

U. S. Department of Labor

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



August 26, 2016

Dear Stakeholders:

The Office of Workers' Compensation Programs has published for public comment a proposed rule that would implement the Longshore and Harbor Workers' Compensation Act's maximum and minimum compensation provisions as outlined in Section 6 of the Act. The proposed rule would also address the Act's section 10(f) annual adjustment provision. Because of your interest in the Longshore program, I wanted to notify you of this publication and provide you with a summary of the changes we are proposing as well as some background about why we are proposing these new rules.

The National Average Weekly Wage has historically risen from year to year, and this determination affects the maximum and minimum compensation rates under Section 6. Questions regarding which fiscal year's maximum wage applied in various situations led to litigation. These questions have now largely been resolved through decisions of the courts of appeals and the Supreme Court. To provide clarity for the parties and forestall any further litigation, the proposed rules would implement the Act's maximum and minimum compensation provisions in line with those court decisions. Specifically, the rule:

- prescribes which maximum compensation rates apply to any particular injury by implementing the Supreme Court's interpretation of the "newly awarded" phrase (*i.e.*, compensation is "newly awarded" when the employee first becomes disabled rather than when a compensation order is entered) and the interpretation of the "currently receiving" phrase adopted by two courts of appeals (*i.e.*, "currently receiving" means the date the employee is entitled to compensation rather than the date it is actually paid);
- addresses the related question of how the Act's minimum compensation provisions apply; and
- outlines the relationship between Section 6's maximum and minimum compensation rates and Section 10(f)'s annual adjustment provision.

I feel strongly that these proposed rules, if adopted in final, would provide a comprehensive regulatory scheme to facilitate timely and accurate payment of compensation to injured workers. The proposed rule was published in the Federal Register on August 26, 2016. You may access it on the Federal Register's website directly or through the links provided on our website at <https://www.dol.gov/owcp/dlhwc>.

Sincerely,

ANTONIO A. RIOS
Director, Division of
Longshore and Harbor Workers' Compensation