

Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- **Fax:** Fax comments to Docket Operations at 202-493-2251.
- **Hand Delivery:** Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**Privacy:** We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Shirley Stroman, ARM-104, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; e-mail [shirley.stroman@faa.gov](mailto:shirley.stroman@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

You may refer to the NPRM published in the **Federal Register** (75 FR 55852) on September 14, 2010 for detailed instructions on filing your comments to the proposed rule and how we will handle them.

##### **Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Federal eRulemaking Portal at <http://www.regulations.gov>;
- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

#### **Background**

On September 14, 2010, the FAA published an NPRM (75 FR 55852) entitled "Flightcrew Member Duty and Rest Requirements." The proposed regulation recognizes the growing similarities between the types of operations and the universality of factors that lead to fatigue in most individuals. Fatigue threatens aviation safety because it increases the risk of pilot error that could lead to an accident. The new requirements, if adopted, would eliminate the current distinctions between domestic, flag and supplemental operations. The proposal provides different requirements based on the time of day, whether an individual is acclimated to a new time zone, and the likelihood of being able to sleep under different circumstances. The NPRM comment period is scheduled to close on November 15, 2010.

Since publication of the NPRM, the FAA has received several petitions to extend the comment period. Requests for extension include those from National Air Carrier Association, Cargo Airline Association (CAA), United Parcel Service (UPS), Atlas Air Worldwide Holdings, Inc., Air Transport Association of America, Inc., (ATA), Air Carrier Association of America, Regional Airline Association, and others. The requests include ones for a 30-day extension, 45-day extension, 60-day extension, and 180-day extension.

In general, the petitioners said the additional time is necessary due to the length and complexity of the NPRM and Regulatory Impact Analysis. Several petitioners, including CAA, UPS, and ATA, also said the recent statutory mandate that requires carriers to submit a Fatigue Risk Management Plan to the FAA by October 30, 2010, will take time and resources away from developing comments to the NPRM.

The FAA has reviewed the requests for an extension of the comment period on the "Flightcrew Member Duty and Rest Requirements" NPRM. While we understand the reasons for these requests, we do not believe an extension is necessary for the reasons stated below.

#### **FAA Response to Comment Period Extension Requests**

In 2009, the FAA established the Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee (ARC). The ARC provided a forum for the aviation industry to give extensive input on revising current flight and duty time limitations regulations. Therefore, the FAA does not believe it is necessary to extend the comment period for the proposed rule. Consequently, the requests for an extension of the comment period are denied. Also, in the recently passed Airline Safety and Federal Aviation Administration Extension Act of 2010, Congress mandated that the FAA issue a final rule on pilot fatigue by August 1, 2011. To help ensure that we meet this deadline, the FAA must receive comments to its proposed rule by November 15, 2010. However, as stated in Title 14 Code of Federal Regulations § 11.45, we will consider comments filed late if it is possible to do so without incurring expense or delay.

The requests for extension and this Notice will be included in the rulemaking docket.

Issued in Washington, DC, on October 12, 2010.

**Dennis Pratte,**

*Acting Deputy Director, Office of Rulemaking.*

[FR Doc. 2010-26142 Filed 10-14-10; 8:45 am]

**BILLING CODE 4910-13-P**

## **DEPARTMENT OF LABOR**

### **Office of Workers' Compensation Programs**

#### **20 CFR Part 701**

**RIN 1240-AA02**

#### **Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels**

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Office of Workers' Compensation Programs (OWCP) is republishing the Notice of Proposed Rulemaking entitled Longshore and Harbor Workers' Compensation Act: Recreational Vessels, published on August 17, 2010 (75 FR 50718), and affording the public an additional period for submitting comments. This document contains proposed regulations implementing amendments to the Longshore and Harbor Workers'

Compensation Act (LHWCA) by the American Recovery and Reinvestment Act of 2009 (ARRA), relating to the exclusion of certain recreational-vessel workers from the LHWCA's definition of "employee." These regulations would clarify both the definition of "recreational vessel" and those circumstances under which workers are excluded from LHWCA coverage when working on those vessels. The proposed rules also codify the Department's longstanding view that employees are covered under the LHWCA so long as some of their work constitutes "maritime employment" within the meaning of the statute.

**DATES:** The Department invites written comments on the proposed rule from interested parties. The Department is particularly interested in receiving comments regarding the proposed definition of "recreational vessel." When first published, the Department set October 18, 2010 as the deadline for comments on the NPRM, which afforded the public 60 days to submit comments. 75 FR 50718 (Aug. 17, 2010). As explained in the supplementary information section below, the Department is republishing the NPRM to accommodate revising the title of 20 CFR chapter VI. The Department is also effectively lengthening the comment period by 30 days. The Department believes that the combined comment period—a total of 90 days—will allow interested members of the public sufficient time to review the NPRM and submit comments. Accordingly, written comments must be received by November 17, 2010.

**ADDRESSES:** You may submit written comments, identified by RIN number 1240-AA02, by any of the following methods. To facilitate the receipt and processing of comment letters, OWCP encourages interested parties to submit their comments electronically.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions on the Web site for submitting comments.

- *Facsimile:* (202) 693-1380 (this is not a toll-free number). Only comments of ten or fewer pages (including a FAX cover sheet and attachments, if any) will be accepted by FAX.

- *Regular Mail:* Submit comments on paper, disk, or CD-ROM to the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C-4315, 200 Constitution Avenue, NW., Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must

take this into consideration when preparing to meet the deadline for submitting comments.

- *Hand Delivery/Courier:* Submit comments on paper, disk, or CD-ROM to the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C-4315, 200 Constitution Avenue, NW., Washington, DC 20210.

*Instructions:* All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C-4315, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693-0038 (this is not a toll-free number). TTY/TDD callers may dial toll free 1-800-877-8339 for further information.

**SUPPLEMENTARY INFORMATION:**

**I. Background of This Rulemaking**

*A. Statutory Background*

Section 2(3) of the LHWCA defines "employee" to mean "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker \* \* \*." 33 U.S.C. 902(3). The remainder of this provision, initially enacted as part of the 1984 amendments to the LHWCA, lists eight categories of workers who are excluded from the definition of "employee" and therefore excluded from LHWCA coverage. 33 U.S.C. 902(3)(A)-(H). Section 2(3)(F) in particular excluded from coverage "individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length," provided that such individuals were "subject to coverage under a State workers' compensation law." 33 U.S.C. 902(3)(F).

Section 803 of Title IX of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115, 127 (2009), amended the section 2(3)(F) exclusion. That provision now excludes "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," and retains the State-workers'-compensation-coverage proviso. 33 U.S.C. 902(3)(F), as amended by Public Law 111-5 section 803, 123 Stat 115, 187 (2009) (emphasis supplied).

Thus, under the original version of section 2(3)(F), all individuals working on recreational vessels shorter than sixty-five feet were excluded from the definition of "employee." The amended exclusion retains this same rule for employees building recreational vessels. For individuals who repair or dismantle recreational vessels, however, the amended exclusion provides for different treatment. Now, workers who repair recreational vessels or dismantle them for repair are excluded from the definition of "employee" regardless of the vessel's length. With the removal of the sixty-five feet length limit, the number of vessels that will be considered recreational for LHWCA purposes will increase; and as vessel numbers increase, the number of workers who repair or dismantle them for repair will naturally increase as well. On the other hand, amended section 2(3)(F) no longer excludes workers who dismantle recreational vessels, except when the dismantling is in connection with a repair. Thus, some workers previously excluded may now be considered "employees" under section 2(3).

The proposed regulations clarify how amended section 2(3)(F) should be interpreted and applied in several respects.

*B. Reasons for Republication*

The NPRM proposes revisions to regulations contained in 20 CFR chapter VI governing the administration of the LHWCA and its extensions, and the Black Lung Benefits Act (BLBA). When the NPRM was initially published on August 17, 2010, Chapter VI was titled "Employment Standards Administration, Department of Labor." Because the Secretary dissolved the Employment Standards Administration on November 8, 2009 (*see* Secretary's Order 10-2009, 74 FR 58834 (Nov. 13, 2009)), that title was no longer accurate. The Department has now issued a final rule revising the title to reflect the Secretary's delegation of her authority to administer the LHWCA and its extensions, and the BLBA to the Director, OWCP. Accordingly, OWCP is republishing the NPRM under the current Chapter VI title, "Office of Workers' Compensation Programs, Department of Labor (Divisions of Longshore and Harbor Workers'

Compensation and Coal Mine Workers' Compensation)."

## II. Summary of the Proposed Rule

The Department summarized each proposed regulation in the August 17, 2010 NPRM. 75 FR 50719–24. Those summaries apply with equal force to this republished NPRM.

## III. Statutory Authority

The Department's statement of its statutory authority for proposing these rules is set forth in the August 17, 2010 NPRM. 75 FR 50724.

## IV. Other Legal Analyses

The Department's analysis of the following legal requirements is set forth in the August 17, 2010 NPRM:

A. Information Collection Requirements (subject to the Paperwork Reduction Act) Imposed under the Proposed Rule, 75 FR 50724.

B. Executive Order 12866 (Regulatory Planning and Review), 75 FR 50724.

C. Small Business Regulatory Enforcement Fairness Act of 1996, 75 FR 50725.

D. Unfunded Mandates Reform Act of 1995, 75 FR 50725.

E. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), 75 FR 50725–28.

F. Executive Order 13132 (Federalism), 75 FR 50728.

G. Executive Order 12988 (Civil Justice Reform), 75 FR 50728.

H. Congressional Review Act, 75 FR 50728.

### List of Subjects in 20 CFR Part 701

Longshore and harbor workers, Organization and functions (government agencies), Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 701 as follows:

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

1. The authority citation for part 701 is revised to read as follows:

**Authority:** 5 U.S.C. 301 and 8171 *et seq.*; 33 U.S.C. 939; 36 DC Code 501 *et seq.*; 42 U.S.C. 1651 *et seq.*; 43 U.S.C. 1331; Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263; Secretary's Order 10–2009; Pub. L. 111–5 § 803, 123 Stat. 115, 187 (2009).

2. Revise the undesignated center heading following § 701.203 to read as follows:

#### Definitions and Use of Terms

\* \* \* \* \*

2a. Amend § 701.301 as follows:  
a. Revise the section heading;  
b. Redesignate paragraph (a)(12) as § 701.302, with its sub-paragraphs redesignated according to the following table:

Former designation in § 701.301	New designation in § 701.302
(a)(12)(i) introductory text.	(a) introductory text.
(a)(12)(i)(A) .....	(a)(1).
(a)(12)(i)(B) .....	(a)(2).
(a)(12)(i)(C) .....	(a)(3).
(a)(12)(ii) introductory text.	(b) introductory text.
(a)(12)(ii)(A) .....	(b)(1).
(a)(12)(ii)(B) .....	(b)(2).
(a)(12)(iii) introductory text.	(c) introductory text.
(a)(12)(iii)(A) .....	(c)(1).
(a)(12)(iii)(B) .....	(c)(2).
(a)(12)(iii)(C) .....	(c)(3).
(a)(12)(iii)(D) .....	(c)(4).
(a)(12)(iii)(E) .....	(c)(5).
(a)(12)(iii)(F) .....	(c)(6).

c. Redesignate paragraphs (a)(13) through (a)(16) as (a)(12) through (a)(15). The revision reads as follows:

#### § 701.301 What do certain terms in this subchapter mean?

\* \* \* \* \*

3. Amend newly designated § 701.302 by adding a section heading, and by revising paragraph (c)(6) to read as follows:

#### § 701.302 Who is an employee?

\* \* \* \* \*

(c) \* \* \*

(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.

4. Add § 701.303 to read as follows:

#### § 701.303 Is a worker who engages in both qualifying "maritime employment" and non-qualifying duties in the course of employment an "employee" covered by the LHWCA?

(a) An individual is a covered "employee" if he or she performs at least some work in the course of employment that qualifies as "maritime employment" and that work is not—

(1) Infrequent, episodic, or too minimal to be a regular part of his or her overall employment; or

(2) Otherwise excluded from coverage under § 701.302.

(b) The individual's status as a covered "employee" does not depend on whether he or she was engaged in

qualifying maritime employment or non-qualifying work when injured.

5. Add a new undesignated center heading following § 701.401 and add § 701.501 to read as follows:

### 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) Recreational vessel does not include a—

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

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

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

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

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

(c) All subsequent amendments to the statutes referenced in paragraph (b) of this section are incorporated. The statutes referenced in paragraph (b) and all subsequent amendments thereto apply as interpreted by regulations in Title 46 of the Code of Federal Regulations.

6. Add § 701.502 to read as follows:

#### § 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 rules 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 to scrap or dispose of the vessel at the end of the vessel’s life.

(c) An individual who performs recreational-vessel work not excluded under paragraph (a) of this section or who engages in other qualifying maritime employment in addition to recreational-vessel work excluded under paragraph (a) of this section will not be excluded from the definition of “employee.” (See § 701.303).

7. Add § 701.503 to read as follows:

**§ 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.

8. Add § 701.504 to read as follows:

**§ 701.504 When does the 2009 amended version of the recreational vessel exclusion 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 are generally caused by exposure to a harmful substance or condition. If the individual claims compensation for an occupational illness or infection, the date of injury is the date the illness becomes “manifest” to the individual. The injury is “manifest” when the individual learns, or reasonably should have learned, that he or she is suffering from the illness, that the illness is related to his or her work with the responsible employer, and that he or she is disabled as a result of the illness.

(3) *Hearing loss.* If the individual claims compensation for hearing loss, the date of injury is the date the individual receives an audiogram with an accompanying report which indicates the individual has suffered a loss of hearing that is related to employment.

(4) *Death-benefit claims.* If the individual claims compensation for an employee’s death, the date of injury is the date of the employee’s death, even if his or her death was the result of an event or incident that happened on an earlier date.

(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.

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

9. Add § 701.505 to read as follows:

**§ 701.505 May an employer stop paying benefits awarded prior to the effective date of the recreational vessel exclusion amendment 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.

**Shelby Hallmark,**

*Director, Office of Workers’ Compensation Programs.*

[FR Doc. 2010–25895 Filed 10–14–10; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 67

RIN 1024–AD65

#### Historic Preservation Certifications for Federal Income Tax Incentives

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) proposes to amend its procedures for obtaining historic preservation certifications for rehabilitation of historic structures. Individuals and corporations must obtain these certifications to be eligible for tax credits from the Internal Revenue Service (IRS). This rule: Incorporates references to the revised sections of the Internal Revenue Code containing the requirements for obtaining a tax credit; replaces references to NPS’s regional offices with references to its Washington Area Service Office (WASO); requires NPS to accept appeals for denial of certain certifications; and removes the certification fee schedule from the regulation. These latter two revisions provide an additional avenue for appeals and allow NPS to update fees by publishing a notice in the **Federal Register** as administrative costs change.

**DATES:** Comments must be received by December 14, 2010.

**ADDRESSES:** You may submit comments, identified by the number 1024–AD65, by any of the following methods:

—*Federal rulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.  
—*Mail:* National Park Service, Attn. Michael J. Auer, 1849 C Street, NW. (org. code 2255), Washington, DC 20240.

All submissions must include the agency name and the number 1024–AD65. We will post all comments without change to <http://www.regulations.gov>, including any personal information provided. For additional information, see “Public Participation” under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Auer, National Park Service, 1849 C Street, NW. (org. code 2255), Washington, DC 20240; [Michael\\_Auer@nps.gov](mailto:Michael_Auer@nps.gov); fax: 202–371–1616.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 47 of Title 26 of the United States Code (the Internal Revenue