

SUBCHAPTER A—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AND RELATED STATUTES

PART 700 [RESERVED]

PART 701—GENERAL; ADMINISTERING AGENCY; DEFINITIONS AND USE OF TERMS

RULES IN THIS SUBCHAPTER

Sec.

701.101 Scope of this subchapter and subchapter B.

701.102 Organization of this subchapter.

OFFICE OF WORKMEN'S COMPENSATION PROGRAMS

701.201 Office of Workers' Compensation Programs.

701.202–702.203 [Reserved]

DEFINITIONS AND USE OF TERMS

701.301 What do certain terms in this subchapter mean?

701.302 Who is an employee?

COVERAGE UNDER STATE COMPENSATION PROGRAMS

701.401 Coverage under State compensation programs.

SPECIAL RULES FOR THE RECREATIONAL VESSEL EXCLUSION FROM THE DEFINITION OF "EMPLOYEE"

701.501 What is a recreational vessel?

701.502 What types of work may exclude a recreational-vessel worker from the definition of "employee"?

701.503 Did the American Recovery and Reinvestment Act of 2009 amend the recreational vessel exclusion?

701.504 When does the recreational vessel exclusion in the American Recovery and Reinvestment Act of 2009 apply?

701.505 May an employer stop paying benefits awarded before February 17, 2009 if the employee would now fall within the exclusion?

AUTHORITY: 5 U.S.C. 301, 8171 *et seq.*; 33 U.S.C. 939; 36 D.C. Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1333; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

SOURCE: 38 FR 26860, Sept. 26, 1973, unless otherwise noted.

RULES IN THIS SUBCHAPTER

§ 701.101 Scope of this subchapter and subchapter B.

(a) This subchapter contains the regulations governing the administration of the Longshore and Harbor Workers' Compensation Act, as amended (LHWCA), 33 U.S.C. 901 *et seq.*, except activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary of Labor for Occupational Safety and Health. It also contains the regulations governing the administration of the direct extensions of the LHWCA: the Defense Base Act (DBA), 42 U.S.C. 1651 *et seq.*; the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331; and the Nonappropriated Fund Instrumentalities Act (NFIA), 5 U.S.C. 8171 *et seq.*

(b) The regulations in this subchapter also apply to claims filed under the District of Columbia Workmen's Compensation Act (DCCA), 36 D.C. Code 501 *et seq.* That law applies to all claims for injuries or deaths based on employment events that occurred prior to July 26, 1982, the effective date of the District of Columbia Workers' Compensation Act, as amended (D.C. Code 32–1501 *et seq.*).

(c) The regulations governing the administration of the Black Lung Benefits Program are in subchapter B of this chapter.

[70 FR 43232, July 26, 2005]

§ 701.102 Organization of this subchapter.

Part 701 provides a general description of the regulations in this subchapter; sets forth information regarding the persons and agencies within the Department of Labor authorized by the Secretary of Labor to administer the Longshore and Harbor Workers' Compensation Act, its extensions and the regulations in this subchapter; and defines and clarifies use of specific terms in the several parts of this subchapter. Part 702 of this subchapter contains the general administrative regulations governing claims filed under the LHWCA. Part 703 of this subchapter

§ 701.201

20 CFR Ch. VI (4–1–23 Edition)

contains the regulations governing insurance carrier authorizations, insurance carrier security deposits, self-insurer authorizations, and certificates of compliance with the insurance regulations, as required by sections 32 and 37 of the LHWCA (33 U.S.C. 932, 937). Because the extensions of the LHWCA (see § 701.101) incorporate by reference nearly all the provisions of the LHWCA, the regulations in parts 701, 702 and 703 also apply to the administration of the extensions (DBA, DCCA, OCSLA, and NFIA), unless otherwise noted. Part 704 of this subchapter contains the exceptions to the general applicability of parts 702 and 703 for the DBA, the DCCA, the OCSLA, and the NFIA.

[70 FR 43232, July 26, 2005]

OFFICE OF WORKERS' COMPENSATION PROGRAMS

§ 701.201 Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs is responsible for administering the LHWCA and its extensions.

[75 FR 63380, Oct. 15, 2010]

§§ 701.202–701.203 [Reserved]

DEFINITIONS AND USE OF TERMS

§ 701.301 What do certain terms in this subchapter mean?

(a) As used in this subchapter, except where the context clearly indicates otherwise:

(1) *Act* or *LHWCA* means the Longshore and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 *et seq.*), and includes the provisions of any statutory extension of such Act (see § 701.101(a) and (b)) pursuant to which compensation on account of an injury is sought.

(2) *Secretary* means the Secretary of Labor, United States Department of Labor, or his authorized representative.

(3)–(4) [Reserved]

(5) *Office of Workers' Compensation Programs* or *OWCP* or the *Office* means the Office of Workers' Compensation Programs, referred to in § 701.201. The term *Office of Workmen's Compensation Programs* shall have the same meaning

as *Office of Workers' Compensation Programs* (see 20 CFR 1.6(b)).

(6) *Director* means the Director of OWCP, or his or her authorized representative.

(7) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA or his or her designee, authorized to perform functions with respect to the processing and determination of claims for compensation under the LHWCA and its extensions as provided therein and under this subchapter. The term District Director is substituted for the term *Deputy Commissioner* used in the statute. This substitution is for administrative purposes only and in no way affects the power or authority of the position as established in the statute.

(8) *Administrative Law Judge* means a person appointed as provided in 5 U.S.C. 3105 and subpart B of 5 CFR part 930, who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings whenever necessary in respect of any claim for compensation arising under the LHWCA and its extensions.

(9) *Chief Administrative Law Judge* means the Chief Judge of the Office of Administrative Law Judges, United States Department of Labor, whose office is at the location set forth in 29 CFR 18.3(a).

(10) *Board or Benefits Review Board* means the Benefits Review Board established by section 21 of the LHWCA (33 U.S.C. 921) as amended and constituted and functioning pursuant to the provisions of chapter VII of this title and Secretary of Labor's Order No. 38–72 (38 FR 90), whose office is at the location set forth in 20 CFR 802.204.

(11) *Department* means the United States Department of Labor.

(12) *Employer* includes any employer who may be obligated as an employer under the provisions of the LHWCA as amended or any of its extensions to pay and secure compensation as provided therein.

(13) *Carrier* means an insurance carrier or self-insurer meeting the requirements of section 32 of the LHWCA as amended and of this subchapter with respect to authorization to provide insurance fulfilling the obligation of an

employer to secure the payment of compensation due his employees under the LHWCA as amended or a statutory extension thereof.

(14) The terms *wages, national average weekly wage, injury, disability, death, and compensation* shall have the meanings set forth in section 2 of the LHWCA.

(15) *Claimant* includes any person claiming compensation or benefits under the provisions of the LHWCA as amended or a statutory extension thereof on account of the injury or death of an employee.

(b) The definitions contained in paragraph (a) of this section shall not be considered to derogate from any definitions or delimitations of terms in the LHWCA as amended or any of its statutory extensions in any case where such statutory definitions or delimitations would be applicable.

(c) As used in this subchapter, the singular includes plural and the masculine includes the feminine.

[38 FR 26860, Sept. 26, 1973, as amended at 42 FR 3848, Jan. 21, 1977; 50 FR 391, Jan. 3, 1985; 51 FR 4281, Feb. 3, 1986; 55 FR 28606, July 12, 1990; 70 FR 43233, July 26, 2005; 76 FR 82127, Dec. 30, 2011; 77 FR 37286, June 21, 2012]

§ 701.302 Who is an employee?

(a) *Employee* means any person engaged in maritime employment, including:

(1) Any longshore worker or other person engaged in longshoring operations;

(2) Any harbor worker, including a ship repairer, shipbuilder and shipbreaker; and

(3) Any other individual to whom an injury may be the basis for a compensation claim under the LHWCA as amended, or any of its extensions;

(b) The term does not include:

(1) A master or member of a crew of any vessel; or

(2) Any person engaged by a master to load or unload or repair any small vessel under eighteen tons net.

(c) Nor does this term include the following individuals (whether or not the injury occurs over the navigable waters of the United States) where it is first determined that they are covered by a state workers' compensation act:

(1) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work (but not longshore cargo checkers and cargo clerks);

(2) Individuals employed by a club (meaning a social or fraternal organization whether profit or nonprofit), camp, recreational operation (meaning any recreational activity, including but not limited to scuba diving, commercial rafting, canoeing or boating activities operated for pleasure of owners, members of a club or organization, or renting, leasing or chartering equipment to another for the latter's pleasure), restaurant, museum or retail outlet;

(3) Individuals employed by a marina, provided they are not engaged in its construction, replacement or expansion, except for routine maintenance such as cleaning, painting, trash removal, housekeeping and small repairs;

(4) Employees of suppliers, vendors and transporters temporarily doing business on the premises of a covered employer, provided they are not performing work normally performed by employees of the covered employer;

(5) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species; or

(6) Individuals employed to build any recreational vessel under sixty-five feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel. For purposes of this paragraph, the special rules set forth at §§ 701.501 through 701.505 apply.

[76 FR 82127, Dec. 30, 2011]

COVERAGE UNDER STATE COMPENSATION PROGRAMS

§ 701.401 Coverage under state compensation programs.

(a) Exclusions from the definition of "employee" under § 701.301(a)(12), and the employees of small vessel facilities

§ 701.501

20 CFR Ch. VI (4–1–23 Edition)

otherwise covered which are exempted from coverage under § 702.171, are dependent upon coverage under a state workers' compensation program. For these purposes, a worker or dependent must first claim compensation under the appropriate state program and receive a final decision on the merits of the claim, denying coverage, before any claim may be filed under this Act.

(b) The intent of the Act is that state law will apply to those categories of employees if it otherwise would. Accordingly, not withstanding any contrary state law, claims by any of the categories of workers excluded under § 701.301 or 702.171 must be made to and processed by the state and a merit decision denying coverage on jurisdictional grounds must be made before coverage or benefits under the Act may be sought.

(c) The time for filing notice and claim under the Act (see subpart B of part 702) does not begin to run for purposes of claims by those workers or dependents described in § 701.301(a)(12) and § 702.171, until a final adverse decision denying coverage under a state compensation act is received.

[50 FR 392, Jan. 3, 1985]

SPECIAL RULES FOR THE RECREATIONAL VESSEL EXCLUSION FROM THE DEFINITION OF "EMPLOYEE"

§ 701.501 What is a recreational vessel?

(a) *Recreational vessel* means a vessel—

(1) Being manufactured or operated primarily for pleasure; or

(2) Leased, rented, or chartered to another for the latter's pleasure.

(b) In applying the definition in paragraph (a) of this section, the following rules apply:

(1) A vessel being *manufactured* or *built*, or being repaired under warranty by its manufacturer or builder, is a *recreational vessel* if the vessel appears intended, based on its design and construction, to be for ultimate recreational uses. The manufacturer or builder bears the burden of establishing that a vessel is recreational under this standard.

(2) A vessel being *repaired*, *dismantled for repair*, or *dismantled at the end of its life* is not a *recreational vessel* if the ves-

sel had been operating, around the time of its repair or dismantling, in one or more of the following categories on more than an infrequent basis—

(A) "Passenger vessel" as defined by 46 U.S.C. 2101(22);

(B) "Small passenger vessel" as defined by 46 U.S.C. 2101(35);

(C) "Uninspected passenger vessel" as defined by 46 U.S.C. 2101(42);

(D) Vessel routinely engaged in "commercial service" as defined by 46 U.S.C. 2101(5); or

(E) Vessel that routinely carries "passengers for hire" as defined by 46 U.S.C. 2101(21a).

(3) Notwithstanding paragraph (b)(2) of this section, a vessel will be deemed recreational if it is a *public vessel*, i.e., a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, at the time of repair, dismantling for repair, or dismantling, provided that such vessel shares elements of design and construction with traditional recreational vessels and is not normally engaged in a military, commercial or traditionally commercial undertaking.

(c) All subsequent amendments to the statutes referenced in paragraph (b)(2) of this section and the regulations implementing those provisions in Title 46 of the Code of Federal Regulations will apply when determining whether a vessel is recreational.

[76 FR 82128, Dec. 30, 2011]

§ 701.502 What types of work may exclude a recreational-vessel worker from the definition of "employee"?

(a) An individual who works on recreational vessels may be excluded from the definition of "employee" when:

(1) The individual's date of injury is before February 17, 2009, the injury is covered under a State workers' compensation law, and the individual is employed to:

(i) Build any recreational vessel under sixty-five feet in length; or

(ii) Repair any recreational vessel under sixty-five feet in length; or

(iii) Dismantle any recreational vessel under sixty-five feet in length.

(2) The individual's date of injury is on or after February 17, 2009, the injury

is covered under a State workers' compensation law, and the individual is employed to:

- (i) Build any recreational vessel under sixty-five feet in length; or
- (ii) Repair any recreational vessel; or
- (iii) Dismantle any recreational vessel to repair it.

(b) In applying paragraph (a) of this section, the following principles apply:

(1) "Length" means a straight line measurement of the overall length from the foremost part of the vessel to the aftmost part of the vessel, measured parallel to the center line. The measurement must be from end to end over the deck, excluding sheer. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the measurement.

(2) "Repair" means any repair of a vessel including installations, painting and maintenance work. Repair does not include alterations or conversions that render the vessel a non-recreational vessel under § 701.501. For example, a worker who installs equipment on a private yacht to convert it to a passenger-carrying whale-watching vessel is not employed to "repair" a recreational vessel. Repair also does not include alterations or conversions that render a non-recreational vessel recreational under § 701.501.

(3) "Dismantle" means dismantling any part of a vessel to complete a repair but does not include dismantling any part of a vessel to complete alterations or conversions that render the vessel a non-recreational vessel under § 701.501, or render the vessel recreational under § 701.501, or, if the date of injury is on or after February 17, 2009, to scrap or dispose of the vessel at the end of the vessel's life.

[76 FR 82128, Dec. 30, 2011]

§ 701.503 Did the American Recovery and Reinvestment Act of 2009 amend the recreational vessel exclusion?

Yes. The amended exclusion was effective February 17, 2009, the effective date of the American Recovery and Reinvestment Act of 2009.

[76 FR 82128, Dec. 30, 2011]

§ 701.504 When does the recreational vessel exclusion in the American Recovery and Reinvestment Act of 2009 apply?

(a) *Date of injury.* Whether the amended version applies depends on the date of the injury for which compensation is claimed. The following rules apply to determining the date of injury:

(1) *Traumatic injury.* If the individual claims compensation for a traumatic injury, the date of injury is the date the employee suffered harm. For example, if the individual injures an arm or leg in the course of his or her employment, the date of injury is the date on which the individual was hurt.

(2) *Occupational disease or infection.* Occupational illnesses and infections generally involve delayed onset of symptoms following exposure to a harmful workplace substance or condition. If the individual claims compensation for an occupational illness or infection, the date of injury is the date the individual was exposed to the substance or condition.

(3) *Hearing loss.* If the individual claims compensation for hearing loss, the date of injury is the date the individual was exposed to harmful workplace noise or other stimulus that is capable of causing hearing loss.

(4) *Death-benefit claims.* If the individual claims compensation for an employee's death, the date of injury is the date of the workplace event or incident that caused, hastened, or contributed to the death.

(5) *Cumulative trauma.* If the individual claims compensation for cumulative trauma, in which multiple traumas contribute to an overall medical condition, such as a neck condition resulting from repetitive motion, the date of injury is any date on which a workplace trauma worsened the individual's condition. A workplace event will not be deemed a contributing trauma if a corresponding worsening of the condition is due solely to its natural progression, rather than the workplace event.

(b) If the date of injury is before February 17, 2009, the individual's entitlement is governed by section 2(3)(F) as it existed prior to the 2009 amendment.

§ 701.505

(c) If the date of injury is on or after February 17, 2009, the individual's entitlement is governed by the 2009 amendment to section 2(3)(F').

[76 FR 82128, Dec. 30, 2011]

§ 701.505 May an employer stop paying benefits awarded before February 17, 2009 if the employee would now fall within the exclusion?

No. If an individual was awarded compensation for an injury occurring before February 17, 2009, the employer must still pay all benefits awarded, including disability compensation and medical benefits, even if the employee would be excluded from coverage under the amended exclusion.

[76 FR 82129, Dec. 30, 2011]

PART 702—ADMINISTRATION AND PROCEDURE

Subpart A—General Provisions

ADMINISTRATION

Sec.

- 702.101 Exchange of documents and information.
- 702.102 Establishment and modification of compensation districts, establishment of suboffices and jurisdictional areas.
- 702.103 Effect of establishment of suboffices and jurisdictional areas.
- 702.104 Transfer of individual case file.
- 702.105 Use of the title District Director in place of Deputy Commissioner.

RECORDS

- 702.111 Employer's records.
- 702.112 Records of the OWCP.
- 702.113 Inspection of records of the OWCP.
- 702.114 Copying of records of OWCP.

FORMS

- 702.121 Forms.

REPRESENTATION

- 702.131 Representation of parties in interest.
- 702.132 Fees for services.
- 702.133 Unapproved fees; solicitation of claimants; penalties.
- 702.134 Payment of claimant's attorney's fees in disputed claims.
- 702.135 Payment of claimant's witness fees and mileage in disputed claims.

INFORMATION AND ASSISTANCE FOR CLAIMANTS

- 702.136 Requests for information and assistance.

20 CFR Ch. VI (4–1–23 Edition)

COMMUTATION OF PAYMENTS AND SPECIAL FUND

- 702.142 Commutation of payments; aliens not residents or about to become non-residents.
- 702.143 Establishment of special fund.
- 702.144 Purpose of the special fund.
- 702.145 Use of the special fund.
- 702.146 Source of the special fund.
- 702.147 Enforcement of special fund provisions.
- 702.148 Insurance carriers' and self-insured employers' responsibility.

LIENS ON COMPENSATION

- 702.161 Liens against assets of insurance carriers and employers.
- 702.162 Liens on compensation authorized under special circumstances.

CERTIFICATION OF EXEMPTION

- 702.171 Certification of exemption, general.
- 702.172 Certification; definitions.
- 702.173 Exemptions; requirements, limitations.
- 702.174 Exemptions; necessary information.
- 702.175 Effect of work on excluded vessels; reinstatement of certification.

Subpart B—Claims Procedures

EMPLOYER'S REPORTS

- 702.201 Reports from employers of employee's injury or death.
- 702.202 Employer's report; form and contents.
- 702.203 Employer's report; how given.
- 702.204 Employer's report; penalty for failure to furnish and or falsifying.
- 702.205 Employer's report; effect of failure to report upon time limitations.

NOTICE

- 702.211 Notice of employee's injury or death; designation of responsible official.
- 702.212 Notice; when given; when given for certain occupational diseases.
- 702.213 Notice; by whom given.
- 702.214 Notice; form and content.
- 702.215 Notice; how given.
- 702.216 Effect of failure to give notice.
- 702.217 Penalty for false statement, misrepresentation.

CLAIMS

- 702.221 Claims for compensation; time limitations.
- 702.222 Claims; exceptions to time limitations.
- 702.223 Claims; time limitations; time to object.
- 702.224 Claims, notification of employer of filing by employee.
- 702.225 Withdrawal of a claim.