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§ 272.24 Subsidy repair summaries.

(a) *Filing requirements*. The Operator of an Eligible Vessel shall submit to the appropriate MARAD regional Ship Operations Office a Subsidy Repair Summary (Form MA–140) for each quarter of a calendar year in which one or more of the Operator's Eligible Vessels (including any vessel which has been temporarily withdrawn from subsidized service) terminates a voyage. This quarterly report shall include supporting documents and information, as described in paragraph (c) of this section. This summary may be for either a single voyage or multiple voyages, and shall be filed not later than 120 days after:

(1) The close of the calendar quarter in which a voyage is terminated, or

(2) The date the reported vessel is temporarily or permanently withdrawn from subsidized service.

(b) *Form requirements*. MARAD will make available one copy of Form MA–140 upon request. Each Operator shall furnish its own supply of the form and prepare each form for submission. Information on any Form MA–140 shall pertain to only one vessel. The Operator's superintendent engineer or other responsible official shall certify every summary submitted by an Operator in the following manner:

> This is to certify that, to the best of my knowledge and belief, and based on recorded entries through (*Date*), this is a true and correct statement of repair and maintenance expenditures for the period stated, and that the repair and maintenance items indicated as eligible for subsidy participation are reasonably attributable to service subsequent to commencement of the first voyage under the Operating-Differential Subsidy Agreement and were necessary, satisfactorily completed, and the price is fair and reasonable (exceptions are listed on separate page).

(c) *Categorization*. The Operator shall exercise due diligence in identifying each item in the Form MA–140 within the following three separate categories:

(1) *Claimed for subsidy*. This includes the following:

(i) M&R

(ii) Spare Parts

(iii) Improvements

(2) *Marine loss*. If any M&R expense is incurred because of marine loss, the Operator shall list such an M&R expense under this separate category, and shall exclude such expense from the totals for the ''Claimed for Subsidy'' and ''Non-Subsidized Items'' categories provided for in this section.

(3) *Non-subsidized items*. This category shall include builders' guarantee items, foreign repairs, and other items of M&R expense not claimed for subsidy.

(d) *Required supporting documents and information*—(1) *General*. The Operator shall support every item in the Form MA–140 with documents or other information, in sufficient detail to permit MARAD to determine the fairness and reasonableness of the prices for the submitted work. With respect to any claims for M&R performed outside the United States, the Operator shall submit with the claim a certificate, signed either by the Operator (if it uses its own shore gang labor or materials from its own inventory) or by an official of the ship repair yard or the independent contractor performing the work, stating that the M&R were performed with materials, labor, or both, of Domestic Origin.

(2) *U.S. Independent contractors*. If a U.S. independent contractor performed M&R work, the Operator shall support each such expense with one copy of the contractor's invoices covering the work performed. If an invoice is not itemized and fully descriptive of the work performed with item prices then the Operator shall attach to the contractor's invoice other supporting documentation, such as specifications, prepared in sufficient detail to permit a determination of the fairness and reasonableness of the prices for each segment of the work performed.

(3) *Operator's shore gang*. If an Operator's own U.S. shore gang has performed any M&R work, the Operator shall submit with the Form MA–140 specifications covering that work, prepared in sufficient detail (including the material and labor cost of each item) to permit a determination of the specific cost of each segment of work performed.

(4) *Operator furnished material*. Whenever an Operator furnishes to a contractor material obtained either from the Operator's own ship stores or

shoreside inventory, or by direct purchase for a specific job, the Operator shall include on the invoice, requisition form or other form of transfer memorandum the item number for which the material was used and the contract number covering the work performed.

(5) *Spare parts.* The Operator shall ensure that the invoice covering any Spare Part for an Eligible Vessel which is to be used or installed as an integral, permanent part of the vessel, indicates the specific piece or part of the vessel's hull, machinery, or Equipment for which the Spare Part was obtained.

(6) *Foreign repairs.* Operators receiving M&R subsidy shall submit copies of all U.S. Customs entry forms detailing foreign expenditures on behalf of Eligible Vessels. The copies shall include all expenditures made during the quarter.

(Approved by the Office of Management and Budget under control number 2133–0007)

§ 272.25 Requirements for subsidy repayment.

(a) *Repayment of M&R subsidy for compensated marine or other loss.* If an Operator eventually receives compensation from an insurer or any other person for a marine loss or any other loss for which M&R subsidy has been paid, the Operator shall repay to MARAD an amount equal to the amount of subsidy paid with respect to that loss.

(b) *Repayment of M&R subsidy for Improvements—three year service requirement.* If, within three years after the completion of an Improvement for which M&R subsidy was paid, the Operator permanently withdraws the Eligible Vessel from the ODSA, the Operator shall repay to MARAD an amount equal to the amount of M&R subsidy paid with respect to that Improvement unless MARAD shall have determined that such action was beyond the control of the Operator.

(c) *Repayment of M&R subsidy due to allocation of costs.* If the allocation of total M&R costs required by § 272.41(e) of this part results in the allocation of a lesser amount of subsidizable M&R costs than were actually paid for during the calendar year, the Operator shall repay to MARAD the amount of ODS which was paid in excess of the allocated subsidizable costs.

(d) *Administrative action.* If an Operator fails to repay an M&R subsidy required to be repaid by this section, MARAD may either reduce any ODS payable by the amount of M&R subsidy required to be repaid by this section, or take any other action necessary to secure repayment.

Subpart D—Penalties

§ 272.31 Determination of penalty.

Operators whose Eligible Vessels have undergone foreign repairs, which MARAD determines are non-emergency in nature, may be subject to a penalty in an amount equal to the total cost (exclusive of applicable U.S. Customs duties) of such foreign repairs and purchases, such penalty to be effected by a deduction from the Operator's total ODS otherwise accrued. The Director, Office of Ship Operating Assistance, shall notify the Operator by letter with respect to:

(a) MARAD's determination of a penalty and the reasons therefore; and

(b) Whether the determination is final or subject to the submission of additional information.

§ 272.32 Mitigation of penalty.

The Director, Office of Ship Operating Assistance, may decide, after a non-emergency foreign repair occurs, to mitigate the penalty. Any mitigation of penalty shall be based on a determination that special circumstances existed at the time of repair. The Director shall not consider the difference in the price of foreign and domestic repair work in making this determination, and shall not grant prior approval of foreign repairs. In determining whether special circumstances existed, the Director shall consider, among others, the following factors:

(a) The trading area of the vessel both before and after the repair was performed;

(b) Loss of revenue and effect on vessel utilization if the vessel had returned to the United States for repairs;

(c) The additional operating expense which would have resulted from a return to the United States to repair the vessel; and

(d) Whether the repairs could have been deferred until return to the