



December 30, 2011

Industry Notice No. 137

**NOTICE TO EMPLOYERS, INSURANCE CARRIERS, AND SELF-INSURED
EMPLOYERS UNDER THE LONGSHORE AND HARBOR WORKERS'
COMPENSATION ACT, AND OTHER INTERESTED PERSONS**

SUBJECT: New Regulations for Recreational Vessel Exclusion

On December 30, 2011, the U.S. Department of Labor published in the Federal Register new regulations implementing the 2009 amendment to the Longshore and Harbor Workers' Compensation Act (LHWCA). These regulations affect workers and employers in the recreational vessel repair industry and their insurance carriers. The effective date of these regulations is January 30, 2012.

The text of the regulations can be found in the 76 Federal Register (pages 82117-82129, published on December 30, 2011) (to be codified at 20 C.F.R. §§ 701.301 – 701.505) or online at <http://federalregister.gov/a/2011-32880>.

BACKGROUND

The LHWCA provides employees (or their survivors in the case of death) compensation for injuries related to maritime employment on the navigable waters of the United States or in adjoining areas. Between 1984 and 2009, the LHWCA excluded "individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length," provided that the individuals were "subject to coverage under a State workers' compensation law." 33 U.S.C. 902(3)(F) (2000). In 2009, Congress amended the LHWCA to remove the sixty-five feet limitation for repair work; the amended provision now excludes "individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel" without regard to vessel size. American Recovery and Reinvestment Act of 2009, Sec. 803, Pub. L. 111-5, 123 Stat 115 (2009).

The Department of Labor published a Notice of Proposed Rulemaking in the Federal Register in August 2010. The final regulations include changes to the proposed rule based on stakeholder input received during the public comment period.

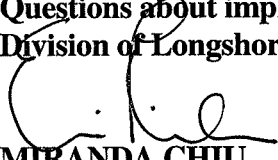
SIGNIFICANT PROVISIONS OF THE NEW REGULATIONS

1. The regulation at 20 C.F.R. § 701.501 clarifies the definition of "recreational vessel" by adopting the Coast Guard's standards for classifying these vessels. The regulation also provides two additional rules for use in applying the recreational-vessel definition:

- A vessel manufacturer or builder may determine whether a vessel is “recreational” under the regulation based on the vessel’s design rather than on its end use.
 - A vessel that is recreational in design and construction and that is used as a “public vessel”—one owned, operated, or bare-boat chartered by the Federal or a State government, including subdivisions—will be deemed recreational under the regulation if it is not normally engaged in military or commercial activity.
2. The regulation at 20 C.F.R. § 701.504 sets out the amendment’s effective date and the standards for determining when it applies. Specifically, the new amendment applies to all injuries occurring on or after February 17, 2009. The following rules apply to determining date of injury:
- For traumatic injuries, the date of injury is the date the employee is hurt.
 - For occupational disease, the date of injury is the date of exposure to a harmful substance or condition.
 - For hearing loss, the date of injury is the date of exposure to injurious noise or other stimulus that causes hearing loss.
 - For cumulative trauma injuries, the date of injury is any date on which a workplace trauma worsened the employee’s condition.

Frequently Asked Questions (FAQs) are available online at www.dol.gov/owcp/dlhwc/lnewregfaq.htm.

Questions about implementation of these regulations should be addressed to the Director, Division of Longshore and Harbor Workers' Compensation, Telephone: (202) 693-0038.

FOR: 
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