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# SUBCHAPTER G—EMERGENCY OPERATIONS

## PART 308—WAR RISK INSURANCE

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## Subpart A—General

### § 308.1 Eligibility for vessel insurance.

Any vessel within one of the following categories shall be eligible for insurance, but shall remain eligible only while meeting the qualifications criteria in one of said categories. An eligible vessel is not insured unless and until an application is submitted as required in subpart B, C, or D of this part 308 and the Maritime Administrator, Department of Transportation, (Maritime Administrator) Maritime Administration (MARAD), approves said application.

(a) A vessel registered, enrolled, or licensed under the laws of the United States of America (United States); any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof; any tug or barge or other watercraft (documented under the laws of the United States, or undocumented) owned by a citizen of the United States and used in essential water transportation; and United States citizen-owned watercraft used in the fishing trade or industry, except when used exclusively in or for sport fishing.

(b) Any vessel, other than a vessel described in paragraph (a) of this section determined by the Maritime Administrator to be engaged in the national defense or the national economy of the United States and subject to an unqualified Contract of Commitment with the United States in a form required by the Maritime Administrator, and which is:

(1) Owned by a United States corporation, or a foreign corporation in which a majority of the stock is owned and controlled by a citizen or citizens of the United States, whether direct or through intervening corporations, foreign or domestic. Where such intervening corporations are foreign, the ultimate majority ownership and control of the stock of such corporations must be vested in a citizen or citizens of the United States as defined 46 U.S.C. 50501(a);

(2) Owned by a foreign corporation which is not directly or beneficially owned by a citizen or citizens of the United States, but which vessel is under a long-term charter or other long-term contract covering the use of the vessel on terms deemed by the Maritime Administrator to subject the vessel to United States control in the

event of an emergency. The charterer of such vessel must be either a citizen or citizens of the United States or a foreign corporation in which a majority of the stock is owned and controlled by a citizen or citizens of the United States, whether direct or indirect through intervening corporations, foreign or domestic. Where such intervening corporations are foreign, ultimate majority ownership and control of the stock of such corporations must be vested in a citizen or citizens of the United States, as defined in 46 U.S.C. 50501(a).

(c) Any other vessel, at the sole discretion of the Maritime Administrator, but only while engaged in a service which has been determined by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States. Vessels in this category are not eligible for war risk insurance interim binders.

### § 308.2 Requirements for eligible vessels.

(a) *Restrictions—foreign-flag vessels.* Interim insurance is available on any vessel described in § 308.1(a) and (b), provided application for interim insurance is submitted as required in subparts B, C, or D of this part 308, and the Maritime Administrator approves said application: Provided, that only vessels of Panamanian, Honduran, Bahamian, Republic of the Marshall Islands or Liberian registry not more than 20 years old will be considered eligible under § 308.1 (b) for interim insurance, subject at all times to the determination specified in paragraph (b) of this section.

(b) *Special rules—foreign-flag vessels.* For the purpose of providing interim insurance on vessels described in § 308.1(b), the Maritime Administrator shall consider the characteristics, employment, and general management of the vessel. The Maritime Administrator formally determines that the following vessels are engaged in a service in the interest of the national defense or the national economy of the United States and qualify for an interim binder:

(1) Vessels substantially engaged in the foreign commerce of the United States or which would be required in the event of war or national emergency;

(2) Tankers of not less than 2,000 deadweight tons;

(3) Dry cargo vessels, including containerships, break-bulk, and dry bulk vessels;

(4) Heavy lift vessels;

(5) Refrigerated vessels and other classes of ships in short supply in the United States-flag fleet;

(6) Passenger vessels; and

(7) Other vessels with special capabilities, as determined by the Maritime Administrator.

(c) *Vessel Position Reports.* All vessels for which war risk insurance interim binders have been issued shall file a Vessel Position Report. The purpose of this report is to inform U.S. agencies of vessel arrivals, departures, and at-sea locations. Failure to make required regular reports will cause MARAD to issue a one-time notice of default. If failure to report continues, MARAD shall cancel the interim binder for the subject vessel and any insurance attaching thereunder. MARAD will issue reporting instructions and formats with the binders.

(d) *Notice of change in status of vessel after binder issued.* Any breach of the warranty prescribed hereunder as to vessels in all categories with respect to Department of Commerce Transportation Order T–1 (44 CFR Parts 401 and 402), as well as the additional warranties as to vessels in categories (b)(1) and (b)(2) of this section, with respect to maintenance of eligibility for insurance and availability of the insured vessels to the U.S. Government in time of emergency, shall terminate the binders and any insurance attaching thereunder. In the event of the sale, demise charter, requisition, confiscation, change of flag, total loss, or any other change in status which, by the terms of the binder causes the binder to terminate, prompt notice shall be given in writing to MARAD's underwriting agent and to MARAD at: Division of Marine Insurance, Maritime Administration, Department of Transportation, 1200 New Jersey Avenue SE., MAR–712, Washington, DC 20950.

(e) *Nature of change in status of other vessels.* It is the intention of the parties that any breach of the warranty as to

operation in the approved service of vessels described in § 308.1(c) shall terminate the insurance. In the event of the sale, demise charter, requisition, confiscation, change of flag, total loss, any other change in status or change in operation of the vessel in the approved service prompt notice shall be given to MARAD's underwriting agent MARAD's underwriting agent and to MARAD at the address in paragraph (d) of this section.

### § 308.3 Applications for insurance; warranties; supporting documents; payment of binder fees.

(a) Application, binder forms. A single application for War Risk Insurance shall be filed on Form MA–528, specifying the types of insurance coverages for which the applicant is applying. A single application may be submitted for several vessels, if the application identifies each vessel to be insured and the coverage(s) required, by completing appendices A and B to that form. An interim binder for war risk insurance coverage, of the types described in subparts B, C and D of this part, shall be on Form MA–942, which may be obtained from the MARAD's underwriting agent or from MARAD.

(b) *Warranties*—(1) *In general.* Applications for war risk hull and protection and indemnity insurance in any eligible category of this part 308 shall include a warranty that, at all times during the effective period of the binder and any insurance attaching thereunder, the insured vessel, regardless of its nation of registry, will comply with Department of Commerce Transportation Order T–1 (44 CFR parts 401 and 402), or any modifications thereof so long as it remains in force and that the vessel will not be chartered, unless in accordance with the provisions of §§ 221.11 and 221.13 of this chapter, which requirement is applicable to any charter in existence at the time the applicant applies for insurance.

(2) Vessels described in § 308.1(a). Applications for war risk insurance on a vessel described in § 308.1(a) shall contain the warranty that at, and from the date of issuance of the interim binder, and for and during the term of any insurance attaching thereunder, such vessel will remain eligible within its category.

(3) Vessels described in § 308.1(b). Applications for war risk insurance on a vessel described in § 308.1(b) shall contain the warranties that at all times the vessel will remain eligible within its applicable category; that the vessel will be made available for use by the United States pursuant to the signed Contract of Commitment submitted with the insurance applications, as required by MARAD; that the vessel will remain in the approved service; and that no controlling interest in the vessel shall be transferred by a subsequent sale or long-term charter, except on the condition that the successor in interest agrees to be bound by the terms of the applicant's Contract of Commitment. All instruments transferring any controlling interest in the vessel, including long-term charter or merger agreements, shall be submitted to MARAD for prior approval.

(4) Vessels described in § 308.1(c). Applications for war risk insurance on a vessel described in § 308.1(c) shall contain warranties that the vessel will remain in the approved service and that any change in flag or service will be reported in advance to MARAD for a new determination as to whether the vessel's service is in the interest of the national defense or the national economy of the United States. Vessels in this category are not eligible for war risk insurance interim binders.

(5) Vessel locator filing requirements. Applications for insurance on vessels in all categories, except tugs and barges and vessels used exclusively in the fishing trade or industry, described in § 308.1(a), shall contain a warranty that at all times the vessel will file reports as required under the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue System (AMVER) as prescribed in § 308.2(c) of this section.

(c) *Filing applications for insurance.* All applications for insurance on a vessel shall be made to MARAD's underwriting agent and to MARAD at the address in § 308.2(d).

(d) *Required submissions with*—(1) *In general.* An application for insurance on a vessel described in § 308.1(b) shall be accompanied by:

(i) A contract of commitment, in the form prescribed in § 308.5. In the event the vessel is determined to be ineligible under the terms of this part 308, the applicant will be so advised and the executed contract of commitment and any official foreign government action or approval will be returned to the applicant by MARAD.

(ii) An executed agreement contained in the application for insurance that any charter or other contract covering the use of the vessel during the period of the binder or any insurance attaching thereunder shall be subject to termination or suspension without notice in the event the United States requires the use of the vessel under the voluntary contract of commitment submitted by the applicant.

(2) *Certification of citizenship.* An application for insurance on such a vessel shall be supported by execution of the citizenship certification, in the format set out in appendix C to Form MA–528, as described in paragraph (a) of this section. That certification shall be required to establish the U.S. citizenship of the majority ownership and control of the vessel-owning corporation, whether that ownership is direct or through intervening corporations.

(3) *Existing long-term charters.* An application for a vessel in this category which is at the time of application under long-term charter or other long-term contract, either to the applicant or from the applicant to a third party, shall be jointly submitted by the owner and the charterer, and in addition to the other materials required under this paragraph, shall be accompanied by a copy of the long-term contract covering the use of the vessel and all addenda thereto, certified to be full and complete copies (except as to rate of hire or freight) and a completed appendix C to Form MA–528, establishing the U.S. citizenship of the majority of the shareholders and control of the charterer. The charterer shall also furnish to MARAD a certified copy of any amendment to such charter which may be issued subsequent to the issuance of any binder of insurance under this part 308.

(4) *Foreign government action or approval.* An application for a vessel in this category also shall be accompanied by a certified copy of the evidence of any official action or approval required by the government of the country of registry as a prerequisite to the execution of a contract of commitment with the United States.

(5) *Additional materials.* With respect to a vessel in this category, the applicant shall submit the following additional materials:

(i) A statement describing the service in which the vessel is engaged, including a listing of the vessel's voyages and ports of call during the immediately preceding six (6) month period, indicating the tonnage and type of cargo carried on such voyages and the reasons why such service should be deemed to be in the interest of the national defense or the national economy of the United States;

(ii) Material demonstrating the management and financial capabilities of the applicant; and

(iii) In the case of a new vessel or a vessel which has not for the six (6) months immediately prior to the date of the application been engaged in the foreign commerce of the United States, a statement, signed by a responsible company official, certifying the extent to which the vessel will be engaged in the foreign commerce of the United States for the six (6) months immediately following the issuance of any interim binder of insurance under this part 308.

(e) *Requests for changes in binders.* All requests for changes in binders and inquiries relative to the insurance after the interim binders have been issued shall be directed to MARAD's underwriting agent or MARAD at the address in § 308.2(d).

(f) *Fees.* A check payable in U.S. funds to the ''Maritime Administration, Department of Transportation'' for the total amount of all binder fees payable by such applicant shall accompany each application. Binder fees are not returnable.

(g) *Availability of Application Forms.* Form MA–528 may be obtained from either MARAD's underwriting agent or MARAD at the address in § 308.2 (d).

### § 308.4 [Reserved]

### § 308.5 Voluntary contract of commitment.

Applications for insurance on vessels described in § 308.1(b) shall be accompanied by a contract of commitment, in triplicate originals, executed by the owner (or by the owner and the charterer where required by § 308.3). Contracts of commitment to make the vessel available to the United States during any period in which vessels may be requisitioned under 46 U.S.C. Chapter 563 shall be submitted on standard contract form which may be obtained from MARAD's underwriting agent or MARAD. The effective date of the contract of commitment will be the effective date of the binder and will be inserted in the contract of commitment by MARAD.

### § 308.6 Period of interim binders, updating application information and new applications.

(a) All existing interim binders remain in full force and effect without the necessity of re-application or the payment of additional fees so long as the Secretary of Transportation's authority to provide such insurance has been extended and is continuous.

(b) Assureds under interim binders are required to notify MARAD's underwriting agent annually, by June 30th, of any change in the information provided in their original binder applications including, but not limited to, change of address, vessel name or vessel characteristics.

(c) New applications for interim binders on American vessels, with necessary attachments (as specified in § 308.3), as well as checks for the binder fees prescribed made payable to ''Maritime Administration, Department of Transportation,'' shall be filed with the MARAD's underwriting agent. All interim binders on American vessels shall become effective as of the date of determination of eligibility by MARAD.

(d) New applications for interim binders on U.S. citizen-owned or controlled foreign-flag vessels, with necessary attachments (as specified in § 308.3), as well as checks for the binder fees prescribed made payable to ''Maritime Administration, Department of Transportation,'' shall be filed for review in accordance with eligibility requirements specified in § 308.2, and mailed to MARAD's underwriting agent. All interim binders on foreign-flag vessels will become effective on the date the owner's contract of commitment is executed by MARAD.

### § 308.7 Premiums and payment thereof.

Rate to be fixed promptly upon the happening of the event causing the American Institute Hull War Risks and Strikes Clauses dated December 1, 1977 (including Automatic Termination and Cancellation Provisions) for attachment to American Institute Hull Clauses dated June 2, 1977 of any war risk policies to become operative and premium shall be payable within ten (10) days after receipt of notice of the amount thereof by the assured. Premiums shall be paid to the Underwriting Agent that issued the binders by check payable to the order of ''Maritime Administration, Department of Transportation.'' In the event that it is subsequently determined that insurance under interim binders did not attach, premiums paid will be refunded by the Maritime Administrator.

### § 308.8 War risk insurance underwriting agency agreement.

Standard form MA–355, Underwriting Agency Agreement, shall be executed by the Maritime Administrator and domestic insurance companies or groups of domestic insurance companies authorized to do a marine insurance business in any States of the United States, appointing such companies or groups of companies as Underwriting Agents to issue binders and policies covering hull, protection and indemnity, and Second Seamen's war risk insurance under subparts B, C, and D of this part. It shall contain provisions including, but not limited to the appointment of the agent, duties of the agent, books and records, compensation, standard of performance, indemnification effective date, amendment and termination, and nondiscrimination.

## Subpart B—War Risk Hull and Disbursements Insurance

### § 308.100 Insured amount.

An applicant for war risk hull insurance shall state the amount of insurance desired but any payment of claim for damage to or actual or constructive total loss of the vessel insured shall be made as provided in § 308.103(a). An applicant desiring disbursements insurance may at his option obtain such additional insurance but any claim for loss of disbursements as a consequence of the actual or constructive total loss of the vessel insured shall be made as provided in § 308.103(c).

### § 308.101 [Reserved]

### § 308.102 Issuance of interim binder; terms and conditions; fees.

Upon acceptance of an application, an interim binder in the form set forth in § 308.106, will be issued and there shall be deemed to be incorporated therein by references all the terms, conditions, and warranties contained in the application for war risk hull and disbursements insurance and the standard war risk hull insurance policy (set forth in § 308.107), to the same extent as if such application and policy were made a part of the binder. The binder fee (not refundable) for American vessels shall be $25 per application for vessels under 500 gross tons; $100 per application for vessels 500 gross tons or over; and $100 per barge application. The binder fee (not refundable) for foreign-flag vessels shall be $50 per application for vessels under 500 gross tons; $200 per application for vessels 500 tons or over; and $200 per barge application. All fees are payable in U.S. funds by check to order of ''Maritime Administration, Department of Transportation.''

### § 308.103 Insured amounts under interim binder.

(a) *Valuation.* The valuation in the policy for damage to, or actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the Maritime Administrator which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under 46 U.S.C. Chapter 563 at the time of the attachment of the insurance under said policy: Provided, however, that in the case of a construction subsidized vessel, for the period of insurance prior to requisition for title or use, the valuation so determined shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for the period of insurance after requisition for use the valuation so determined shall not exceed the amount which would be payable under 46 U.S.C. 56303 in the case of requisition for title or use: Provided, further, that the insured shall have the right within sixty (60) days after the attachment of the insurance under said policy, or within sixty (60) days after determination of such valuation by the Maritime Administrator, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Maritime Administrator and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under 46 U.S.C. Chapter 563 at the time of the attachment of the insurance under said policy: Provided, however, that in the case of a construction-subsidized vessel, the valuation determined by the court as such just compensation for any period of insurance

prior to actual requisition for title or use of the vessel shall be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for any period of insurance after actual requisition for use, the valuation determined by the court shall be the amount which would have been payable under 46 U.S.C. 56303 in the case of requisition for title: And provided further, that in the event of an election by the insured to reject the stated valuation fixed by the Maritime Administrator and to sue in the courts, the amount of the judgment will be payable without regard to any limitations provided by statute, although the excess of any amounts advanced on account of just compensation that is over the amount of the court judgment shall be required to be refunded by the insured. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy. The ''stated valuation'' of the vessel insured refers to the vessel as described in §309.5 of this chapter.

(b) *Insurance risks.* Insurance risks covered by the terms of the standard form of war risk hull insurance policy (§308.107), except damage to or actual or constructive total loss of the vessel insured as set forth in paragraph (a) of this section and loss of disbursements (limited to consumable and subsistence stores, slop chests, bar stock and bunker fuel lost as a consequence of the actual or constructive total loss of the vessel insured) as set forth in paragraph (c) of this section and identified as disbursements, shall be insured for an amount not in excess of the ''sum insured'' as referred to in said policy.

(c) *Disbursements.* Disbursements shall be insured as authorized under 46 U.S.C. 53903(a)(4) and shall be limited to consumable and subsistence stores, slop chests, bar stock and bunker fuel. Disbursements insurance shall be optional and is insurance additional to the war risk hull insurance provided under this subpart, and payment of claim shall be limited to the actual value of the disbursements lost as a consequence of the actual or constructive total loss of the vessel insured.

### §308.104 Additional war risk insurance.

Owners or charterers may obtain, on an excess basis, additional war risk insurance in such amounts as desired and such insurance shall not inure to the benefit of the Maritime Administrator as underwriter.

### §308.105 Reporting casualties and filing claims.

All casualties occurring after insurance under a binder has attached shall be reported promptly to the underwriting agent that issued the binder and all claim documents shall likewise be filed with such underwriting agent, but payment of the amounts due in settlement of claims will be made by the Maritime Administrator.

### §308.106 [Reserved]

### §308.107 War risk hull insurance policy.

Standard Form MA–240, issued by the Maritime Administrator, acting for the United States, through authority delegated by the Secretary of Transportation, may be obtained from MARAD's underwriting agent or MARAD.

## Subpart C—War Risk Protection and Indemnity Insurance

### §308.200 Insured amount—application.

An applicant for war risk protection and indemnity insurance shall state the amount of insurance desired but such amount shall not exceed $750 per gross ton of the Vessel.

### §308.201 [Reserved]

### §308.202 Issuance of interim binder; terms and conditions.

Upon acceptance of an application, an interim binder in form as set forth in §308.3 will be issued and there shall be deemed to be incorporated therein by reference all the terms, conditions, and warranties contained in the application for war risk protection and indemnity insurance (set forth in §308.3) and the standard war risk protection

and indemnity insurance policy (set forth in § 308.207) to the same extent as if such application and policy were made a part of the binder. The binder fee (not refundable) shall be $100 per application for American barges; $25 per application for all other American vessels; $200 per application for foreign-flag barges; and $50 per application for all other foreign-flag vessels. All fees are payable in U.S. funds by check to the order of ''Maritime Administration, Department of Transportation.''

### § 308.203 Amount insured under interim binder.

The amount insured shall be the amount stated in the application, but not in excess of $750 per gross ton of the vessel.

### § 308.204 Additional war risk protection and indemnity insurance.

Owners or charterers may obtain, on an excess basis, additional war risk protection and indemnity insurance in such amounts as desired and such insurance shall not inure to the benefit of the Maritime Administrator, as underwriter.

### § 308.205 Reporting casualties and filing claims.

All casualties occurring after insurance under a binder has attached shall be reported promptly to, and all claim documents filed with ''Office of Marine Insurance, Maritime Administration, Department of Transportation.''

### § 308.206 [Reserved]

### § 308.207 War risk protection and indemnity insurance policy.

The standard form of war risk protection and indemnity insurance policy, Form MA–241, may be obtained from MARAD's underwriting agent or MARAD.

## Subpart D—Second Seamen's War Risk Insurance

### § 308.300 Insured amount—application.

An applicant for Second Seamen's war risk insurance shall not state the amount of insurance desired, which shall be as provided in § 308.303.

### § 308.301 [Reserved]

### § 308.302 Issuance of interim binder; terms and conditions.

Upon acceptance of an application, an interim binder in form as set forth in § 308.3 will be issued and there shall be deemed to be incorporated therein by reference all the terms, conditions, and warranties contained in the application for Second Seamen's war risk insurance (set forth in § 308.3) and the Second Seamen's War Risk Policy (1955) (set forth in § 308.306) to the same extent as if such application and policy were made a part of the binder. The binder fee (not refundable) shall be $75 per application for American vessels and $150 per application for foreign-flag vessels. All fees are payable in U.S. funds by check to the order of ''Maritime Administration, Department of Transportation.''

### § 308.303 Amounts insured under interim binder.

The amounts insured are the amounts specified in the Second Seamen's War Risk Policy (1955) or as modified by shipping articles, collective bargaining agreements or other applicable employment agreements which are in effect as of the date of a casualty involving the subject vessel. Upon the attachment of this binder, the number of crew members and modified benefits payable as of that date shall be declared immediately to the Underwriting Agent that issued the binder. Any subsequent changes shall be likewise declared.

### § 308.304 Reporting casualties and filing claims.

All casualties occurring after insurance under a binder has attached shall be reported promptly to, and all claim documents filed with, ''Maritime Administration, Attention: Chief, Office of Marine Insurance.''

### § 308.305 [Reserved]

### § 308.306 Second Seamen's War Risk Policy, Form MA–242.

The standard form of Second Seamen's War Risk Policy Form MA–242, may be obtained from MARAD's underwriting agent or MARAD.

## Subpart E—War Risk Builder's Risk Insurance

### § 308.400 Authority.

The Secretary of Transportation has delegated authority to the Maritime Administrator to perform the functions vested in the Secretary of Transportation by 46 U.S.C. Chapter 539. The Maritime Administrator, pursuant to a finding by the Secretary under 46 U.S.C. 53902(a) has authorized the issuance of war risk insurance on American vessels under construction in shipyards in the United States.

### § 308.401 Eligibility for insurance.

A vessel is eligible for insurance if it is an American vessel, as defined in 46 U.S.C. 53901, being constructed in a shipyard within the United States.

### § 308.402 Insurance during vessel construction period.

(a) *Prelaunching period.* This period is from the date and time the first material destined for inclusion as part of the vessel becomes at risk at the shipyard of the builder to the date and time the vessel first becomes waterborne after launching.

(b) *Postlaunching period.* This period is from the date and time the vessel first becomes water-borne after launching to the date and time of delivery of the vessel by the builder.

(c) *Portions of periods.* A vessel may be insured for a portion of either period as cited in paragraph (a) or (b) of this section at the sole discretion of the Maritime Administrator.

### § 308.403 Insured amounts.

(a) *Prelaunching period.* The amount insured during this period will be the cost of material destined for inclusion as a part of the vessel at risk at the shipyard of the builder, plus the cost of labor, other direct charges, overhead, and profit not exceeding 10 percent, all as determined from the builder's records.

(b) *Postlaunching period.* The amount insured during this period will be:

(1) An amount not in excess of the difference in amount between the total amount of war risk insurance obtainable from companies authorized to do an insurance business in a State of the United States and the contract price of the vessel plus the cost of the materials and equipment furnished by the owner and not included in such contract price, or

(2) An amount not in excess of the contract price of the vessel plus the cost of materials and equipment furnished by the owner and not included in the contract price: Provided, that no war risk insurance is obtainable from companies authorized to do an insurance business in a State of the United States.

(c) *Maximum liability.* The amount of any claim for damage to or the total or constructive total loss of the vessel adjusted, compromised, settled, adjudged or paid shall not exceed the amount insured: Provided, that the amount payable hereunder shall not exceed the maximum sum which the Maritime Administrator, as Underwriter, is authorized to pay under any applicable Acts of Congress: Provided, further, that where MARAD is an Excess Underwriter, the amount payable under this insurance for damage to or the total or constructive total loss of the vessel, after all sums due and payable under primary and excess insurance written by commercial Underwriters have been exhausted, shall be the balance, if any, of said claims.

### § 308.404 Application for insurance.

Application for insurance shall be made to ''Maritime Administration, Attention: Chief, Division of Marine Insurance'' at the address in § 308.2(d). The applications shall be signed by all parties to be named as assureds, unless they have filed with the Chief, Division of Marine Insurance, written designations of a broker or brokers to act for them, in which case the applications may be signed by such broker or brokers.

### § 308.405 Form of application.

Applications shall be submitted in duplicate and may be obtained from MARAD's underwriting agent or MARAD.

### § 308.406 Issuance of policies; terms and conditions.

Upon acceptance of an application, a policy in the form specified in § 308.409

will be issued with endorsements MA–283(A) and MA–283(D), or MA–283(B) and MA–283(D), or MA–283(C), and MA–283(D), as appropriate.

### § 308.407 Premiums and payment.

For the prelaunching period premium will be charged on the average value at risk during each calendar month or the daily pro rata part thereof for periods of less than one calendar month. For the postlaunching period premium will be charged on the amount insured for the full period. Premiums shall be due and payable within thirty days after receipt by the Assured of notice of the amount thereof and if not paid within that period the insurance shall become null and void and of no effect from the beginning of the period for which the premium charge is made unless the Maritime Administrator agrees otherwise. Payment shall be made to MARAD at the address in §308.2(d), by check payable to the order of ''Maritime Administration, Department of Transportation.''

### § 308.408 Right of Maritime Administrator to change rate of premium.

The Maritime Administrator, acting for the Secretary of Transportation, shall have the right to change the rate of premium at any time, and unless the revised rate of premium is accepted in writing by the Assured within fifteen (15) days after receipt by the Assured of notice of the revised rate, the policy shall become null and void and of no effect as of midnight, Standard Time, at the location of the shipyard on the fifteenth (15th) day after receipt of said notice. Premium at the revised rate shall be payable for the fifteen (15) day period during which the insurance remained in force unless the Assured, within such period, dispatches notice to MARAD by fax, certified mail or courier of his refusal to accept such revised rate of premium, in which event premium at the revised rate shall be payable for that portion of the fifteen (15) day period prior to dispatch of such notice. Upon the dispatch of such notice of non-acceptance the insurance shall terminate.

### § 308.409 Standard form of War Risk Builder's Risk Insurance Policy, Form MA–283.

The standard form of War Risk Builder's Risk Insurance Policy, Form MA–283 may be obtained from MARAD's underwriting agent or MARAD.

### § 308.410 Reporting casualties and filing claims.

Casualties shall be reported promptly to, and all claims documents filed with MARAD, Attention: Chief, Division of Marine Insurance, at the address in §308.2(d).

## Subpart F—War Risk Cargo Insurance

INTRODUCTION

### § 308.500 Authority.

The Secretary of Transportation has delegated authority to the Maritime Administrator to perform the functions vested in the Secretary by 46 U.S.C. Chapter 539, which authority includes the insurance set forth in this Subpart, as provided under 46 U.S.C. 53903(a)(3). For the purposes of this Subpart F—War Risk Cargo Insurance, the terms ''cargo'' and ''cargoes'' as used herein shall include loaded or empty containers located aboard American and foreign-flag vessels insured under 46 U.S.C. Chapter 539. Cargo war risk insurance will be written under either an open policy or a facultative policy in accordance with the provisions of this subpart.

### § 308.501 Cargoes on which coverage is available.

The Maritime Administrator will be prepared to provide marine insurance against loss or damage by the risks of war under approved clauses on shipments of cargoes coming within one or more of the following categories:

(a) Shipped or to be shipped on any American vessel, as defined in 46 U.S.C. 53901;

(b) Shipped or to be shipped on any foreign flag vessels owned by citizens of the United States;

(c) Owned by citizens or residents of the United States, its Territories or possessions;

(d) Imported to, or exported from, the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(e) Sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions;

(f) Shipped between ports in the United States, or between ports in the United States and its Territories and possessions, or between ports in such Territories or possessions; and

(g) Shipped or to be shipped on any foreign flag vessels, whether or not owned by citizens of the United States, if such vessels are engaged in transportation in the water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Maritime Administrator to be in the interest of the national defense or the national economy of the United States, when so engaged.

### § 308.502 Additional insurance.

The assured may place increased value or additional insurance in other markets beyond the amount of insurance provided by the Maritime Administrator, but such insurance must be non-participating with the Maritime Administrator's coverage, and without benefit of salvage or right of contribution.

### § 308.503 Rate schedules.

Rate schedules published by the Maritime Administrator may be obtained from an underwriting agent. All rate schedules are subject to change by the Maritime Administrator at any time without notice. If no rate is published for a voyage on which war risk coverage is available, the Maritime Administrator will name a rate through an underwriting agent upon application.

### § 308.504 Definition of territories and possessions.

Whenever reference is made to the territories and possessions of the United States in this subpart or in any supplement thereto or any policy of insurance issued pursuant to the provisions thereof, said territories and possessions shall be deemed to include only the Virgin Islands of the United States, the Commonwealth of Puerto Rico, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Wake Island, Midway Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Navassa Island, and Wake Island.

## OPEN POLICY WAR RISK CARGO INSURANCE

### § 308.505 General.

The Maritime Administrator is prepared to provide an open cargo war risk insurance policy covering any cargoes described in § 308.501. The policy will be in the standard form of War Risk Open Cargo Policy, Form MA–300, prescribed in § 308.517. All policies will be issued by underwriting agents appointed by the Maritime Administrator. All underwriting agents will be domestic insurance companies authorized to do a marine insurance business in a State of the United States.

### § 308.506 Application for an Open Cargo Policy.

Application for an Open Cargo Policy shall be made by filing Form MA–301, prescribed in § 308.521, with the underwriting agent of MARAD. The application shall state the applicant's name and address; the person or persons to whom loss shall be payable; the nature and geographic scope of the shipments to be covered under the policy which shall not be broader than the coverage authorized in § 308.501; the requested effective date, which shall not be earlier than the date of the completion of the requirements for the issuance of the policy; and the basis of valuation to be incorporated in the policy. An applicant may specify one basis of valuation for imports and another for exports,

and he may specify different bases of valuation for different commodities or voyages, provided that each basis of valuation specified by the applicant shall define the value by the use of facts which existed prior to the date of the shipment and which are readily ascertainable by either party after the safe arrival or loss of the shipment.

### § 308.507 Security for payment of premiums.

Clause 21 of the policy requires the assured to maintain with the Maritime Administrator a collateral deposit fund or a surety bond, to secure the payment of the premiums, in an amount which shall at all times exceed the unpaid premiums on all risks which have attached under the policy. The minimum amount of the fund or of the surety bond shall be $1,000. Clause 21 also provides that, within seven (7) days from the time knowledge comes to the assured that the amount of the deposit or the surety bond is insufficient to meet the requirements of Clause 21, the assured shall deposit additional collateral or increase the surety bond in an amount not less than double the amount of such insufficiency, and for a sum which shall be a multiple of $500. If the assured fails to increase the deposit or the surety bond within the seven (7) day period, the policy automatically becomes void at the end of the seven (7) day period except as to risks which have attached prior to that date. The procedure for establishing a collateral deposit fund is prescribed in § 308.509, and the procedure for posting and maintaining a surety bond is prescribed in § 308.510. An application for the issuance of an open cargo policy shall be ineffective unless a collateral deposit fund is established and maintained, or a surety bond is posted and maintained, in accordance with the provisions of this section and § 308.510.

### § 308.508 Issuance of an Open Cargo Policy.

(a) *Time.* The underwriting agent will issue an Open Cargo Policy within fifteen (15) days after the completion by the applicant of the requirements set forth in §§ 308.506 and 308.507 unless the time for issuance is extended by the Maritime Administrator in writing. The underwriting agent may not make any Open Cargo Policy effective with respect to shipments attaching on a date earlier than the date when the application was completed, but he may make it effective on the date of the completion of the application or any date thereafter requested by the applicant.

(b) *Numbering.* Each Open Cargo Policy supplied to the underwriting agent by the Maritime Administrator shall be numbered by MARAD before it is supplied to the underwriting agent. No two numbers shall be the same. The underwriting agent when issuing the policy shall add at the end of the policy number the agency number assigned to that underwriting agent, and where policies are issued by more than one office of an underwriting agent, the issuing office shall also be identified in the policy number. For example, policies issued by an office in New York will be designated by ''NY'' and policies issued in San Francisco will be designated by ''SF'' prefixed to the underwriting agent's agency number.

### § 308.509 Collateral deposit fund.

(a) *Requirements.* An assured electing to use a cash collateral deposit fund pursuant to § 308.507 shall comply with the provisions of this section and Clause 21 of the Open Cargo Policy, Form MA–300, prescribed in § 308.517.

(b) *Cash or Government bonds.* To establish a collateral deposit fund the applicant shall deposit with the underwriting agent a check payable to the order of the ''Maritime Administration, Department of Transportation'' for the amount of the fund, or United States Government bonds having a par value at the time of deposit of the amount of the fund, which shall be a multiple of $500 but not less than $1,000, together with a letter of transmittal executed by the applicant on Form MA–302, prescribed in § 308.522. Upon receipt of the deposit, the underwriting agent shall assign it a serial number and transmit it to ''Maritime Administration, Attention: Chief Financial Officer, Maritime Administration''. It is the responsibility of the assured to make sure that this deposit fund is sufficient at all times to cover the premiums payable on all risks which have

attached under the policy, so as to prevent the termination of the insurance under the provisions of Clause 21.

(c) *Overdue premiums.* Pursuant to Clause 20, if the assured fails to pay any premium when it becomes due and payable, he thereby breaches the policy and it automatically ceases to insure any shipments which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium, unless within the fifteen (15) day period the premium has been paid and the assured has otherwise complied with the requirements of the policy, including the filing of the closing report required by Clause 19 and the payment of the reinstatement fee of $25 required by Clause 20. If the assured fails to pay the premium within the fifteen (15) day period, the Maritime Administrator may deduct from the assured's collateral deposit fund all amounts due.

(d) *Increase in amount of collateral as required by Clause 21.* If the assured fails to deposit additional collateral in the fund within seven (7) days from the time knowledge comes to the assured that the amount of collateral is insufficient to meet the requirements of Clause 21, the policy shall be void except as to risks which have attached prior to the expiration of the seven (7) day period.

(e) *Changes in amount of collateral.* The assured may increase or decrease the amount of the collateral deposit fund by amounts of not less than $500 or multiples thereof, provided that the amount of the fund shall not be less than the amount required by Clause 21, or the required minimum of $1,000, whichever is greater. The effect of any change in the amount of the collateral deposit shall be the sole responsibility of the assured, and the permission granted by this paragraph to change the amount of collateral in the fund shall in no manner relieve the assured of the responsibility imposed by Clause 21.

(f) *Increase of collateral.* To increase the amount of the collateral on deposit in the fund, the assured shall transmit to the underwriting agent on Form MA–302, prescribed in § 308.522, a check payable to the order of ''Maritime Administration, Department of Transportation'' or United States Government bonds having a par value at the time of deposit of not less than the amount of the requested increase. The increase shall become effective upon the date of the receipt of the application and check or bonds by the underwriting agent, as shown on Form MA–302.

(g) *Decrease of collateral.* To decrease the collateral deposit fund, the assured shall file with the underwriting agent an application on Form MA–305, prescribed in § 308.525. The decrease shall become effective upon the date of the receipt of the application by the underwriting agent as shown on Form MA–305.

(h) *Refund of collateral.* Whenever the assured becomes entitled to a refund of the collateral deposit, in whole or in part, by reason of a request for a partial return of such collateral, or the cancellation of the policy and the payment in full of all premiums then or thereafter due, or the waiver by the Maritime Administrator of the requirements of maintaining the collateral deposit fund because the assured is a department or agency of the United States or is acting on behalf of such a department or agency, or the substitution of a surety bond in the place and stead of the collateral deposit fund, as provided in § 308.510(j), the Maritime Administrator will refund to the assured the amount of the collateral deposit to which the assured is entitled; provided, however, that the repayment of such collateral shall not be made by the Maritime Administrator until the assured has filed a closing report and paid in full all premiums with respect to all shipments which had attached at the time of the receipt by the underwriting agent of the application for the refund, Form MA–305, and a certificate executed in duplicate on Form MA–306, prescribed in § 308.526, and, in the event of the substitution of a surety bond for the collateral deposit fund, the receipt by the underwriting agent of the surety bond properly executed, in accordance with § 308.510.

### § 308.510 Surety bond.

(a) *Requirements.* An assured electing to post a surety bond pursuant to § 308.507 shall comply with the provisions of this section and Clause 21 of

the Open Cargo Policy, Form MA–300, prescribed in § 308.517.

(b) *Amount of bond.* An applicant who wishes to post a surety bond shall deliver to the underwriting agent a surety bond on Form MA–308, prescribed in § 308.528, executed by the assured as principal, and by the surety, in such amount as the assured determines to be necessary to comply with Clause 21. Such amount shall be a multiple of $500 but shall not be less than $1,000. Upon receipt of the surety bond, the underwriting agent shall assign a serial number to it and transmit it to ''Maritime Administration, Attention: Chief, Division of Marine Insurance.'' It shall be the responsibility of the assured to provide that the amount of the bond is sufficient at all times to cover the premium payable on all risks which have attached under the policy, so as to prevent the termination of the insurance under the provisions of Clause 21.

(c) *Surety.* The sufficiency of the surety executing the bond shall be subject to approval by the Maritime Administrator. The underwriting agent may accept on behalf of the Maritime Administrator a surety bond executed by a surety named on the United States Treasury Department's approved list of sureties whose bonds are acceptable to the United States Treasury Department to secure obligations due the United States, provided the bond is within the maximum amount for which the surety is so authorized to write bonds as shown by the approved list.

(d) *Overdue premiums.* Pursuant to Clause 20, if the assured fails to pay any premium when it becomes due and payable, he thereby breaches the policy and it automatically ceases to insure any shipments which would otherwise have attached after the expiration of fifteen (15) days following the due date of the premium, unless within the fifteen (15) day period the premium has been paid and the assured has otherwise complied with the requirements of the policy, including the filing of the closing report required by Clause 19 and the payment of the reinstatement fee of $25 required by Clause 20. If the assured fails to pay the premium within the fifteen (15) day period, all amounts due shall become a liability collectible under the surety bond and from the assured.

(e) *Increase in amount of bond as required by Clause 21.* If the assured fails to increase the amount of the surety bond within seven (7) days from the time knowledge comes to the assured that the amount of the bond is insufficient to meet the requirements of Clause 21, the policy shall be void except as to risks which have attached prior to the expiration of the seven (7) day period.

(f) *Changes in amount of bond.* The assured may increase or decrease the amount of the surety bond by amounts of not less than $500 or multiples thereof, provided that the amount of the bond shall not be less than the amount required by Clause 21, or the required minimum of $1,000, whichever is greater. The effect of any change in the amount of the bond shall be the sole responsibility of the assured, and the permission granted by this paragraph to change the amount of the bond shall in no manner relieve the assured of the responsibility imposed by Clause 21.

(g) *Increase in amount of bond.* To increase the surety bond the assured shall transmit to the underwriting agent, on Form MA–310, prescribed in § 308.530, an endorsement duly executed by the assured and the surety company on Form MA–311, prescribed in § 308.531. The increase shall become effective upon the date of the receipt of the endorsement by the underwriting agent as shown on Form MA–311.

(h) *Decrease in amount of bond.* To decrease the amount of the bond, the assured shall transmit to the underwriting agent, on Form MA–310, prescribed in § 308.530, an endorsement duly executed by the assured and the surety on Form MA–311, prescribed in § 308.531. The decrease shall become effective upon the date of the receipt of the endorsement by the underwriting agent as shown on Form MA–311, except as to shipments which on that date are known or reported to the assured to be in transit and which have attached under the policy and upon which premium has not been paid in full.

(i) *Termination of bond.* Whenever the assured becomes entitled to a termination of a surety bond by reason of

the cancellation of the policy and the payment in full of all premiums then or thereafter due, or the waiver by the Maritime Administrator of the requirements of maintaining the surety bond by an assured which is a department or agency of the United States or is acting on behalf of such a department or agency, or the substitution of a collateral deposit fund in the place or stead of the surety bond, the underwriting agent shall execute a release on Form MA–312, prescribed in § 308.532. The release shall be made effective as of:

(1) The effective date of the cancellation of the policy when the bond is terminated for that reason, or

(2) The date of the Maritime Administrator's directive waiving the requirement of a surety bond when the bond is terminated for that reason, or

(3) The effective date of the establishment of a collateral deposit fund when the bond is terminated for that reason.

(j) *Substitution of bond for collateral deposit.* An assured may substitute a surety bond for a collateral deposit fund by delivering to the underwriting agent a surety bond on Form MA–309, prescribed in § 308.529, executed by the assured as principal, and by the surety, in such amount as the assured determines to be necessary to comply with Clause 21. Such amount shall be a multiple of $500, but shall not be less than $1,000. The collateral deposit fund will be refunded to the assured after the bond has been posted, in accordance with the provisions of § 308.509(h).

### § 308.511 Cancellation of Open Cargo Policy.

An assured may cancel an Open Cargo Policy by delivering to the underwriting agent, at least fifteen (15) days prior to the requested date of cancellation, an application for cancellation executed by the assured on Form MA–304, prescribed in § 308.524, together with the original policy. The policy shall be cancelled as of the effective date requested in the application, which, unless otherwise agreed by the Maritime Administrator in writing, shall not be a date earlier than fifteen (15) days following the date of the receipt of the application as acknowledged by the underwriting agent on Form MA–304, with respect to all risks that have not attached prior to said effective date. Such cancellation shall not relieve the assured of the obligation to file closing reports with respect to all risks which attached prior to the effective date of the cancellation and to pay all unpaid premiums. Within four (4) months of the effective date of cancellation, unless otherwise agreed by the Maritime Administrator in writing, the assured must file a closing report in duplicate on Form MA–313, prescribed in § 308.533, of all shipments covered by the policy for which closing reports have not been previously filed. The assured shall mark this closing report ''Final Closing Report on Cancellation of Policy'', and file a certificate on Form MA–313–B, prescribed in § 308.535, executed by the assured in duplicate. Thereafter, when all unpaid premiums have been paid, the assured will become entitled to a refund of the collateral deposit, or cancellation of the surety bond in accordance with §§ 308.509 and 308.510. If the assured has lost or mislaid the original policy and is unable to produce it for cancellation, the assured shall execute a letter of indemnity and such other documents as may be required by the Maritime Administrator.

### § 308.512 Declaration of shipments under Open Cargo Policy.

(a) *Closing report.* (1) The assured shall file with the underwriting agent, not later than the twenty-fifth (25th) day of each month, a closing report for all inward shipments and a closing report for all outward shipments, and pay the premium and fees, for all shipments covered during the preceding calendar month, as required by Clause 19. Each closing report shall be filed in duplicate on Form MA–313, prescribed in § 308.533, supported by a certificate executed by the assured on Form MA–313–A, prescribed in § 308.534. If the assured has no shipments to report during any calendar month, the closing report, Form MA–313, shall, nevertheless, be filed with one or both of the following statements, depending upon their applicability, noted thereon certifying that:

(i) No inward shipment coming within the scope of this policy arrived at

destination during the preceding calendar month, and that during the preceding calendar month no knowledge has come to the assured of an inward shipment covered under the terms of the policy which will not arrive by reason of loss, frustration or other similar cause,

(ii) No outward shipment coming within the scope of this policy was made during the preceding calendar month, and

(iii) Whenever a sea passage is made with respect to cargo covered under the policy by a barge or sailing vessel the assured shall note that fact upon the closing report, unless the Maritime Administrator otherwise agrees.

(2) An assured reporting for one calendar month shall not include therein a report of a shipment due to be reported in the report for the next succeeding calendar month. Thus, the report of January closing shipments filed in February does not include February closings.

(b) *Inward shipments.* The closing report covering inward shipments shall include:

(1) All such shipments which have arrived at the port of destination during the preceding calendar month, and

(2) All such shipments with respect to which inability to so arrive by reason of loss, frustration, or other similar causes has come to the knowledge of the assured during the preceding calendar month.

(c) *Outward shipments.* The closing report covering outward shipments shall include all such shipments which attached under the policy during the preceding calendar month.

(d) *Definition of inward and outward shipments.* A shipment will be classified as an inward shipment or as an outward shipment by reference to the geographical location of the assured with respect to the movement of the shipment. The address of the assured as stated in the application filed by him for the policy shall be deemed to be the assured's geographical location for the purpose of determining whether the shipment is inward or outward. To illustrate, if an assured has stated in his application that his address is in Hawaii, the assured's shipments of goods from the United States to Hawaii would be classified as inward, and his shipments from Hawaii to the United States would be classified as outward. Any shipments that cannot be classified as inward or outward under this definition shall be treated as inward shipments for the purposes of the declaration.

(e) *Supplemental closing report.* If an assured files a closing report and thereafter discovers that one or more additional shipments should have been included in the report, then, even though the assured has executed the certificate on Form MA–313–A, prescribed in § 308.534, or Form MA–313–B, prescribed in § 308.535, in connection with the closing report, the assured must nevertheless amend the closing report by filing a supplemental closing report supported by an appropriate certificate. The supplemental closing report must be accompanied by a statement in writing signed by the assured giving the reasons for the omission of such shipments from the original closing report. If the Maritime Administrator finds that the failure to file the complete closing report was either inadvertent or unintentional or arose by reason of causes beyond the control of the assured, the otherwise automatic termination of the policy by reason of a breach of the warranty embodied in Clause 20 shall be avoided pursuant to the provisions of Clause 23.

### § 308.513 Payment of premiums and fees.

The assured shall pay the premium, when his closing report is filed, for all shipments shown on his closing report for the preceding month, at the rates prescribed by the Maritime Administrator and in effect on the date of the ocean bill of lading, or if an ocean bill of lading was not issued, on the date of the equivalent shipping document, or if no ocean bill of lading or equivalent shipping document was issued, or if such documents were undated, on the date the goods were laden on the overseas vessel, as required by Clause 19. All payments of premium or fees must be made by check or money order payable to the order of ''Maritime Administration, Department of Transportation.''

### § 308.514 Return premium.

No premium will be returned to the assured with respect to a shipment of goods that attached under the policy except where there was a declaration of value at variance with Clause 8, or an error in the application of a rate or in the computation of a premium, or the insured goods were short-shipped. An application for the return of a premium shall be made on Form MA–307, prescribed in § 308.527, filed in duplicate with the Underwriting Agent who will transmit it to the Maritime Administrator for payment.

### § 308.515 Payment in event of loss.

All claims for losses shall be filed by the assured with the Underwriting Agent who issued the policy. Such claims must be supported by the customary documents required in connection with war risk insurance claims, together with appropriate declarations as required by Clause 9, and such further data as may now or hereafter be required by the Maritime Administrator.

### § 308.516 Failure to comply with Clause 21.

(a) If the assured willfully fails to maintain a collateral deposit fund or a surety bond in an amount sufficient to meet the requirements of Clause 21, the policy becomes void from the date the fund or bond was first insufficient, but, if the assured's failure was inadvertent, the policy may be reinstated when the assured complies with Clause 21, and shows to the satisfaction of the Maritime Administrator that his failure was inadvertent and not willful. If the failure was in fact inadvertent, the assured shall file a declaration on Form MA–314, prescribed in § 308.536, executed in duplicate, with the Underwriting Agent within seven (7) days from the time knowledge comes to the assured of the insufficiency of the collateral deposit fund or surety bond unless the time for filing such declaration is extended by permission of the Maritime Administrator. If the space provided in the declaration, Form MA–314, for an explanation of the circumstances whereby the assured first had knowledge that the collateral was not sufficient, the assured shall attach to the declaration a detailed statement and include the same by reference in the declaration.

(b) If any policy becomes void by reason of the failure of the assured to deposit additional collateral or increase the amount of its surety bond under the provisions of Clause 21, the Maritime Administrator reserves the right to refuse to issue another policy to such assured for a period of ninety (90) days.

### § 308.517 Open Cargo Policy, Form MA–300.

The standard form of War Risk Open Cargo, Form MA–300, may be obtained from MARAD's underwriting agent or MARAD.

### § 308.518 Standard optional endorsement No. 1, Form MA–300–A.

Standard Optional Endorsement No. 1, which may be obtained from MARAD's underwriting agent or MARAD, limits the amount payable for the loss of goods to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. An Assured may elect to have his Open Cargo Policy endorsed with Standard Optional Endorsement No. 1 applicable on all shipments, or on all outward shipments, or on all inward shipments, or on named commodities except goods sold by the Assured prior to loading on board the overseas vessel and shipped for the account and at the risk of third persons other than a branch subsidiary or affiliate of the Assured. When an Assured has elected to have Standard Optional Endorsement No. 1 made applicable to certain named commodities he may not change to a different basis of valuation for those commodities until after he has given ninety (90) days written notice to the Maritime Administrator through the Underwriting Agent of his election to make the change. Application for Standard Optional Endorsement No. 1 may be made to the Underwriting Agent which is authorized to issue the endorsement without prior approval of the Maritime Administrator.

### § 308.519 Standard optional endorsement No. 2, Form MA–300–B.

Standard Optional Endorsement No. 2, which may be obtained from MARAD's underwriting agent or MARAD, amends the policy to cover shipments made to the Assured or shipped by the Assured as agent for the account and risk of a principal. Application for Standard Optional Endorsement No. 2 may be made to the Underwriting Agent, which is authorized to issue the endorsement without prior approval of the Maritime Administrator.

### § 308.520 Standard optional endorsement No. 3, Form MA–300–C.

Standard Optional Endorsement No. 3, which may be obtained from MARAD's underwriting agent or MARAD, amends the policy to include shipments of diamonds for industrial purposes, or rubies or sapphires, natural or synthetic, used for instruments or watch jewels imported to the Continental United States (excluding Alaska). Application for Standard Optional Endorsement No. 3 may be made to the Underwriting Agent, which shall transmit it to the Maritime Administrator for approval or disapproval of the issuance of the endorsement.

### § 308.521 Application for Open Cargo Policy, Form MA–301.

The standard form of application for a War Risk Open Cargo Policy may be obtained from MARAD's underwriting agent or MARAD.

### § 308.522 Collateral deposit fund, letter of transmittal, Form MA–302.

The standard form of letter of transmittal for use in establishing a collateral deposit fund may be obtained from MARAD's underwriting agent or MARAD.

### § 308.523 Application for revision of Open Cargo Policy, Form MA–303.

An application for the revision of an Open Cargo Policy shall be filed in duplicate with the Underwriting Agent on a form which may be obtained from MARAD's underwriting agent or MARAD.

### § 308.524 Application for cancellation of Open Cargo Policy, Form MA–304.

The standard form of application for cancellation of an Open Cargo Policy Form MA–304 may be obtained from MARAD's underwriting agent or MARAD.

### § 308.525 Application for decrease in amount of cash collateral fund, Form MA–305.

Application for decrease in the amount of the cash collateral deposit fund shall be made on Form MA–305, which may be obtained from MARAD's underwriting agent or MARAD.

### § 308.526 Certificate for repayment of decrease of collateral deposit fund, Form MA–306.

The standard form of certificate for repayment of the amount of the decrease of the collateral deposit fund, Form MA–306, may be obtained from MARAD's underwriting agent or MARAD.

### § 308.527 Application for return premium, Form MA–307.

An application for the return of premium, which may be obtained from MARAD's underwriting agent or MARAD, shall be filed in duplicate with the Underwriting Agent on Form MA–307.

### § 308.528 Surety Bond A, Form MA–308.

The Standard Form of Surety Bond A, Form MA–308, which may be obtained from MARAD's underwriting agent or MARAD, shall be used by an Assured who elects to post a surety bond as security for payment of the premiums pursuant to Clause 21 of the policy:

### § 308.529 Surety Bond B, Form MA–309.

An Assured who elects to substitute a surety bond for a collateral deposit fund shall submit Form MA–309, which may be obtained from MARAD's underwriting agent or MARAD.

### § 308.530 Letter requesting increase or decrease in amount of surety bond, Form MA–310.

An endorsement increasing or decreasing the amount of the surety bond, Form MA–310, shall be transmitted to the underwriting agent and may be obtained from MARAD's underwriting agent or MARAD.

### § 308.531 Endorsement of surety bond increasing or decreasing amount of coverage, Form MA–311.

The Standard Form of Endorsement which shall be used in increasing or decreasing the amount of a surety bond, Form MA–311, may be obtained from MARAD's underwriting agent or MARAD.

### § 308.532 Release of surety bond, Form MA–312.

The Standard Form of Release of Surety bond, Form MA–312, may be obtained from MARAD's underwriting agent or MARAD.

### § 308.533 Closing report, Form MA–313.

This form, which may be obtained from MARAD's underwriting agent or MARAD, shall be filed in duplicate with the Underwriting Agent not later than the 25th day of each month.

### § 308.534 Certificate to be attached to closing report, Form MA–313–A.

The standard form of Certificate to be attached to the closing report, Form MA–313–A, may be obtained from MARAD's underwriting agent or MARAD and shall be filed each month.

### § 308.535 Certificate to be attached to final closing report, Form MA–313–B.

The Standard Form of Certificate, Form MA–313–B, shall be attached to the final closing report after cancellation of the policy, and may be obtained from MARAD's underwriting agent or MARAD.

### § 308.536 Declaration where failure to comply with Clause 21 was inadvertent, Form MA–314.

An Assured that fails inadvertently to maintain a collateral deposit fund or surety bond in an amount sufficient to meet the requirements of Clause 21 of the Policy shall file this Declaration, Form MA–314, which may be obtained from MARAD's underwriting agent or MARAD.

## FACULTATIVE WAR RISK CARGO INSURANCE

### § 308.538 General.

The Maritime Administrator is prepared to provide facultative war risk insurance policies covering any cargoes described in § 308.501 which are designated by an applicant prior to the attachment of risks, if the applicant does not have an Open Cargo Policy issued by the Maritime Administrator, or if he has a shipment which is not covered by his Open Cargo Policy. However, a person with regular shipments is urged to avail himself of the advantages of the automatic coverage of an Open Cargo Policy. The Maritime Administrator reserves the right to decline to quote rates or bind insurance on shipments of cargo that could be covered by an Open Cargo Policy unless the applicant can show to the satisfaction of the Maritime Administrator that the risk is not one of a series of similar risks forming part of a continual flow of business for the applicant. The policy will be in the standard form of War Risk Facultative Cargo Policy, Form MA–316, prescribed in § 308.545. All policies shall be issued by Underwriting Agents appointed by the Maritime Administrator. All Underwriting Agents shall be domestic insurance companies authorized to do a marine insurance business in a State of the United States.

### § 308.539 Application.

(a) *Preliminary request.* Application for a Facultative Cargo Policy shall be made by filing a preliminary request in writing (including telegram) with an Underwriting Agent of MARAD, setting forth the following information:

(1) The name and address of the applicant;

(2) The amount of insurance requested;

(3) The commodity and quantity to be insured;

(4) The voyage to be covered;

(5) The name of the vessel upon which the cargo will be shipped, if

known, the name of the steamship line, if known, and the date of shipment, if the applicant is submitting the request to bind war risk in writing; for security reasons, if the applicant is submitting the order to bind war risk insurance by telefax, neither the name of the vessel nor the name of the steamship line nor the anticipated date of sailing, should be mentioned. Mentioning such information in a telefax may result in a denial of insurance to the applicant. Any envelope transmitting a letter containing such information shall be marked ''confidential.''

(b) *Binder.* Before the insurance can be bound, the applicant shall provide the Underwriting Agent with a properly prepared binder on Form MA–315 prescribed in § 308.544. The binder must be submitted in duplicate, accompanied by check or Money Order payable to the order of ''Maritime Administration, Department of Transportation'' for the full amount of the premium computed on the amount to be insured at the rate set by the Maritime Administrator. Any application for facultative cargo war risk insurance received by an Underwriting Agent later than 4 p.m. (Local Time) shall be considered the next day's business.

(c) *Optional loss limits clause.* Clause 9 of the standard form of facultative cargo policy, Form MA–316, prescribed in § 308.545, limits the amount payable for loss to the fair market value at the place and approximate time of the attachment of risk, plus the cost of marine insurance, transportation and expenses incident thereto, and war risk insurance with respect to the lost or damaged goods, or if it is impossible to determine the fair market value at place and time of attachment of risk, the fair market value at the designated port of arrival on the date of the attachment of the risk, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods, or if the goods had been purchased prior to loading, the actual amount paid or payable to the seller for the goods less all discounts, plus the cost of marine insurance, transportation and expenses incidental thereto, and war risk insurance with respect to the lost or damaged goods. In lieu of these loss limits, the Assured by so specifying in his application, and the binder may have attached to the policy when issued Standard Optional Endorsement No. 1–A, Form MA–316, prescribed in § 308.546, which limits the amount payable for loss to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profits arising out of the insured venture.

### § 308.540 Premiums.

(a) *Rates.* Rate Schedules for war risk facultative cargo insurance will be published by the Maritime Administrator from time to time, and may be obtained from an Underwriting Agent. All Rate Schedules are subject to change by the Maritime Administrator without notice. If no rate is published for a voyage on which war risk facultative cargo insurance is available, the Maritime Administrator will name a rate through an Underwriting Agent upon application. Whenever an applicant for war risk facultative cargo insurance receives a definite rate quotation and desires to bind insurance at the quoted rate, an order to bind the insurance in accordance with the procedure set forth in this subpart should be submitted within two business days following the day of quotation accompanied by check or Money Order payable to the order of ''Maritime Administration, Department of Transportation'' for the full amount of the premium thereon computed on the amount to be insured at the rate set by the Maritime Administrator, or the quotation will expire.

(b) *Return premium.* Where goods are short-shipped, the amount of insurance may be reduced by an amount computed by applying to the original amount of insurance the proportion which the quantity of merchandise short-shipped (i.e., bales, barrels, tons, and other designations of quantity) bears to the total quantity of merchandise originally declared for insurance. Where more than one class of merchandise is insured under one policy (e.g., fuel, oil and gasoline) the reduced amount of insurance must be computed separately on each item. Where the amount of insurance is reduced, the

Maritime Administrator will give consideration to requests for proportionate returns of premium. An application for the return of a premium must be submitted to the Underwriting Agent in quadruplicate on Form MA–317, prescribed in § 308.547.

### § 308.541 Issuance.

(a) *Binder.* The Underwriting Agent is authorized to issue a facultative policy in Form MA–316, prescribed in § 308.545, when there has been presented to him a properly prepared binder on Form MA–315, prescribed in § 308.544, together with the payment of the premium as required, and such policy shall be issued as soon as possible after the binder form has been presented to the Underwriting Agent. Prior to the issuance of the policy, the Underwriting Agent is authorized to accept the risk on behalf of the Maritime Administrator by signing the binder. The Maritime Administrator will provide each Underwriting Agent with a supply of facultative policies which shall not be valid until countersigned by the Underwriting Agent. The Underwriting Agent shall keep a permanent record of all such policies and the Assured to whom the policy is issued.

(b) *Numbering.* Each Facultative Cargo Policy supplied to the Underwriting Agent by the Maritime Administrator shall be numbered by MARAD before it is supplied to the Underwriting Agent. No two numbers shall be the same. The Underwriting Agent when issuing the policy shall add at the end of the Policy number the agency number assigned to that Underwriting Agent, and where policies are issued by more than one office of an Underwriting Agent the issuing office shall also be identified in the policy number. For example, the policies issued by an office in New York will be designated ''NY'' and policies issued in San Francisco will be designated by ''SF'' prefixed to the Underwriting Agent's agency number.

### § 308.542 Warranty regarding thirty-day shipments.

If, after an effective binding of war risk insurance on a shipment of cargo, the assured believes that it will be impossible to comply with the warranty requiring the goods to be shipped and in transit within thirty days from the effective date of binding, such an assured may apply to the Maritime Administrator, through the Underwriting Agent, to modify the warranty. If the Maritime Administrator is satisfied that an extension of time within which the goods are warranted to be shipped and in transit should be granted, he will do so, but additional premium may be charged in the discretion of the Maritime Administrator.

### § 308.543 Cancellation.

Facultative war risk insurance is not subject to cancellation by the Assured unless the goods are not shipped within thirty (30) days following the effective date of binding, and then only if the policy is returned for cancellation.

### § 308.544 Facultative binder, Form MA–315.

The standard form of War Risk Facultative Cargo Binder, which may be obtained from MARAD's underwriting agent of MARAD, shall be completed by the applicant and submitted, in duplicate, to an Underwriting Agent before the insurance can be bound.

### § 308.545 Facultative cargo policy, Form MA–316.

The standard form of War Risk Facultative Cargo Policy, Form MA–316, may be obtained from MARAD's underwriting agent or MARAD.

### § 308.546 Standard optional endorsement No. 1–A, Form MA–316–A.

Standard Optional Endorsement No. 1–A limits the amount payable for the loss of goods to the actual bona fide pecuniary loss to the Assured, exclusive of any allowance for anticipated or accrued profit arising out of the insured venture. (Similar provisions for Open Cargo Policies are contained in Standard Optional Endorsement No. 1, Form MA–300–A, prescribed in § 308.518.) Application for Standard Optional Endorsement No. 1–A shall be made to the Underwriting Agent at the time application is made for the policy. The Underwriting Agent is authorized to issue the endorsement without prior approval of the Maritime Administrator. This form may be obtained from

MARAD's underwriting agent or MARAD.

### § 308.547 Application for return premium, Form MA–317.

An application for the return of premium must be filed in duplicate with the Underwriting Agent on Form MA–317, which may be obtained from MARAD's underwriting agent or MARAD.

GENERAL

### § 308.548 Standard form of underwriting agency agreement for cargo, Form MA–318.

This form, which may be obtained from MARAD's underwriting agent or MARAD, is the standard form of underwriting agency agreement applicable with respect to agreements executed by the Maritime Administrator and domestic insurance companies authorized to do a marine insurance business in any State of the United States, appointing such companies as Underwriting Agents to issue war risk cargo policies in accordance with the provision of the agreement and this subpart.

### § 308.549 Application for appointment of Cargo Underwriting Agent, Form MA–319.

Any domestic insurance company authorized to do a marine insurance business in any State of the United States may apply for appointment as a Cargo Underwriting Agent by submitting to the Maritime Administrator a letter and Form MA–399, which may be obtained from MARAD's underwriting agent or MARAD.

### § 308.550 Certificate, Form MA–320.

Wherever any provision of this subpart, or any amendment thereto, requires the Assured to make a declaration or certification under the penalties of perjury, and the form of the declaration or certificate is not prescribed, the Assured may execute a certificate on Form MA–320–A for an individual, on Form MA–320–B for a partnership, or on Form MA–320–C for a corporation, which forms may be obtained from MARAD's underwriting agent or MARAD.

### § 308.551 War risk insurance clearing agency agreement for cargo, Form MA–321.

The standard form of clearing agency agreement, Form MA–321, shall be executed by the Maritime Administrator and domestic insurance companies, or groups of domestic insurance companies authorized to do a marine insurance business in any State of the United States, appointing such companies or groups of companies as clearing agents, which form may be obtained from MARAD's underwriting agent or MARAD.

### § 308.552 Effective date.

This subpart shall be effective as and when the Maritime Administrator finds that war risk cargo insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

## Subpart G—Records Retention

### § 308.600 Records retention requirement.

The records specified in §§ 308.8, 308.517, and 308.548 of this part shall be retained until a release is granted by MARAD, at which time MARAD will take custody of the records.

(Authority: 46 U.S.C. sections 53902, 53910; 49 CFR 1.93)

# PART 309—VALUES FOR WAR RISK INSURANCE

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