Transmittals

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LIST of TRANSMITTALS

22-01	Issued: November 15, 2021	PM Chapter 07-0600	DBA Waivers
21-01	Issued: December 1, 2020	PM Chapter 4-400	Delegation of Authority
17-02	Issued: December 9, 2016	PM Chapter 8-302	Penalty: Late Report of Injury (30e)
17-01	Issued: October 3, 2016	PM Chapter 6-300	Special Fund Entitlement Reviews
16-03	Issued: January 19, 2016	PM Chapter 8-302	Late Report of Injury
16-02	Issued: December 1, 2015	PM Chapter 1-501	Transfer of Files
16-01	Issued: November 18, 2015	PM Chapter 4-200	Informal Conferences
15-01	Issued: March 23, 2015	PM Chapter 3-502	Commutations
14-01	Issued: June 23, 2014	PM Chapter 4-200	Informal Conferences

Transmittal No. 22-01

RELEASE – NEW CHAPTER IN LHWCA PROCEDURE MANUAL

CHAPTER 07-0600, DBA WAIVERS

LHWCA TRANSMITTAL NO: 22-01 November 15, 2021

EXPLANATION OF MATERIAL TRANSMITTED:

The Division of Federal Employees', Longshore and Harbor Workers' Compensation (DLHWC) has added LWHCA Procedure Manual (PM) Chapter 07-0600 as outlined below, to reflect the Department of Labor's discretion to waive the application of the Defense Base Act (DBA) "with respect to any contract, subcontract, or subordinate contract, work location under such contracts or classification of employees," upon the request of an agency head. DBA section 1(e), 42 U.S.C. § 1651(e).

Paragraph 1, **Purpose and Scope** outlines that the chapter's focus is procedures for waiving application of the DBA.

Paragraph 2, **Background and Effect of DBA Waivers** provides statutory reference for and effect of DBA Waivers.

Paragraph 3, **Types of Waivers and DOL Policies on Waivers** explains the types of waivers and their applications.

Paragraph 4, **Waiver Request** establishes that only a federal agency of the United States may request waiver of the DBA and that DLHWC's response regarding the Waiver Request shall be communicated to the requesting agency.

Paragraph 5, **Waiver Request Package** outlines what a complete DBA waiver request package must consist of: Form BEC 565, a comparison of the workers' compensation benefits available in the relevant country to the benefits under the DBA, English translations of the local workers' compensation provisions or other relevant law or policy, website addresses from which the requestor has obtained any information and a memo or letter explaining any differences between the benefits and scope of coverage under the DBA and the relevant local workers' compensation law.

Paragraph 6, **Evaluation of Waiver Request** establishes the procedure for the Director, DLHWC or their designee to evaluate the request by making sure all required materials in the Waiver Request Package have been submitted, acknowledging receipt to the requester, evaluating the materials for the required information, and developing as necessary by sending follow up questions to the agency making the request.

Paragraph 7, **Issuing a Decision Granting a Waiver** outlines actions for Longshore staff to take if the waiver is being granted.

Paragraph 8, **Denying a Waiver** outlines actions for Longshore staff to take if the waiver is being denied.

Paragraph 9, **Update the Website** outlines actions for Longshore staff to take to update the Active DBA Waivers page of the Longshore website.

Paragraph 10, **Remind the Requesting Department or Agency to adjust Contract Provisions** outlines the need to remind the department or agency requesting the waiver to advise all contracting and contracted personnel of any status changes of existing DBA waivers, particularly if they affect any existing periods of contract awards.

Paragraph 11, **Renewal** establishes that the procedures for waiver renewal are the same as those for granting an initial waiver.

Paragraph 12, **Monitor the Website for Waiver Expiration Dates** provides procedure for website updates when a waiver is within six months of expiration, or if a request for a renewal has been submitted.

Paragraph 13, **Responsibilities** summarizes the responsibilities of the United States Department or Agency Heads, Contracting Agencies, and DOL.

Paragraph 14, **Responses to Inquiries** outlines actions DOL should take when it receives inquiries from insurance companies, brokers, or employers regarding DBA waivers.

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

Because transmittal of the Longshore Procedure Manual is primarily electronic, DLHWC has discontinued the practice of inserting page numbers when an entire chapter is reissued.

Longshore procedure manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
				07-0600	

Distribution: List No. 1– (District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services).

Transmittal No. 21-01

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 4-400, DELEGATION OF AUTHORITY

LHWCA TRANSMITTAL NO: 21-01 December 1, 2020

EXPLANATION OF MATERIAL TRANSMITTED:

Procedure Manual (PM) Chapter 4-400 has been revised, as outlined below, to reflect revised Delegations of Authority from the Secretary of Labor to, and further sub-delegation by, the Director, OWCP; DLHWC Director; District Directors (DD); and GS-12 Claims Examiners (CE) to administer the provisions of the Longshore Act and its extensions. The Chapter serves as the formal action establishing and memorializing delegations of authority (eliminating the need for memoranda or correspondence to effectuate the delegation) for certain duties, functions, and tasks from the Director, OWCP to the DLHWC Director or DDs, from the DLHWC Director to the DDs, and from the DDs to the GS-12 CEs. Responsibilities delegated to non-GS-12 CEs will be specifically memorialized in writing by the District Director.

Paragraph 2, **Delegation of Authority**, was revised to delete a reference to the requirement for a specific Delegation of Authority, memorialized by memorandum or letter, before performing the duties of the Secretary of Labor, or designee, Director, OWCP Director, DLHWC, or a District Director. The Chapter now serves as the official Delegation of Authority and enumerates specific types of authority, functions, and duties which may be delegated to the DLHWC Director, the DD, and CEs, with specific delegation of authority to GS-12 CEs for certain duties of the DDs, including some duties and functions allocated by statute to the "Deputy Commissioner." The Chapter also confirms that a higher level position can revoke the authority of a lower level position. Signature Authority allows each signing official exercising delegated authority, whether the Director, DLHWC, DD, or CE, to sign decisions and correspondence with their own name and title.

Paragraph 3, **Legal and Historical Perspective**, was revised to add a legal perspective to the history of the Delegation of Authority. The paragraph enumerates either sole or joint authority of the DDs for a variety of tasks including, but not limited to, approving section 8(i) settlement agreements, issuing compensation orders when the parties agree, issuing supplementary orders declaring default, issuing certain orders relating to medical care, and awarding attorney fees pursuant to Section 28.

Paragraph 4, **Delegation to Administer Certain Duties under the Act from DD to CE**, was revised to delete Supervision of Medical Care. The changes to Paragraph 4 were made to enumerate the duties that GS-12 CE's are delegated to administer including: Call and Hold Conferences; Issue Recommendations; Penalty Assessment pursuant to Section 14(g) of the Act; Settlement Application Approval for Represented Claimants; Settlement Application Denials; Issue Compensation Order Upon Agreement by the Parties; Issue Certain Orders Not Requiring Agreement by the Parties; DOL Vocational Rehabilitation Services; Refer Cases to the Office of Administrative Law Judges (OALJ) or the Benefits Review Board (BRB); Order Payment to the Special Fund Pursuant to Section 44(c)(1) of the Act; Award of Agreed Attorney Fees; Service of Orders; Calculate Benefits when Ordered by the OALJ; LS-33 Approve of Denial; Disfigurement Award Determinations; Special Fund Denials Pursuant to Sections 8(f), 18(b) or 32(a) of the Act; Special Fund – Change Address or EFT; Special Fund – Authorize Medical Care up to $3,000; Special Fund – Suspension for Failure to Attend a Medical Exam; Special Fund – Suspension for Failure to Return Forms LS-200/LS-267/LS-266; Special Fund - Reinstate Suspended Benefits NTE 4 Weeks; Special Fund Prepare Reconciliations; Special Fund – Prepare Overpayment/Underpayment Adjustments; Special Fund – Prepare SF Payments.

Paragraph 5, **Delegation to Administer Certain Duties under the Act from Secretary of Labor, Director, OWCP and DLHWC Director to the District Director**, was revised to delete Agreed Settlements as a separate paragraph. The changes to paragraph 5 were made to enumerate the authority delegated to the DDs to include: Perform all duties delegated to GS-12 CE's; Penalty Assessment Pursuant to Section 30(e) of the Act; Commutation of Benefits; Small Vessel Facility Certification; Special Fund – Grant Section 8(f) Relief; Special Fund – Obligate Payment; Special Fund – Settlement; Special Fund – Section 22 Modification; Special Fund – Authorize Payment for Medical Care; Special Fund – Reinstate Suspended Benefits; Special Fund – Terminate Benefits; Special Fund – Certify Reconciliations; Special Fund – Certify Overpayment/Underpayment Adjustments; Special Fund – Certify SF Payments; Supervision of Medical Care; Defaulted Payments; Section 14(f) Additional Compensation; Subpoenas Duces Tecum; Congressional Correspondence; FOIA Requests;.

Paragraph 6, **Delegation to Administer Certain Duties under the Act from Secretary of Labor and Director, OWCP to DLHWC Director**, was revised to delete Attorneys' Fees as a separate paragraph. The changes to paragraph 6 were made to enumerate the authority delegated to the Director, DLHWC to include: Approve National Average Weekly Wage (NAWW) Adjustments; Assess and Adjust Penalties; Authorize Insurance Carrier and Self-Insured Employers; Grant Waiver of Application of the Defense Base Act (DBA).

Paragraphs 7, 8, 9, 10, 11, 12, and 13 were deleted and incorporated into the preceding paragraphs.

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

The following chapter is being updated in part. Because transmittal of the Longshore Procedure Manual is primarily electronic, LHWC has discontinued the practice of inserting page numbers when an entire chapter is reissued.

Longshore procedure manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
4	4-400	7-12	4	4-400	1-6

Distribution: List No. 1– (OWCP: Longshore Program District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff in Longshore Program; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services).

Exhibit 1: Quick Reference Signature Authority

Transmittal No. 17-02

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 8-302, PENALTY: LATE REPORT OF INJURY (30e)

LHWCA TRANSMITTAL NO. 17-02 December 9, 2016

EXPLANATION OF MATERIAL TRANSMITTED:

Procedure Manual (PM) Chapter 8-302 has been revised, as outlined below, to reflect implementation of the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) which requires agencies to adjust the levels of existing civil monetary penalties with an initial “catch up” adjustment, followed by annual adjustments for inflation.

No change was made to paragraph 1.

Paragraph 2, **Statutory and Regulatory Authority**, was updated to delete a reference to the statutory maximum civil penalty for missing, late, or misrepresented injury and death reports, being increased to $11,000, on or after November 17, 1997, and replace it with a reference to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and the resulting annual increase.

No changes were made to paragraphs 3, 4, or 5.

Paragraph 6, **Initial District Director Action**, was updated to delete a reference to the statutory maximum civil penalty for missing, late, or misrepresented injury and death reports, being $11,000.

No change was made to paragraph 7.

Paragraph 8, **Determining the Penalty Amount**, was updated to delete the actual Penalty Schedule from the Procedure Manual and replace it with reference to the annually adjusted Penalty Schedule in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The paragraph was also updated to add that when the annual adjustment occurs, the Program will issue an Industry Notice outlining the adjusted amount(s) for all DLHWC penalties and that the most recent annual Industry Notice should be consulted for the current Penalty Schedule.

Paragraph 8b was updated to increase the amount, at which the National Office and the BLLLS Division of the Solicitor of Labor must be consulted, before an assessment of a penalty, from above $1,000 to above $2,000.

No changes were made to paragraphs 9, 10, and 11.

DOUGLAS C. FITZGERALD

Director, Division of

Longshore and Harbor Workers’ Compensation

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Longshore procedure manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
8	8-302	2,6 and 8	8	8-302	2,6 and 8

Distribution: List No. 1– (Regional Directors, OWCP: District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services)

Transmittal No. 17-01

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 6-0300, SPECIAL FUND ENTITLEMENT REVIEWS

LHWCA TRANSMITTAL NO. 17-01 October 3, 2016

EXPLANATION OF MATERIAL TRANSMITTED:

The Division of Longshore and Harbor Workers' Compensation (DLHWC) has revised and updated Procedure Manual Chapter 6-300, and simultaneously updated the name of the chapter from Special Fund Monitoring to Special Fund Entitlement Reviews. This chapter provides guidelines and procedures for monitoring cases being paid by the Special Fund. It also provides guidelines and procedures for temporary suspension and forfeiture. Finally, this Chapter references Longshore Case Management System (LCMS) codes and letters to be used in conjunction with the processes outlined in the chapter.

Paragraph 1, **Purpose and Scope**, outlines that the chapter's focus is procedures for monitoring cases being paid by the Special Fund under sections 8(f), 10(h), 18(b) and 32(a) of the Act.

Paragraph 2, **Policy**, provides the regulatory reference setting forth that the Director may require an employee to whom it is paying compensation to report earnings (Form LS-200) and may require claimants who are being paid death benefits to submit a claimant statement (Form LS-267).

Paragraph 3, **Issuance of Forms LS-200/267**, establishes that on an annual basis, National Office will mail to each claimant receiving benefits from the Special Fund a Form LS-200, if receiving disability benefits, or a Form LS-267, if receiving death benefits. LCMS codes 200s or 267s will be added by National Office at the time of mailing.

Paragraph 4, **Timeframes**, establishes that the Form LS-200/267 is to be returned within 30 days. The District Office should review each case within 60 days of the mailing date and take follow up action as indicated in the chapter.

Paragraph 5, **Form Not Returned**, provides the regulatory reference for pursuing forfeiture but establishes that the District Office has broad discretion to take actions to obtain a signed form before pursuing forfeiture. This paragraph sets forth actions to be taken when forms are returned as undeliverable or not returned and outlines procedures for a temporary suspension of benefits.

Paragraph 6, **Form Returned**, outlines the actions the District Office must take upon receipt of completed forms LS-200 and LS-267. It establishes that when the form is complete and no changes are warranted code 200r or 267r must be entered into LCMS. If the form is incomplete, the signatures are different or the form is completed by someone other than claimant, this paragraph establishes that form letters 200f or 267f must be used to identify missing information or request completion of the form and that follow up must occur every 60 days. Additionally, it establishes that when earnings are reported, the employer/carrier, if active, must be notified with a copy to claimant (including authorized representative, if any). If benefits are paid pursuant to Section 18(b) or 32(a), and the CE determines that the compensation order should be considered for modification it establishes that the CE should take appropriate action to develop the case as needed. Finally, it also establishes that if a widow(er) has re-married, the National Office Fiscal Branch must be notified.

Paragraph 7, **Forfeiture of Compensation**, provides the statutory and regulatory references for pursuing forfeiture and reiterates that the District Office has broad discretion to take actions to obtain a signed form before pursuing forfeiture. It establishes that when forfeiture is pursued the DD must notify the employee of the proposed forfeiture, hold an informal conference, evaluate the evidence regarding failure to report and make a determination that the evidence is sufficient to support a conclusion that the beneficiary failed to file a report; and issue an order finding a failure to report earnings. Lastly, it establishes that if the claimant will not agree with proposed forfeiture, a formal hearing before an Administrative Law Judge is required.

Paragraph 8, **Student Status – Form LS-266**, establishes that the CE must verify a student beneficiary's full-time school attendance every 6 months and that 60 days before a dependent child turns 18 years of age, the CE should send form LS-266 to the parent/guardian for completion using LCMS code and form letter 266i. The CE must ensure that there is a current LS-266 signed by the registrar of the school in all cases where the Special Fund is paying student benefits to a child 18 years or older. If the form is not received or follow up action is needed code 266f should be entered in LCMS and used as a form letter to follow up. When the completed form is received 266r must be entered into LCMS.

Paragraph 9, **Death or Change in Status of a Special Fund Recipient**, provides that if a claimant dies or a child's student status changes, the National Office Fiscal Branch must be notified. It also provides that if a subsequent death claim is filed the employer/carrier remains a party in interest and is responsible for evaluating the death claim. If benefits are being paid under Section 18(b) or 32(a) the DD should evaluate the death claim and provide a recommendation for consideration to the National Office Policy Branch. The District Office may not issue an order awarding death benefits without the prior agreement of the National Office Policy Branch.

ANTONIO A. RIOS

Director, Division of

Longshore and Harbor Workers' Compensation

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Longshore Procedure Manual page number handling

Remove Insert

Part	Chapter	Paragraphs	Part	Chapter	Paragraphs
6	6-300	1-9	6	6-300	1-9

Distribution: List No. 1– (Regional Directors, OWCP: District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services)

Transmittal No. 16-03

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 8-0302, PENALTIES and INTEREST

LHWCA TRANSMITTAL NO. 16-03 January 19, 2016

EXPLANATION OF MATERIAL TRANSMITTED:

The Division of Longshore and Harbor Workers' Compensation (DLHWC) has revised and updated Procedure Manual Chapter 8-302, Penalties and Interest. This chapter provides guidelines and procedures for assessing penalties for late reports of injury or death. It also provides a "graduated" penalty approach to determining the appropriate penalty amount, up to and including, the statutory maximum of $11,000. Finally, this Chapter references form letters to be used for communication with industry stakeholders to ensure uniformity.

Paragraph 1, **Purpose and Scope**, outlines that the focus of the chapter is to provide the guidelines and procedures for assessing penalties for late reports of injury or death under Section 30(e) of the Longshore and Harbor Workers' Compensation Act (LHWCA).

Paragraph 2, **Statutory and Regulatory Authority**, provides the statutory citations from the LHWCA, the regulatory references, as well as statutory authority from the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Paragraph 3, **Report Requirement (Form LS-202)**, outlines the basic principles that apply to filing a notice of injury, that an employer must file a report of death in all cases of death, and a report of injury in all cases where the injury results in loss of one or more shifts of work.

Paragraph 4, **Time for Filing and Methods of Submission**, establishes that Section 30(a) of the Act provides the 10 day period for submission on the injury/occupational illness report. If the report is submitted more than 10 days from the date of injury or from the date the employer has knowledge of the injury, it is late and subject to the Section 30(e) penalty. This includes any illness, disease, or death proximately caused by the employment. This paragraph also references section 30(d) of the Act and outlines that injury reports are timely so long as they are mailed within the 10 day requirement. Reference is made to 20 C.F.R. 702.203, which provides additional clarity regarding timeliness and alternative means of submission, besides regular mail.

Paragraph 5, **"Knowingly and Willfully" Requirement**, establishes that for purposes of imposing a penalty, a report of injury or death is not necessarily late because it was not filed within 10 days as section 30(e) has a prerequisite before a penalty may be imposed: the employer must "knowingly and willfully" fail or refuse to file the section 30(a) report of injury within the allotted time. This paragraph describes how the "knowingly and willfully" requirements may be satisfied.

Paragraph 6, **Initial District Director Action**, outlines the actions the District Director (or designee) must take in soliciting evidence to establish if and when the "knowingly and willfully" requirements of the Act were met.

Form letters 30e1 and 30e2 aid in the collection of evidence by seeking information that may be relevant in determining if the penalty is warranted, or should be reduced. Form letter 30e1 describes the evidence OWCP has received that indicates an injury or death has occurred and should be sent to the employer when a Form LS-202 has not been received. Form letter 30e2 is to be used when the report has been received late.

Paragraph 7, **Evaluating the Response**, establishes that at the end of a 30 day period provided for a response, the District Director will carefully evaluate the employer's explanation for failing to timely submit the report of injury. If there is no response, a second request is sent by certified mail, or some other method that allows for tracking. If a response is received, the District Director must evaluate the evidence relevant to the "knowingly and willfully" requirement in section 30(e). If the District Director determines that the requirements have not been met, a brief notification letter, form letter 30ex, should be issued to the Employer. If the District Director determines that a penalty is appropriate, the penalty amount must then be determined.

Paragraph 8, **Determining the Penalty Amount**, outlines the "graduated" penalty approach to determining the appropriate penalty amount for violations of Section 30(e) from $250 up to the statutory maximum of $11,000. The District Director should review the DLHWC Penalty Log to determine how many penalties, if any, have been assessed against the employer in the previous 2 years to determine the accurate starting point for any penalty. It also establishes that for any penalty above $1,000, the District Director should first consult with the National Office and the BLLLS Division of the Solicitor of Labor. Finally, this paragraph describes how penalty assessment is subject to the Small Business Regulatory Enforcement Fairness Act (SBREFA) which requires agencies to consider the reduction of civil penalties for violations of statutory requirements by small businesses.

Paragraph 9, **Issuing the Penalty**, provides that once the District Director establishes the appropriate penalty, form letter 30e3 should be issued allowing a 30 day period for payment. The District Director must explain how the two prong "knowingly and willfully" test was met, specify the number of prior offenses, if any, in the previous two years, specify the penalty amount, and provide an explanation regarding whether or not the employer was considered a SBREFA "small business." Thereafter, the Penalty Log should be updated promptly.

Paragraph 10, **Follow Up Actions after Penalty Assessment**, outlines the basic procedures to be followed after the penalty has been assessed depending on the Employer's response, or lack thereof. If the assessed penalty is received, it should be processed into the Special Fund and an acknowledgment letter, form letter 30ep, should sent to the employer. If the assessed penalty is not received, within 30 days, the District Director should request a written explanation and send form letter 30e4. If no payment is received after 30 days of issuance of the form letter 30e4, the District Director should notify the National Office and the BLLLS Division of the Solicitor of Labor.

Paragraph 11, **False Statement or Misrepresentation**, provides that Section 30(e) also authorizes civil penalties when the Employer "knowingly or willfully" makes a false statement or misrepresentation in any such report.

ANTONIO A. RIOS

Director, Division of

Longshore and Harbor Workers’ Compensation

The following chapter is being updated in its entirety. Because transmittal of the Longshore Procedure Manual is primarily electronic, DLHWC has discontinued the practice of inserting page numbers when an entire chapter is reissued.

Longshore Procedure Manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
8	8-302	1-12	8	8-302	1-11

Distribution: List No. 1– (Regional Directors, OWCP: District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor’s Office Division of Black Lung and Longshore Legal Services)

Transmittal No. 16-02

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 1-0501, TRANSFER OF FILES

LHWCA TRANSMITTAL NO. 16-02 December 1, 2015

EXPLANATION OF MATERIAL TRANSMITTED:

The Division of Longshore and Harbor Workers’ Compensation (DLHWC) has revised and updated Procedure Manual Chapter 1-501, Transfer of Files. This chapter provides guidelines for transferring cases between District Offices.

Paragraph 1, **Purpose and Scope**, outlines that the chapter will provide guidelines and procedures used in transferring files from one District Office to another after the case has been created.

Paragraph 2, **Statutory and Regulatory Authority**, provides the pertinent references pertaining to transferring cases.

Paragraph 3, **Request for Transfer**, describes the typical reason for transfer of a case, which is when the claimant moves to a different compensation district.

Paragraph 4, **Transfer Actions**, outlines the steps to take once it has been decided that a case transfer is needed. These steps include completion of pending actions, completion of a case transfer form if there is a paper component to the case, notifying the parties and updating the Longshore Case Management System (LCMS).

ANTONIO A. RIOS

Director, Division of

Longshore and Harbor Workers' Compensation

The following chapter is being updated in its entirety. Because transmittal of the Longshore Procedure Manual is primarily electronic, DLHWC has discontinued the practice of inserting page numbers when an entire chapter is reissued.

Longshore Procedure Manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
1	1-501	1-6	1	1-501	1-4

Distribution: List No. 1– (Regional Directors, OWCP: District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services)

Transmittal No. 16-01

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 4-0200, INFORMAL CONFERENCES

LHWCA TRANSMITTAL NO. 16-01 November 18, 2015

EXPLANATION OF MATERIAL TRANSMITTED:

Procedure Manual (PM) Chapter 4-0200 has been revised, as outlined below, to reflect new letter names and conference codes in the Longshore Case Management System (LCMS). One other change was made to outline that that a deadline for an application for 8(f) should be added to a recommendation that is issued if permanency is an issue in the case.

No changes were made to paragraphs 1, 2, 3 or 4.

Paragraph 5, **Tracking the Informal Conference Request**, was updated to delete a reference to the "LS-141" and replace it with a reference to a Conference Scheduling Notice.

Paragraph 6, **Actions Required Within 15 Days of Receipt**, was also updated to delete a reference to the "LS-141" and replace it with a reference to a Conference Scheduling Notice. The paragraph was also updated to delete a reference to the prior "cnfs" code in favor of codes "cnfo" Conference Notice (for office) and "cnft" Conference Notice (for telephone). Code "cnfo" should be used if any of the parties is scheduled to attend the conference in person. Code "cnft" should be used if all of the parties are scheduled to participate by phone. Also, a regulatory reference was added to the end of paragraph 6a(5).

The requirements for the written recommendation were updated to reflect that if permanency or death is in issue, a complete application for section 8(f) relief is to be submitted by a given deadline.

Paragraph 6c was updated with a reminder that prior to issuing a Deferral Notice the CE should consider whether a conference can be scheduled as requested to avoid any unnecessary delays, especially if there is a hardship (e.g. if the claimant is unable to work and is not receiving compensation) or if the desired evidence will be extremely difficult to obtain (e.g. medical treatment notes from overseas). When scheduling the conference, the CE can ask that the parties submit any necessary additional evidence prior to the conference date; this practice can facilitate timely conferences. Also, the reference to the "LS-218" was replaced with a reference to a Conference Deferral Notice, and code "cndf" replaced all references to code "218s".

Paragraph 7, **Conference Request Withdrawn Prior to Scheduling**, was updated to replace the prior code "218s" with code "cnfp" (conference postponed/cancelled/withdrawn).

Paragraph 8, **Cancelling/Postponing a Scheduled Conference**, updated the "cnfp" code meaning to include withdrawn, as well postponed or cancelled.

No changes were made to paragraph 9.

Paragraph 10, **Conducting the Informal Conference**, was updated to delete reference to the "cnfh" (Conference Held) code in favor of the "cnho" Conference Held (in office) and "cnht" Conference Held (by telephone) codes. Code "cnho" should be used if any of the parties attended the conference in person. Code "cnht" should be used if all of the parties participated by phone. The correct conference held code, to distinguish between in-person and completely telephonic conferences should be used regardless of how the conference was originally scheduled to occur.

Paragraph 11, **Memorandum of Informal Conference**, was updated to delete reference to the Form LS-280, in favor of Conference Memorandum. The paragraph also deletes code "280s" in favor of "cnfm."

No changes were made to paragraph 12.

ANTONIO A. RIOS

Director, Division of

Longshore and Harbor Workers' Compensation

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Longshore Procedure Manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
4	4-200	5,6,7,8,10 and 11	4	4-200	5,6,7,8,10 and 11

Distribution: List No. 1– (Regional Directors, OWCP: District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services)

Transmittal No. 15-01

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 3-0502, COMMUTATIONS

LHWCA TRANSMITTAL NO. 15-01 March 23, 2015

EXPLANATION OF MATERIAL TRANSMITTED:

The Division of Longshore and Harbor Workers' Compensation (DLHWC) has revised and updated Procedure Manual Chapter 3-502, Commutations. This chapter provides guidelines for processing commutation requests. It also provides the criteria used for commutation calculations and outlines a policy change regarding the DLHWC's usage of life tables for determining life expectancy.

Paragraph 1, **Purpose and Scope**, outlines that the focus of the chapter is to provide the procedures and requirements for processing requests for commutation of benefits under Section 9(g) of the Longshore and Harbor Workers' Compensation Act (LHWCA) and Section 2(b) of the Defense Base Act (DBA).

Paragraph 2, **Statutory and Regulatory Authority**, provides the statutory citations from the LHWCA and the DBA as well as regulatory references.

Paragraph 3, **General Provisions**, outlines some of the basic principles that apply to commutations. These general provisions include the District Director's authority to commute benefits even if the claimant or beneficiary objects. This paragraph also provides that a formal hearing before the Office of Administrative Law Judges (OALJ) on the question of whether a commutation should be granted is not permitted. The paragraph discusses the limits of commutations, which unlike settlements, cannot relieve the Employer/Carrier (E/C) of the requirement to furnish medical care that is needed as a result of the work injury. The paragraph also clarifies that the DLHWC will consider commutations only in situations in which all benefits due can be commuted; if there are multiple beneficiaries, all benefits must be able to be commuted at the same time.

Paragraph 4, **Processing a Request for Commutation**, clarifies that a claimant and/or the claimant's authorized representative may not seek commutation of benefits directly from the DLHWC; he/she must contact the E/C to initiate such action. The paragraph also outlines the District Director's review process and referral to the National Office for calculation of the commutation amount.

Paragraph 5, **Commutation Calculation**, discusses some of the data elements that must be considered when calculating commutations. The effective date is the date the calculation is performed in the National Office; all benefits accrued prior to that date must be paid by the E/C at the full rate. The discount rate used is the same as the discount rate used for settlement calculations, and credits under §§ 3(e), 33(f) and 14(j) of the Act are applied. Annual adjustments are also considered in the commutation calculation, using the adjustment effective October 1st of each year for permanent total disability and death benefit calculations.

This paragraph also outlines a significant change in the use of life tables to determine life expectancy.

The statute and regulations provide the Director broad discretion in calculating commutation amounts. They do not mandate any particular method of calculation or dictate any particular formula. Rather, the statute permits commutation calculations to be made in an amount "as determined by the Secretary" without imposing any limitations or conditions. The Director is therefore authorized to calculate commutations using whatever method he deems appropriate. Exercising this discretion, the Director has determined that as of the date of this transmittal, the DLHWC will begin calculating life expectancy using the beneficiary's country of residence and the tables developed by the World Health Organization (WHO).

Historically, the DLHWC used the United States Life Tables produced by the United States Department of Health and Human Services for commutation calculations. However, under current law, commutation is only available for non-United States citizens who are not United States residents; all claimants/beneficiaries affected do not live in the United States. Conditions that lead to longevity in the United States may not be present in other countries, and life expectancy tables specific to the United States are not necessarily the best indicator of life expectancy in foreign countries. This is especially true when credible, country-specific life tables exist that are readily accessible on-line, thereby providing transparency, and are an accurate alternative.

The DLHWC considers the WHO to be a credible source of information for country specific life expectancy. "WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries and monitoring and assessing health trends." See the WHO website at the following link: http://apps.who.int/en/

The life expectancy data used is extracted from the WHO's Global Health Observatory Data Repository, available via the following link: http://apps.who.int/gho/data/node.main.692?lang=en

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Director, Division of

Longshore and Harbor Workers' Compensation

The following chapter is being updated in its entirety. Because transmittal of the Longshore Procedure Manual is primarily electronic, DLHWC has discontinued the practice of inserting page numbers when an entire chapter is reissued.

Longshore Procedure Manual page number handling

Remove			Insert		
Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
3	3-502	1-7	3	3-502	1-5

Distribution: List No. 1– (Regional Directors, OWCP: District Directors, DLHWC; All Claims Examiners, National Office DLHWC Professional Staff; Director, OWCP, Solicitor's Office Division of Black Lung and Longshore Legal Services)

Transmittal No. 14-01

RELEASE - REVISION TO LHWCA PROCEDURE MANUAL

CHAPTER 4-0200, INFORMAL CONFERENCES

LHWCA TRANSMITTAL NO. 14-01 June 23, 2014

EXPLANATION OF MATERIAL TRANSMITTED:

The Division of Longshore and Harbor Workers' Compensation (DLHWC) has historically placed great emphasis on working together with stakeholders to resolve workers' compensation claims as expeditiously as possible. Continuing in the effort to improve the effectiveness of dispute resolution through the Informal

Conference process, Procedure Manual (PM) Chapter 4-0200 has been revised to provide updated procedures and guidelines for scheduling and conducting Informal Conferences. Guidance provided previously via DLHWC Bulletin 11-02 (Implementation of Operational Goals), which established timeframes and Longshore Case Management System (LCMS) coding requirements for tracking informal conference requests has been updated and incorporated within this revised chapter.

While the informal conference process is part of the DLHWC's dispute resolution protocols, the coding of disputes and resolutions is not specifically discussed in this chapter. However, reminders are provided throughout the chapter to consider such coding at various decision points.

Paragraph 1, **Purpose and Scope**, outlines that the focus of the chapter is to provide consistent guidelines for conducting informal conferences, to include timeframes and coding requirements.

Paragraph 2, **Regulatory Authority**, provides the regulatory citations that provide the framework for the informal conferences conducted by the District Directors (DDs) and Claims Examiners (CEs) under the DD's supervision.

Paragraph 3, **Overview**, discusses that the purpose of a conference is to amicably resolve disputes, when possible, narrow the disputed issues and simplify future proceedings. This paragraph notes that any party to the claim can request an informal conference, but makes clear that the DD or CE can also schedule a conference at his/her discretion.

Paragraph 4, **Parties Involved**, outlines the individuals that should be part of the conference, whether in person or via telephone/web conference.

Paragraph 5, **Tracking the Informal Conference Request**, discusses how a request for informal conference is tracked in LCMS, including the code and date to use, and how a DD/CE can use the LCMS coding provided to document the initiation of an informal conference without receipt of a request from an interested party.

Paragraph 6, **Actions Required Within 15 Days of Receipt**, first outlines that an action in response to the request for conference should be taken within 15 days of receipt of the request. Three (3) basic actions fulfill this requirement. The DD/CE can schedule the conference, issue written recommendations without convening the parties, or notify the parties that the conference cannot be scheduled until additional documentation or evidence is submitted.

1. If the case is in posture for a conference, the Informal Conference Scheduling Notice, LS-141, must be sent to all parties and a copy retained in the case file.

The requirements for this notice as well as the corresponding LCMS coding are provided. The paragraph also outlines that the conference should be held within 45 days of the date the request for conference was received, with at least 10 days notice, and that if permanency or death is raised before the informal conference, the LS-141 must include notice that a complete application for Section 8(f) relief must be submitted before or at the conference.

2. If a determination is made that there is sufficient evidence in the file to make a recommendation without convening the parties, the DD/CE may issue a written recommendation. The requirements for the written recommendation as well as the corresponding LCMS coding are provided.
3. If a case is not in posture for a conference, the LS-218 must be issued acknowledging the request for conference but also indicating that additional information and/or evidence is needed. The requirements for the LS-218 as well as the corresponding LCMS coding are provided, and this paragraph also discusses the actions to take after the LS-218 has been issued depending on whether documents are submitted in response to the request. Guidelines are also provided regarding how to use the LS-218 letter and coding for instances where the DD/CE decides to schedule an Independent Medical Examination (IME).

Paragraph 7, **Conference Request Withdrawn Prior to Scheduling**, outlines the actions to take if the requesting party asks to withdraw the conference request before it is scheduled.

Paragraph 8, **Cancelling/Postponing a Scheduled Conference**, provides that a previously scheduled conference may be cancelled/rescheduled upon request of the parties and outlines what actions should be taken in response to such a request.

Paragraph 9, **Preparing for the Informal Conference**, provides basic guidelines for preparation prior to the informal conference.

Paragraph 10, **Conducting the Informal Conference**, provides guidance regarding how to conduct the conference and emphasizes that care should be taken to ensure that unrepresented claimant’s rights are protected. The paragraph provides the necessary coding to document the conference in LCMS and outlines that if the issue of permanency is raised at the conference, the

DD/CE should establish the date when the employer's application for Section 8(f) relief must be submitted.

Paragraph 11, **Memorandum of Informal Conference**, provides pertinent regulatory references and states that the Informal Conference Memorandum (Form LS-280) must be issued within 10 calendar days of the conclusion of the conference. The necessary LCMS coding is also specified. Specific expectations for the content of the conference memorandum are provided based on whether or not there is agreement on the issues at the conclusion of the conference. Regardless of the outcome, the memorandum should provide an outline of the issues presented, describe the evidence considered and state the positions of the parties.

If at the conclusion of the conference there was agreement on all matters, the memorandum should also embody the agreement between the parties. If any party in interest requests that the agreed disposition be embodied in a compensation order, the order should be prepared, within thirty days of the agreement, for signature by the DD. If there was no agreement between the parties, the memorandum must also contain clear recommendations, with rationale, for resolution of the disputed issues.

Specific procedures are also provided with regard to coding, timeframes and documentation when the parties agree to post-conference actions. In this instance, the LS-280 should clearly define the responsibilities of the parties and state specific dates by which actions are expected. Within 15 days of receipt of the anticipated documentation, a supplemental memorandum is to be issued based on the new evidence, or if no evidence is received or the action is not taken, the DD/CE should issue a final recommendation based on the evidence in the file.

Paragraph 12, **Referral for Hearing**, provides that if the recommendation is rejected by one of the parties and there is no indication that further conferences would be productive, or if one of the parties requests a referral prior to a conference, the case should be promptly referred to the Office of Administrative Law Judges (OALJ).

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Longshore and Harbor Workers' Compensation

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Part	**Chapter**	**Paragraphs**	**Part**	**Chapter**	**Paragraphs**
4	4-200	1-11	4	4-200	1-12

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