

temporarily meet the criteria for qualification but only for facilities which work on exclusively small vessels, as defined.

[50 FR 396, Jan. 3, 1985]

§ 702.172 Certification; definitions.

For purposes of §§ 702.171 through 702.175 dealing with certification of small vessel facilities, the following definitions are applicable.

(a)(1) "Small vessel" means only those vessels described in section 3(d)(3) of the Act, 33 U.S.C. 903(d)(3), that is:

(i) A commercial barge which is under 900 lightship displacement tons (long); or

(ii) A commercial tugboat, towboat, crewboat, supply boat, fishing vessel or other work vessel which is under 1,600 tons gross.

(2) For these purposes: (i) One gross ton equals 100 cubic feet, as measured by the current formula contained in the Act of May 6, 1894 as amended through 1974 (46 U.S.C. 77); (ii) one long ton equals 2,240 lbs; and (iii) "Commercial" as it applies to "vessel" means any vessel engaged in commerce but does not include military vessels or Coast Guard vessels.

(b) "Federal Maritime Subsidy" means the construction differential subsidy (CDS) or operating differential subsidy under the Merchant Marine Act of 1936 (46 U.S.C. 1101 et seq.).

(c) *facility* means an operation of an employer at a particular contiguous geographic location.

[51 FR 4283, Feb. 3, 1986]

§ 702.173 Exemptions; requirements, limitations.

(a) Injuries at a facility otherwise covered by the Act are exempted only upon certification that the facility is: (1) Engaged in the building, repairing or dismantling of exclusively small commercial vessels; and (2) does not receive a Federal maritime subsidy.

(b) The exemption does not apply to: (1) Injuries at any facility which occur over the navigable waters of the United States or upon any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels; or (2) where the

employee at such facility is not subject to a State workers' compensation law.

[50 FR 396, Jan. 3, 1985]

§ 702.174 Exemptions; necessary information.

(a) *Application.* Before any facility is exempt from coverage under the Act, the facility must apply for and receive a certificate of exemption from the Director or his/her designee. The application must be made by the owner of the facility; where the owner is a partnership it shall be made by a partner and where a corporation by an officer of the corporation or the manager in charge of the facility for which an exemption is sought. The information submitted shall include the following:

(1) Name, location, physical description and a site plan or aerial photograph of the facility for which an exemption is sought.

(2) Description of the nature of the business.

(3) An affidavit (signed by a partner if the facility is owned by a partnership or an officer if owned by a corporation) verifying and/or acknowledging that:

(i) the facility is, as of the date of the application, engaged in the business of building, repairing or dismantling exclusively small commercial vessels and that it does not then nor foreseeably will it engage in the building, repairing or dismantling of other than small vessels.

(ii) The facility does not receive any Federal maritime subsidy.

(iii) The signator has the duty to immediately inform the district director of any change in these or other conditions likely to result in a termination of an exemption.

(iv) the employer has secured appropriate compensation liability under a State workers' compensation law.

(v) Any false, relevant statements relating to the application or the failure to notify the district director of any changes in circumstances likely to result in termination of the exemption will be grounds for revocation of the exemption certificate and will subject the employer to all provisions of the Act, including all duties, responsibilities and penalties, retroactive to the date of application or date of change in circumstances, as appropriate.