

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

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

(iii) 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:

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

(B) 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;

(C) 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;

(D) 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;

(E) 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

(F) Individuals engaged in the building, repairing or dismantling of recreational vessels under 65 feet in length. For purposes of this subparagraph *recreational vessel* means a vessel manufactured or operated primarily for pleasure, or rented, leased or chartered by another for the latter's pleas-

ure, and *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 shall be from end to end over the deck, excluding sheer.

(13) *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.

(14) *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.

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

(16) *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]

#### 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 otherwise covered which are exempted

**Pt. 702**

**20 CFR Ch. VI (4-1-08 Edition)**

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]

**PART 702—ADMINISTRATION AND PROCEDURE**

**Subpart A—General Provisions**

**ADMINISTRATION**

Sec.

- 702.101 [Reserved]
- 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.

**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.