

## § 249.8

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 Subale 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.