claim given to the employer (702.224). This is an expensive and time consuming process which has been proven to be unnecessary.

#### Use of OWCP Fee Schedule

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

## Insurance Policies

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

# **Analysis of Comments**

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

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

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

employer's timely compliance with the statutory obligations.

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

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

The remotely possible scenarios used to support the employer's objections are not sufficient to overcome the distinct advantages, particularly the savings in staff resources and mailing costs, associated with dropping this requirement. As noted in the preamble to the proposed rule, while certified mail does not add significantly to the security of the mail process, the requirement does increase costs and the amount of staff time it takes to mail a document. Approximately 9,000 pieces of mail per year must now be sent certified mail under these rules, at a cost of over \$9,000 in extra mailing charges and more in staff time to complete the necessary Postal Service forms. The recipients should see an improvement in the level of service as resources now dedicated to certified mailings can be used elsewhere.

The individual, in his comments, requested that the regulatory changes be applicable only prospectively and that they not apply to injuries sustained or claims filed before the proposed rules were published in the Federal Register.

It is not the intent of the Director, that the changes deleting the certified mail requirement be applied to relieve a party of liability already incurred or to impose liability where none existed. However, the Director does believe that it will be appropriate to apply the OWCP fee schedule to pending claims where such application will assist in resolving outstanding issues. For these reasons, no change needs to be made to the rules as written.

#### Conclusion

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

## Statutory Authority

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

#### Classification

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

#### Paperwork Reduction Act

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

## Regulatory Flexibility Act

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