

## SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

### PART 249—APPROVAL OF UNDERWRITERS FOR MARINE HULL INSURANCE

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AUTHORITY: Sec. 204(b), 1109, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b), 1279b); 49 CFR 1.66.

SOURCE: 53 FR 23119, June 20, 1988, unless otherwise noted.

#### § 249.1 Purpose.

This part prescribes certain regulations governing the placement of marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended (Act). (46 U.S.C. 1271–1279)

#### § 249.2 Policy.

(a) It is the policy of the Maritime Administration (MARAD) that companies subject to requirements for the placement of marine hull insurance shall be afforded the widest possible opportunity to obtain the necessary coverage, with minimal regulatory constraints, with financially sound underwriters, and that such placement should not create any unnecessary impediments to competitive maritime operations.

(b) It is also the policy of MARAD to require owners of vessels with ODS or Title XI obligation guarantees to allow the American marine insurance market the opportunity to compete for the marine hull insurance on their vessels before such insurance is placed. Consistent with sound business judgment, owners will be expected to place their

insurance with the American market to the maximum extent possible when the rates, terms and conditions offered by American underwriters are competitive with those offered by foreign underwriters.

#### § 249.3 Amounts of insurance.

MARAD will inform the owner of each vessel that is subsidized or covered by vessel obligation guarantees, prior to initial placement and at least annually thereafter, of the minimum amount of insurance required to be placed on the vessel.

#### § 249.4 Eligibility.

*In General.* All required marine hull insurance must be placed with:

- (a) Underwriters licensed to do business in one or more of the United States;
- (b) Underwriters at Lloyds;
- (c) Member companies of the Institute of London Underwriters; or
- (d) Other underwriters specifically approved in advance by the Maritime Administration.

#### § 249.5 Eligibility criteria.

(a) *U.S. Underwriters.* Underwriters licensed to do business in a state are eligible to participate without further consideration, provided they have at least a B security rating, as published in the latest edition of A.M. Best's Insurance Reports, and the amount of insurance does not exceed the limitation on risk prescribed in § 249.8.

(b) *Foreign Underwriters.* (1) Underwriters at Lloyds are eligible to participate without further consideration.

(2) Underwriters which are members of the Institute of London Underwriters (ILU) (i.e., member companies, not parents or affiliates of the member companies) are eligible to participate without further consideration, provided that the ILU member company actually underwriting the risk maintains a trust fund in the United States for the benefit of its U.S. policyholders in an amount at least equal to the minimum provided in § 249.7(d), and the

amount insured does not exceed the limitation on risk prescribed in § 249.8. Parent companies or affiliates of the ILU member companies are treated as other foreign underwriters under subsection (c) of this section.

MARAD reserves the right to review this eligibility at any time.

(c) *Other Foreign Underwriters.* Foreign underwriters, other than those specified in paragraphs (b) (1) and (2) of this section, may also be eligible to participate in the writing of marine hull insurance on MARAD program vessels, if approved to do so in accordance with the procedures contained in §§ 249.6 and 249.7.

(d) *Documentation of eligibility.* It shall be the responsibility of the vessel owner and its broker to ensure that the requirements of this section are met, and they should be able to provide MARAD, upon request, with documentation to that effect.

#### § 249.6 Application procedures.

(a) MARAD may grant specific approval for underwriters described in § 249.5(c) to participate in the writing of marine hull insurance on MARAD program vessels, only in advance of any actual placement.

(b) Only those foreign underwriters who have obtained a high rating (A or comparable) from an accepted international rating service may apply, and if approved, such approval will be contingent upon continued maintenance of such rating. MARAD will make available to interested parties the names of any accepted international rating service.

(c) To seek approval, an applicant shall submit to MARAD:

(1) Certified financial data for the five previous years in sufficient detail to enable MARAD to assess the financial strength and solvency of the applicant. Normally, this would be the same data which the underwriter must submit to the regulatory agency in its country of domicile. However, MARAD may request additional data if the applicant's submissions are considered inadequate;

(2) A comprehensive description and English language version of the insurance regulatory regime that is in place in the insurer's country of domicile.

(After review, MARAD may contact the foreign national regulatory authorities, as appropriate);

(3) An affidavit in writing, executed by an agent of the applicant who is a domiciliary of the United States, and supported by appropriate documentation, to demonstrate that there is nothing in either law or practice to preclude a U.S. insurer from obtaining the same access to the applicant's home market as the applicant is seeking to the U.S. market, and

(4) The details of its reinsurance program, if it wishes to write any risks in excess of five percent of its policyholders' surplus. These details shall be accompanied by a statement that clearly demonstrates the special circumstances and good cause by which MARAD should be persuaded to modify its general policy on limitation of risk described in § 249.8.

#### § 249.7 Approval

(a) Approval of the applicant will be based upon an assessment of the applicant's financial condition and solvency, its rating by an accepted international rating service, suitability of the regulatory regime under which the applicant must operate in its home country, and on the principle of reciprocal non-discrimination. MARAD will not approve access to the U.S. hull insurance market, if U.S. insurers are denied similar access to the hull insurance market in the applicant's home country.

(b) MARAD will publish in the FEDERAL REGISTER each Notice of Application received from foreign underwriters described in § 249.5(c), affording interested persons an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which might exist in the applicant's country of domicile.

(c) In granting approval, MARAD will consider all materials available to it, and may impose reasonable terms and conditions upon any such approvals granted.

(d) Upon approval, applicant will be required to establish and maintain for the benefit of its U.S. policyholders a U.S. trust fund in the amount of at least \$1.5 million, such amount to be

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reviewed periodically (but not more frequently than annually), and adjusted as appropriate. This requirement may be satisfied by means of an appropriate irrevocable letter of credit.

(e) All policies, at the time of issuance, shall contain the latest American Institute of Marine Underwriters' forms, or equivalent, as approved by MARAD.

(f) All policies issued by foreign underwriters shall include New York Subable Clause or Service of Suit (USA) Clause.

(g)(1) To maintain approval, foreign underwriters, other than those specified in § 249.5(b), shall, in addition to retaining the high rating from an accepted international rating service, file annual financial statements in the same level of detail as required for original approval. Such statements shall be due within 120 days after the close of the underwriter's annual accounting period.

(2) In addition, a new affidavit concerning the lack of discriminatory laws or practices related to hull insurance in the underwriter's home market, as described in § 249.6(c)(3), shall be filed annually at the same time as the financial statements.

(h) Since there is no annual re-approval required, foreign underwriters which are approved shall agree to submit additional information, as requested by MARAD, if it has reason to believe there has been a change in the underwriter's financial status or business practices which could affect the quality of its security. Failure to provide such information on a timely basis could result in immediate withdrawal of the authorization to write hull insurance on MARAD program vessels.

### § 249.8 Limitation on risk.

(a) Underwriters may take a line on any single risk in excess of five percent of its Policyholders' Surplus only with the prior approval of MARAD. MARAD will grant such approval to certain underwriters only in special circumstances, and for good cause shown. The standard to be applied in such cases shall be that the underwriter's *net* retention on any single risk may not exceed five percent of its Policyholders' Surplus, the gross amount of

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the risk may not exceed its surplus, and the reinsurers must have a high (A or comparable) rating from an accepted international rating service.

(b) The vessel owner shall also provide MARAD with a mortgagee's interest policy in an amount equal to the difference between the net retention and the amount of the line taken by such underwriter.

### § 249.9 American market participation.

(a) Owners of vessels receiving ODS or Title XI vessel obligation guarantees, or their brokers, shall offer to the American marine insurance market the opportunity to compete for the placement of marine hull insurance on each vessel. Consistent with sound business judgment, owners will be expected to place their insurance with the American market to the maximum extent possible when the rates, terms and conditions offered by American underwriters are competitive with those offered by foreign underwriters. MARAD will make available a list of approved American underwriters and their capacities.

(b) In the event that less than 50 percent of the placement is made with the American marine insurance market, the owners, or their brokers, shall file an affidavit confirming that the risk has been offered to a substantial portion of the American market. The affidavit shall list the American underwriters to which the risk was offered, and such underwriters shall account for at least 50 percent of the approved American market capacity, or 75 percent in the event that more than 75 percent of the risk was placed in foreign markets.

(c) Failure to comply with (a) or (b), above, may result in MARAD requiring that the risk be reoffered and that the existing placement be modified, as deemed appropriate.

### § 249.10 Non-discrimination policy.

To administer effectively the policy regarding non-discrimination against U.S. insurers in other countries, as described in §§ 249.6(b)(3) and 249.7(a), MARAD seeks the assistance of the American marine insurance industry to

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 re-

quest 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.

### PART 251—APPLICATION FOR SUBSIDIES AND OTHER DIRECT FINANCIAL AID

#### Sec.

251.1 Applications for construction-differential subsidy under Title V, Merchant Marine Act, 1936, as amended.

251.11 Applications under Title VI, Merchant Marine Act, 1936, as amended.

251.21 Applications under sections 803, 804, 805 (a) and (d), and 605(b), Merchant Marine Act, 1936.

251.31 Charges for processing applications for authorization to transfer ownership of ships built with construction-differential subsidy.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

#### § 251.1 Applications for construction-differential subsidy under Title V, Merchant Marine Act, 1936, as amended.

(a) Applications under section 501 of the Act for subsidy to aid in the construction of new vessels or the reconstruction of existing vessels, to be operated in the foreign commerce of the United States, shall be filed on form FMB-8 in accordance with the instructions annexed thereto.<sup>1</sup>

(b) Applications for aid in the construction of new vessels to be operated in domestic trade shall be filed on Form VA-9 in accordance with the instructions annexed thereto.<sup>1</sup>

#### APPENDIX NO. 1—POLICY

1. To the maximum practical extent as determined by the Maritime Subsidy Board applicants for construction-differential subsidy (CDS) under Title V of the Merchant Marine Act of 1936, as amended, shall duplicate designs of ships previously approved by the Board for Subsidized Ship Construction.

<sup>1</sup>Copies of forms referred to may be obtained on request from the Secretary, Maritime Subsidy Board, Washington, D.C.