

§ 298.21

46 CFR Ch. II (10-1-01 Edition)

§ 298.21 Limits.

(a) *Actual Cost basis.* We will issue a guarantee on an amount of the Obligation satisfactory to us based on the economic soundness of the transaction. The Obligation amount may be less than but not more than 75 percent or 87½ percent, whichever is applicable, under the provisions of section 1104A(b)(2) or section 1104B(b)(2) of the Act of the Actual Cost of the Vessel or Vessels or Shipyard Project asset(s).

(1) If minimum horsepower of the main engine is a requirement for Guarantees up to 87½ percent of the Actual Cost, the standard for the horsepower will be continuous rated horsepower.

(2) Where we refinance existing debt, the amount of new Obligations we issue for the existing debt may not exceed the lesser of:

(i) The amount of outstanding debt being refinanced (whether or not receiving assistance under Title XI); or

(ii) Seventy-five or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Shipyard Project with respect to which the new Obligations are being issued.

(b) *Actual Cost items.* Actual Cost is comprised essentially of those items which would customarily be capitalized as Vessel or Shipyard Project construction costs such as designing, engineering, constructing (including performance bond premiums that we approve), inspecting, outfitting and equipping.

(1) Cost items include those items usually specified in Vessel or Shipyard Project construction contracts, *e.g.*, changes and extras, cost of owner furnished equipment, shoreside spare parts and commitment fees and interest on the Obligations or other borrowings incurred during the construction period (excluding interest paid on subordinated debt considered to be Equity), and less income realized from investment of Escrow Fund deposits during the construction period.

(2) Commissions (which represent a portion of the total shipyard contract price) may be included in the foreign equipment and services amount of the Actual Cost of an export project, provided:

(i) A majority of the work done by the parties receiving the commissions

is in the form of design and engineering work, and

(ii) The commissions represent a small amount of the total contract price.

(3) You may include Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act as an item of Actual Cost.

(4) In approving an item of Actual Cost, we will consider all pertinent factors.

(c) *Items excludible from Actual Cost.* Actual Cost shall not include any other costs such as the following:

(1) Legal fees or expenses;

(2) Accounting fees or expenses;

(3) Commitment fees or interest other than those specifically allowed;

(4) Fees, commissions or charges for granting or arranging for financing;

(5) Fees or charges for preparing, printing and filing an application for Title XI Guarantees and supporting documents, for services rendered to obtain approval of the application and for preparing, printing and processing documents relating to the application for Guarantees;

(6) Underwriting or trustee's fees;

(7) Foreign, federal, state or local taxes, user fees, or other governmental charges;

(8) Investigation fee determined in accordance with section 1104(f) of the Act and § 298.15;

(9) Predelivery Vessel operating expenses, Vessel insurance premiums and other items which may not be properly capitalized by the owner as costs of the Vessel under GAAP;

(10) The cost of the condition survey required by § 298.11(f) and all work necessary to meet the standards set forth in that paragraph;

(11) The cost to the Shipowner of a Vessel which is to be reconstructed, or reconditioned, *e.g.*, cost of acquisition or repair work;

(12) Generally, any amount payable to the shipyard for early delivery of the Vessel;

(13) Generally, any amount payable to the manufacturer of the Shipyard Project for early delivery of the equipment to the General Shipyard Facility;

(14) Predelivery Shipyard Project expenses which may not be properly capitalized by the General Shipyard Facility as costs of the Shipyard Project under GAAP; and

(15) The cost of major foreign components and other foreign components for which there is no waiver and their assembly when comprising any part of the hull and superstructure of a Vessel.

(d) *Substantiation of Actual Cost.* (1) Before we make distribution from the Escrow Fund or Construction Fund (described in §§ 298.33 and 298.34), and prior to our final Actual Cost determination for each Vessel or Shipyard Project, you must submit to us documents substantiating all claimed costs eligible under paragraph (b) of this section or, alternatively, appropriate certification of such costs by an agent who has received our approval.

(2) These documents may include, but need not be limited to, copies of invoices, change orders, subcontracts, and where we require, statements from independent certified or independent licensed public accountants that the costs for which you seek payment or reimbursement were actually paid or are payable for the construction of a Vessel or Shipyard Project.

(3) You must summarize, index and arrange these documents according to cost categories by following the directions contained in our forms.

(e) *Escalation as part of Actual Cost.* Escalation clauses in construction contracts shall be subject to our approval. After a review of the base contract price and the escalation clauses, we shall, in order to estimate the Actual Cost amount to be stated in the Letter Commitment, add to the approved base contract price the amount of estimated escalation as approved by us. We must subsequently approve the amount of escalation cost you claimed as a component of Actual Cost.

(f) *Monies received in respect of construction.* (1) If you or any Person acting on your behalf, from time to time receives moneys due for construction of a Vessel or Shipyard Project (described in the Security Agreement) from the shipbuilder, guarantors, sureties or other Persons, you shall give us written notice of such fact.

(2) As long as we have not paid the Guarantees, you or other recipient shall promptly deposit these moneys in a Depository with a written notice that the Depository shall hold such moneys on deposit until it receives written instructions from us as to their disposition.

(3) We will determine the extent to which Actual Cost is to be reduced by these moneys.

(4) In no event shall Actual Cost be reduced with respect to payments by the shipyard to a Vessel or Shipyard Project owner of liquidated damages for late delivery of the Vessel or Shipyard Project.

(5) If we have paid the Guarantees, you or other recipient must promptly pay these moneys, including any liquidated damages, to us for deposit into the Maritime Guaranteed Loans account.

(g) *Depreciated Actual Cost.* After a Vessel or Shipyard Project has been delivered or redelivered (in the case of reconstruction or reconditioning), the limitation on the amount of Guarantees will be 75 or 87½ percent, whichever is applicable, of the Depreciated Actual Cost of the Vessel or Shipyard Project.

§ 298.22 Amortization of Obligations.

(a) Generally, after delivery or completion of Shipyard Project, and until maturity of the Obligations, provisions of the Trust Indenture or other part of the Documentation require you to make periodic payment of principal and interest on the Obligations.

(b) Usually, the payment of principal (amortization) shall be made semi-annually, but in no event, less frequently than on an annual basis, and in either case the amortization shall be in equal payments of principal (level principal), unless we consent to the periodic payment of a constant aggregate amount, comprised of both interest and principal components which are variable in amount (level payment). No other proposed method of amortization will be allowed which would reduce the amount of periodic amortization below that determined under the level principal or level payment basis at any time prior to maturity of the Obligations, except where: