

DEPARTMENT OF LABOR**Office of the Secretary****29 CFR Part 18**

RIN 1290-AA20

Use of Settlement Judges in Longshore and Related Proceedings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: Settlement judges have been made available, with certain exceptions, for proceedings before the Office of Administrative Law Judges since mid-August 1993. Cases arising pursuant to the Longshore and Harbor Workers' Compensation Act and related statutes, however, were excluded from the formal settlement judge procedure because of the high rate of settlement already existing in that program. Existing methods of promoting settlements, both before the Office of Workers' Compensation Programs and the Office of Administrative Law Judges, continue to accommodate high rates of resolution of cases without the need for a formal hearing. Experience with the settlement judge procedure, however, indicates that making settlement judges available in cases arising pursuant to the Longshore and Harbor Workers' Compensation Act and related statutes would be appropriate and beneficial where the parties consent to the appointment, and the Chief Administrative Law Judge concludes that such an appointment is a prudent use of resources. The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, therefore, is hereby amended to permit the appointment of settlement judges in cases arising out of Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, the Defense Base Act, the Outer Continental Shelf Lands Act, the Nonappropriated Fund Instrumentalities Act, and the former District of Columbia Workmen's Compensation Act.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: John M. Vittone, Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K St. NW., Suite 400-N, Washington, DC 20001, Telephone: (202) 565-5341.

SUPPLEMENTARY INFORMATION: Settlement judges have been made available, with certain exceptions, for proceedings before the Office of Administrative Law

Judges since mid-August 1993. See 58 FR 38498 (July 16, 1993). One variety of proceeding in which settlement judge proceedings have not been available is cases arising pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, and related statutes. The related statutes include the Longshore Act's direct extensions—the Defense Base Act, the Outer Continental Shelf Lands Act, Nonappropriated Fund Instrumentalities Act—and the former District of Columbia Workmen's Compensation Act, 45 Stat. 600.

The Longshore and directly related workers' compensation cases were excluded from the formal settlement judge procedure because existing techniques for promoting settlements in such cases were already achieving significant rates of settlement in cases pending before the administrative law judges. Success in the use of settlement judges in other case areas, and interest in the procedure arising from the workers' compensation bar, however, indicates that it would be beneficial and appropriate to make the settlement judge procedure available in proceedings arising pursuant to the Longshore Act and the aforementioned related statutes. Accordingly, the following rule would end the exclusion of such cases from the settlement judge provision of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

This amendment of the settlement judge rule is not intended to supplant informal methods of dispute resolution long used successfully in Longshore and related cases, such as the informal conference before the Office of Workers' Compensation Programs, or settlement conferences before the presiding administrative law judge. Rather, it is intended to provide an additional method of dispute resolution in cases where the parties are unable to resolve the issues at the OWCP district office level, one or more party has requested a formal hearing, all consent to the appointment of a settlement judge, and the Chief Administrative Law Judge concludes that such an appointment represents a prudent use of resources. Settlements reached before a settlement judge remain subject to review by the presiding administrative law judge in accordance with section 8(i) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 908(i). Moreover, the availability of the settlement judge process does not change existing law regarding the effect of settlements on petitions for Special Fund relief pursuant to section 8(f) of the Longshore Act, 33 U.S.C. 908(f).

Executive Order 12866

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning And Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as is generally required by the APA (5 U.S.C. 553), since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure.

Small Business Regulatory Fairness Act of 1996

This rule is not classified as a "rule" under Chapter 8 of the Small Business Regulatory Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

List of Subjects in 29 CFR Part 18

Administrative practice and procedure.

Accordingly, part 18 of title 29 of the Code of Federal Regulations is amended as follows:

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

2. Section 18.9 is amended by revising paragraph (e)(2) to read as follows:

§ 18.9 Consent order or settlement; settlement judge procedure.

* * * * *

(e) * * *

(2) *How initiated.* A settlement judge may be appointed by the Chief Administrative Law judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when—

(i) A party objects to referral of the matter to a settlement judge;

(ii) Such appointment is inconsistent with a statute, executive order, or regulation;

(iii) The proceeding arises pursuant to Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901 *et seq.*, also known as the Black Lung Benefits Act.

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Signed at Washington, DC, this 20th day of August, 1999.

Alexis M. Herman,

Secretary of Labor.

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