

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the vessel's normal operating speed, and shall include for single unit vessels and fully integrated tug/barge units (ITB's), as defined by the definition of Pushing Mode ITB contained in U.S. Coast Guard Navigation and Vessel Inspection Circular 2-18, change 1, enclosure (1), an additional five percent to account for weather conditions. An allowance of ten percent shall be added for all other tug/barge units.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the charter party terms. However, in no case shall less than 70 percent of deadweight be used for rate calculation purposes. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate for each parcel shall be provided based on the combined voyage.

(g) *Total rate.* The fair and reasonable rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component divided by the amount of cargo to be carried as determined by paragraph (f) of this section, expressed as cost per ton.

§ 382.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

PART 383—DETERMINATION OF FAIR AND REASONABLE GUIDELINE RATES FOR THE CARRIAGE OF LESS-THAN-SHIPLOAD LOTS OF BULK PREFERENCE CARGOES CARRIED ON U.S.-FLAG LINER VESSELS

Sec.

383.1 Scope.

383.2 Data submission.

383.3 Determination of fair and reasonable rates.

383.4 Waiver.

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

SOURCE: 57 FR 21036, May 18, 1992, unless otherwise noted.

§ 383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on U.S.-flag commercial liner vessels. These regulations contain the method that the Maritime Administration (MARAD) shall use in calculating fair and reasonable rates, and the type of information that shall be submitted by liner operators interested in carrying such preference cargoes. For the purpose of these regulations, the term *less-than-full shipload* shall include all cargoes up to the full deadweight capacity of the specific vessel used by an operator in the carriage of a preference cargo, provided that said vessel has been engaged in the liner trades. For these purposes, Liner Trades 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.

§ 383.2 Data submission.

(a) *General.* Operators wishing to employ liner vessels in the carriage of liner parcels of dry bulk preference cargoes shall submit information, as

provided in paragraph (b) of this section, as applicable, to the Director, Office of Ship Operating Assistance, Maritime Administration, Washington, DC 20590. The information in paragraph (b)(1) of this section shall be submitted annually not later than April 30 of each year. The information in paragraphs (b)(2) and (b)(3) of this section shall be submitted initially and thereafter only when changes occur. All submissions shall be certified by the operator as true, accurate and complete and are subject to verification by MARAD. MARAD's calculations of fair and reasonable guideline rates for U.S.-flag vessels shall be performed on the basis of cost data provided by U.S.-flag vessel operators as specified herein. Failure of a vessel operator to submit the required cost data will result in MARAD being unable to construct the guideline rate for any affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required Information for each vessel.* (1) For each vessel that an operator wishes to be considered for the carriage of preference cargoes, operating cost information shall be submitted by vessel type, in the format prescribed at 46 CFR 232.1, Form MA-172, including cargo carried, operating revenue and expenses (Schedule 301). Such information shall be applicable to the most recently completed calendar year.

(2) Total vessel costs capitalized (list and date capitalized improvements separately) and applicable interest rates for indebtedness shall be submitted for each vessel.

(3) Fuel consumption, by grades of fuel consumed, shall be submitted for each vessel at normal operating speed and while in port in metric tons per day.

(4) An operator who already submits the information in paragraph (b)(1) of this section to MARAD, in conjunction with other MARAD programs, need not submit a duplicate of the information.

(c) *Required port and cargo handling information.* For each parcel carried under the provisions of this part, the following port and cargo handling costs related to the carriage of such parcel shall be provided within 90 days of the termination of the voyage:

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expense, and any other appropriate expense associated with the loading or discharge of the preference cargo.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses associated with the loading or discharge of the preference cargo (excluding despatch).

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuators and/or cranes, lightening (indicate tons moved and cost per ton), grain-to-grain cleaning of holds and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses.

(d) *Confidentiality.* If the data submitted under this rule contains 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 claim of exemption at the time the data is submitted. The claim shall be made in a letter contained in a sealed envelope 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. In claiming an exemption under FOIA, the submitter must state the basis for such action, including supporting information showing: That the information claimed to be confidential is a trade secret or commercial or financial information in accordance with statutory and decisional authority, and 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, of if the information has been disclosed or otherwise made available to the public, which such disclosure or availability does not compromise the confidential nature of the

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

§ 383.3 Determination of fair and reasonable rates.

(a) *Cost components.* MARAD shall calculate fair and reasonable rates for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a fuel cost component, a capital cost component, and a component for port and cargo handling expenses.

(b) *Operating cost component—(1) General.* MARAD shall calculate a daily operating cost for each vessel based on the actual operating costs of the owner's vessels of the same type. This cost shall be obtained from cost data for the calendar year immediately preceding the current year submitted in accordance with paragraph (b)(1) of this section. Such data shall be escalated by MARAD to the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation (net of operating differential subsidy), with the exception of fuel costs and charter hire, and shall include the expense categories as defined by 46 CFR 232.1, Form MA-172, Schedule 301, Operating Expenses.

(c) *Fuel component.* Fuel costs shall be determined as a separate component for each vessel, based on the vessel's rate of consumption and current fuel prices.

(d) *Capital component—(1) General.* MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating vessel, consisting of vessel depreciation, interest, return on working capital, and return on equity.

(2) *Items included.* The capital component shall include:

(i) *Depreciation.* The owner's capitalized vessel cost, including capitalized improvements, shall be depreciated on a straight-line basis over a 25-year economic life, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. To the extent a vessel is chartered or leased, the operator shall submit the capitalization cost and imputed interest rate (in the event these items are not furnished, they shall be constructed by MARAD). When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 15 years old shall be depreciated over a 10-year period. When vessels more than 15 years old are reconstructed, MARAD will determine the depreciation period. The residual value of the vessel shall be assumed to be 2.5 percent of total capitalized cost.

(ii) *Interest.* The cost of debt shall be determined by applying the vessel owner's actual interest rate to the outstanding vessel indebtedness. It shall be assumed that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost, including capitalized improvements, and that annual principal payments are made in equal installments over the 25-year economic life. If an actual interest rate is not available, MARAD shall select an appropriate interest rate. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the guideline rate shall be used. A current long-term interest rate (the title XI rate if available) will be used for operators without vessel debt.

(iii) *Return on working capital.* Working capital shall equal the dollar amount necessary to cover 100 percent of the operating and voyage costs of the vessel for the voyage. The rate of return shall be based on an average of the most recent (over a five year period) return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(iv) *Return on equity.* The rate of return on equity shall be determined as in paragraph (d)(2)(iii) of this section.

For the purpose of determining equity it shall be assumed that the vessel's constructed net book value less constructed principal outstanding in equity. The constructed net book value shall equal the owner's capitalized cost minus accumulated straight-line depreciation. For vessels whose depreciable period has expired (excluding improvements) as determined in paragraph (d)(2)(i), the scrap value of the vessel shall be considered as the vessel's equity.

(v) *Voyage component.* The annual depreciation, interest, and return on equity shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital for the voyage to determine the capital cost component.

(e) *Port and cargo handling component*—(1) *General.* MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element, as applicable. The port and cargo handling cost component shall be based on the most current information available verified by information submitted in accordance with this section, or as otherwise determined by MARAD. Since Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments, additional services such as bagging at discharge, rail or truck loading, on carriage to inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable guideline rate, these expenses will be identified separately from the guideline rate and should be reviewed and approved by the sponsoring Government shipper agency. In the event such charges are not approved, the cargo preference requirement must be met by utilizing a U.S.-flag vessel for the ocean transportation, if such a vessel will accept a rate at or below the guideline rate for the ocean transportation only.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender.

(ii) *Foreign port and cargo handling charges.* To the extent possible, MARAD shall include in this category all known foreign port cargo handling and canal charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender.

(3) *Terms.* If the terms of the tender are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *ad hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(f) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating, fuel, and capital cost components of the fair and reasonable rate (and certain other costs, i.e., canal tolls), the voyage length and cargo tons shall be based on an average of voyage days total payable tons carried for all appropriate vessel types and voyages of the operator on the service for which the fair and reasonable rate is being calculated, as determined from data submitted in accordance with § 383.2(b)(1). Appropriate adjustments will be made to existing data in instances where an operator commences operation of a newly authorized service. The component for port and cargo handling charges shall be based on cargo tender terms.

(g) *Total rate.* The operating cost component, fuel cost component, capital cost component, and port and handling cost component, each expressed as a cost per ton, shall be added together. The sum of the four components, plus an additional 13.5 percent of the sum to account for brokers' commissions and general and administrative expenses, shall yield the guideline rate.

§ 383.4 Waiver.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping

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with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

10-8 (36 FR 19707, July 23, 1973); and Secretary's Circular 30 (Nov. 5, 1979).

SOURCE: 45 FR 66168, Oct. 6, 1980, unless otherwise noted.

PART 385—RESEARCH AND DEVELOPMENT GRANT AND COOPERATIVE AGREEMENTS REGULATIONS

GENERAL

GENERAL

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REGULATION SYSTEM

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AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); 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); Department of Commerce Organization Order

§ 385.1 Scope.

This part sets forth information about the Maritime Administration (MarAd) assistance regulations: Their purpose, authority, applicability, issuance, arrangement, implementation, and exception procedure; definitions of terms; and general MarAd assistance policies.

REGULATION SYSTEM

§ 385.2 Scope.

Sections 385.2 through 385.9 set forth introductory information pertaining to the MarAd assistance regulations: Their purpose, authority, applicability, exclusions, issuance, arrangement, publication, and exceptions.

§ 385.3 Purpose.

Sections 385.2 through 385.9 establish the MarAd assistance regulations which codify, implement, and publish uniform assistance policies and selected procedures applicable to MarAd and recipients of MarAd assistance awards. The MarAd assistance regulations do not, in and of themselves, provide authority for the use of assistance instruments nor the making of assistance awards where statutory authority has not been otherwise provided. Generic authority to award grants and cooperative agreements is provided in Pub. L. 95-224, the Federal Grant and Cooperative Agreement Act of 1977. The assistance regulations are distinct from the Federal and MarAd and Department of Transportation procurement regulations.

§ 385.4 Authority.

The MarAd assistance regulations are issued pursuant to section 204(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)), and pursuant to delegation of authority by the Secretary of Transportation to the Maritime Administrator, Department of Transportation.