



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 Ave., NW
Washington, DC 20210

Wednesday, November 17, 2010

Re: Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels - RIN 1240-AA02

Dear Mr. Niss:

I appreciate the opportunity to comment on the Department of Labor's notice of proposed rulemaking and request for comments entitled: *Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels*, [75 Fed. Reg. 50,718](#) (Aug. 17, 2010).

I have to say that overall I agree with the vast majority of the proposed rule, in particular the rules concerning the effective dates and the clarity in measuring vessels.

In the seminars and meetings since the passage of ARRA in February 2009, with CUSTOMERS IN RECREATIONAL MARINE BUSINESSES as well as the insurance industry, the questions I received compelled me to believe that an expanded definition for recreational marine vessels is critical to remove any doubt as to who is and is not covered, but it is the format of the proposed new definition that gives me some concern.

I agree with the principals stated in 701.501 (1) that the vessel should be used "PRIMARILY for pleasure" which implies that incidental non recreational work is acceptable

The problem I see is that 701.501 (2) b contradicts part (1) is that is specifically excludes for coverage the 3 types of passenger vessels listed even if incidental. The Reality is that the vast majority of vessel over 65ft, particularly the mega yachts, do some charter work and thus will fail the 701.501 (2) b) test and be thrown directly back into Longshore regardless of whether Incidental or not.



I would like to see the definition rewritten allow incidental charter work to be acceptable and a definition that could be simply applied to the vast majority of vessels by simply looking at the registration of the vessel when registered with the USCG or any state.

I have drafted and attach some ideas of how this could be achieved.

Much to my surprise, I have also received a number of questions regarding the title of vessels in a business name makes it commercial. My belief is that it does not - the use is determinative and I am suggesting a wording to clarify that was well.

I will be happy to provide any additional information and respond to any questions you might have. Accordingly, the best way to proceed would be to withdraw the rulemaking and conduct additional consultations with the affected industry through additional information gathering or public hearings or workshops. Based on that process, a rule could be crafted that takes into account the most up to date information when implementing this legislation.

Thanks very much

Yours Sincerely

Ian R. Greenway
President

701.501 What is a Recreational Vessel?

- a) Recreational vessel means a vessel—
1. Registered with the US Coastguard or any State as a recreational vessel; OR
 2. If not registered as described in a) 1.
 - i. Being manufactured or operated primarily for pleasure; or
 - ii. Leased, rented, or chartered to another for the latter's pleasure.
- b) Recreational vessel does not include a—
1. Any vessels registered with the US Coastguard or any state, as a commercial OR fishing vessel; OR
 2. If not registered as described in b) 1.
 - i. Vessel routinely engaged in any type of trade or business involving the transportation of goods, including Tug/Tow Boats, Cargo Vessels, Commercial Fishing vessels, Security/Patrol Vessels, Government Vessels, Barges, Oil Service, Drilling Rigs and Platforms, Dredges, Pilot/Harbor Boats, and similar vessels.
 - ii. That is a submersible vessel carrying at least one passenger for hire; or
 - iii. That is a ferry carrying more than 6 passengers.
 - iv. Vessel that spends more than 20% of its operational time:
 - a) Carrying more than 6 passengers, including at least one passenger for hire; OR
 - b) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 6 passengers; OR
 - c) That is chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers;
- c) The ownership of a vessel in a corporate, personal, or other name shall be ignored when determining the vessel status in a) and b). The actual use of the vessel will be determinative.