATES: The Department invites written comments on the proposed regulations from interested parties. Written comments must be received by February 12, 2021.

ADDRESSES: You may submit written comments, identified by RIN number 1240-AA13, by any of the following methods. To facilitate the receipt and processing of comments, OWCP encourages interested parties to submit such comments electronically.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

- **Regular Mail or Hand Delivery/Courier:** Submit comments on paper to the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S-3229, 200 Constitution Avenue NW, Washington,

DC 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.

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, (202)-693-0040, rios.antonio@dol.gov. TTY/TDD callers may dial toll free 1-877-889-5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The Longshore and Harbor Workers' Compensation Act (LHWCA or Act), 33 U.S.C. 901-50, establishes a comprehensive federal workers' compensation system for an employee's disability or death arising in the course of covered maritime employment. *Metro. 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, Public Law 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.

OWCP's sound administration of these programs involves periodic reexamination of the procedures used for claims processing and related issues. OWCP has identified three areas where improvements can be made. The first is expanding electronic filing and requiring private parties to transmit all

documents and information to OWCP electronically, except when the individual does not have a computer, lacks access to the internet, or lacks the ability to utilize the internet. Receiving documents and information in electronic form speeds claims administration and simplifies recordkeeping requirements. The second is streamlining settlement procedures. This too should speed the settlement-approval process and lessen the parties' burdens to submit multiple documents to have a settlement considered. Finally, OWCP is updating its existing penalty regulations and filling a gap by proposing a procedural scheme for employers to challenge penalties assessed against them. These rules will better apprise employers of their obligations and give them a clear path to exercise their rights to challenge any penalty imposed by OWCP.

On April 28, 2020, OWCP hosted a public outreach webinar to solicit stakeholders' views on how OWCP could improve its processes in the three areas covered in this rulemaking. See E.O. 13563, sec. 2(c) (January 18, 2011) (requiring public consultation prior to issuing a proposed regulation). OWCP has considered the feedback received during that session in developing the proposed rules.

This rule is not an Executive Order 13771 regulatory action because it is not significant under Executive Order 12866.

II. Direct Final Rulemaking

In addition to this Notice of Proposed Rulemaking (NPRM), OWCP is concurrently publishing a companion direct final rule (DFR) elsewhere in this issue of the **Federal Register**. In direct final rulemaking, an agency publishes a DFR 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 DFR, the rule goes into effect. If the agency receives significant adverse comment, the agency withdraws the DFR 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.

By simultaneously publishing this NPRM with a DFR, notice-and-comment rulemaking will be expedited if OWCP receives significant adverse comment and withdraws the DFR. The proposed and direct final rules are substantively identical, and their respective comment

periods run concurrently. OWCP will treat comment received on the NPRM as comment regarding the companion DFR and vice versa. Thus, if OWCP receives significant adverse comment on either the NPRM or the DFR, OWCP will publish a **Federal Register** notice withdrawing the DFR and will proceed with this proposed rule.

For purposes of the DFR, a significant adverse comment is one that explains why the rule (1) is inappropriate, including challenges to the rule's underlying premise or approach; or (2) will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the DFR, 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 DFR would be ineffective without the addition.

OWCP requests comments on all issues related to this rule, including economic or other regulatory impacts on the regulated community.

III. Overview of the Proposed Rule

A. Electronic Transmission of Documents and Information and Electronic Signatures

The Department's current regulations implementing the LHWCA at 20 CFR part 702 allow OWCP and private parties to exchange documents and information through certain electronic methods or in paper form, at the sender's option. 20 CFR 702.101. The Department added optional electronic transmission to the regulations in 2015. 80 FR 12917–33 (March 12, 2015). Since then, OWCP has continued to expand its use of electronic case files and is working towards a fully electronic case-file environment.

Electronic case files have many advantages, including allowing claims staff remote access to documents and information; efficient case file transmission to the Office of Administrative Law Judges, the Benefits Review Board, and other tribunals; elimination of possible mail-handling delays due to unforeseen weather or other events, safety restrictions, and the like; and cost savings in reduced copying, scanning, and storage of paper documents. Electronic filing methods are ubiquitous, and the public generally is very familiar with them. In addition to the substantial business conducted in a fully electronic environment,

government agencies and court systems routinely use electronic transmission systems to receive documents and information. In fact, OWCP estimates that more than 80 percent of all documents it now receives in the Longshore program are transmitted electronically by the private parties.

For these reasons, the Department is now proposing a rule that would require all private parties transmitting documents and information to OWCP to do so electronically except when a district director allows a different filing method because the individual does not have a computer, lacks access to the internet, or lacks the ability to utilize the internet. The exception is consistent with the E-Government Act of 2002's directive that agencies must ensure the continued availability of services for persons who do not have computers or internet access. Sec. 202(c), Public Law 107–347, 116 Stat. 2899, 2911 (44 U.S.C. 3501 note). OWCP envisions a simple process for requesting relief under the exception and will allow individuals to self-certify their inability to use electronic filing. OWCP is unaware of any law that would prohibit it from making electronic filing mandatory for all other parties.

In proposing this rule, OWCP has considered the principles underlying 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. The GPEA 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.

Moreover, by 2022, the National Archives and Records Administration (NARA) will, to the fullest extent possible, no longer accept temporary or permanent records from agencies in a non-electronic format. *See* National Archives and Records Administration, 2018–2022 Strategic Plan at 12 (Feb. 2018); *Delivering Government Solutions in the 21st Century* at 22, 100–102 (June

21, 2018). Requiring electronic filings now will make more efficient OWCP's compliance with NARA's recordkeeping directives.

The proposed rules would also allow the use of electronically signed documents consistent with E-SIGN. In April 2020, the Longshore program began accepting documents signed using certain electronic methods. *See* Industry Notice No. 179 (April 20, 2020) <https://www.dol.gov/owcp/dlhwc/lindustryntices/industryntice179.pdf>. This rule would codify that practice. Allowing the use of improvements in signature technology will facilitate an easier and faster exchange of documents between parties and OWCP. The use of electronic signatures is voluntary, and parties may continue to submit documents with “wet” ink signatures, so long as they are scanned and submitted electronically. At the same time, OWCP is conscious of the need to safeguard the integrity of electronic signatures and to ensure that each signature truthfully reflects the purported signatory's intent to sign. To that end, the proposed rule sets out criteria to be followed by parties submitting electronically-signed documents.

B. Streamlining the Settlement Process

Section 8(i) of the Act, 33 U.S.C. 908(i), allows parties to settle compensation cases. Parties may agree to settle amounts payable for disability compensation, death benefits, medical benefits, attorney's fees, and costs. An adjudicator—a district director or an administrative law judge—must review each settlement application. Unless the settlement amount is inadequate or was procured by duress, the adjudicator must approve it. Section 8(i) also provides that when all parties are represented by counsel, a settlement application is deemed approved 30 days after its submission if the adjudicator does not disapprove it.

The settlement application process should be easy for the parties to follow and lead to prompt resolution of compensation cases. However, in some instances, the settlement application process has become overly complicated. To justify the settlement application, parties submit large amounts of documentation (*e.g.*, all of the employee's medical treatment records) that is well beyond what is necessary for full consideration of the application in most cases. In addition to the extra burdens placed on parties, this practice creates unnecessary administrative burdens for OWCP and the Office of Administrative Law Judges (OALJ).

The proposed revisions of the settlement regulations at §§ 702.241–702.243 would streamline the application process by focusing on the relevant information the parties must initially submit to properly adjudicate the settlement application. The adjudicator may then exercise his or her discretion and ask for additional documentation from the parties in those cases where necessary to determine whether the settlement is adequate in amount and procured without duress. The proposed rules also allow the adjudicator to defer to the parties' representations regarding the adequacy of the settlement amount and whether the settlement was procured by duress. The Department believes these changes will make both the application and approval process more efficient, lessening the burden on parties and adjudicators alike. The Department has also taken this opportunity to propose reorganizing, and in some cases simplifying, much of the information contained in the current settlement regulations.

C. Procedures for Civil Money Penalties

The proposed regulations contain new and amended provisions implementing the Act's civil money penalty provisions. The Act allows OWCP to impose a penalty when an employer or insurance carrier fails to timely report a work-related injury or death, 33 U.S.C. 930(e), or fails to timely report its final payment of compensation to a claimant, 33 U.S.C. 914(g). *See* 20 CFR 702.204, 702.236. An employer who discharges or discriminates against an employee because of that employee's attempt to claim compensation under the Act may also be penalized. 33 U.S.C. 948a; 20 CFR 702.271. The proposed rule would revise current § 702.204 to provide for graduated penalties for an entity's failure to file, or falsification of, the required report of an employee's work-related injury or death. *See* 33 U.S.C. 930(a); 20 CFR 702.201. The proposed rule provides that the penalty assessed will increase for each additional violation the employer has committed over the prior two years. The current regulation states only the maximum penalty allowable, without providing further guidance.

The proposed regulations also contain a new Subpart I setting out procedures for assessing and challenging penalties. These rules would allow an entity against whom a penalty is assessed the opportunity for a hearing before an administrative law judge, and to petition the Secretary of Labor (Secretary) for further review. After receiving notice from the district

director that the assessment of a penalty is being considered and a subsequent decision assessing the penalty, the respondent may request a hearing before an administrative law judge. The ensuing decision will address whether the respondent violated the statutory or regulatory provision under which the penalty was assessed, and whether the amount of the penalty assessed is correct. Any party aggrieved by the decision may petition for the Secretary's review, which will be discretionary and based on the record. These additional levels of review are consistent with Recommendation 93–1 of the Administrative Conference of the United States, which recommends that formal adjudication under the Administrative Procedure Act be made available where a civil money penalty is at issue. The proposed procedures will fully protect employers' and insurance carriers' rights to challenge OWCP's action before any penalty becomes final and subject to collection, and ensure transparency and fairness in the enforcement proceedings. *See generally* Executive Order 13892, *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication* (October 9, 2019).

IV. Section-by-Section Analysis

A. Regulations Related to Electronic Transmission of Documents and Information and Electronic Signatures

Section 702.101 Exchange of Documents and Information; Electronic Signatures

Proposed § 702.101 revises several parts of the current regulation to require electronic submission of all documents and information to OWCP, permits the use of electronic signatures, and amends the title of the regulation to include electronic signatures. Proposed paragraph (a) begins by excepting from the mandatory electronic submission and exchange requirements those instances where the statute either allows filings by mail or mandates service by mail: Sections 702.203 (employer's report of injury or death, implementing 33 U.S.C. 930(d)), 702.215 (notice of injury or death, implementing 33 U.S.C. 912(c)), and 702.349 (service of compensation orders, implementing 33 U.S.C. 919(e)). Although parties are not required to submit reports and notices of injury or death to OWCP electronically, OWCP encourages them to do so.

Proposed paragraph (a) combines current paragraphs (a) and (b) and breaks the combined text into three subsections that address three categories

of document and information exchanges. Paragraph (a)(1) provides that parties (and their representatives) sending documents and information to OWCP must submit them electronically through an OWCP-authorized system. OWCP's Secure Electronic Access Portal (SEAPortal) is an example of such a system. A district director may make an exception to this rule for parties who do not have computers or access to the internet, or who lack the ability to use the internet. When a district director authorizes a party to use an alternative submission method, the party may use any of the methods set forth in the current rule: Postal mail, commercial delivery service, hand delivery, or another method OWCP authorizes. In all instances, documents are considered filed when received by OWCP.

Proposed paragraph (a)(2) provides that OWCP may send documents and information to parties and their representatives by a reliable electronic method (e.g., email), postal mail, commercial delivery service, hand delivery, or electronically through an OWCP-authorized system. These methods are the same as those in the current regulation with one exception. For documents and information OWCP sends via a reliable electronic method, the proposed rule eliminates the requirement that the party or representative must agree in writing to receive documents by that method. OWCP is now routinely obtaining electronic contact information, such as email addresses, from parties and representatives, and plans to increase its use of standard electronic business communication practices. Service of compensation orders, however, would still be governed by § 702.349 and thus be sent electronically only when a party or representative affirmatively waives their statutory right to registered or certified mail service.

Proposed paragraph (a)(3) governs exchange of documents and information between opposing parties and representatives. Like the current rule, the proposed provision allows the parties flexibility to choose the method of service they wish to use. They may use the same methods as OWCP, although parties must agree in writing to receive documents by a reliable electronic method. Requiring written confirmation from the recipient will continue to protect all parties and representatives from any misunderstandings about service.

Proposed paragraph 702.101(g) is a new provision that allows parties to submit electronically-signed documents to OWCP. The rule is intended to permit the widest possible use of electronic

technology. Electronic signatures would be accepted on all submissions to OWCP that require a signature, not merely those non-exhaustive examples listed in the text of the proposed rule.

Proposed paragraph (g)(1) explains how key terms are used in the remainder of the paragraph. A “document” includes both paper and electronic writings. The documents listed in this definition—applications, claim forms, notices of payment, and reports of injury—are meant to serve as examples of the types of documents parties could electronically sign and submit to OWCP, but are not meant to be an exhaustive list. Electronic signatures on other types of documents not listed here would also be accepted by OWCP.

An “electronic signature” is a mark created by electronic means that shows an intent to sign the document. An electronic signature is binding on a business entity only if the signatory has appropriate legal authority to bind the entity.

“Electronic signature devices” are tools parties may use to create electronic signatures. As with documents, the examples of electronic signature devices provided in this paragraph are not an exhaustive list. Parties could utilize other types of electronic signature devices, as long as the device is uniquely usable by the signatory at the time the signature is made. The purpose of this limitation is to ensure the signature’s trustworthiness. The definition of “electronic signature programs” is designed to permit the submission of documents electronically signed with third-party software programs such as—but not limited to—AdobeSign, DocuSign, and E-Sign.

The definition of “signatory” is limited to individual, human persons; a corporation or business cannot be a signatory, though a signatory can sign on behalf of a corporation or business. This definition is designed to ensure that if the validity of a signature is challenged, it will be possible for all parties involved to verify who created it.

Proposed paragraph (g)(2) lists the allowable methods for creating and affixing electronic signatures and adds the proviso that OWCP can approve other methods.

Proposed paragraph (g)(3) clarifies that all electronic signatures made on the same document need not be created by the same method; a document could, for example, contain a “/s” signature from a claimant (as specified in paragraph (g)(2)(iii)) and a separate signature from an employer’s agent made by drawing a mark with a stylus on a touch-screen (as specified in

paragraph (g)(2)(iv)). OWCP recognizes that some of the methods described in paragraph (g)(2) may overlap. For example, an electronic signature program may involve a signatory first logging in through the use of an electronic signature device such as a PIN number, and then typing their name following a “/s” mark. A signature that incorporates multiple acceptable methods is still an acceptable electronic signature. These provisions are designed to be as inclusive as possible while militating against the possibility of abuse or fraud.

Finally, proposed paragraph (g)(4) would impose obligations on parties that submit electronically-signed documents. This subparagraph is designed to mitigate the possibility of a legal challenge to the integrity of a signature or the identity of the signatory. Paragraph (g)(4)(i) is designed to prevent the use of signatures that leave the actual identity of the signatory ambiguous; examples of such signatures might be those that indicate only a PIN, ambiguous username, or email address that is shared by multiple members of a business or other organization. Paragraphs (g)(4)(ii)–(iii) impose record-keeping obligations on parties. By requiring parties to keep information about how and when an electronic signature was created, OWCP ensures that some means of authenticating the signature exists if the document’s validity is ever disputed.

The remaining proposed revisions to § 702.101 are technical in nature. Existing paragraphs (c)–(f) are renumbered to (b)–(e), and cross-references to other paragraphs throughout the section have been updated. In addition, because proposed paragraph (a)(2) would not require parties and representatives to consent in writing to receive documents and information from OWCP via reliable electronic methods, proposed paragraph (c) removes the words “OWCP” and “as appropriate” from current paragraph (d). Even though much of § 702.101 remains unchanged, the Department has chosen to re-publish the section in full for the public’s convenience.

Section 702.203 Employer’s Report; How Given

Section 30 of the Longshore Act, 33 U.S.C. 930, governs how and when employers must report employee injuries and deaths. In general, employers must send reports within 10 days of the injury or death, or knowledge of an injury or death. The Act explicitly allows an employer to comply with the reporting requirement by “mailing” the report “in a stamped

envelope, within the time prescribed.” 33 U.S.C. 930(d). Current § 702.203(b), which implements section 30(d), acknowledges this mailing provision and provides that employers may send the reports to OWCP by U.S. Postal mail, commercial delivery service, or electronically. To encourage electronic filing yet preserve the statutory mail provision, proposed § 702.203(b) eliminates commercial delivery service as a submission option but retains the mailing provisions. If an employer chooses to mail the report, the rule places the burden on the employer to preserve evidence of the date the report is mailed to OWCP. This could easily be accomplished by using certified mail. Finally, to clarify electronic submission procedures, the proposed rule requires submission via an OWCP-authorized system and includes a cross-reference to proposed § 702.101(a)(1). This revision eliminates the use of other electronic transmission methods and the need to specify when filing is complete under those methods.

Section 702.215 Notice; How Given

Section 12 of the Longshore Act, 33 U.S.C. 912, governs how and when employees and survivors give notices of injury or death to employers and OWCP. The Act requires that such notices 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). Without amendment of current § 702.215, the proposed revisions to § 702.101 would effectively eliminate this statutory mailing option. Section 702.215 provides that “[n]otice 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.” The “submitting” language brings to bear the transmission methods specified in § 702.101. *See* 20 CFR 702.101(e); 48 CFR 12921 (March 12, 2015). Since proposed § 702.101(a) would require electronic filing of these notices, OWCP proposes to amend § 702.215 to preserve the option of filing by mail in compliance with the Act. The proposed rule makes clear that employees and survivors may also file these notices electronically through an OWCP-authorized system.

B. Regulations Pertaining to Settlements

Section 702.241 Settlements; Definitions; General Information

Proposed § 702.241 contains basic information about settlements under section 8(i) of the Longshore Act, 33 U.S.C. 908(i). Proposed paragraph (a) retains the current definition of the term

“Adjudicator,” adds a definition for “Compensation case,” and includes the definition for “Counsel” located in current § 702.241(h). Paragraph (b) sets out several basic concepts: That an adjudicator must approve all settlements; the types of compensation, fees, and costs that a settlement may include; the “inadequate” and “procured by duress” standard applied in reviewing settlements; and, where all parties are represented by counsel, that the settlement is deemed approved 30 days after receipt of a completed application unless an adjudicator requests additional information or disapproves the application within that time period.

Proposed paragraph (c) specifies when a settlement application is considered received by an adjudicator or higher tribunal. The proposed rule eliminates the provision in current § 702.241(c) allowing settlement applications filed with an administrative law judge to be considered received “five days before the date on which the formal hearing is scheduled to be held.” In OWCP’s experience, judges act quickly on settlement applications when received. Removing this provision will help eliminate any confusion parties may have over when a judge will consider their settlement proposal and promote prompt resolution. Paragraph (d) retains the provision in current § 702.241(f) regarding days that count towards the 30-day settlement period. And paragraph (e) retains the provision in current § 702.241(g) that limits settlements to claims in existence at the time of the settlement and provides that settlements for the injured employee do not affect survivors’ claims for death benefits.

Additional note: Current § 702.241(b) has been moved to proposed § 702.242(e) and revised. Current § 701.241(d) has been moved to proposed § 702.243(f) and revised. Current § 701.241(e) has been moved to proposed § 702.243(i) and revised.

Section 702.242 Settlement Application; Contents and Submission

Proposed § 702.242 sets out the information parties must include in a settlement application and how parties must submit the application. Paragraph (a) simplifies the requirements in current § 702.242(a) by requiring that the parties use an application form prescribed by OWCP. The form will be a self-sufficient document that requires all information necessary for a complete application and signatures necessary to indicate agreement to the settlement. The form will also apprise claimants of

the effect of the settlement (*e.g.*, waiver of rights to further compensation). Using a form should simplify the application process for the parties, who will no longer have to create their own documents. A form also has the advantage of allowing OWCP to adopt technology that will allow full online completion and submission of the settlement application.

Proposed paragraph (a) also lists the components that must be included in the settlement application. In large part, this list reflects the requirements set forth in current § 702.242(a) and (b). Parties are required to include basic facts about the case, amounts to be paid under the settlement, the signatures of the parties agreeing to the settlement and attesting that the settlement is adequate and not procured by duress, and a statement regarding severability of the parts of the settlement, where appropriate.

Proposed paragraph (b) provides that the adjudicator can request any additional information he or she deems necessary to decide whether the settlement is adequate or was procured by duress. This allows the adjudicator to tailor a request for additional information (*e.g.*, a medical report, projections of future medical treatment expenses) to the facts of the particular case. Paragraph (c) limits the adjudicator’s consideration to the information in the application, any specific information the adjudicator requests from the parties, and information in the case record when the settlement application is filed.

Proposed paragraphs (d) and (e) prescribe how parties submit completed settlement applications. These provisions require parties to submit applications to the district director except when the case is pending before the OALJ. In that instance, parties may either ask OALJ to remand the case to the district director and then submit the application to the district director after remand or submit the application to OALJ for consideration. Parties who submit settlement applications while a case is pending before a higher tribunal—the Benefits Review Board or a court—must submit them to the district director and ask the tribunal to return the case to the district director, who is an adjudicator with the authority to consider the application. These procedures reflect current practice.

Section 702.243 Settlement Approval and Disapproval

Proposed § 702.243 governs how settlement applications are reviewed and the consequences of that review. Proposed paragraph (a) requires

adjudicators to review the settlement application within 30 days of receipt. During that time period, the adjudicator must notify the parties if the application is incomplete and ask for any additional information as allowed under proposed § 702.242(b). The notice must also inform the parties that the 30-day period in proposed § 702.241(b) will not begin to run until the adjudicator receives the completed application and additional information. This formulation is consistent with current § 702.243(a), which states that an incomplete application tolls the 30-day time period for deeming the application approved.

Proposed paragraph (b) combines two requirements in current § 702.243(b) and (c) regarding adjudicating a settlement. The adjudicator must issue a compensation order approving or disapproving the settlement application. If the application is disapproved in any part, the adjudicator must include a statement of the reasons for finding the settlement (or part thereof) inadequate or procured by duress. This provision also requires the adjudicator to file and serve the compensation order under the procedures set forth in § 702.349. Although OWCP already follows these procedures, adding a reference to § 702.349 will ensure that parties will be able to choose to receive orders on settlements via electronic means rather than by registered or certified mail.

Proposed paragraph (c) instructs adjudicators to consider the information in the settlement application, any additional information the adjudicator requested under proposed § 702.242(b), and the parties’ attestations in the application in determining whether the proposed settlement is adequate and was procured without duress. The rule also allows the adjudicator to defer to the parties’ attestations regarding adequacy and duress. This provision replaces current § 702.243(f)’s more detailed standard for determining whether the settlement amount is adequate, allowing the adjudicator to consider only that information important to the particular case.

Like current § 702.243(e), proposed paragraph (d) continues to provide that disapproval of any part of a settlement applies to the entire settlement unless the parties state in the application that they agree to settle various parts independently. OWCP will incorporate this question into the settlement application.

Proposed paragraph (e) sets out the actions parties may take after an adjudicator disapproves a settlement application. When disapproved by a district director, the parties may submit an amended settlement application to

the district director or request an administrative law judge hearing on the disapproval. Any party may also ask for an administrative law judge hearing on the merits of the case. Similarly, when disapproved by an administrative law judge, the parties may submit an amended settlement application to the judge, appeal to the Benefits Review Board, or proceed with a hearing on the merits.

Proposed paragraph (f) sets out the circumstances when a settlement is deemed approved. Consistent with section 8(i)(1), 33 U.S.C. 908(i)(1), this regulation applies only when all parties are represented by counsel. If the adjudicator neither approves nor disapproves the settlement application within 30 days after an adjudicator receives a complete application and any additional information the adjudicator requests under proposed § 702.242(b), the settlement will be deemed approved.

Proposed paragraph (g) retains the provision in current § 702.243(b) that an employer's and insurance carrier's liability for a compensation case is not discharged until the settlement application is approved. This includes both approvals issued by an adjudicator and those settlements deemed approved under the provisions of this section.

Proposed paragraph (h) addresses the effect of settling attorney fees. The rule retains the thrust of the provision in current § 702.241(e): Approval of a settlement application that includes attorney fees constitutes approval of fees for all purposes. Paragraph (h) adds that fees in a settlement application may include fees for services rendered before a different adjudicator or tribunal. This will allow one adjudicator to resolve all fee matters, eliminating any need for the parties to seek fee resolutions from any other adjudicator or tribunal.

Proposed paragraph (i) revises current § 702.243(g) regarding how adjudicators consider settlements in cases being paid under a final compensation order. The current regulation requires adjudicators to disapprove any settlement amount that falls below the present value of compensation payments commuted (as prescribed in the regulation) unless the parties show that the amount is adequate. Proposed paragraph (i) expands the adjudicator's discretion by making the comparison between the settlement and commuted amounts permissible rather than mandatory. This will allow the adjudicator more flexibility to ratify the parties' agreement as to the settlement amount. OWCP also proposes to remove from current § 702.243(g) the reference to the U.S. Life Table developed by the

Department of Health and Human Services. This table is insufficient because it does not provide life expectancies for people in foreign countries that could be covered by the Longshore Act or its extensions, particularly the Defense Base Act. Proposed paragraph (i) instead allows OWCP to specify the life expectancy tables or calculators to be used under this provision.

C. Regulations Related to Civil Money Penalties

Section 702.204 Employer's Report; Penalty for Failure To Furnish or for Falsifying

Proposed § 702.204 revises the current regulation in several ways. First, paragraph (a)(1) defines a knowing or willful violation sufficient to impose a penalty. Paragraph (c) provides that the number of penalties assessed in the prior two years against an entity—including its parent company, subsidiaries, or related entities—will be considered in assessing further penalties. Paragraph (c) also lists the penalty amounts that will be imposed, beginning at two percent of the maximum penalty amount for a first violation, with the penalty doubling for each subsequent violation through the sixth violation. The seventh violation will result in the maximum penalty. OWCP has proposed a percentage scheme because the maximum penalty amount will be adjusted every year under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, section 701.

Section 702.233 Additional Compensation for Failure To Pay Without An Award

OWCP proposes to substitute the phrase “additional compensation” for the word “penalty” in § 702.233's current title (i.e., “Penalty for failure to pay an award”). Section 702.233 implements section 14(e) of the Act, 33 U.S.C. 914(e), which provides that claimants are entitled to an additional 10 percent of any compensation payable without an award when not paid within 14 days of when it is due. The Board has held that payments under section 14(e) are “compensation” and not “penalties.” *Robirds v. ICTSI Oregon, Inc.*, 52 BRBS 79 (2019)(en banc); *appeal docketed* Ninth Cir. No. 19–1634. In reaching its conclusion, the Board relied on the Federal Circuit's decision in *Ingalls Shipbuilding, Inc. v. Dalton*, 119 F.3d 972, 979 (Fed. Cir.

1997), which held that payments under section 14(e) are compensation. The majority of courts have also construed the similar language in section 14(f) of the Act, 33 U.S.C. 914(f) (requiring payment of additional 20 percent for late payments under terms of an award), as payments of “compensation” rather than a penalty. *See Newport News Shipbuilding and Dry Dock Co. v. Brown*, 376 F.3d 245, 251 (4th Cir. 2004) (“[I]t is plain that an award for late payment under [section] 14(f) is compensation.”); *Tahara v. Matson Terminals, Inc.*, 511 F.3d 950, 953–54 (9th Cir. 2007) (same); *but see Burgo v. General Dynamics Corp.*, 122 F.3d 140, 145–46 (2d Cir. 1997). Using “additional compensation” in the title of § 702.233 promotes accuracy and clarifies the instances in which the new penalty procedures apply.

Section 702.236 Penalty for Failure To Report Termination of Payments

Proposed § 702.236 revises the current rule to incorporate the penalty procedural rules proposed in new Subpart I.

Section 702.271 Discrimination Against Employees Who Bring Proceedings; Prohibition

Proposed § 702.271 revises the current rule by dividing paragraph (a) into paragraphs (a) and (b), and renumbering the subdivisions of paragraph (a), for clarity. Current paragraph (a)(2) is deleted and replaced by proposed § 702.273, which sets forth the range of penalties to be assessed and incorporates the penalty procedural rules proposed in new Subpart I. Given this change, the words “and penalty” are deleted from the section's title and the punctuation has been altered. Current paragraphs (b), (c), and (d) are redesignated (c), (d), and (e).

Section 702.273 Penalty for Discrimination

Proposed § 702.273 replaces and revises current § 702.271(a)(2). It sets forth the range of penalties for discharge or discrimination, and incorporates the penalty procedural rules proposed in new Subpart I. The proposed rule also stays proceedings on any penalty assessed by the district director prior to a hearing until the Administrative Law Judge or higher tribunal resolves the underlying discrimination complaint.

Section 702.901 Scope of This Part

Proposed § 702.901 provides that the procedures set forth in Subpart I apply when the district director imposes civil monetary penalties under §§ 702.204, 702.236, or 702.273, and that any

penalties collected are to be deposited into the special fund described in 33 U.S.C. 944.

Section 702.902 Definitions

Proposed § 702.902 defines “respondent” as the employer, insurance carrier, or self-insured employer against whom the district director is seeking to assess a penalty.

Section 702.903 Notice of Penalty; Response; Consequences of No Response

Proposed § 702.903 is a new provision governing OWCP’s notice of any penalty assessed and the respondent’s response. Paragraph (a) requires OWCP to serve a written notice on the respondent by a method that verifies the delivery date because date of receipt triggers the respondent’s response period. Paragraph (b) prescribes the contents of the notice, which include the consequences of not responding to the notice or supplying an inadequate response. Paragraph (c) gives the respondent 30 days to respond with documentation regarding any facts relevant to the reason for the penalty, as well as any documentation that may lead to mitigation of the penalty amount under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), if the penalty arises under § 702.236. Paragraph (d) provides that, if there are further proceedings before an administrative law judge, that judge may consider only the evidence submitted to the district director, unless exceptional circumstances prevented the respondent from submitting it to the district director. OWCP has proposed this restriction so that OWCP can evaluate all evidence the respondent wishes to introduce in assessing the penalty. Finally, paragraph (e) provides that if the respondent does not respond within 30 days, the assessment of the penalty and its amount becomes final and collection may begin under § 702.912.

Section 702.904 Decision on Penalty After Timely Response; Request for Hearing

Proposed § 702.904 addresses the district director’s decision and any appeal to an administrative law judge. Paragraph (a) provides that the district director’s decision must state the reasons for the assessment of the penalty and its amount, and set forth the consequences of a respondent’s failure to timely respond. Paragraph (b) provides that the respondent may request a hearing before an administrative law judge within 15 days of receiving the decision by filing a request with the district director, and

sets forth the requirements the request must meet. Paragraph (c) provides that a timely hearing request will stay the collection of a penalty until final resolution of the penalty by the administrative law judge or the Secretary. Paragraph (d) provides that, if the respondent does not request a hearing within 15 days, the assessment and penalty become final, and collection of the penalty may be instituted under § 702.912.

Section 702.905 Referral to the Office of Administrative Law Judges

Proposed § 702.905 addresses referral of an assessment and penalty for a hearing before an administrative law judge. Paragraph (a) provides that, when the district director receives a request for hearing, the district director will immediately notify the Chief Administrative Law Judge, who will assign the case to an administrative law judge. The district director will also forward the administrative record, which consists of the district director’s decision, the documentation the district director relied on in making the decision, all written responses and documentation filed by the respondent with the district director, and a statement of the issues referred for hearing. Paragraph (b) provides that the rules set forth in 29 CFR part 18 will apply to any hearing before an administrative law judge.

Section 702.906 Decision and Order of Administrative Law Judge

Proposed § 702.906 governs the contents, issuance, service, and finality of the administrative law judge’s decision. Paragraph (a) provides that the administrative law judge may consider only the issues referred for hearing by the district director. Paragraph (b) limits the administrative law judge’s determinations on those issues to whether the respondent has violated the provision under which the penalty was assessed, and whether the penalty is appropriate under the standards set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2). Limiting the judge’s consideration to these issues will help streamline the hearing and decision process. Paragraph (c) requires the administrative law judge’s decision to include a statement of findings and conclusions on each issue referred, with the reasons and bases for those findings and conclusions. Paragraph (d) requires the administrative law judge to serve both the respondent and the district director with the decision on the day it is issued through a trackable delivery method. Paragraph (e) provides that any party may move for reconsideration of

the decision within 30 days of its issuance, and that any such motion will suspend the running of time to file a petition for review under § 702.908. Paragraph (f) provides that, absent a timely request for reconsideration or petition for review, the administrative law judge’s decision will be deemed final, and recovery of the penalty may be instituted under § 702.912.

Section 702.908 Review by the Secretary

Proposed § 702.908 allows any party aggrieved by an administrative law judge’s decision to petition the Secretary for review. Paragraph (a) requires that any petition be filed within 30 days. Under paragraph (b), a timely motion for reconsideration filed with the administrative law judge tolls the time for filing a petition with the Secretary; the 30-day period will not begin to run until the judge issues a decision on reconsideration. Paragraph (c) sets out the requirements for the petition for review. And paragraph (d) provides the mailing address for sending the petition but allows the Secretary to designate alternative filing methods, such as an electronic filing system. Documents are not considered filed until actually received by the Secretary.

Section 702.909 Discretionary Review

Proposed § 702.909(a) provides that the Secretary’s review of a timely petition is discretionary. Paragraph (a)(1) provides that, if the Secretary declines review, the administrative law judge’s decision will be considered the final agency decision. Under paragraph (b)(2), if the Secretary chooses to review the decision, the Secretary will notify the parties of the issues to be reviewed and set a schedule for the parties to submit written arguments. Paragraph (b) requires the district director to forward the administrative record to the Secretary if the Secretary decides to review the administrative law judge’s decision.

Section 702.910 Final Decision of the Secretary

Proposed § 702.910 limits the Secretary’s review to the hearing record. The Secretary will review findings of fact under a substantial evidence standard and conclusions of law *de novo*. The Secretary may affirm, reverse, modify, or vacate the decision, and may remand to the Office of Administrative Law Judges for further review. The Secretary’s decision must be served on all parties and the Chief Administrative Law Judge.

Section 702.911 Settlement of Penalty

Proposed § 702.911 provides that the respondent and the district director may enter into a settlement at any time during proceedings before the administrative law judge or the Secretary. This provision is meant to allow flexibility and forestall further litigation if the district director and the respondent reach agreement at any point during the proceedings.

Section 702.912 Collection and Recovery of a Penalty

Paragraph (a) of proposed § 702.912 provides that, when a penalty becomes final under §§ 702.903(e), 702.904(d), or 702.906(f), the penalty is immediately due and payable to the Department on behalf of the special fund described in 33 U.S.C. 944. Paragraph (b) provides that, if payment is not received within 30 days after it becomes due and payable, it may be recovered by a civil action brought by the Secretary.

V. Legal Basis for the Proposed Rule

Section 39(a) of the LHWCA, 33 U.S.C. 939(a)(1), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration of the Act. 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). This rule falls well within these statutory grants of authority.

VI. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

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 the proposed rule is adopted in final, all forms and documents currently approved by OMB are subject to electronic submission except when a party obtains permission from OWCP to use a different submission method or otherwise provided by statute. The Department has submitted an Information Collection Request (ICR) for all of these forms under the procedures for review and clearance contained in 5 CFR 1320.13. The Exchange of Documents and Information; Electronic Signatures Rule (*see* proposed § 702.101) 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. The Department will require private parties to use an electronic method for the transmission of information to OWCP.

The collection of information requirements are contained within ICRs assigned the following OMB control numbers: 1240–0003, 1240–0004, 1240–0005, 1240–0008, 1240–0012, 1240–0014, 1240–0025, 1240–0026, 1240–0029, 1240–0036, 1240–0040, 1240–0041, 1240–0042, 1240–0045, 1240–0053, and 1240–0058. The regulatory sections specifying the submission procedures are found in the following sections: 20 CFR 702.111, 702.121, 702.132, 702.162, 702.174, 702.175, 702.201, 702.202, 702.221, 702.234, 702.235, 702.236, 702.242, 702.243, 702.251, 702.285, 702.317, 702.321, 702.349, 702.407, 702.419, 703.116, 703.203, 703.204, 703.205, 703.209, 703.210, 703.212, 703.303, and 703.310. *See also* 42 U.S.C. 1652.

Although the rule does not eliminate current methods of submission for these collections by mail where consistent with statute, the parties will have to submit more documents electronically. OWCP anticipates electronic submission will lead to cost savings in hours and mailing costs (envelopes and postage) for the parties. Given the response rate for each of the existing collections, current combined mailing costs are estimated at \$118,657. Once the rule becomes final, the Department anticipates a 97 percent rate of

electronic submission, an accompanying reduction in postal mail submission, and a resulting cost savings of \$115,097. The Department has submitted a request to OMB for a non-substantive change for each existing ICR cited above to obtain approval for the changed cost estimate resulting from electronic submission.

The proposed rule imposes two new information collections. First, proposed § 702.201(a)(1)(i) generally requires parties and their representatives to submit documents and information electronically to OWCP. But the rule allows an OWCP district director to allow an alternative filing method for individuals who do not have a computer, access to the internet, or the ability to use the internet. OWCP plans to use a new form that will allow individuals to self-certify that they qualify for this exception. For this form, OWCP estimates 3,048 respondents with an annual time burden of 254 hours. Because this form will only be used when other documents are being submitted, there is no additional cost burden. Second, proposed § 702.242 requires parties to apply for approval of a settlement using an application form prescribed by OWCP. As explained in the section-by-section analysis above, OWCP believes use of a comprehensive form will lessen the burdens on the parties and the adjudicators who must review the settlements. Although OWCP already has an approved settlement application form (*see* OMB control number 1240–0058, Form LS–8), the new form will collect some additional information in a substantially revised format. For this form, OWCP estimates 5,400 respondents with an annual time burden of 1,782 hours and other costs burden of \$289.17. The Department has submitted a request to OMB for approval of both new information collections.

The submitted ICRs for the new collections imposed by this rule will be available for public inspection for at least 30 days under the “Currently Under Review” portion of the Information Collection Review section on the *reginfo.gov* website, available at: <http://www.reginfo.gov/public/do/PRAMain>. 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 NW, Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: 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 it receives within 30 days of publication of this NPRM in the **Federal Register**. To help ensure appropriate consideration, comments should mention at least one of the OMB control numbers noted in this section.

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

- 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, through the use of appropriate automated, electronic, 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: 24,631.

Total Estimated Annual Time Burden: 6,158 hours.

Total Estimated Annual Other Costs Burden: \$232.76.

2. *Title of Collection:* Carrier's Report of Issuance of Policy.

OMB Control Number: 1240-0004.

Total Estimated Number of Responses: 1,500.

Estimated Annual Time Burden: 25 hours.

Total Estimated Annual Other Costs Burden: \$0.47.

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: 695.

Estimated Annual Time Burden: 869 hours.

Total Estimated Annual Other Costs Burden: \$12.08.

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: 90,759.

Estimated Annual Time Burden: 32,971 hours.

Estimated Annual Other Costs Burden: \$786.09.

5. *Title of Collection:* Request for Earnings Information.

OMB Control Number: 1240-0025.

Total Estimated Number of Responses: 100.

Estimated Annual Time Burden: 25 hours.

Estimated Annual Other Costs Burden: \$0.95.

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: \$0.19.

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

OMB Control Number: 1240-0029.

Total Estimated Number of Responses: 90,000.

Estimated Annual Time Burden: 48,750 hours.

Total Estimated Annual Other Costs Burden: \$2,532,816.

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

OMB Control Number: 1240-0036.

Total Est. Number of Responses: 3,513.

Estimated Annual Time Burden: 586 hours.

Total Estimated Annual Other Costs Burden: \$61.13.

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: \$0.71.

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

OMB Control Number: 1240-0041.

Total Estimated Number of Responses: 37,800.

Total Estimated Annual Time Burden: 6,300 hours.

Total Estimated Annual Other Costs Burden: \$357.21.

11. *Title of Collection:* Notice of Controversy 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: \$295.97.

12. *Title of Collection:* Request for Electronic Service of Orders—Waiver of Certified Mail Requirement.

OMB Control Number: 1240-0053.

Total Estimated Number of Responses: 14,000.

Estimated Annual Time Burden: 770 hours.

Estimated Annual Other Costs Burden: \$0.00.

13. *Title of Collection:* Request for Intervention, Longshore and Harbor Workers' Compensation Act.

OMB Control Number: 1240-0058.

Total Estimated Number of Responses: 12,414.

Total Estimated Annual Time Burden: 3,189 hours.

Total Estimated Annual Other Costs Burden: \$342.91.

14. *Title of Collection:* Rehabilitation Plan and Award.

OMB Control Number: 1240-0045.

Total Estimated Number of Responses: 3,913.

Estimated Annual Time Burden: 1957 hours.

Estimated Annual Other Costs Burden: \$0.00.

15. *Title of Collection:* Rehabilitation Maintenance Certificate.

OMB Control Number: 1240-0012.

Total Estimated Number of Responses: 3,452.

Estimated Annual Time Burden: 575 hours.

Estimated Annual Other Costs Burden: \$0.00.

16. *Title of Collection:* Rehabilitation Action Report.

OMB Control Number: 1240–0008.

Total Estimated Number of Responses: 4,066.

Estimated Annual Time Burden: 678 hours.

Estimated Annual Other Costs Burden: \$0.00.

VII. 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, reducing costs, harmonizing rules, and promoting flexibility. The Department has considered this proposed rule with these principles in mind and has concluded that the regulated community would benefit from this regulation for several reasons.

Requiring most parties and representatives to submit documents electronically to OWCP will speed claims processing and allow OWCP to be more responsive to requests for assistance. Currently, OWCP must scan paper submissions into digital format and add them to the electronic case file before claims staff can take any action on them. When coupled with the time to deliver paper submissions to OWCP, this can delay responding to a request by several days. In contrast, electronic submissions are immediately associated with the case file and available to claims staff. Codifying the use of digital signatures in the regulations will also simplify electronic and even paper submissions (when allowed).

Similarly, streamlining the settlement process by limiting the amount of information the parties must submit with every application will reduce administrative burdens on both the parties and OWCP. All of these changes will result in more expeditious resolution of disputes, thus furthering the “certain, prompt recovery for employees” the Act guarantees. *Roberts v. Sea-Land Servs., Inc.*, 556 U.S. 93, 97; 132 S.Ct. 1350, 1354 (2012).

The Department does not believe parties would incur additional costs as a result of the revisions to the electronic

submission of documents and information regulation and may see a small financial benefit. As noted, more than 80 percent of documents currently sent to OWCP are submitted electronically. For these parties and representatives, no change in their current practices would be needed. Although the parties and representatives who currently submit paper documents would have to alter their practice, these alterations may result in cost savings by reducing paper copying charges and mailing or delivery expenses. Even if parties and representatives incurred minimal additional costs, they would be outweighed by the benefits reaped—primarily more expeditious claims processing and delivery of compensation.

The Department also believes that promulgating procedural rules related to civil money penalties would benefit employers (and their insurance carriers) against whom OWCP may assess penalties. Currently, the regulations contain no set procedures for employers to challenge penalties, which can lead to procedural decisions being made on a case-by-case basis. The proposed rules would establish a transparent and consistent pathway for assessment and adjudication of penalties: Clear notice of the penalty and an opportunity to contest it before imposed by OWCP; hearing by an administrative law judge upon request; discretionary review by the Secretary; and a stay of payment for the penalty assessed until review is complete and the decision becomes final. These procedures would clearly protect an employer’s rights to be fully heard before having to pay a penalty.

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

VIII. 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.” This rule does not include any Federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100,000,000.

IX. 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 an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have “a significant economic impact on a substantial number of small entities” or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many longshore employers and a handful of insurance carriers may be small entities within the meaning of the RFA, *see generally* 77 FR 19471–72 (March 30, 2012), this rule, if adopted in final, will not have a significant economic impact on them. Most employers and insurance carriers already submit documents and information to OWCP electronically, and electronic filing is usually associated with slightly lower costs than traditional paper filings. Thus, mandating electronic submission will have little to no impact on these parties. Similarly, streamlining the settlement-application submission process will have no negative economic impact and a potentially small positive impact on employers and carriers. Finally, the regulations related to penalties generally set procedures with no economic impact. To the extent the proposed rules affect the penalty amount assessed by OWCP, the rules explicitly take into account small entities by incorporating the mitigation provisions in section 223 of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), where appropriate. *See* proposed § 702.903(c)(2).

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, however, 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.

X. 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.” 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,” if promulgated as a final rule.

XI. 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 in 20 CFR Part 702

Administrative practice and procedure, Claims, Longshore and harbor workers, Maximum compensation rates, Minimum compensation rates, Workers’ compensation.

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

PART 702—ADMINISTRATION AND PROCEDURE

■ 1. The authority citation for part 702 continues 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; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary’s Order 10–2009, 74 FR 58834.

■ 2. Revise § 702.101 to read as follows:

§ 702.101 Exchange of documents and information; electronic signatures.

(a) Except as otherwise provided by §§ 702.203, 702.215 and 702.349, all documents and information under this subchapter—

(1) Sent to OWCP—

(i) Must be submitted electronically through an OWCP-authorized system unless a district director permits an alternative submission method for individuals who do not have a computer, lack access to the internet, or lack the ability to utilize the internet. Documents and information submitted through an OWCP-authorized electronic system are considered filed when received.

(ii) When authorized to use an alternative method, submission may be made by postal mail, commercial

delivery service (such as Federal Express or United Parcel Service), hand delivery, or another method authorized by OWCP. Documents and information submitted using an alternative method are considered filed when received by OWCP.

(2) Sent by OWCP to parties and their representatives must be sent—

(i) Electronically by a reliable electronic method;

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

(iii) Electronically through an OWCP-authorized system that delivers documents to the parties and their representatives or notifies them when documents have been added to the case file.

(3) Sent by any party or representative to another party or representative must be sent by any method allowed under paragraphs (a)(2)(i) through (iii) of this section, except that when sent by a reliable electronic method, the receiving party or representative must agree in writing to receive documents and information by that method.

(b) For purposes of paragraph (a) of this section, reliable electronic methods for delivering documents include, but are not limited to, email, facsimile and web portal.

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

(d) The provisions in paragraphs (a) through (c) 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.

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

(f) 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.

(g) Any requirement in this subchapter that a document be signed may be satisfied by an electronic signature.

(1) Definitions. For purposes of this paragraph—

Document means any form of writing submitted to OWCP, including applications, claim forms, notices of payments, and reports of injury.

Electronic signature means a mark on a document, created by electronic means, that indicates the signatory’s endorsement of or assent to the terms of a document. An electronic signature may serve as the binding signature for a business or other corporate or collective entity if the signatory has the legal authority to bind the entity.

Electronic signature device means a code, password, or other mechanism that is used by a signatory to create or input electronic signatures on a document or to log in to an electronic signature program. The code, password, or mechanism must be unique to the signatory at the time the signature is created and the signatory must be uniquely entitled to use it. The device is compromised if the code or mechanism is available for use by any other person. Examples of such devices include a unique username and password, a PIN number or other numeric code, biometrics, cryptographic controls such as asymmetric or symmetric cryptography, and software that takes a scan of a user’s ID.

Electronic signature program means a software application that allows a signatory to log in using an electronic signature device and electronically sign a document.

Signatory means any person who, on behalf of themselves or an entity for whom they are authorized to sign, places an electronic signature on a document.

(2) Acceptable methods of creating an electronic signature include—

(i) The use of an electronic signature device;

(ii) The use of an electronic signature program, provided that such program includes the use of an electronic signature device;

(iii) The signatory typing their name onto an electronic document following a “/s” mark;

(iv) The signatory using a mouse, touchpad, stylus, or other equivalent device to physically draw their signature on a display screen;

(v) Other methods allowed by OWCP.

(3) A document containing multiple electronic signatures may utilize the same method or methods of signing with respect to each signature, or may utilize different methods, provided the methods are acceptable methods pursuant to paragraph (g)(2) of this section.

(4) Entities submitting electronically-signed documents must—

(i) Ensure that all signatures allow OWCP to clearly identify the signatory. Any signature made on behalf of a business or other collective entity should identify the individual person signing.

(ii) Keep a record of how the electronic signature was obtained, including any electronic signature programs and/or electronic signature devices used, and be able to provide this information at OWCP's request.

(iii) Keep a record of the date the signature was created and be able to provide this information at OWCP's request.

(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) Subject to paragraph (a) of this section, 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 electronic (or physical when permitted) 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 an electronic (or physical when permitted) location specified by OWCP for that district director.

■ 3. Revise § 702.203(b) to read as follows:

§ 702.203 Employer's report; how given.

(a) * * *

(b) Employers may send a report of injury to the district director electronically through an OWCP-authorized system (*see* § 702.101(a)(1)). If the employer sends its report of injury by U.S. postal mail, the report will be considered filed on the date that the employer mails the document. If the report is filed by mail, the employer must retain documentation demonstrating when the report was mailed.

■ 4. Revise § 702.204 to read as follows:

§ 702.204 Employer's report; penalty for failure to furnish and or falsifying.

(a) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by § 702.201, or who knowingly or willfully makes a false statement or misrepresentation in any report, shall be subject to a civil penalty not to exceed \$24,441 for each such failure, refusal,

false statement, or misrepresentation for which penalties are assessed after January 15, 2020.

(1) For purposes of failing or refusing to send a report required by § 702.201, an employer, insurance carrier, or self-insured employer—

(i) Acts knowingly if it has actual knowledge of the employee's injury or death, that the injury or death is likely covered by the Act, and that a report is required; or if it had reason to know about the employee's injury or death, that the injury or death is likely covered by the Act, and that a report is required.

(ii) Acts willfully if it intentionally disregards the reporting requirement or is indifferent to the reporting requirement.

(2) Proof of either a false statement or misrepresentation made knowingly and willfully in a report required by § 702.201 is sufficient to warrant imposition of a penalty under this section.

(b) The district director has the authority and responsibility for assessing the penalty described in paragraph (a) of this section using the procedures set forth at subpart I of this part.

(c) In determining the penalty amount under paragraph (a) of this section, the district director will consider how many penalties, if any, have been assessed against the employer, insurance carrier, or self-insured employer in the two years preceding the most recent reporting violation. In determining the number of prior penalties assessed, the district director will include penalties assessed against an entity's parent company, subsidiaries, and related entities. The district director will assess a penalty in an amount equaling the following percentages of the maximum penalty, rounded up to the next dollar:

TABLE 1 TO PARAGRAPH (c)

Number of violations	Percentage of maximum penalty assessed
First late/falsified report:	2
Second late/falsified report:	4
Third late/falsified report:	8
Fourth late/falsified report:	16
Fifth late/falsified report:	32
Sixth late/falsified report:	64
Seventh (and above) late/falsified report:	100

■ 5. 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 electronically through an OWCP-authorized system, by mail, or orally in person or by telephone.

■ 6. Revise the section heading of § 702.233 to read as follows:

§ 702.233 Additional compensation for failure to pay without an award.

* * * * *

■ 7. Revise § 702.236 to read as follows:

§ 702.236 Penalty for failure to report termination of payments.

Any employer failing to notify the district director that the final payment of compensation has been made as required by § 702.235 shall be assessed a civil penalty in the amount of \$297 for any violation for which penalties are assessed after January 15, 2020. The district director has the authority and responsibility for assessing this penalty using the procedures set forth at Subpart I of this part.

■ 8. Revise § 702.241 to read as follows:

§ 702.241 Settlements: Definitions; general information.

(a) As used in §§ 702.241 through 702.243, the term—

Adjudicator means district director or administrative law judge (ALJ).

Compensation case means a claim for compensation or other statement indicating potential entitlement to compensation or benefits.

Counsel means any attorney admitted to the bar of any state, territory, or the District of Columbia.

(b) Parties may settle a compensation case only with an adjudicator's approval. The settlement may include disability compensation, death benefits, medical benefits, attorney's fees, and costs. An adjudicator must approve the settlement unless it is inadequate or was procured by duress. If all parties to the settlement are represented by counsel, completed applications will be deemed approved unless specifically disapproved by an adjudicator within 30 days of receipt of the application unless the adjudicator requests additional information under § 702.243(a).

(c) Receipt of a settlement application occurs—

(1) For submissions to a district director, on the day OWCP receives a complete application.

(2) For submissions to an ALJ, when the application is considered filed under the OALJ's rules of practice and procedure (29 CFR part 18).

(3) For compensation cases pending before a higher tribunal, the date the tribunal takes action indicating the

adjudicator should consider the settlement (*e.g.*, enters an order remanding the case, dismisses the appeal).

(d) The 30-day period for consideration of a settlement begins the day after the adjudicator's receipt of a complete application. If the 30th day is a Saturday, Sunday, or legal holiday, the next business day will be considered the 30th day.

(e) An agreement by the parties to settle a compensation case is limited to the rights of the parties and to claims then in existence. Settlement of disability compensation or medical benefits for the injured employee will not affect, in any way, the right of the employee's survivor(s) to claim death benefits.

■ 9. Revise § 702.242 to read as follows:

§ 702.242 Settlement application; contents and submission

(a) A settlement application must be made on a form prescribed by OWCP. The settlement application must include all information required by the form, including—

(1) A brief summary of the facts of the case, including a description of the incident; a description of the nature of the injury; the degree of impairment or disability; the claimant's average weekly wage; and a summary of compensation paid;

(2) The amounts to be paid under the settlement for compensation, medical benefits, death benefits, attorney's fees and costs, as appropriate;

(3) The signatures of all parties agreeing to the settlement as stated in the application and attesting that the settlement is adequate and was not procured by duress; and

(4) If the settlement application includes the parties' agreement on more than one form of compensation or benefits, a statement whether the parties agree to settle the parts independently if the adjudicator does not approve the settlement in its entirety.

(b) The adjudicator may request additional information from the parties if he or she believes, under the particular circumstances of the case, that such information is necessary to determine whether the settlement is adequate or has been procured by duress.

(c) The adjudicator will not consider any information a party submits other than the settlement application required by paragraph (a) of this section, additional information requested by the adjudicator under paragraph (b) of this section, or information in the case record before the settlement application is filed.

(d) To submit a completed settlement application—

(1) The parties must submit the application to a district director in all cases unless the case is pending before the OALJ. Submission must be made under the procedures set forth at § 702.101(a) except that if a hard copy is submitted under that provision, the application must be sent by certified mail with return receipt requested or by a commercial delivery service with tracking capability that provides reliable proof of delivery to the district director.

(2) In cases pending before the OALJ, the parties may either—

(i) Request that the case be remanded to the district director for consideration of the application and, after remand, file the application with a district director under paragraph (d)(1) of this section; or

(ii) Submit the application to OALJ under the procedures set forth in the OALJ's rules of practice and procedures (29 CFR part 18) for consideration.

(e) If the parties submit a settlement application to a district director while the compensation case is pending at the Benefits Review Board or a court, the parties must notify the Board or the court and request that the case be remanded or otherwise returned to the district director for consideration of the application.

■ 10. Revise § 702.243 to read as follows:

§ 702.243 Settlement approval and disapproval.

(a) Within 30 days of receipt, the adjudicator must evaluate the settlement application and notify the parties in writing if the application is incomplete or if the adjudicator requests additional information. If all parties are represented by counsel, any such notice must also state that the 30-day period in § 702.241(b) will not commence until the adjudicator receives the completed application and the additional information.

(b) The adjudicator must issue a compensation order approving or disapproving the settlement application, and file and serve it on the parties in accordance with § 702.349 unless the settlement has already been deemed approved under paragraph (f) of this section. If the adjudicator disapproves the settlement application in any part, the order must include the adjudicator's reasons for finding the settlement inadequate or procured by duress.

(c) In determining whether the settlement is adequate and procured without duress, the adjudicator must consider all of the information required by § 702.242(a), any additional information requested under

§ 702.242(b), and the parties' attestations in the settlement application, to which the adjudicator may defer.

(d) If the adjudicator disapproves any part of a settlement application, the entire application is disapproved unless the parties have stated in the application that they agree to settle the parts independently.

(e) After a settlement application is disapproved by—

(1) A district director, the parties may submit an amended application to the district director or request a hearing before an ALJ on either the settlement disapproval or the merits of the case under sections 8 and 19 of the Act, 33 U.S.C. 908 and 919.

(2) An ALJ, the parties may submit an amended application to the ALJ, file an appeal with the Benefits Review Board under section 21 of Act, 33 U.S.C. 921, or proceed with a hearing on the merits of the case.

(f) If all parties to the settlement are represented by counsel and the adjudicator does not formally approve or disapprove the application within 30 days after receipt of a complete settlement application and any additional requested information (*see* § 702.242(b)), the application will be deemed approved. A settlement application that is deemed approved under this paragraph will be considered filed in the office of the district director on the last day of the 30-day period as calculated under § 702.241(d).

(g) The liability of an employer/insurance carrier is not discharged until the settlement is specifically approved by a compensation order issued by the adjudicator or deemed approved under § 702.241(b) and paragraph (f) of this section.

(h) Attorney's fees in a settlement application may include fees for work performed before other adjudicators and tribunals. If the settlement is approved, the attorney's fees will be considered approved within the meaning of § 702.132.

(i) When parties settle cases being paid under a final compensation order where no substantive issues are in dispute, the adjudicator, in determining whether the proposed settlement amount is adequate, may compare the amount to the present value of future compensation payments commuted, computed by:

(1) Determining the probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation according to a current life expectancy table or calculator specified by OWCP; and

(2) Applying the discount rate specified at 28 U.S.C. 1961.

■ 11. In § 702.271:

- a. Revise the section heading and paragraph (a);
- b. Redesignate paragraphs (b) through (d) as (c) through (e); and
- c. Add new paragraph (b).

The revisions and addition read as follows:

§ 702.271 Discrimination against employees who bring proceedings; prohibition.

(a) No employer or its duly authorized agent may discharge or in any manner discriminate against an employee as to his or her employment because that employee:

- (1) Has claimed or attempted to claim compensation under the Act; or
- (2) Has testified or is about to testify in a proceeding under the Act.

(b) To discharge or refuse to employ a person who has been adjudicated to have filed a fraudulent claim for compensation or otherwise made a false statement or misrepresentation under section 31(a)(1) of the Act, 33 U.S.C. 931(a)(1), is not a violation of paragraph (a) of this section.

* * * * *

■ 12. Revise § 702.273 to read as follows:

§ 702.273 Penalty for discrimination.

Any employer who violates § 702.271(a) will be subject to a civil penalty of not less than \$2,444 or more than \$12,219 when assessed after January 15, 2020 to be paid by the employer alone (and not by a carrier). The district director has the authority and responsibility for assessing this penalty using the procedures set forth at subpart I of this part. Any penalty assessed by the district director prior to a hearing on the discrimination complaint will be stayed pending final resolution of the complaint by the Administrative Law Judge or higher tribunal.

■ 13. Add subpart I to read as follows:

Subpart I—Procedures for Civil Money Penalties

Sec.

702.901 Scope of this part.

702.902 Definitions.

702.903 Notice of penalty; response; consequences of no response.

702.904 Decision on penalty after timely response; request for hearing.

702.905 Referral to the Office of Administrative Law Judges.

702.906 Decision and order of Administrative Law Judge.

702.907 [Reserved]

702.908 Review by the Secretary.

702.909 Discretionary review.

702.910 Final decision of the Secretary.

702.911 Settlement of penalty.

702.912 Collection and recovery of penalty.

Subpart I—Procedures for Civil Money Penalties

§ 702.901 Scope of this part.

(a) These procedures apply when the district director imposes the civil money penalties prescribed by § 702.204, § 702.236, or § 702.273.

(b) The district director will deposit all penalties collected into the special fund described in section 44 of the Act, 33 U.S.C. 944.

§ 702.902 Definitions.

In addition to the definitions provided in §§ 701.301 and 701.302, the following definition applies to this subpart:

Respondent means the employer, insurance carrier, or self-insured employer against whom the district director is seeking to assess a civil penalty.

§ 702.903 Notice of penalty; response; consequences of no response.

(a) The district director will serve a written notice through an electronic method authorized by OWCP or by trackable delivery method on each respondent against whom he or she is considering assessing a penalty. Where service is not accepted by a respondent, the notice will be deemed received by the respondent on the attempted date of delivery.

(b) The notice must set forth the—

- (1) Facts giving rise to the penalty;
- (2) Statutory and regulatory basis for the penalty;

(3) Amount of the proposed penalty, including an explanation for the amount set;

(4) Consequences of not submitting all documentation to the district director as set forth in paragraph (d) of this section; and

(5) Consequences of failing to timely respond to the notice as set forth in paragraph (e) of this section.

(c) The respondent must respond within 30 days of receipt of the notice. The response may include—

(1) Documentation regarding any facts relevant to the reason for the penalty; and

(2) Documentation supporting a request for mitigation of the penalty amount under Section 223 of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 601 (note), if the penalty arises under § 702.236.

(d) Documentation not presented to the district director may not be admitted in any further proceedings before an Administrative Law Judge or other tribunal unless the respondent

demonstrates exceptional circumstances prevented submission to the district director.

(e) If the respondent does not respond within 30 days of receipt of the notice, the assessment and amount of the penalty set forth in the notice will be deemed final, and collection and recovery of the penalty may be instituted under § 702.911.

§ 702.904 Decision on penalty after timely response; request for hearing.

(a) If the respondent files a timely response to the notice described in § 702.903, the district director will review the facts and any argument presented and issue a decision on the penalty. The decision must—

(1) Include a statement of the reasons for the assessment and the amount of the penalty;

(2) Set forth the respondent's right to request a hearing on the district director's decision and the method for doing so; and

(3) Set forth the consequences of failing to timely respond to the decision as set forth in paragraph (d) of this section.

(b) The respondent has 15 days from receipt of the decision to request a hearing before an Administrative Law Judge by filing a request for hearing with the district director. The request must—

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific determinations in the district director's decision with which the respondent disagrees;

(4) Be signed by the respondent making the request or by the respondent's authorized representative;

(5) State both the physical mailing address and electronic mailing address for the respondent and the authorized representative for receipt of further communications.

(c) A timely hearing request will operate to stay collection of the penalty until final resolution of the penalty is reached by the Administrative Law Judge or the Secretary, as appropriate.

(d) If the respondent does not request a hearing within 15 days of receipt of the notice, the assessment and amount of the penalty set forth in the district director's decision will be deemed final, and collection and recovery of the penalty may be instituted under § 702.912.

§ 702.905 Referral to the Office of Administrative Law Judges.

(a) When the district director receives a request for hearing in response to a decision issued under § 702.904, the district director will immediately notify

the Chief Administrative Law Judge, who will assign an Administrative Law Judge to the case. The district director will also forward to the Office of Administrative Law Judges the following documentation, which will be considered the administrative record:

(1) The district director's notice and decision issued under §§ 702.903 and 702.904;

(2) The documentation upon which the district director relied in making his or her decision;

(3) All written responses and documentation filed by the respondent with the district director;

(4) A statement of the issues referred by the district director for hearing.

(b) Except as otherwise provided in this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges at 29 CFR part 18 will apply to hearings under this subpart.

§ 702.906 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge must consider only those issues referred by the district director for hearing.

(b) On issues properly before him or her, the Administrative Law Judge must limit his or her determinations to:

(1) Whether the respondent has violated the sections of the Act and regulations under which the penalty was assessed;

(2) The correctness of the penalty assessed by the district director as set forth in §§ 702.204, 702.236, 702.271, and 702.903(c)(2).

(c) The decision of the Administrative Law Judge must include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue referred.

(d) On the date of issuance, the Administrative Law Judge must serve a copy of the decision and order on the district director and the respondent by a trackable delivery method.

(e) Any party may ask the Administrative Law Judge to reconsider his or her decision by filing a motion within 30 days of the date of issuance of the decision. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review under § 702.908.

(f) If no party files a motion for reconsideration or petition for review within 30 days of the issuance of the Administrative Law Judge's decision, the decision will be deemed final, and collection and recovery of the penalty may be instituted under § 702.912.

(g) At the conclusion of all hearing proceedings, the Administrative Law Judge will forward the complete hearing

record to the district director who referred the matter for hearing, who will retain custody of the record.

§ 702.907 [Reserved]

§ 702.908 Review by the Secretary.

(a) Any party aggrieved by the decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Copies of the petition must be served on all parties and on the Chief Administrative Law Judge.

(b) If any party files a timely motion for reconsideration under § 702.906(e), any petition for review, whether filed prior to or subsequent to the filing of a timely motion for reconsideration, will be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party will begin upon issuance of a decision on reconsideration.

(c) The petition for review must—

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific determinations in the Administrative Law Judge's decision with which the party disagrees;

(4) Be signed by the party or the party's authorized representative; and

(5) Attach copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge that would assist the Secretary in determining whether review is warranted.

(d) All documents submitted to the Secretary, including a petition for review, must be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210 or alternative method required by the Secretary. Documents are not considered filed with the Secretary until actually received.

§ 702.909 Discretionary review.

(a) Following receipt of a timely petition for review, the Secretary will determine whether the Administrative Law Judge's decision warrants review. This determination is solely within the Secretary's discretion.

(1) If the Secretary does not notify the parties within 30 days of the petition for review's filing that he or she will review the decision, the Administrative Law Judge's decision will be considered the final decision of the agency at the expiration of that 30 days.

(2) If the Secretary decides to review the decision, the Secretary will notify the parties within 30 days of the petition for review's filing of the issue

or issues to be reviewed and set a schedule for the parties to submit written argument in whatever form the Secretary deems appropriate.

(b) If the Secretary decides to review the decision, the district director must forward the administrative record compiled before the Administrative Law Judge to the Secretary.

§ 702.910 Final decision of the Secretary.

The Secretary's review will be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law will be *de novo*. Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision must be served upon all parties and the Chief Administrative Law Judge.

§ 702.911 Settlement of penalty.

At any time during proceedings under this subpart, the district director and the respondent may enter into a settlement of the penalty.

§ 702.912 Collection and recovery of penalty.

(a) When the determination of the amount of the penalty becomes final (*see* §§ 903(e), 904(d), 906(f), 909(a)(1), 910), the penalty is immediately due and payable to the U.S. Department of Labor on behalf of the special fund described in section 44 of the Act, 33 U.S.C. 944. The respondent will promptly remit the final penalty imposed to the Secretary of Labor.

(b) If such remittance is not received within 30 days after it becomes due and payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

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