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provide information at the time of publication of Notice of Application described in §249.7(b) concerning the existence of any discriminatory laws or practices in the marine hull insurance market abroad. Upon receipt of such information, MARAD will take whatever action it deems appropriate.

§249.11 Confidentiality.

(a) If the data submitted under this rule contain information that the submitter considers to be commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the submitter shall assert a claim of exemption at the time the data are submitted. The claim shall be made in a letter contained in a sealed enveloped marked ''Confidential Information,'' addressed to the Secretary, Maritime Administration. The submitter shall stamp or mark ''confidential'' on the top of each page containing information claimed to be confidential.

(b) In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing: (1) That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority; and (2) that measures have been taken by the submitter of the information to ensure that the information has not been disclosed or otherwise made available to the public, or, if the information has been disclosed or otherwise becomes available to the public, why such disclosure or availability does not compromise the confidential nature of the information.

(c) In the event of a subsequent request for any portion of the data under the FOIA, those submissions not so claimed by the submitter will be disclosed, and those so claimed will be subject to the initial determination by the Secretary, Maritime Administration.

(d) If the Secretary makes a determination unfavorable to the submitter, the submitter will be advised that MARAD will not honor the request for confidentiality at the time of any request for production of information under the FOIA by third parties.

§249.12 Waivers.

The provision of this part may be waived in writing, for special circumstances and good cause shown, provided the procedures adopted are consistent with the Act and with the intent of these regulations.

PARTS 251–252 [RESERVED]

PART 272—REQUIREMENTS AND PROCEDURES FOR CONDUCTING CONDITION SURVEYS AND ADMINISTERING MAINTENANCE AND REPAIR SUBSIDY

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272.44 Dates.

AUTHORITY: 46 App. U.S.C. 1114(b), 1173, 1176; 49 CFR 1.66.

SOURCE: 55 FR 34919, Aug. 27, 1990, unless otherwise noted.

Subpart A—General

§ 272.1 Purpose.

The purpose of this part is to prescribe the requirements and procedures for determining the condition of vessels receiving operating-differential subsidy, to prescribe the requirements for reporting and substantiating maintenance and repair (M&R) expenses, and to establish the criteria and procedures for determining whether a M&R expense is subsidizable.

§ 272.2 Scope.

Except as otherwise provided in subpart B, the provisions of this part apply only to vessels operating under an operating-differential subsidy agreement which provides for the payment of M&R subsidy, except that this part does not apply to any vessel operating under an operating-differential subsidy agreement for the carriage of bulk raw and processed agricultural commodities from the United States to the Union of Soviet Socialist Republics, pursuant to part 294 of this chapter.

§ 272.3 Definitions.

For the purposes of this part:

(a) *Act* means the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1101 *et seq*.

(b) *MARAD* means the Maritime Administration, a unit of the United States Department of Transportation, as distinguished from the Board (which is a unit of MARAD).

(c) *Board* means the Maritime Subsidy Board of the Maritime Administration.

(d) *Domestic Origin:*

(1) *Labor*. With respect to labor, Domestic Origin means that the work shall be performed by a U.S. ship repair facility, a U.S. independent contractor, or by the Operator's own shore gang.

(2) *Materials*. With respect to materials, Domestic Origin means that all articles, materials, and supplies shall be of the growth, production or manufacture of the United States.

(e) *Eligible Vessel* means a vessel operated under an ODSA, other than an ODSA subject to part 294 of this chapter, which provides for the payment of M&R subsidy with respect to the operation of that vessel.

(f) *Equipment* means that part of an Eligible Vessel that is not part of the vessel's hull or machinery.

(g) *Expendable equipment* means those articles, outfittings and furnishings that are portable, semi-portable or detachable, that are used in equipping a ship for service and in its normal day-to-day maintenance and operation, and that are subject to casual or gradual deterioration and replacement. It does not include items classified as stores and supplies or Spare Parts.

(h) *Improvement* means work to be performed on an Eligible Vessel which is a modification, alteration, addition or betterment, which may be accomplished separately from M&R, but may be eligible for M&R subsidy pursuant to § 272.22 of this part.

(i) *M&R* and *M&R Subsidy* mean, respectively, maintenance and repairs and maintenance and repair subsidy payable pursuant to section 603 of the Act.

(j) *ODS* and *ODSA* refer, respectively, to operating-differential subsidy provided under an operating-differential subsidy agreement entered into pursuant to title VI of the Act.

(k) *Operator* means any individual, partnership, corporation, or association that enters into an ODSA with the Board pursuant to title VI of the Act.

(l) *Permanent equipment* means Equipment that is, or is intended to become when installed, an integral, permanent, built-in part of the vessel.

(m) *Region Office* means any one of the four Maritime Administration Region Offices in New York, NY; New Orleans, LA; San Francisco, CA; and Chicago, IL; established pursuant to section 809 of the Act.

(n) *Spare parts* means such items as spare propellers and tailshafts and self-contained operable units of machinery or equipment, as well as those items generally recognized within the maritime industry as Spare Parts.

(o) *United States* means the states of the United States, the District of Columbia and Puerto Rico.

§ 272.4 Effective date.

The provisions of this part apply to voyages of every Eligible Vessel which terminate on or after September 26, 1990.

§ 272.5 Prior instructions superseded.

The provisions of this part supersede any provisions of MARAD Circular Letters and Accounting Instructions applicable to M&R and dated prior to the effective date of these regulations to the extent that the provisions of this part may be inconsistent with the provisions of such prior instructions.

Subpart B—Requirements and Procedures for Determining the Condition of Eligible Vessels

§ 272.11 Scope.

This subpart applies to any Eligible Vessel, other than one operating under an ODSA subject to part 294 of this chapter.

§ 272.12 Determining the condition of eligible vessels.

The Operator of an Eligible Vessel shall make the vessel available whenever MARAD may require, in any of the following instances:

(a) At the commencement of the first subsidized voyage, except for a newly constructed vessel which enters subsidized service immediately upon delivery by the shipyard, and for which there is a prior condition survey report. If that subsidized service commences outside the continental limits of the United States, the vessel may be surveyed at the first United States port of call;

(b) At the commencement of the first voyage following the effective date for M&R subsidy established by MARAD, if such M&R rate was not established at the commencement of the vessel's first voyage;

(c) Upon the discontinuance of a M&R subsidy rate;

(d) Upon resumption of subsidized voyages after temporary withdrawal from subsidized operation. The vessel shall not be considered as having been temporarily withdrawn from subsidized service if it performed unsubsidized voyages in a subsidized service of the Operator;

(e) Upon withdrawal from subsidized service, either temporarily (subject to the provisions of paragraph (d) of § 272.14), or permanently;

(f) During the dry docking period incident to the vessel's American Bureau of Shipping Special Surveys;

(g) Upon termination of the last voyage under the ODSA, or at the end of the contract period, with respect to subsidized vessels in idle status at that time; or

(h) At any other time that MARAD considers to be appropriate.

§ 272.13 Operator's responsibilities.

Whenever MARAD notifies an Operator that a survey of an Eligible Vessel is required under this section, the Operator shall:

(a) Make the vessel immediately available for survey if the vessel is in a port of the United States at the time of notification, or make the vessel available for survey immediately upon arrival at the first port of call in the United States if the vessel is not in a port of the United States at the time of notification; and

(b) Furnish to the Secretary of the Board the following:

(1) A copy of each American Bureau of Shipping report and every other salvage association or damage survey report; and

(2) Copies of certificates or other evidence of compliance with applicable laws, rules, and regulations as to vessel condition and operation, including, but not limited to, those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successors, and compliance with all applicable treaties and conventions to which the United States is a signatory.

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

§ 272.14 Survey procedures.

(a) *Prior to survey*. Unless otherwise directed by MARAD, the Operator of a vessel which is required to be surveyed

under this subpart shall contact the ship operations unit of the Region Office in which the survey is to be conducted.

(b) *Operator's assistance to surveyor.* The Operator shall assist the marine surveyor performing the survey for MARAD and shall permit access by that surveyor to all parts of the vessel, its log books, and other official records. The Operator may designate a representative to accompany the marine surveyor during the survey, but no Operator's representative is required to be present during the survey.

(c) *On-subsidy surveys.* An on-subsidy survey consists of the following:

(1) *Vessel survey.* This includes an inspection and the completion of reports by the surveyor, in sufficient detail to reveal a comprehensive picture of the conditions noted.

(2) *On-subsidy survey report.* The on-subsidy survey report consists of:

(i) Ship Survey Report, Form MA–58; and

(ii) As appropriate for the circumstances of the survey and the respective vessel, Forms MA–55 (Turbines and Gears Report); MA–56 (Tooth Contact Report); MA–57 (Drydock Report); and MA–59 (Measurements of Piston Rings and Grooves).

(d) *Off-subsidy surveys.* An off-subsidy survey consists of the following:

(1) *Repair specifications.* The Operator shall prepare and furnish to the appropriate Region Office detailed repair specifications covering all repair work attributable to completed subsidized service.

(2) *Off-subsidy survey report.* The survey report for an off-subsidy survey consists of the repair specifications required by paragraph (c)(1) of this section, and the findings of the Region Office on these specifications after the survey required by paragraph (c)(2) of this section.

§ 272.15 Execution of condition survey reports.

Every survey report shall be signed by:

(a) The Operator's representative, when designated pursuant to § 272.13(a), but only if that representative was in attendance during the survey;

(b) The Operator's superintendent engineer or equivalent;

(c) The marine surveyor who conducted the survey; and

(d) The appropriate representative of the Region Office for the Region in which the survey was conducted.

§ 272.16 Non-compliance with survey requirements.

MARAD may disallow any one or more M&R claims otherwise eligible for subsidy if an Operator fails to:

(a) Contact the appropriate Region Office as required by § 272.14(a);

(b) Comply with provisions of § 272.14(c)(1) with respect to repair specifications, or to make the vessel reasonably available for inspection before its next sailing; or

(c) Comply with any other requirement specified in this subpart B.

Subpart C—Eligibility Criteria for M&R Subsidy; Substantiation of M&R Expenses

§ 272.21 General eligibility criteria.

(a) *Eligible maintenance and repairs.* Costs of maintenance and repair are eligible for M&R subsidy participation if they are:

(1) Performed on an Eligible Vessel;

(2) Necessary, because of subsidized operation, for the M&R or replacement of damaged or worn parts of the vessel's hull, machinery, or Permanent Equipment;

(3) Uncompensated by insurance;

(4) Considered fair and reasonable by the Board;

(5) Of Domestic Origin; and

(6) Otherwise eligible in accordance with provisions of this part.

(b) *Off-subsidy survey items.* Any M&R contained in an executed off-subsidy survey report is eligible maintenance and repair if:

(1) Paragraphs (a) (1) through (6) of this section are met;

(2) The work is accomplished by the Operator before or during the next drydocking period (periodic or otherwise); and

(3) The vessel is either owned by the same Operator who owned it at the time of the off-subsidy survey, or ownership was transferred to the Federal

Government pursuant to section 510 of the Act (46 App. U.S.C. 1160).

(c) *Operator furnished items*. In addition to the general requirements of paragraph (a) of this section, the cost of the Operator's materials, supplies, or both, furnished by the Operator which are necessary to the performance of eligible M&R, is eligible for M&R subsidy if:

(1) The items for which the cost was incurred are issued by the Operator from ship's inventory or the Operator's shoreside inventory, or are issued by direct purchase to the ship repair yard, other independent contractor, or shore gang labor; and

(2) No subsidy, whether M&R or otherwise, has previously been paid for such material, supplies, or both; and

(3) The items are of Domestic Origin.

(d) *Costs associated with shore gang labor*. In addition to the general requirements of paragraph (a) of this section, the costs incurred with respect to the Operator's employment of U.S. shore gang labor necessary for the performance of eligible M&R are eligible for M&R subsidy participation only if such costs are:

(1) For direct labor charges;

(2) For eligible Spare Parts, as described in paragraph (e) of this section; or

(3) Incidental to the payment of wages for the direct labor, to the extent that such costs are required by State or Federal law or by collective bargaining agreements.

(e) *Spare parts*. Spare parts are eligible for M&R subsidy if they are:

(1) Necessary for eligible M&R;

(2) Issued by the Operator from the Operator's shoreside inventory or issued by direct purchase to a U.S. ship repair yard, U.S. independent contractor, or U.S. shore gang labor; and

(3) Placed aboard an Eligible Vessel, and

(4) Of Domestic Origin.

§ 272.22 Improvements and other similar work.

(a) *Eligible expenditures*. Any expenditure not in excess of $200,000 for work effected during any one or a series of repair periods, which the Operator and MARAD consider to be an Improvement, is eligible for M&R subsidy if otherwise eligible for such subsidy pursuant to provisions of this Part.

(b) *Capital expenditures*. An expenditure in excess of $200,000 for work effected during any one or a series of repair periods, which is not necessary for maintenance or repair shall be considered to be a capital expenditure, ineligible for M&R subsidy, except that work on an Eligible Vessel which the operator considers to be an Improvement is eligible for M&R subsidy if, before awarding this work:

(1) The Operator submits a written request to the Director, Office of Ship Operations, for consideration of the expenditures;

(2) The Director determines that the work is an Improvement and is technically acceptable; and

(3) The Associate Administrator for Maritime Aids approves M&R subsidy for the work, as appropriate, pursuant to the provisions of title VI of the Act.

(c) *Improvements performed in more than one repair period*. Whenever an Operator desires to spread the work incident to any Improvement over more than one repair period, the operator shall give written notice to the Director, Office of Ship Operations, prior to commencement of the work, as to the scope of work involved, expected benefits, the number of voyages over which the work will be spread and the estimated total cost. The operator shall report in the Subsidy Repair Summary (Form MA–140) the actual total cost of such work, covering the repair period in which it is finally completed, and shall attach a copy of the acknowledgement of such notification to the Form MA–140.

§ 272.23 Examples of ineligible expenses.

Expenses ineligible for M&R subsidy participation include, but are not limited to, the following examples:

(a) *Specialized improvements*. Any expenditure or Improvement required to alter, outfit or otherwise equip a vessel for its intended subsidized service which MARAD determines should have been performed before the initial entry of the vessel into subsidized service;

(b) *Convenience items*. Any expenditure for items that the Region Director determines to be aboard a ship only for

the convenience of the Operator or crew members, and which are not considered integral parts of the vessel and are not required for seaworthiness, navigation or the health or well-being of the crew or passengers.

(c) *Unsupported expenses.* Any expense item which the Operator fails to substantiate adequately with documentation, as required by § 272.24.

(d) *Untimely requests for review.* Any disallowed expense item for which the Operator fails to make a timely request for review, as required by § 272.43.

(e) *Untimely appeals.* Any expense item disallowed in the final determination by the Director, Office of Ship Operations, for which the Operator fails to make a timely appeal to the Board, pursuant to § 272.43.

(f) *Absence of notice of multi-repair period Improvements.* Any expenses for an Improvement extending over more than one repair period in which the Operator did not notify the Director, Office of Ship Operations, as required by § 272.22(c).

(g) *Cargo expenses.* Any expense of special cargo fittings of a temporary nature, dunnage, ceiling, battens, the cleaning of cargo holds and tanks for cargo, the reading and certification of temperatures for refrigerated cargoes, and similar expenses.

(h) *Stevedore damage.* Any expense or any damage to the vessels or cargo gear directly attributable to a stevedore.

(i) *Rented equipment.* Any expense for the rental of Permanent or Expendable Equipment, such as compressors, paint floats, and other similar items for use by shore gangs or ship's crew on repair or other work, radar, radio telephones, and other similar items for use by ship's crew in ship operations.

(j) *Special requirements for trade routes.* Any expense for the initial installation of equipment necessary for the vessel's particular trade route, such as Suez Canal davits, which should have been installed before the entry of the vessel into the particular subsidized service.

(k) *General operating expenses.* Any expense for the loading of stores, the landing and sorting of laundry, pilot service, tug charges, removing surplus equipment to warehouses, and other similar expenses which do not involve actual maintenance and repair.

(l) *Items attributable to unsubsidized operations.* Any item of maintenance or repair that is clearly attributable to unsubsidized operation, including expenses noted in on-subsidy surveys for repairs which clearly should have been made before departure from the last United States port on the first voyage:

(1) In subsidized service, or

(2) Upon resumption of subsidized operation following temporary withdrawal.

(m) *Overdue classification and inspection requirements.* Any expenses for work required by a classification society or an agency of the Federal Government, which was due (irrespective of any grace period granted) and not completed before the first voyage:

(1) In subsidized service, or

(2) Upon resumption of subsidized operation following temporary withdrawal, except when such work is attributable to prior subsidized service.

(n) *Foreign maintenance and repairs.* Any expense for any item of M&R, including insurance repairs, that is not of Domestic Origin.

(o) *Marine or other loss.* Any part of an expense or a repair which is recovered or recoverable from an insurer or another party.

(p) *Consumables, expendables.* Any procurement expense for consumables, expendables, and Expendable Equipment, when used or installed by ship's crew or furnished for inclusion in ship's inventory, and any expense for maintenance, repair, or replacement of Expendable Equipment.

(q) *Excessive costs.* Costs for M&R which MARAD considers excessive, after allowing the Operator an opportunity to present all relevant facts pertinent to such costs.

(r) *Overhead costs.* Any expense included in shore gang labor charges which is an overhead item, as prescribed by 46 CFR part 232—Uniform Financial Reporting Requirements.

(s) *Guarantee items.* Any expense for an item adjudged or noted as being a guarantee item of a construction or repair contractor.

[55 FR 34919, Aug. 27, 1990, as amended at 57 FR 34690, Aug. 6, 1992]

§ 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

United States, taking into consideration the Coast Guard requirements for dry docking and special surveys.

§ 272.33 Appeals.

The Operator may appeal final penalty determinations of the Director, Office of Ship Operating Assistance, to the Board, as provided in § 272.43(c) of this part.

Subpart E—Examination, Audit, Review and Appeal Procedures

§ 272.41 Requirements for examination and allocation of M&R expenses.

(a) *Examination requirement*. Pursuant to the specific limitations on M&R subsidy in section 603 of the Act, the Region Office shall examine the expenses submitted by an operator on Form MA–140 in order to determine eligibility to receive M&R subsidy and the reasonableness of such expenses.

(b) *Operator's responsibility*. During the examination, the operator shall provide, at the request of the Director or other official of the Region Office, any further documentation or information necessary to support an M&R expense. If such documentation or information, including information required under paragraph (e) of this section, is not received at the Region Office on a timely basis, the Director or other official of the Region Office may disallow the M&R expense.

(c) *Notification of examination results*. At the completion of the examination the Director or other appropriate official of the applicable Region Office shall notify the Operator by letter of the results of the examination, and shall state the reason for each disallowance of an item claimed for subsidy and/or each nonapproval of a marine loss item.

(d) *Record retention requirements*. To facilitate an audit examination of M&R made pursuant to § 272.42 of this part, the Operator shall maintain files arranged by vessel and voyage, which shall include, at a minimum, a copy of the Region Office notice letter, a copy of the Form MA–140 with all supporting documents submitted therewith, and the condition survey report. The Operator shall retain all the required materials in files for not less than 3 years after completion of the audit.

(1) *Limitation on approval*. Any approval for payment of M&R subsidy for a marine loss item shall be subject to rescission or modification if the Operator subsequently receives insurance or other compensation for the item. The Region Finance Officer may at any time request verification that the Operator has not received such compensation.

(2) *Status report on approved marine loss items*. The Operator shall advise the Region Finance Office by letter as to whether insurance or other compensation will be recovered for the marine loss item. The Operator is responsible for ensuring that the letter reaches the applicable Region Office within 120 days after:

(i) The date on which all repairs for damage attributed to the ''Policy Voyage'' (as defined in the Operator's insurance policy) are completed, when the amount for such repairs does not exceed the franchise or deductible of the policy, or

(ii) The date of the underwriter's rejection of the Operator's marine loss insurance claim or claims.

(Reporting and recordkeeping requirements contained in paragraph (d) introductory text were approved by the Office of Management and Budget under control number 2133–0007)

[55 FR 34919, Aug. 27, 1990, as amended at 61 FR 32706, June 25, 1996]

§ 272.42 Audit requirements and procedures.

(a) *Required audit*. In connection with the audit of the Operator's subsidizable expenses, the Office of the Inspector General, Department of Transportation, shall audit for MARAD the Operator's M&R costs, as necessary, for the determination of final subsidy rates. The Operator shall substantiate those costs recorded on the books of account which have been approved by the Administration.

(b) *Notification of audit results*. Upon completion of the audit by the Office of Inspector General, the MARAD Office of Financial Approvals shall notify the Operator of the audit results, including

any items disallowed and the reasons for such disallowance.

[57 FR 34690, Aug. 6, 1992]

§ 272.43 Review and appeal procedures.

(a) *Exclusive procedures.* Notwithstanding the audit appeal procedures of part 205 of this chapter, the provisions of this section shall be the exclusive remedy available to an Operator for the review and appeal of any disallowance of subsidy for a M&R expense claimed or any penalty assessed pursuant to § 272.31.

(b) *Request for review.* An Operator may request review by:

(1) The Director, Office of Ship Operations, with respect to any disallowance by the Region office of a claimed M&R expense, after receiving the notification required by § 272.41(c); or

(2) The Director, Office of Financial Approvals, with respect to any disallowance of a claimed M&R expense, after receiving the notification required by § 272.42(b).

(c) *Timeliness of request.* The Operator shall file all requests for review pursuant to paragraph (b) of this section within 60 days after the date of the audit notification. Any disallowance with respect to which the Operator fails to file a timely request for review shall be final and shall not be subject to appeal to the Board pursuant to paragraph (e) of this section.

(d) *Notification of review determination.* The appropriate MARAD Office Director shall notify the Operator by letter, with respect to each timely filed review request, of the Director's determination and the reasons for each disallowance and whether the determination is final or subject to the submission of additional information.

(e) *Appeal to the Maritime Subsidy Board*—(1) *Right to appeal.* An Operator may appeal a MARAD Office Director's final determination issued pursuant to § 272.32 (penalties) or § 272.43 (review of claims disallowance or of audit results) of this section to the Board in writing.

(2) *Contents and timeliness.* The Operator shall set forth in any appeal the reasons for the Operator's objection to a penalty or disallowance of M&R subsidy and shall file such appeal with the Secretary of the Board within 60 days after the date of the notification sent to the operator by the appropriate Director pursuant to paragraph (d) of this section or § 272.33.

§ 272.44 Dates.

The dates noted on the letters or notifications sent to the Operator by officials of the Region Office, any Director or any other official or MARAD, pursuant to the provisions of this part, shall be conclusive for the purposes of determining the timeliness of any requests for review made under the provisions of this part.

PART 276 [RESERVED]

PART 277—DOMESTIC AND FOREIGN TRADE; INTERPRETATIONS

§ 277.1 Guam, Midway and Wake.

Steamship service between ports of the United States mainland and ports in the islands of Guam, Midway and Wake is not ''domestic intercoastal or coastwise service'' within the meaning of section 805(a) of the Merchant Marine Act, 1936. This interpretation is limited to Guam, Midway and Wake and does not signify that a similar interpretation is or would be applicable to Hawaii, Puerto Rico or Alaska.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interprets or applies sec. 805, 49 Stat. 2012, as amended; 46 U.S.C. 1223)

[G.O. 73, 15 FR 9065, Dec. 19, 1950]

PARTS 280–283 [RESERVED]

PART 287—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS

Sec.

287.1 Definitions.
287.2 Scope of section 511 of the Act and the regulations in this part.
287.3 Requirements as to vessel operations.
287.4 Application to establish fund.
287.5 Tentative authorization to establish fund.
287.6 Establishment of fund.
287.7 Circumstances permitting reimbursement from a construction reserve fund.
287.8 Investment of funds in securities.
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