

DEPARTMENT OF TRANSPORTATION**Maritime Administration****46 CFR Part 298**

[Docket No. R-154]

RIN 2133-AB14

Obligation Guarantees: Program Administration**AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Maritime Administration ("MARAD") is issuing this notice of proposed rulemaking which proposes modifications to certain provisions of the existing regulations implementing Title XI of the Merchant Marine Act, 1936, as amended ("Act"), in order to improve administration of the Title XI program. MARAD administers financial assistance under Title XI of the Act in the form of obligation guarantees for all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. On March 31, 1994, MARAD published in the **Federal Register** an interim final rule which amended its regulations implementing Title XI in order to carry out the provisions of Subtitle D of Public Law 103-160, expanding the authorization for obligation guarantees to finance the construction, reconstruction, and reconditioning of eligible export vessels and shipyard modernization and improvement. A final rule was published on September 16, 1994. The final rule stated that MARAD would publish at a later date a separate notice of proposed rulemaking to improve administration of the entire Title XI program. That is the subject of this rulemaking.

MARAD initiated a review of the administration of its Title XI obligation guarantees program regulations with the objective of implementing President Clinton's ongoing regulatory reform initiative and to reaffirm and implement the principles of Executive Order 12866—Regulatory Planning and Review (September 30, 1993). This rulemaking would significantly shorten the time for processing applications for guarantees and reduce the economic burden on applicants in complying with MARAD requirements for the submission of information. Accordingly, it is expected to encourage the construction of vessels in United States shipyards.

DATES: Written comments are requested and must be received on or before May 26, 1995. A 30 day comment period has

been chosen in order to improve the efficiency of the administration of the Title XI program.

ADDRESSES: Comments may be mailed or otherwise delivered to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: David A. Lippold, Examiner, Division of Capital Assets Management, Office of Ship Financing, Maritime Administration, Room 8122, 400 Seventh Street SW., Washington, D.C. 20590. Telephone 202-366-1907.

SUPPLEMENTARY INFORMATION: Title XI of the Act, 46 App. U.S.C. 1271 *et seq.*, authorizes the Secretary of Transportation (Secretary) to provide guarantees of debt ("obligation guarantees") issued for the purpose of financing or refinancing the construction, reconstruction or reconditioning of vessels built in United States shipyards. On November 30, 1993, Public Law 103-160, cited as the "National Defense Authorization Act for Fiscal Year 1994" ("Authorization Act"), was enacted. Subtitle D of Title XIII of the Authorization Act, cited as the "National Shipbuilding and Shipyard Conversion Act of 1993" ("Shipbuilding Act"), expanded the Title XI program by authorizing the Secretary to guarantee obligations issued to finance the construction, reconstruction, or reconditioning of eligible export vessels and for shipyard modernization and improvement. The Shipbuilding Act establishes "a National Shipbuilding Initiative (NSI) program to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient internationally competitive industry."

Applications for obligation guarantees are made to MARAD acting under authority delegated by the Secretary to the Maritime Administrator ("Administrator"). Prior to execution of a guarantee, MARAD must, among other things, make determinations of economic soundness of the project, and the financial and operating capability of the applicant. Prior to amendment by Public Law 103-160, guarantees could be issued only for debt issued by United States citizens.

The Title XI program enables applicants to obtain long-term financing on terms and conditions and at interest rates comparable to those available to large corporations. Funds secured by the obligation guarantees are borrowed in the private sector.

As noted, the provisions of the Shipbuilding Act that required changes in MARAD's regulations became effective on November 30, 1993. MARAD concluded that it was imperative to publish amendments to its Title XI regulations, as an interim final rule. The interim final rule became effective on publication in the **Federal Register** on March 31, 1994 (59 FR 15123), in order to permit implementation of the NSI program without delay.

That interim final rule stated that MARAD would publish, at a later date, a separate notice of proposed rulemaking which would propose modifications to the Title XI regulations to improve administration of the overall Title XI program. Such modifications were not addressed in the interim rule because they were not required to implement the Shipbuilding Act. This notice of proposed rulemaking solicits public comments on a number of proposals to improve the current Title XI program.

In addition to soliciting comments on the amendments to the Title XI regulations set forth in this notice of proposed rulemaking, MARAD is hereby soliciting industry and other public comments on three additional areas. The first issue on which MARAD is soliciting public comments deals with the retention in section 298.13 of the waiver requirement specifically granted for foreign components and services to be included in Actual Cost. MARAD is concerned about the potential adverse effect on the U.S. supplier base, which we recognize as critical to the national defense and economy. We are attempting to create an environment where both the shipbuilding and ship supply industries have the opportunity to be competitive based on fair pricing, quality, and timeliness.

The second issue on which MARAD is soliciting public comments deals with construction period financing. The Title XI regulations currently provide authority for MARAD to do construction period financing. As the Secretary may approve Guarantees with respect to obligations to be issued to finance the construction, reconstruction, or reconditioning of vessels or construction of advanced or modern shipbuilding technology during the applicable period of construction, reconstruction, or reconditioning, we

are inviting comments on available forms of security, in addition to surety bonds, that could protect MARAD's interests as a lender, how progress should be monitored, what new procedures/methodologies should be developed to improve the previously utilized progress payment system, and if payment of interest on the obligations should be made on a more frequent basis (i.e., weekly, monthly or quarterly) than that outlined in § 298.22.

Amortization of Obligations, of this Part 298. In addition, in § 298.21 MARAD has proposed the use of an approved agent as an alternative for appropriate certification of the Actual Cost of a project. However, comments are solicited on how the Title XI applicant will verify/certify to MARAD that certain costs have been paid prior to disbursement of Title XI funds from the escrow account, for example, the use of an agent on MARAD's behalf to verify that certain costs have been paid.

Comments are also requested concerning the standard application Form MA 163 referenced in § 298.3, *Applications*, of this title and the required documentation outlined in Subpart D of this part 298. Please comment also on the current standard application Form MA 163 and any proposed amendments to the form and standard documentation, particularly with regard to export vessels and shipyard modernization. Specific changes to the existing standard application form could, for example, include a requirement to list any requests which have been made of other U.S. and/or foreign institutions regarding the project for which the Title XI financing is requested and if so, a statement of the nature of this assistance, including any rating of foreign financial institutions by other U.S. government agencies. Other changes could involve modifications to the standard form of the Title XI Reserve Fund and Financial Agreement. In addition, comments are invited for any proposed modifications to the existing regulatory requirements covering the Title XI program.

Whenever reference is made in these regulations to forms prescribed by MARAD for applications or other filing requirements, the format of such forms in effect prior to the effective date of these regulations may be used pending revision and issuance of new forms, which must be approved by The Office of Management and Budget. To the extent necessary to reflect statutory requirements, any form submitted may be modified or supplemented to facilitate processing, but until new forms have been approved, these

regulations do not require more extensive paperwork or reporting requirements than exist under the present Title XI regulations.

Discussion of Rulemaking Text

MARAD is proposing to amend its Obligation Guarantees regulations at 46 CFR Part 298, the proposed amendments summarized as follows:

References to the Terms "Affiliate" and "Affiliated"

All references to the existing defined terms "Affiliate" and "Affiliated" would be replaced by the defined term "Related Party". This change reflects a terminology change in generally accepted accounting principles (GAAP), as promulgated by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants, and conforms to changes made in Part 232, Uniform Financial Reporting Requirements, on November 24, 1993, effective December 27, 1993. Accordingly, the definition of Affiliate or Affiliated in section 298.2 (c) is proposed to be removed, a new definition of Related Party added, and the paragraph designations for the definitions are redesignated herein accordingly. In addition, it is proposed that paragraphs 298.13(a)(2)(iv), 298.13(b)(2)(i)(B) and (b)(3), 298.35(b)(1)(ii), 298.35(b)(2)(ii), 298.35(c)(1)(ii), 298.35(c)(2)(ii), and 298.37 be amended to reflect the "Related Party" preferred terminology which conforms to changes made in Part 232 on November 24, 1993.

Subpart A—Introduction

Section 298.2 Definitions

Section 298.2 is intended to provide convenient reference to the meaning of significant terminology used in Part 298, based principally on statutory derivation, reflecting with the letter designation of the paragraphs respectively, contained in the final rule published on September 16, 1994 (based on the interim final rule designations and redesignations), or as proposed to be redesignated in this rulemaking. As proposed:

Paragraph (a), "Act" remains unchanged.

Paragraph (b), "Actual Cost" remains unchanged.

Paragraph (c), "Advanced Shipbuilding Technology" remains unchanged.

Paragraph (d), "Affiliate or Affiliated" is removed.

Redesignated paragraph (d), "Closing" remains unchanged.

Redesignated paragraph (e), "Depository" remains unchanged.

Redesignated paragraph (f), "Depreciated Actual Cost" remains unchanged.

Redesignated paragraph (g), "Documentation" remains unchanged.

Redesignated paragraph (h), "Eligible Export Vessel" remains unchanged.

Redesignated paragraph (i), "Eligible Shipyard" remains unchanged.

Redesignated paragraph (j), "General Shipyard Facility" remains unchanged.

Redesignated paragraph (k), "Guarantee" remains unchanged.

Redesignated paragraph (l), "Guarantee Fee" remains unchanged.

Redesignated paragraph (m), "Indenture Trustee" is changed to require that a qualified bank or trust company must, among other things, be located in and organized and doing business under the laws of the United States, a State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico.

Redesignated paragraph (n), "Letter Commitment" remains unchanged.

New paragraph (o), "Letter of Interest" is added as an attempt to enhance a company's or shipyard's marketing effort and, in the long run, expedite the decision-making process on Title XI applications. It may be issued by the Secretary upon receipt of a request for Guarantees and is not a financial offer but rather an indication of what terms may be considered by the Secretary if a Letter Commitment is issued at a later date. This definition parallels very closely the Export-Import Bank of the United States' definition for a letter of interest.

Paragraph (p), "Maritime Administration" remains unchanged.

Paragraph (q), "Modern Shipbuilding Technology" remains unchanged.

Paragraph (r), "Mortgage" remains unchanged.

Paragraph (s), "Obligation" remains unchanged.

Paragraph (t), "Obligee" remains unchanged.

Paragraph (u), "Obligor" remains unchanged.

Paragraph (v), "Paying Agent" remains unchanged.

Paragraph (w), "Person" remains unchanged.

Paragraph (x), "Preferred Mortgage" remains unchanged.

New paragraph (y), "Related Party" is added, defined as is "Affiliate" or "Affiliated" in existing paragraph (d).

Redesignated paragraph (z), "Secretary" remains unchanged.

Redesignated paragraph (aa), "Secretary's Note" remains unchanged.

Redesignated paragraph (bb), "Security Agreement" remains unchanged.

Redesignated paragraph (cc), "Vessel" remains unchanged. Although the definition of Vessel has not been modified, one continued area of interest has been the expansion of Title XI financing to promote a U.S.-flag cruise industry and to expand opportunities for U.S. shipyards in the passenger vessel market, including ferries, "cruises to nowhere" and gaming vessels. Some organizations have requested that passenger vessels engaged in commercial common carriage on a scheduled service be determined to be eligible for Title XI even if they do not have overnight accommodations or specific point-to-point service. In the past, MARAD policy has excluded such vessels from Title XI coverage. Although no regulatory change is necessary, MARAD is taking the opportunity at this time to announce a change in policy expressly to include passenger vessels engaged in commercial common carriage as eligible for the Title XI program. Commercial common carriage vessels must operate on a scheduled service and offer passage to the public at large.

Section 298.3 Applications

Section 298.3 is self-explanatory. Paragraphs (a), (c), and (d) remain unchanged. Paragraph (b)(1) is amended to shorten the period between the filing of the application and the anticipated date by which a Letter Commitment is required from six months to four months. In addition, it shortens the period of time for the Secretary to perform a preliminary review of the application for adequacy of completeness from 30 days to 15 days and reduces the amount of time the applicant has to correct deficiencies from nine months to 15 days for each request for additional information. If the requested information is not received within this 15 day period, then the Secretary may terminate the processing of the application without prejudice. Once the Title XI application is considered complete by the Secretary, the Secretary will act on the application within a period of 60 calendar days. Finally, the revised paragraph states that, unless otherwise extended by the Secretary, if an application is not completed by the applicant and acted upon by the Secretary within four months from the submission date, the processing of the application is terminated without prejudice and the applicant may reapply. This shortened period of time is much less than the one year period currently provided for in the existing Title XI regulations.

In order to insure that a Title XI applicant is serious in applying for

federal assistance and in view of the increasing complexity of export and shipyard modernization projects and the increased interest in the Title XI program, the filing fee referenced in paragraph (c) and submitted with a formal Title XI application shall be adjusted from a fixed fee of \$1,000 to a fee based on the requested amount of the Title XI financing. Each Title XI application must be accompanied by a filing fee in the amount of one quarter of the investigation fee amount calculated pursuant to the investigation fee formula outlined in § 298.15. Although the total investigation fee formula for each project shall not change, requiring that one quarter of the investigation fee be submitted with the receipt of a formal Title XI application will result in the Government recovering the administrative cost of processing the application in a more expeditious manner. Notwithstanding the above, in no event will the filing fee be less than \$1,000. The filing fee will continue to be non-refundable and will be used as a credit against the investigation fee.

Finally, a new paragraph (f) is added in order to expedite the review of Title XI proposals and lessen the burden on the applicant, which provides for the preliminary review of a request by an applicant, rather than a complete application, and the issuance by the Secretary within ten days of a Letter of Interest. There shall be no filing fee payable in respect of a request for the issuance of such a letter. Letters of interest address the general eligibility of a project and are not binding commitments of the Government.

Section 298.10 Citizenship

In section 298.10, paragraphs (b) through (e) remain unchanged. Paragraph (a) of this section is deleted in its entirety and replaced with a new paragraph which incorporates changes conforming it to the citizenship standards in Part 221.

Section 298.11 Vessel Requirements

In § 298.11, paragraphs (b) and (d) remain unchanged. Paragraph (a) of this section is revised to be divided into three categories. This change will provide greater flexibility to ship owners and shipyards and will be squarely in line with the standards enunciated by the U.S. Coast Guard.

The first category defines a vessel financed by Obligation Guarantees to be considered to be of U.S. construction and qualified for coastwise trade provided that all components of the hull and superstructure are fabricated in the United States, and that the Vessel is

assembled entirely in the United States; however, the Vessel may have foreign source machinery, equipment, or hull and superstructure material which has been manufactured in a foreign facility to the extent allowed by the U.S. Coast Guard. The second category defines a Vessel financed by Obligation Guarantees to be considered to be of U.S. construction if the Vessel is assembled entirely in the United States, but not qualified for the coastwise trade because it has material which has been manufactured in a foreign facility. The third category states that with respect to Eligible Export Vessels financed by Obligation Guarantees, the Vessel must be assembled in a U.S. shipyard.

Paragraph (c) is amended to permit Quality Systems Certificate Scheme issued by qualified International Association of Classification Societies (IACS) members who have been recognized by the Secretary as meeting acceptable standards for such a society to participate in the Eligible Export Vessel program. That recognition shall include, at a minimum, recognition that the society meets the requirements of IMO Resolution A.139(18) and delegation by the United States Coast Guard of inspection/certification authority.

Finally, paragraph (e) would be added to this section to indicate that the preferred system of measurement and weights for Vessels and advanced and modern shipbuilding technology is the metric system.

Section 298.12 Applicant and Operator's Qualifications

Section 298.12 is modified to eliminate the submission of certain information in paragraph (b) about the identity and ownership of the applicant which is not required. In addition, the paragraph is modified by requesting that the applicant furnish its international identification number, if any. Paragraph (c)(3) of this section is modified to cover insolvency or reorganization proceedings of the applicant under either domestic or foreign statutes in the case of Eligible Export Vessels. Finally, paragraph (f) of this section is modified to limit the information required to be submitted regarding the management and shore management personnel concerned with the physical operation of the vessel(s) owned by the applicant or proposed for construction or individuals concerned with the physical operation of the shipyard.

Section 298.13 Financial Requirements

Paragraph (a)(2) is revised to clarify that foreign components of the hull and

superstructure may not be included in Actual Cost. The fourth sentence is amended to clarify that, although excluded from Actual Cost, foreign components of the hull and superstructure can be regarded as owner-furnished equipment that may be used in satisfying the applicant's equity requirements imposed by paragraph (a)(3) of this section. An illustration is provided to demonstrate how the cost of foreign components of the hull and superstructure may satisfy an applicant's equity requirements. New paragraph (a)(3) provides that the ability of co-financiers to exercise their rights against collateral shared with MARAD, if an applicant utilizes co-financing (i.e., consisting of a blend of Title XI and private financing for the debt portion of the project), shall be subject to the approval of the Secretary. Finally, paragraphs (a)(4), (b)(2), (b)(3) and (b)(4) are amended to be consistent with 46 CFR Part 232 with respect to the use of the defined term Related Party.

Section 298.14 Economic Soundness

In section 298.14 the existing paragraph (a)(2)(i)(F) is amended to recognize the potential for purchasing existing equipment of a reasonable condition and age from sources other than existing Title XI holders.

Section 298.16 Substitution of Participants

Section 298.16 is amended by removing existing paragraph (a) which requires a mortgagee applying for permission to assign an insured mortgage to another entity to pay a fee of \$1,500. It is very unlikely that any of the few remaining insured Mortgages will be assigned prior to their maturity within the next several years and, if so, MARAD's approval of such a request is routine.

Section 298.17 Evaluation of Applications

Section 298.17 is amended by removing in Subpart B, Appendix A-Selected Cash Flow Impacts. Appendix A should have been removed when the responsibility for the computation of the internal rate of return was shifted from the Title XI applicant to MARAD in 1992.

Section 298.21 Limits

Section 298.21 modifies paragraph (b) to include in the Actual Cost determination Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act. Finally, paragraph (d) is amended to include applicability to Advanced Shipbuilding Technology and Modern

Shipbuilding Technology and to provide the alternative for appropriate certification of the Actual Cost of a project by an agent approved by the Secretary.

Section 298.23 Refinancing

The penultimate sentence in Section 298.23 is modified to provide that an applicant shall satisfy all of the eligibility requirements set forth in Subpart B of Part 298, including economic soundness, as may be necessary.

Section 298.25 Financing Repayment of Construction-Differential Subsidy

Section 298.25 is removed due to the fact that the construction-differential subsidy program has not been funded since 1981.

Section 298.28 Advances

Section 298.28 is amended by shortening and simplifying the description of the criteria that will be applied in exercising the Secretary's discretion to make an advance or payment of funds.

Section 298.32 Required Provisions in Documentation

Section 298.32 is amended to conform to the three categories of Vessels identified in § 298.11 (a) regarding Vessel requirements, addressed earlier. In addition, paragraph (b)(6) is amended by adding the applicability of the appropriate insurance on Eligible Export Vessels.

Section 298.36 Annual Guarantee Fee

Section 298.36 is amended by deleting paragraphs (f), (g), and (i) in their entirety and amending paragraph (e) to reflect the requirement that the obligor make a lump sum payment of the Guarantee Fee at the closing of the loan Guarantee, without any right of reimbursement in the event of prepayment of the Obligation. The proposed amendment ensures that the government will retain the full benefit of the Guarantee Fee and will create an incentive for applicants to enhance the financial structure of their transactions in order to merit eligibility for the lowest possible Guarantee Fee rate. It is proposed that the project's entire Guarantee Fee payment shall be made by the Obligor to the Secretary in an amount equal to the sum of the present value of the separate products obtained by applying the Guarantee Fee rate to the projected amount of the guaranteed Obligations outstanding for each year of the stated maturity of the guaranteed Obligation. In calculating the present value used in determining the amount

of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board quarterly rates. Under no circumstances could the Secretary refund the Guarantee Fee to the Obligor. As provided in § 298.21(b), a Guarantee Fee paid pursuant to this section would be included in Actual Cost and would be eligible to be financed.

Section 298.42 Report Requirements—Financial Statements

Section 298.42 is amended by making certain technical corrections relating to requirements for independent audits by clarifying that the financial statements of a company are audited.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been reviewed under Executive Order 12866, and it has been determined that this is not an economically significant regulatory action as the rule is not likely to result in an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, since this rule would further the implementation of the National Shipbuilding Initiative program established under Subtitle D of Title XIII, Public Law 103-160, to support the industrial base and national security objectives by assisting in the reestablishment of a United States shipbuilding industry as a self-sufficient internationally competitive industry, and is of great interest to the U.S. maritime industry, it has been determined to be a significant rule under the Department's Regulatory Policies and Procedures. Accordingly, it is considered to be a significant regulatory action under E.O. 12866. Because the economic impact should be minimal, further regulatory evaluation is not necessary. These amendments are intended only to simplify and clarify the procedural requirements for obtaining Guarantees, principally to expedite the process for MARAD's review of applications. Its purpose is to encourage the construction of ships in U.S. shipyards both for the domestic and the Eligible Export Vessel programs.

MARAD is publishing these amendments as a notice of proposed rulemaking, as necessary to carry out the Secretary's responsibilities under

Title XI and to improve program administration.

This rulemaking document has been reviewed by the Office of Management and Budget under Executive Order 12866, "Regulatory Planning and Review."

Federalism

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

MARAD certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

MARAD has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133-0018). Use of the present Maritime Administration Title XI Obligation Guarantees form will be continued pending revision and issuance of new forms, which must be approved by The Office of Management and Budget.

List of Subjects in 46 CFR Part 298

Loan programs—transportation, Maritime carriers, and Mortgages.

Accordingly, 46 CFR Part 298 is proposed to be amended as follows:

1. The authority citation for part 298 continues to read as follows:

Authority: 46 App. U.S.C. 1114 (b), 1271 et seq, 49 CFR 1.66.

§ 298.13, 298.35, 298.37 [Amended]

2. Remove all references in §§ 298.13 (a)(2)(iv), (b)(2)(i)(B) and (b)(3); 298.35 (b)(1)(ii), (b)(2)(ii), (c)(1)(ii), and (c)(2)(ii); and 298.37 to the terms "Affiliate(s)" and "affiliates", and substitute the term "Related Party".

3. Section 298.2 is amended as follows:

a. By removing paragraph (d), *Affiliate or Affiliated*.

b. By amending paragraph (n), *Indenture Trustee*, to add the following words, "which is located in and organized and doing business under the laws of the United States, any State or

territory thereof, the District of Columbia or the Commonwealth of Puerto Rico," after the amount "\$3,000,000."

c. By redesignating paragraphs (e) through (o) as paragraphs (d) through (n); redesignating paragraphs (y) through (bb) as paragraphs (z) through (cc); and by adding new paragraphs (o) and (y) to read as follows:

§ 298.2 Definitions.

* * * * *

(o) *Letter of Interest* means a letter issued by the Secretary upon receipt of a request for Guarantees. A Letter of Interest is not a financial offer but rather an indication of what terms may be considered by the Secretary if a Letter Commitment is issued at a later date. Proposed terms set forth in Letters of Interest shall remain valid for six months.

* * * * *

(y) *Related Party* means any Person directly or indirectly controlling, controlled by or under common control with another Person.

* * * * *

4. Section 298.3 is amended as follows:

By revising paragraphs (b)(1) and (c), and adding a new paragraph (f), to read as follows:

§ 298.3 Applications.

* * * * *

(b)(1) *Time requirements for application.* Each application shall be submitted to the Secretary at least four months prior to the anticipated date by which the applicant requires a Letter Commitment. The Secretary may consider applications with less notice prior to the anticipated date by which the applicant requires a Letter Commitment, upon written documentation that extenuating circumstances exist. During the first 15 calendar day period after submission, the Secretary will perform a preliminary review of the application for adequacy and completeness. If the application is found to be incomplete, or if additional data is required, the Secretary will notify the applicant promptly in writing and the applicant will have 15 calendar days to correct deficiencies from the date of each request for additional information. If the applicant has not corrected the deficiencies, or made substantial progress toward correcting them, within this 15 calendar day period, then the Secretary may terminate the processing of the application without prejudice. Once the Title XI application is considered complete by the Secretary, the Secretary will act on the application within a

period of 60 calendar days. If an application is not completed by the applicant and acted upon by the Secretary within four months from the submission date, unless such time period is extended by the Secretary, the Secretary will notify the applicant in writing that processing of the application is terminated and that the applicant may reapply at a later date.

* * * * *

(c) *Filing Fee.* Each application must be accompanied by a filing fee in the amount of one quarter of the investigation fee amount calculated pursuant to the investigation fee formula outlined in § 298.15. In no event will the filing fee be less than \$1,000.

The filing fee will be non-refundable, irrespective of whether the Secretary subsequently issues a Letter Commitment or whether the applicant subsequently reduces the amount of the requested guarantee and will be used as a credit against the investigation fee.

* * * * *

(f) *Preliminary review.* (1) Upon receipt of a request for a Letter of Interest, the Secretary may perform a preliminary review of the application. After preliminarily evaluating the technical, financial, and economic viability of the proposed Title XI project (e.g., the existence of a long term Vessel charter commitment or the technical ability of the yard to construct a Vessel), the Secretary may issue, within 10 days of receipt of that request, the Letter of Interest. A request for a Letter of Interest shall contain the following information:

(i) Type of vessel or Advanced or Modern Shipbuilding Technology to be financed;

(ii) Approximate total cost of the vessel or Advanced or Modern Shipbuilding Technology and amount to be guaranteed;

(iii) Recent financial information on the prospective shipowner, bareboat charterer, and shipyard, if available;

(iv) Information bearing on the economic soundness of the proposed project; and

(v) Proposed term of financing.

(2) There shall be no filing fee payable in respect of a request for the issuance of such a Letter of Interest. Letters of Interest address the general eligibility of a project and are not binding commitments of the Government.

5. Section 298.10 is amended by revising paragraph (a) to read as follows:

§ 298.10 Citizenship.

(a) *Applicability.* Prior to acquiring a legal or beneficial interest in a Vessel financed under Title XI of the Act,

except as provided in paragraph (e) of this section, the applicant and any other Person (including, but not limited to shipowners and, if applicable, owner trustees, equity participants and bareboat charterers) shall establish their United States citizenship within the meaning of Section 2 of the Shipping Act, 1916, as amended ("1916 Act") (46 App. U.S.C. 802) and MARAD's regulation at 46 CFR 221.3(c). All persons holding a Preferred Mortgage on the Vessel who do not qualify as citizens of the United States shall submit on the date of the closing evidence that they qualify for the MARAD approval granted pursuant to 46 CFR 221.23, or that they have received approval pursuant to 46 CFR 221.25. The Secretary will not approve an application providing for ownership of such Vessel by, or bareboat chartering of such Vessel to, a non-U.S. citizen. Citizenship may also be required of any Person who is deemed by the Secretary to be an operator of the Vessel or who has authority to direct the operation of the Vessel on behalf of the shipowner. Certain chartering arrangements, including time chartering and contracts of affreightment, have been given general approval by the Secretary pursuant to Sections 9, 37, and 41 of the 1916 Act. See Part 221 of Title 46 for more details on these approvals and other approvals granted concerning chartering and mortgaging of U.S. documented vessels.

6. Section 298.11 is amended as follows:

a. By amending paragraph (c) by adding in the first sentence after the word "registered", before the parenthesis, the words "or otherwise recognized by the Secretary as meeting acceptable classification standards for such a society, which shall include recognition that the society meets the requirements of IMO Resolution A.739(18) and delegation by the United States Coast Guard of inspection/certification authority".

b. By revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 298.11 Vessel requirements.

* * * * *

(a) *United States Construction.*

(1) *Coastwise Trade, U.S.-Flag Vessels.* A vessel financed by Obligation Guarantees is considered to be of United States construction and qualified for use in coastwise trade operation (46 App. U.S.C. 883) if:

(i) All components of the hull and superstructure are fabricated in the United States; and

(ii) The Vessel is assembled entirely in the United States and has U.S. or foreign source machinery, equipment or hull and superstructure material which has been manufactured in a foreign facility, to the extent permitted by the U.S. Coast Guard.

(2) *Non-Coastwise Trade, U.S.-Flag Vessels.* A Vessel financed by Obligation Guarantees is considered to be of United States construction if the vessel is assembled entirely in the United States but not qualified for use in the coastwise trade because it has foreign material which has been manufactured in a foreign facility.

(3) *Eligible Export Vessels.* With respect to Eligible Export Vessels, the Vessel is considered to be of U.S. construction if assembled in a United States shipyard.

* * * * *

(e) *Metric Usage.* The preferred system of measurement and weights for Vessels and Advanced and Modern Shipbuilding Technology shall be the metric system.

7. Section 298.12 is amended by revising paragraphs (b)(1)(i) and (b)(2)(i) to read as follows:

§ 298.12 Applicant and operator's qualifications.

* * * * *

(b) *Identity and ownership of applicant.* * * *

(1) *Incorporated companies.* * * *

(i) Exact name of applicant and tax identification number of a U.S. corporation, or if appropriate, international identification number of the applicant.

* * * * *

(2) *Partnerships, joint-ventures, associations, unincorporated companies.* * * *

(i) Name of partnership, association, or unincorporated company, and tax identification number, or if appropriate, international identification number of applicant.

* * * * *

§ 298.12 [Amended]

7a. Section 298.12 is further amended by:

a. By removing paragraphs (b)(1)(iv) through (b)(1)(vii), (b)(2)(v) through (b)(2)(vii), (b)(2)(ix), and (b)(3), and redesignating paragraph (b)(2)(viii) as (b)(2)(v) and paragraph (b)(4) as paragraph (b)(3).

b. By amending paragraph (c)(3) by adding after the word "proceedings", the first time it occurs, before the comma, the words "under either domestic or foreign statutes".

c. By amending paragraph (f)(1) by removing the words "by all", each time

they appear, and inserting in their place the words "by all senior supervisory personnel".

8. Section 298.13 is amended as follows:

a. By adding the following sentence to the end of paragraph (a)(3), *Financing*: "If the applicant uses co-financing (involving a blend of Title XI and private financing for the debt portion of the project), the ability of the co-financiers to exercise their rights against collateral shared with the Secretary for any transaction shall be subject to the approval of the Secretary."

b. By removing paragraph (b)(7), *Deferred Lease Hire*.

c. By revising paragraphs (a)(2)(i), (a)(4), (b)(2), (b)(3), (b)(4) and (e)(2)(i) to read as follows:

§ 298.13 Financial requirements.

(a) * * *

(2) *Cost of the project.* * * *

(i) In the case of an applicant for Vessel Financing Guarantees, a detailed statement of the estimated Actual Cost of construction, reconstruction or reconditioning of the Vessel(s) including those items which would normally be capitalized as Vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to Vessel(s) delivery. Each item of foreign components and services shall be excluded from Actual Cost, unless a waiver is specifically granted for the item, which waiver shall not be granted for foreign components of the hull and superstructure. Although excluded from Actual Cost, foreign components of the hull and superstructure can be regarded as owner-furnished equipment that may be used in satisfying the applicant's equity requirements imposed by paragraph (a)(3) of this section. An illustration of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is outlined in this paragraph. If any of the costs have been incurred by written contracts such as the shipyard contract, management or operating agreement, signed copies should be forwarded with the application. The applicant may be required to have the contracting shipyard submit back-up cost details and technical data. This information shall be submitted in the format as prescribed by the Title XI application procedures.

Illustration—Cost of Foreign Components Satisfying Equity Requirements

Assuming that the total project cost is \$100 million, of which the cost of foreign components in the hull and superstructure total \$20 million, and that the Title XI applicant has requested financing for 87½ percent of the cost of the project, the following is a demonstration of how the value of the foreign components in the hull and superstructure may be used in meeting the equity requirements of § 298.13(a)(3):

Cost of Foreign Components Excluded from Actual Cost

Table with 2 columns: Description and Amount. Rows include: Cost of Project (\$100.0 million), Cost of Foreign Components in Hull and Superstructure (\$20.0 million), Total Actual Cost of Project (\$80.0 million), Required Equity (12½ percent) (\$10.0 million), Total Project Cost Financed w/ Title XI (87½ percent) (\$70.0 million).

The \$10 million in required equity may be satisfied by the owner's contribution of the foreign components of hull and superstructure to the project.

* * * * *

(4) Financial Information. The applicant shall submit the following additional financial statements with respect to both the proposed Title XI project and the overall operations of the applicant, prepared in accordance with 46 CFR part 232 and including notes to explain the basis used for arriving at the figures:

(i) The three most recent audited financial statements of the applicant, its parent, if any, and other significant participants. If the applicant is a new entity or is to be funded from or guaranteed by external source(s), it shall provide the audited financial statements of the funding source(s);

(ii) A pro forma balance sheet of the applicant as of the estimated date of execution of the Guarantees reflecting the assumption of the Title XI Obligations;

(iii) A schedule of amortization of all existing debt (Title XI or otherwise) of the applicant for the period in which the Guarantees are to be outstanding; and

(iv) A Sources and Uses Statement for the first full year of operations and the following five years, including a clear source of funding for the payment of all debt when due.

(b) Financial Definitions. * * *

(2) Working Capital means the difference between current assets and current liabilities, adjusted as follows:

(i) Current assets shall exclude: (A) Amounts in or required to be set aside in any Title XI Reserve Fund, pursuant to § 298.35(e) or Capital Construction Fund Security Amount prescribed by § 298.35(f), (excluding that portion of such fund which is

available for the payment of current liabilities) that is being maintained pursuant to an agreement covering a Vessel owned or leased by the company, or in another similar fund required under any other mortgage, indenture or other agreement to which the company is a party; and

(B) Any receivables from a Related Party or from any stockholder, director, officer or employee (or their family) of the company or of a Related Party other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days.

(ii) Current liabilities shall include the current portion of charter hire and other lease obligations not already included as a current liability.

(3) Equity (net worth) shall be exclusive of:

(i) Any receivables from a Related Party or from any stockholder, director, officer or employee (or their family) of the company or of a Related Party other than current receivables arising out of the ordinary course of business and not outstanding for more than 60 days, and

(ii) Any increment resulting from the reappraisal of assets. (4) Long Term Debt shall exclude the balance of Escrow Fund deposits attributable to the principal of Obligations sold, where deposits are required in accordance with § 298.33. However, there shall be included any guarantee or other liability for the debt of any other Person.

* * * * *

(e) Special financial requirements at closing. * * *

(2) Lessee or charterer as operator. * * *

(i) Working Capital. The Company shall have Working Capital in an amount determined in accordance with the provisions of paragraph (e)(1)(i) of this section, applicable as if the owner were the operator.

* * * * *

9. Section 298.14, is amended by revising paragraph (a)(2)(i)(F) introductory text to read as follows:

§ 298.14 Economic soundness.

(a) Economic Evaluation. * * *

(2) Project Feasibility. * * *

(i) Relevant market. * * *

(F) The potential for purchasing existing equipment of a reasonable condition and age from another source, including information regarding—

* * * * *

§ 298.16 [Amended]

10. Section 298.16, Substitution of participants, is amended by removing paragraph (a) and redesignating the

introductory text as paragraph (a); by revising in the last sentence of newly designated paragraph (a) the phrase "is applicable, as follows:" to read "is applicable."; and by removing the paragraph (b) heading Mortgage assumption and revising the phrase "Payment of \$3,000 fee" to read "A \$3,000 fee".

Appendix A to Subpart B [Removed]

11. Appendix A to Subpart B—Selected Cash Flow Impacts—is removed.

§ 298.21 [Amended]

12. Section 298.21, Limits, is amended as follows:

a. By inserting in paragraph (b), before the third sentence, an additional sentence, reading as follows: "In addition, Guarantee Fees determined in accordance with the provisions of section 1104(e) of the Act shall be included in the items of Actual Cost."

b. By inserting in paragraph (d), Substantiation of Actual Cost, after the word "Vessel" each time it appears, the words "or Advanced Shipbuilding Technology or Modern Shipbuilding Technology", and by inserting at the end of the first sentence the words "or, alternatively, appropriate certification of such costs by an agent approved by the Secretary".

c. By removing paragraph (c)(9) and redesignating paragraphs (c)(10) through (c)(16) as paragraphs (c)(9) through (c)(15).

§ 298.23 [Amended]

13. Section 298.23, Refinancing, is amended in the penultimate sentence by adding after the word "part" and before the period, a comma followed by the words "including economic soundness, as may be necessary."

§ 298.25 [Removed and reserved]

14. Section 298.25, Financing repayment of construction-differential subsidy, is removed and reserved.

§ 298.28 [Amended]

15. Section 298.28, Advances, is amended by removing paragraphs (a)(1) through (a)(3) and (b), redesignating paragraph (c) as paragraph (b) and by removing the third sentence in paragraph (a), In general, and inserting, in its place, two new sentences reading as follows: "The applicant making the request for an advance shall demonstrate (with market and cash flow analysis and other projections) that its problems are of a short term duration (less than two years); with the help of an advance(s), the applicant would be assisted over its temporary difficulties; and there is adequate collateral for the advance. The advance will be repaid in

a manner satisfactory to the Secretary and the advance will be subject to such other terms and conditions as required by the Secretary.”

16. Section 298.32 is amended as follows:

a. By inserting in paragraph (b)(6), after the word “Vessel”, each time it appears, the words “or Eligible Export Vessel”.

b. By revising paragraph (a)(6) to read as follows:

§ 298.32 Required provisions in documentation.

(a) *Performance under shipyard and related contracts.* * * *

(6) Requiring that for:

(i) Coastwise Trade, U.S.-Flag 48 Vessels, that all components of the hull and superstructure are fabricated in the United States and the Vessel is assembled entirely in the United States with either U.S. or foreign source machinery, equipment or hull and superstructure material which has been fabricated in a foreign facility, to the extent allowed by U.S. Coast Guard regulations;

(ii) Non-Coastwise Trade, U.S.-Flag Vessels, that the Vessel is assembled entirely in the United States and may have material which has been fabricated in a foreign facility, to the extent allowed by U.S. Coast Guard regulations; and

(iii) Eligible Export Vessels, that the Vessel is assembled in a United States shipyard. If Obligations will not be

issued during the period of construction of a Vessel, shipyard related contracts shall generally include the provisions specified in paragraphs (a)(2) and (a)(3) and applicable provision(s) of this paragraph (a)(6).

17. Section 298.36, Annual Guarantee Fee, is amended as follows:

a. By removing the third sentence in paragraph (b), *Rate calculation.*

b. By removing paragraphs (f), *Adjustment of Guarantee Fee*, (g), *Increase in Guarantee Fee due to Security Default*, and (i), *Interest on late payment of Guarantee Fees*, and redesignating paragraph (h) as paragraph (f).

c. By revising paragraph (e) to read as follows:

§ 298.36 Annual Guarantee Fee.

* * * * *

(e) *Payment of Guarantee Fee.* The Guarantee Fee covering the full period of the stated maturity of the Obligations commencing with the date of the Security Agreement shall be paid to the Secretary concurrently with the execution and delivery of said Agreement. The project's entire Guarantee Fee payment shall be made by the Obligor to the Secretary in an amount equal to the sum of the present value of the separate products obtained by applying the Guarantee Fee rate to the projected amount of the Obligations Outstanding for each year of the stated maturity of the Obligations. In calculating the present value used in

determining the amount of the Guarantee Fee to be paid, MARAD will use a discount rate based on information contained in the Department of Commerce's Economic Bulletin Board quarterly rates. Under no circumstances will the Secretary refund the Guarantee Fee to the Obligor. A Guarantee Fee paid pursuant to this section may be included in Actual Cost and is eligible to be financed.

§ 298.42 [Amended]

18. Section 298.42, Reporting requirements—financial statements, is amended as follows:

a. In the introductory paragraph, by removing the word “accounts” in the first sentence and inserting in its place the term “financial statements”.

b. By revising the seventh and eighth sentences of paragraph (a), *Reports of Company and other Persons*, to read as follows: “The annual report shall be accompanied by the public accountant's report based on an audit of the company's financial statements. An audit by the public accountants of the financial statements contained in the company's semiannual report may be required by the Secretary.”

Dated: April 19, 1995.

By Order of the Maritime Administrator.

Joel C. Richard

Secretary, Maritime Administration.

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