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Director may require that such reports be certified and verified in whatever manner is considered appropriate.

(b) Pursuant to section 44(d)(3) of the Act, 33 U.S.C. 944(d)(3), for the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of section 44 with respect to the special fund, the provisions of 15 U.S.C. 49 and 50 as amended (the Federal Trade Commission Act provisions relating to attendance of witnesses and the production of books, papers, and documents) are made applicable to the jurisdiction, powers, and duties of the Director, OWCP, as the Secretary's delegatee.

(c) Civil penalties and unpaid assessments shall be collected by civil suits brought by and in the name of the Secretary.

(Approved by the Office of Management and Budget under control number 1215-0160)

[38 FR 26861, Sept. 26, 1973, as amended at 50 FR 395, Jan. 3, 1985]

§ 702.148 Insurance carriers' and self-insured employers' responsibilities.

(a) Each carrier and self-insured employer shall make, keep, and preserve such records, and make such reports and provide such additional information as the Director prescribes or orders, which he considers necessary or appropriate to effectively carry out his responsibilities.

(b) Consistent with their greater direct liability stemming from the amended assessment formula, employers and insurance carriers are given the authority to monitor their claims in the special fund as outlined in paragraph (c) of this section. For purposes of monitoring these claims, employers and insurance carriers remain parties in interest to the claim and are allowed access to all records relating to the claim. Similarly, employers and insurance carriers can initiate proceeding to modify an award of compensation after the special fund has assumed the liability to pay benefits. It is intended that employers and insurance carriers have neither a greater nor a lesser responsibility in this new role that they not have with regard to cases that remain their sole liability. (See § 702.373(d).)

(c) An employer or insurance carrier may conduct any reasonable investiga-

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tion regarding cases placed into the special fund by the employer or insurance carrier. Such investigation may include, but shall not be limited to, a semi-annual request for earnings information pursuant to section 8(j) of the Act, 33 U.S.C. 908(j) (See § 702.285) periodic medical examinations, vocational rehabilitation evaluations, and requests for any additional information needed to effectively monitor such a case.

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(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[38 FR 26861, Sept. 26, 1973, as amended at 47 FR 145, Jan. 5, 1982; 50 FR 395, Jan. 3, 1985]

LIENS ON COMPENSATION

§ 702.161 Liens against assets of insurance carriers and employers.

Where payments have been made from the special fund pursuant to section 18(b) of the Act, 33 U.S.C. 918(b) and § 704.145(f) the Secretary of Labor shall, for the benefit of the fund, be subrogated to all the rights of the person receiving such payments. The Secretary may institute proceedings under either section 18 or 21(d) of the Act, 33 U.S.C. 918 or 921(d), or both, to recover the amount expended by the fund or so much as in the judgement of the Secretary is possible, or the Secretary may settle or compromise any such claim.

[50 FR 395, Jan. 3, 1985]

§ 702.162 Liens on compensation authorized under special circumstances.

(a) Pursuant to section 17 of the Act, 33 U.S.C. 917, when a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c) [LMRA], established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to compensation under this Act, has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, a lien

shall be authorized on such compensation in favor of the trust fund for the amount of such payments.

(b)(1) An application for such a lien shall be filed on behalf of the trust fund with the district director for the compensation district where the claim for compensation has been filed, 20 CFR 702.101. Such application shall include a certified statement by an authorized official of the trust fund that:

(i) The trust fund is entitled to a lien in its favor by reason of its payment of disability payments to a claimant-employee (including his name therein);

(ii) The trust fund was created pursuant to a collective bargaining agreement covering the claimant-employee;

(iii) The trust fund complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c);

(iv) The trust agreement contains a subrogation provision entitling the fund to reimbursement for disability benefits paid to the claimant-employee who is entitled to compensation under the Longshoremen's Act;

(2) The statement shall also state the amount paid to the named claimant-employee and whether such disability benefit payments are continuing to be paid.

(3) If the claimant has signed a statement acknowledging receipt of disability benefits from the trust fund and/or a statement recognizing the trust fund's entitlement to a lien against compensation payments which may be received under the Longshoremen's and Harbor Worker's Compensation Act as a result of his present claim and for which the fund is providing disability payments, such statement(s) shall also be included with or attached to the application.

(c) Upon receipt of this application, the district director shall, within a reasonable time, notify the claimant, the employer and/or its compensation insurance carrier that the request for a lien has been filed and each shall be provided with a copy of the application. If the claimant disputes the right of the trust fund to the lien or the amount stated, if any, he shall, within 30 days after receipt of the application or such other longer period as the district director may set, notify the dis-

trict director and he shall be given an opportunity to challenge the right of the trust fund to, or the amount of, the asserted lien; notice to either the employer or its compensation insurance carrier shall constitute notice to both of them.

(d) If the claim for compensation benefits is resolved without a formal hearing and if there is no dispute over the amount of the lien or the right of the trust fund to the lien, the district director may order and impose the lien and he shall notify all parties of the amount of the lien and manner in which it is to be paid.

(e) If the claimant's claim for compensation cannot be resolved informally, the district director shall transfer the case to the Office of the Chief Administrative Law Judge for a formal hearing, pursuant to section 19(d) of the Act, 33 U.S.C. 919(d), and 20 CFR 702.317. The district director shall also submit therewith the application for the lien and all documents relating thereto.

(f) If the administrative law judge issues a compensation order in favor of the claimant, such order shall establish a lien in favor of the trust fund if it is determined that the trust fund has satisfied all of the requirements of the Act and regulations.

(g) If the claim for compensation is not in dispute, but there is a dispute as to the right of the trust fund to a lien, or the amount of the lien, the district director shall transfer the matter together with all documents relating thereto to the Office of the Chief Administrative Law Judge for a formal hearing pursuant to section 19(d) of the Act, 33 U.S.C. 919(d), and 20 CFR 702.317.

(h) In the event that either the district director or the administrative law judge is not satisfied that the trust fund qualifies for a lien under section 17, the district director or administrative law judge may require further evidence including but not limited to the production of the collective bargaining agreement, trust agreement or portions thereof.

(i) Before any such lien is approved, if the trust fund has provided continued disability payments after the application for a lien has been filed, the

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trust fund shall submit a further certified statement showing the total amount paid to the claimant as disability payments. The claimant shall likewise be given an opportunity to contest the amount alleged in this subsequent statement.

(j) In approving a lien on compensation, the district director or administrative law judge shall not order an initial payment to the trust fund in excess of the amount of the past due compensation. The remaining amount to which the trust fund is entitled shall thereafter be deducted from the affected employee's subsequent compensation payments and paid to the trust fund, but any such payment to the trust fund shall not exceed 10 percent of the claimant-employee's bi-weekly compensation payments.

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[42 FR 45301, Sept. 9, 1977, as amended at 50 FR 395, Jan. 3, 1985; 51 FR 4282, Feb. 3, 1986]

CERTIFICATION OF EXEMPTION

§ 702.171 Certification of exemption, general.

An employer may apply to the Director or his/her designee to certify a particular facility as one engaged in the building, repairing or dismantling of exclusively small vessels, as defined. Once certified, injuries sustained at that facility would not be covered under the Act except for injuries which occur over the navigable waters of the United States including any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels. A facility otherwise covered under the Act remains covered until certification of exemption is issued; a certification will be granted only upon submission of a complete application (described in § 702.174), and only for as long as a facility meets the requirements detailed in section 3(d) of the Act, 33 U.S.C. 903(d). This exemption from coverage is not intended to be used by employers whose facilities from time to time may temporarily meet the criteria for qualification but only for facilities which

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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