

Advocacy Recommends DOL Consider Regulatory Alternatives that Would Minimize the Small Business Impacts of Regulations Implementing the Longshore and Harbor Workers' Compensation Act

On November 17, 2010, the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor (DOL) regarding its proposed rule, *Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels*. A complete copy of Advocacy's letter to DOL may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- DOL oversees the implementation of the Longshore and Harbor Workers' Compensation Act (LHWCA), a federal program which requires employment-injury protection for workers who are injured on the navigable waters of the United States, or adjoining areas. Section 2(3)(F) of the statute currently excludes from LHWCA coverage “individuals employed to build, repair, or dismantle any recreational vessel under 65 feet in length, provided that such individuals are “subject to coverage under a state workers’ compensation law.”
- The American Recovery and Reinvestment Act of 2009 (ARRA) contained amendments to the LHWCA. The authors of this provision sought to exempt *all* entities conducting repair and dismantling of recreational vessels from the more expensive federal LHWCA coverage, because recreational vessels exceeding 65 feet in length are quite common.
- Small businesses and Congressional members are concerned that DOL’s addition of two provisions to the proposed rule do not conform to Congressional intent because it places entities that repair and dismantle recreational vessels back into the more expensive LHWCA coverage. The proposal also may create confusion about coverage for the recreational marine industry.
- The proposed rule adds a new definition of “recreational vessel” that is restrictive, which would add more entities into LHWCA coverage. The regulation also sets vague parameters for when an employee doing both recreational and commercial work “walks in/ or walks out” of qualifying employment for the purposes of the LHWCA coverage. Small entities are concerned this provision may require mandatory LHWCA coverage. Small businesses recommend a different definition of “recreational vessel” that more closely conforms to statutory intent and an “80 percent of work” test to trigger the LHWCA exemption.

For more information, visit Advocacy’s Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at Janis.Reyes@sba.gov or by phone at 202-205-6533.