

**U.S. Department of Labor**

Office of Workers' Compensation Programs  
Division of Longshore and  
Harbor Workers' Compensation  
Washington, D.C. 20210



**AUG 17 2010**

File Number:

National Marine Manufacturers Association  
231 S. LaSalle Street, Suite 2050  
Chicago, IL. 60604 U.S.A.

Dear Sir/Madam:

The Department of Labor announces proposed regulations to implement amendments to the Longshore & Harbor Workers' Compensation Act contained in the American Recovery and Reinvestment Act of 2009. These changes impact the recreational vessel industry in important ways, and the Department is seeking public comments about the proposed rules. You can view the proposed regulations at the Federal Register website at the following address:

<http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=9cQOxp/4/1/0>

**SUMMARY**

Congress included an amendment to the Longshore and Harbor Workers' Compensation Act (LHWCA) in the American Recovery and Reinvestment Act of 2009 (ARRA). That amendment expanded the already existing group of recreational-vessel repairers, and employees who dismantle those vessels for repair, that are excluded from LHWCA coverage. The proposed regulations implement the amendment by clarifying the definition of "recreational vessel," specifying when the amendment applies, and codifying current case law that the LHWCA covers an employee throughout his or her employment if he or she regularly performs at least some duties that come within the ambit of the statute.

**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 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 removed 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).

**SIGNIFICANT PROVISIONS OF THE PROPOSED RULE**

- Clarifies the definition of "recreational vessel" by adopting the Coast Guard's standards for classifying these vessels. The current regulations define a "recreational vessel" as one

- “manufactured or operated primarily for pleasure, or rented, leased or chartered by another for the latter’s pleasure.” 20 C.F.R. 701.301(a)(12)(iii)(F). Without the sixty-five feet limitation, however, this definition is too broad and does not clarify for the regulated public exactly what vessels the Department considers to be “recreational.” The proposed rules refine the definition by adopting the Coast Guard’s standards for categorizing vessels as recreational. These rules are well-known within the regulated community.
- Sets out the amendment’s effective date and standards for determining when it applies.
- Clarifies that workers who perform both qualifying maritime employment and excluded work are covered under the LHWCA. Because an employer may use a common work force to perform both excluded and non-excluded work, the proposed rule codifies existing case law holding that the LHWCA covers a worker so long as he or she engages in at least some maritime employment within the meaning of the statute and even if injured while performing excluded work.

#### COMMENT SUBMISSION INSTRUCTIONS AND TIME LIMITS

Comments about the proposed regulation may be submitted to the Department of Labor electronically at the following internet address:

[www.regulations.gov](http://www.regulations.gov)

The Notice of Proposed Rulemaking also sets out detailed instructions for submitting comments by facsimile, mail, or personal delivery. We welcome your comments and suggestions, which must be received by October 18, 2010.

Sincerely,



MICHAEL NISS  
Director, Division of  
Longshore and Harbor  
Workers’ Compensation