

## SUPPORTING STATEMENT

Office of Workers' Compensation (OWCP) is requesting OMB approval by February 7, 2020, as this is the go-live date for this collection.

### **A. Justification.**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collections. Attach a copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information.**

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA or Act). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the LHWCA's coverage to certain other employee groups. LHWCA section 39(a) generally authorizes the Secretary of Labor to prescribe rules and regulations to implement the Act. *See* 33 U.S.C. 939(a).

Parties to LHWCA claims ask OWCP District Directors, who administer claims, to take a variety of routine actions. The particular action requested depends on the claim. Currently, there is no uniform method for either requesting District Director action or submitting the information necessary for the District Director to evaluate the request. Parties submit the information in various formats – letter, email, etc. District Office staff must first identify the type of action requested and then often must contact the parties involved to obtain missing or incomplete information. Capturing the required information in one form will save time, effort and cost for the federal government and simplify filing for the parties. The forms will also help OWCP properly classify different types of documents as it moves into a fully electronic case file environment and speed delivery of services to stakeholders.

### **Attorney Fee Approval Request (LS-4)**

When an attorney successfully obtains benefits for the injured worker or survivor, he or she may be entitled to a fee. *See* 33 U.S.C. 928; 20 CFR 702.132. In certain circumstances, the Act shifts payment of the attorney's fee to the employer (or its insurance carrier). 20 CFR 702.134. The appropriate adjudicator – an OWCP District Director, an Administrative Law Judge, the Benefits Review Board or a court – must approve the fee. The District Director rules on attorney fees for services rendered while the case is pending before him or her. 20 CFR 702.132. *See* 20 CFR 702.134.

The attorney requesting the District Director's approval must file an itemized fee petition for services performed at the OWCP level. To identify and timely respond to the requests, OWCP is

requiring attorneys to submit Form LS-4, Attorney Fee Approval Request. Using this form will speed the processing of attorney fee requests and the payment of such fees.

### **Application for Special Fund Relief (LS-5)**

Under section 8(f) of the Act, 33 U.S.C. 908(f), if a pre-existing disability contributes to a disability or impairment from a subsequent work-related injury, the employer is liable for only the first 104 weeks of permanent disability compensation and the Longshore Special Fund (*see generally* 33 U.S.C. 944) is liable thereafter. *See also* 20 CFR 702.321. Hearing loss claims are different in that the Special Fund pays for the pre-existing hearing loss and the employer for the added hearing loss. An employer/carrier must submit a request for section 8(f) relief from compensation payments to OWCP; relief may be granted by an OWCP District Director or an Administrative Law Judge.

To identify and timely respond to requests under section 8(f), OWCP is requiring employers/carriers to submit Form LS-5, Application for Special Fund Relief. Form LS-5 reflects the application requirements codified at 20 CFR 702.321.

### **Commutation Application (LS-6)**

When compensation under the LHWCA or the Defense Base Act (DBA), an extension of the LHWCA, is payable to certain aliens who are not residents (or about to become nonresidents) of the United States or Canada, the OWCP Director may commute future periodic payments and require payment equal to one-half of the commuted amount. *See* 33 U.S.C. 909(g); 42 U.S.C.1652; 20 CFR 702.142; 20 CFR 704.102. The Director may commute compensation payments at his or her option, and must commute them upon the application of the employer or insurance carrier.

In response to its LHWCA and DBA stakeholders and to facilitate the commutation of payments to injured workers and the beneficiaries of deceased workers, OWCP is requiring employers and carriers to file Form LS-6 to request commutation.

### **Request for Intervention (LS-7)**

Title 20 CFR 702.311 empowers the District Directors to resolve disputes with respect to claims in a manner designed to protect the rights of the parties and to resolve such disputes at the earliest practicable date. *See* 33 U.S.C. 923(a); 20 CFR 702.301 (“the district directors are empowered to amicably and promptly resolve such problems by informal procedures”). In some cases, the best resolution method is an informal conference. *See* 20 CFR 702.312-702.316 (establishing guidelines for conducting informal conferences).

Usually one of the parties requests an intervention or informal conference to assist with dispute resolution. Prior to scheduling an informal conference, the issues in dispute must be established and the District Director, or designee, must determine whether the type of intervention requested is the most effective means for resolving the disputed issues. The Form LS-7, Request for Intervention, will be used for that purpose.

### **Settlement Approval Request 8(i) (LS-8)**

LHWCA section 8(i), 33 U.S.C. 908(i), allows the parties to settle claims for compensation and/or medical benefits. A Settlement Approval Request is time-sensitive because once the parties submit a settlement application, the District Director within thirty days must determine whether the settlement is adequate under the Act and regulations and, if so, issue a Compensation Order approving the settlement proposal in response.

To facilitate prompt processing of settlement approval requests, OWCP is requiring the parties to use Form LS-8. The parties must also attach a signed settlement application that outlines the terms of the settlement and provides the information required by the regulations. Title 20 CFR 702.242-702.243 authorize this information collection.

### **Stipulation Approval Request (LS-9)**

The regulations empower District Directors to resolve claims amicably and promptly, and issue formal compensation orders when the parties reach agreement on issues. *See* 20 C.F.R. 702.301, 702.311, 702.315(a). To meet these goals, the District Director may issue an Order Approving Stipulations agreed to by all parties.

To facilitate prompt processing of requests to approve stipulations, OWCP is requiring the parties to use Form LS-9. The parties must attach the signed joint stipulations they wish to have approved. OWCP will prioritize handling of LS-9 forms.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

### **Attorney Fee Approval Request (LS-4)**

The District Director, or designee, will use the information collected to determine both the type of Order that will be issued in response to the request for approval of an attorney fee and an appropriate fee amount based on the quality of the representation, the complexity of the case, and the amount of compensation awarded. The LS-4 request also allows opposing parties to take action to either resolve the request for fees through a stipulated agreement or support their positions with documentation.

### **Application for Special Fund Relief (LS-5)**

The information collected via Form LS-5 pertains to the different facts the filing employer or insurance carrier must establish to demonstrate it is entitled to relief from compensation payments under section 8(f) of the Act. The District Director will decide whether to grant section 8(f) relief based on the information submitted with Form LS-5.

### **Commutation Application (LS-6)**

The information collected via Form LS-6 is necessary for the Director, or designee, to determine whether the employer or insurance carrier's request for commutation is appropriate. It also will be used to help establish the amount of the commutation and the potential beneficiaries.

### **Request for Intervention (LS-7)**

District Office staff will determine what type of intervention is appropriate to resolve the dispute using the information supplied on Form LS-7. Disputes may be resolved by telephone, written correspondence, and informal conference. The information gathered will be used to define the disputed issues, clarify them, and prepare the District Office staff for any informal conference held. The LS-7 request also allows opposing parties to take action to either resolve the dispute or support their positions with documentation.

### **Settlement Approval Request 8(i) LS-8**

District Office staff will use the information gathered to evaluate the proposed settlement and to decide whether to approve or disapprove the request. The information will allow the District Director, or designee, to evaluate the adequacy of the settlement amount, the probability of the claimant's success if the claim is formally litigated, whether the settlement was procured under duress, and other factors.

### **Stipulation Approval Request (LS-9)**

Where the parties reach agreement on all issues and request a compensation order, Form LS-9 Stipulation Approval Request will be submitted together with the parties' stipulated agreement. The District Director, or designee, will review the stipulations and determine whether the agreement between the parties is appropriate and in compliance with the Act and regulations. The information gathered will be used, for example, to identify the types and periods of disability to be paid; benefit rate(s) per week; number of weeks to be paid and totals paid for each period; and whether future compensation payments will be paid as a result of the stipulations.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.**

The forms will be electronically interactive on the Internet for completion and submission. Respondents have the option either to print and fill out the forms manually or to fill in the forms online.

Respondents will have several options for submitting the completed forms. Respondents may submit forms electronically using our secure web portal (<https://SEAportal.dol-esa.gov>). The forms will be accessed at <https://www.dol.gov/owcp/dlhwc/lforms.htm>. When submitted electronically, the documents are quickly available to the District Office adjudicating the case for appropriate action.

Alternatively, respondents may submit the completed forms by hand, commercial delivery service or regular mail to a central mail receipt site with the exception of the LS-8 Settlement Approval Request. The LS-8 must be sent by either certified mail with return receipt requested or commercial delivery service with tracking capability (unless filed electronically through the web portal). The Longshore program will image and index all documents received in hard copy to the appropriate case file. They will then be available to the District Office administering the case for appropriate action.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

All forms in the Longshore program have been carefully reviewed to eliminate all requests for duplicate information. Forms LS-4, LS-5, LS-6, LS-7, LS-8 and LS-9 are unique: no other forms are used to identify the requests.

**5. If the collection information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Generally, the required information will be collected from large employers who are self-insured under the Act, large insurance carriers who are authorized to write insurance coverage under the Act, or individual claimants. However, information may also be requested from injured workers, attorneys and small businesses. To keep burden to a minimum, the forms request only that information which is absolutely essential for the Longshore program to properly administer claims. In addition, as discussed below, this information collection would impose a very small time and cost burden on respondents. Thus, this information collection will not have a significant economic impact on a substantial number of small entities.

**6. Describe the consequence of Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If these information collections were not conducted, there would be no uniform method for parties and their representatives to request various District Office actions on their claims; OWCP would have difficulty identifying the requested action and categorizing requests in its electronic case file database; District Directors, or designees, may not have the information necessary to decide on the requested action in accordance with the Act and regulations; and opposing parties may not receive notice of the requests. The information is only collected on occasion when a party requests action

by the District Office as provided under the Act and regulations. It therefore cannot be collected less frequently.

**7. Explain any special circumstances.**

There are no special circumstances for the collection of this information.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments.**

A *Federal Register* notice inviting public comment was published in the *Federal Register*, 84 FR 38672, August 7, 2019. No comments were received.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.**

The completed forms will be maintained in the claimant's case file. Thus, the information collected is covered by two Privacy Act Systems of Records, DOL/OWCP-3,4, published at 81 *Federal Register* 25859-61 (April 29, 2016), or as updated and republished.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, private. This justification should include the reasons why the agency considers the questions necessary; the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no questions of a sensitive nature.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

**Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special surveys to obtain information on which to base burden estimates. Consultation with a sample of potential respondents is desirable. If the burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden and explain the reason for the variance.**

**Generally, estimates should not include burden hours for customary and usual business practices.**

Burden has been estimated by multiplying the estimated average response time with the estimated responses. The estimated responses were determined by a review of OWCP data maintained by the National Office, which reflect the number of requests made in FY2018, and the number of requests filed electronically. The response time is based on experience with the usual requests. The estimate takes into consideration that some cases require more information than others due to the complexity of the issues involved and the minute estimate should therefore be considered as an average time needed to gather the information, complete the form, obtain required signatures, and submit the required information.

The annualized burden cost estimates are calculated using the National Average Weekly Wage (NAWW), as computed by the Bureau of Labor Statistics, <http://www.bls.gov/data>, for production or non-supervisory workers on private non-agriculture payrolls in a 40 hour work week. Section 6(b) of the Act mandates the use of the NAWW in setting the maximum and minimum compensation rates under the Act and in determining the amount of annual adjustments for permanent total disability and for death benefits. See 33 U.S.C. 906(b). Since it is not possible to determine the specific occupation or wages for each person who will provide the information covered by this clearance, and wages can vary considerably from person to person depending on duties and length of service, use of a national average weekly wage covering all occupations is reasonable. The FY2019 applicable NAWW is \$755.38. The average work week is 40 hours. The Annualized Burden Cost was computed using the NAWW divided by 40 hours per week multiplied by the Burden Hours. The computations are therefore as follows:

Data Collection Activity	Annual number of respondents	Number of responses per respondent	Total Number of Responses	Average burden per response (in Hours)	Annual estimated burden hours	Average hourly wage <sup>a</sup>	Annual monetized burden hours
LS-4	486		486	.25	122	\$18.88	\$2,303.36
LS-5	577		577	.33	190		\$3,587.20
LS-6	40		40	.17	7		\$132.16
LS-7	5,390		5,390	.17	916		\$17,294.08
LS-8	5,400		5,400	.33	1,782		\$33,644.16
LS-9	521		521	.33	174		\$ 3,247.36
Unduplicated Total (Annual)	12,414	--	12,414		3,191		\$60,211.32

<b><u>Form #</u></b>	<b><u>Estimated Response time in Minutes</u></b>	<b><u>Estimated number of Responses</u></b>	<b><u>Burden in Hours</u></b>	<b><u>Annualized Burden Cost</u></b>
LS-4	15	486	122	\$2,303.36
LS-5	20	577	190	\$3,587.20

LS-6	10	40	7	\$132.16
LS-7	10	5,390	916	\$17,294.08
LS-8	20	5,400	1,782	\$33,644.16
LS-9	20	521	172	\$ 3,247.36
Total	95	12,414	3,191	\$60,211.32

The burden cost was calculated by using the response time in minutes multiplied by the number of estimated responses. For example, Form LS-4 has a 15 minute estimated response time multiplied by the estimated number of responses, 486, and divided by 60 minutes to get the total burden hours (*i.e.*,  $15 \times 486 \div 60 = 122$ ). The burden hours were then multiplied by \$18.88, which is the equivalent of the hourly rate when the National Average Weekly wage is divided by 40 work hours (*i.e.*,  $\$755.38 \div 40 = \$18.88$ ;  $\$18.88 \times 122 = \$2,303.36$ ).

### 13. Annual Costs to Respondents (capital/start-up & operation and maintenance)

All forms may be electronically filed with no costs associated. Some forms are still submitted via regular mail and the costs to respondents for each form are:

<u>Form</u>	<u># submitted non-electronically</u>	<u>Postage</u>	<u>Envelope</u>	<u>Paper &amp; Printing</u>
LS-4	146	\$0.95	\$0.20	\$1.00
LS-5	173	\$0.95	\$0.20	\$1.00
LS-6	20	\$0.55	\$0.03	\$0.05
LS-7	1,956	\$0.55	\$0.03	\$0.05
LS-8	1,620	\$4.75	\$0.20	\$1.00
LS-9	156	\$0.95	\$0.20	\$1.00
Total	4,071	\$8.70	\$0.86	\$4.10

The costs for the LS-8 are higher because the regulations require parties to submit Settlement Approval Requests electronically through the SEAPortal, by certified mail with return receipt requested, or by a commercial delivery service with tracking capability that provides reliable proof of delivery. 20 CFR 702.243. This estimate is based on the current rate for certified mail with return receipt requested. The LS-4 and LS-5 includes documentation attached to the form.

The Respondents' Annual Cost was calculated by adding up the cost for postage, envelopes and printing per response and then multiplying by the estimated number of responses.

### 14. Provide estimates of annualized cost to the Federal government.

There is no added cost to the Federal Government for our review of the information submitted as it is currently being reviewed but not in a uniform method.

The estimated total cost to the Federal Government for processing these forms is approximately \$8,496.48. Work can be performed anywhere in the country; consequently, the agency has used the [2019 Rest of the U.S. pay chart](#) developed by the Office of Personnel Management. The cost is figured as follows:

One data entry clerk (GS-7, step 5) earning \$22.84 per hour spending about 2 minutes reviewing the form and electronically indexing it into the case file.

$$12,414 \text{ forms} \times 2 \text{ minutes (.03 hours)} = 372 \text{ hours} \times \$22.84 = \$8,496.48$$

Upon receipt of these forms, the District Director will assign the case to a claims staff member who performs a review of the case to determine the appropriate action to take in response to the request.

#### **15. Explain the reasons for any program changes or adjustments**

Burden has been estimated by multiplying the estimated average response time with the estimated responses. The estimated responses were determined by a review of OWCP data maintained by the National Office, which reflect the number of requests made in FY2018, and the number of requests filed electronically. The response time is based on experience with the usual requests. The estimate takes into consideration that some cases require more information than others due to the complexity of the issues involved and the minute estimate should therefore be considered as an average time needed to gather the information, complete the form, obtain required signatures, and submit the required information.

#### **16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection information, completion of report, publication dates, and other actions.**

The information collected will not be published for statistical use.

#### **17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The expiration date will be displayed on the forms.

#### **18. Explain each exception to the certification statement in ROCIS.**

There are no exceptions to the certification.

## **B. Collections of Information Employing Statistical Methods**

Statistical methods are not used in the collection of information.