

§ 380.40

(6) Personnel records and supplementary records such as union agreements.

(c) Reports prepared by Federal, State, Local, or foreign governments pertaining to any documents referred to in this §380.24, shall be retained for the same period as prescribed herein for the retention of the documents to which they apply.

(d) If identical copies of the same document serve more than one purpose, only the original copy is required to be retained.

(Approved by the Office of Management and Budget under control number 2133-0501)

(Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Pub. L. 97-31 (August 6, 1981); 49 CFR 1.66 (46 FR 47458, Sept. 28, 1981))

[48 FR 45560, Oct. 6, 1983]

Subpart D [Reserved]

Subpart E—Compulsory Disclosure

§ 380.40 Subpoenas, other compulsory processes and requests.

In any case where it is sought by subpoena, order, or other compulsory process or other demand of a court or other authority to require the production or disclosure of any record in the files of the Maritime Administration or other information acquired by an officer or employee of the Maritime Administration as a part of the performance of his official duties or because of his official status, the matter shall be immediately referred for determination, through the Secretary of the Maritime Administration and Maritime Subsidy Board, to the Maritime Administrator, Department of Transportation.

[G.O. 112, 36 FR 21816, Nov. 16, 1971]

PART 381—CARGO PREFERENCE— U.S.-FLAG VESSELS

Sec.

381.1 Purpose.

381.2 Definitions.

381.3 Reporting information and procedure.

381.4 Fair and reasonable participation.

381.5 Fix American-flag tonnage first.

381.6 Informal grievance procedure.

381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

46 CFR Ch. II (10-1-09 Edition)

381.8 Subsidized vessel participation.

381.9 Available U.S.-flag service.

AUTHORITY: 46 App. U.S.C. 1101, 1114(b), 1122(d) and 1241; 49 CFR 1.66.

SOURCE: General Order 103, 36 FR 6894, Apr. 10, 1971, unless otherwise noted.

§ 381.1 Purpose.

The purpose of this part 381 is to prescribe regulations to be followed by all departments and agencies having responsibility under the Cargo Preference Act of 1954, section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)), in the administration of their programs with respect to that Act, and to provide a uniform system for the collection of data on the administration of such programs for use in preparing the annual reports to Congress required by that Act.

§ 381.2 Definitions.

(a) *Cargo Preference Act of 1954* means section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)).

(b) *Cargoes subject to the Cargo Preference Act of 1954*, include equipment, material or commodities:

(1) Procured, contracted for or otherwise obtained within or outside the United States for the account of the United States;

(2) Furnished within or outside the United States to or for the account of any foreign nation without provision for reimbursement;

(3) Furnished within or outside the United States for the account of any foreign nation in connection with which the United States advances funds or credits or guarantees the convertability of foreign currencies.

(4) Procured, contracted for, or otherwise obtained within or outside of the United States with advance of funds, loans or guaranties made by or on behalf of the United States.

(c) *Department or agency having responsibility under the Cargo Preference Act of 1954* means any department or agency of the Federal Government, administering a program that involves the transportation on ocean vessels of cargoes subject to the Cargo Preference Act of 1954. At present, these agencies include:

(1) Department of State.

Maritime Administration, DOT

§ 381.4

- (2) Department of Agriculture.
- (3) Department of Defense.
- (4) Post Office Department.
- (5) General Services Administration.
- (6) Export-Import Bank of the United States.
- (7) National Aeronautics and Space Administration.
- (8) Inter-American Development Bank.
- (9) U.S. Information Agency.
- (10) Department of Interior.
- (11) Department of Commerce.
- (12) Department of Treasury.
- (13) Department of Health, Education, and Welfare.
- (14) Department of Housing and Urban Development.
- (15) Department of Transportation.
- (16) Atomic Energy Commission.
- (17) Tennessee Valley Authority.
- (18) Veterans Administration.
- (19) Smithsonian Institution.
- (20) Library of Congress.

(d) *Liner parcel* means any cargo, dry or liquid, normally carried under berth terms by common carriers in ocean trades.

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[G.O. 103, 36 FR 6894, Apr. 10, 1971, as amended by Amdt. 1, 36 FR 10739, June 2, 1971; 36 FR 19367, Oct. 5, 1971; 42 FR 57126; Nov. 1, 1977]

§ 381.3 Reporting information and procedure.

(a) *Reports of cargo preference shipments.* Each department or agency subject to the Cargo Preference Act of 1954, except the Department of Defense for which separate regulations will be issued, shall furnish to the Office of National Cargo and Compliance, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, within 20 working days of the date of loading for shipments originating in the United States or within 30 working days for shipments originating outside the United States, the following information concerning each shipment of preference cargo:

(1) Identification of the sponsoring U.S. Government agency or department;

(2) Name of vessel;

- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Commodity description;
- (8) Gross weight in pounds;
- (9) Total ocean freight revenue in U.S. dollars.

(b) *Format of reports.* The information listed in paragraph (a) of this section shall be furnished to the Maritime Administration in a format prepared by the reporting department or agency and approved by the Maritime Administrator, Department of Transportation as suitable for the purpose of carrying out his responsibility under section 901(b)(2) of the Merchant Marine Act, 1936, as amended, pursuant to the authority delegated to him thereunder by the Secretary of Transportation under section 3 of Department Organization Order 10-8, 36 FR 1223. Where obtainable, a properly notated and legible copy of the ocean bill of lading in English will suffice. Reporting formats shall be submitted for approval by April 30, 1971.

(c) *Shipments made subject to the Act.* In those instances where a shipment has been made that was not known to be subject to the Cargo Preference Act of 1954 when it was made, but subsequent events cause it to be subject to that Act, the agency taking the action that caused the shipment to be subject to the Act shall furnish to the Office of National Cargo and Compliance the information listed in paragraph (a) of this section in the approved reporting form.

[General Order 103, 36 FR 6894, Apr. 10, 1971, as amended at 57 FR 13047, Apr. 15, 1992]

§ 381.4 Fair and reasonable participation.

In order to insure a fair and reasonable participation by U.S.-flag commercial vessels in liner parcel cargoes subject to the Cargo Preference Act of 1954, as required by that Act, the head of each department or agency having responsibility under that Act shall prescribe regulations or formal staff instructions providing for the cargo mix of liner parcel cargoes transported on ocean vessels to be divided between privately owned U.S.-flag vessels and foreign-flag vessels in such a manner as to

§ 381.5

yield to the U.S.-flag vessels freight revenue per long ton at least equal to the freight revenue per long ton afforded the foreign-flag vessels participating in the same grant, loan, or purchase transaction. A copy of the regulations or staff instructions prescribed by each department or agency shall be furnished to the Secretary, Maritime Administration, no later than June 30, 1971, for approval.

[G.O. 103, Amdt. 1, 36 FR 10739, June 2, 1971]

§ 381.5 Fix American-flag tonnage first.

Each department or agency having responsibility under the Cargo Preference Act of 1954 shall cause each full shipload of cargo subject to said act to be fixed on U.S.-flag vessels prior to any fixture on foreign-flag vessels for at least that portion of all preference cargoes required by that Act and the Food Security Act of 1985 to be shipped on U.S.-flag vessels, computed by purchase authorization or other quantitative unit satisfactory to the agency involved and the Maritime Administration, except where such department or agency determines, with the concurrence of the Maritime Administration, that (a) U.S.-flag vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels, or (b) that there is a substantially valid reason for fixing foreign-flag vessels first.

[G.O. 103, Amdt. 2, 36 FR 19254, Oct. 1, 1971, as amended at 57 FR 13047, Apr. 15, 1992]

§ 381.6 Informal grievance procedure.

(a) Whenever any person has a question, problem, complaint, grievance, or controversy pertaining to the terms and conditions of any tenders, charter party terms, or other matter involving the administration of the Cargo Preference Act of 1954, such person may request the Maritime Administration to afford him an opportunity to discuss the matter informally with representatives of the Maritime Administration and, if other U.S. Government agencies or foreign missions, embassies, or agencies acting on behalf of a foreign government are involved with them or persons authorized to speak for them.

(b) In such cases, a request may be made by telephone or letter to the Chief, Office of Market Development,

46 CFR Ch. II (10-1-09 Edition)

Maritime Administration, Washington, DC 20590, (202) 366-4610. When such a request has been received, the Maritime Administrator, Department of Transportation or his designated representative will promptly consider the matter on its merits and provide assistance if possible. If the matter cannot be resolved satisfactorily by the Maritime Administration, the Maritime Administrator, Department of Transportation or his designated representative will then arrange for a meeting at a time and place satisfactory to all interested parties so that the matter may be freely discussed and resolved.

(c) At such meetings, the Maritime Administrator, Department of Transportation or his designated representative may request any U.S. Government agency, foreign mission, embassy, or agency acting on behalf of a foreign government, or others having an interest in the matter to attend such a conference, or to send representatives authorized to speak for them. All such meetings and conferences will be conducted in an informal manner.

[G.O. 103, Amdt. 3, 37 FR 3641, Feb. 18, 1972, as amended at 57 FR 13047, Apr. 15, 1992]

§ 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected department or agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least 50 percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United

States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in § 381.3. A copy of the appropriate clauses required by this part shall be submitted by each affected agency or department to the Secretary, Maritime Administration, for approval no later than 30 days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) *Agreement Clauses.* "Use of United States-flag vessels:

"(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

"(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590."

(b) *Contractor and Subcontractor Clauses.* "Use of United States-flag vessels: The contractor agrees—

"(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the

extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

"(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

"(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract."

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[42 FR 57126, Nov. 1, 1977]

§ 381.8 Subsidized vessel participation.

(a) For the purpose of approving subsidized U.S.-flag liner and bulk vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 (46 U.S.C. 1214(b)), shall evaluate bids received from the operators of such vessels in the manner described in this section.

(b) When a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operator's bid by:

(1) Requesting from MARAD an amount for the operating-differential subsidy (ODS) likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidders;

(2) Deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operator's bid;

§ 381.9

46 CFR Ch. II (10-1-09 Edition)

(3) Comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder;

(4) Requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and

(5) Determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whichever was determined to be the lowest responsive bid pursuant to paragraph (b)(3) of this section, is at or below the fair and reasonable guideline rate.

(c) If the amount of dry bulk cargo to be shipped is changed at any time prior to award, the department or agency shall request that MARAD provide new ODS amounts applicable to the carriage. The department or agency shall redetermine the augmented bids before determining the lowest responsive bid and requesting from MARAD a revised fair and reasonable guideline rate in accordance with the provisions of paragraph (b) of this section.

(d) Whenever a bid is submitted for a U.S.-flag vessel for the transportation of dry bulk preference cargo, the responsible department or agency shall only approve bids that apply to an individual vessel, and may not accept combined bids submitted for more than one vessel. If two or more vessels are offered, separate bids shall be submitted for each vessel. A bidder may submit a conditional lower bid for each vessel to be effective only if more than one vessel is contracted to carry the cargo.

(e) The requirements of this section shall apply only to those departments or agencies that directly pay or finance all or part of U.S.-flag ocean freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with this part.

(f) The requirements of this section shall not apply to foreign aid consisting of direct cash transfer payments under specific agreements be-

tween departments or agencies and the recipient country with respect to the utilization of U.S.-flag vessels for transportation of commodities purchased with such funds.

[53 FR 24272, June 28, 1988]

§ 381.9 Available U.S.-flag service.

For purposes of shipping bulk agricultural commodities under programs administered by sponsoring Federal agencies from U.S. Great Lakes ports during the 1996-2000 Great Lakes shipping seasons, if direct all-U.S.-flag service, at fair and reasonable rates, is not available at U.S. Great Lakes ports, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) or other point(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately-owned commercial vessel to the ultimate foreign destination, will be deemed to comply with the requirement of "available" commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates (if offered) to a Canadian port or other point on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The "fair and reasonable" rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR Part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag "fair and reasonable" rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters. Alternatively, the supplier of the commodity may offer the Cargo FOB Canadian transshipment point, and MARAD will determine fair and reasonable rates accordingly.

[61 FR 24897, May 17, 1996]

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS

Sec.

382.1 Scope.

382.2 Data submission.

382.3 Determination of fair and reasonable rates.

382.4 Waivers.

AUTHORITY: 46 App. U.S.C. 1114, 1241(b); 49 CFR 1.66.

SOURCE: 63 FR 3828, Jan. 27, 1998, unless otherwise noted.

§ 382.1 Scope.

The regulations in this part prescribe the type of information that shall be submitted to the Maritime Administration (MARAD) by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except vessels engaged in liner trades, which is defined as service provided on an advertised schedule, giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

§ 382.2 Data submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Costs and Rates, Maritime Administration, Washington, DC 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators. A further review based on the independent CPA performing an engagement consistent with professional standards, i.e., an attestation engagement, is recommended. Submissions are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the

U.S.-flag vessel operator, as specified herein. If a vessel operator fails to submit the required cost data, MARAD will not construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required vessel information.* The following information shall be submitted not later than April 30, 1998, for calendar year 1997 and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

- (1) Vessel name and official number.
- (2) Vessel DWT (summer) in metric tons.
- (3) Date built, rebuilt and/or purchased.
- (4) Normal operating speed.
- (5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel.
- (6) Daily fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs) and by type of fuel.
- (7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).
- (8) Operating cost information, to be submitted in the format stipulated in 46 CFR 232.1, on Form MA-172, Schedule 310. Operators are encouraged to provide operating cost information for similar vessels that the operator considers substitutable within a category, as defined in § 382.3(a)(1), in the aggregate on a single schedule. Information shall be applicable to the most recently completed calendar year.
- (9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this part, an operating day means any day on which a vessel or tug/barge unit