Dated: September 20, 2002.

Joseph J. Angelo,

Acting Assistant Commandant, Marine Safety, Security and Environmental Protection.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. MARAD–2002–12425]

RIN 2133–AB47

Amendment of MARAD's Regulations Establishing and Administering Deposit Funds Authorized by Section 1109 of the Merchant Marine Act, 1936, as Amended

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: Recent legislation modified the Merchant Marine Act, 1936, as amended, by adding a new Section 1109, which authorizes the Secretary of Transportation to hold funds from Title XI obligors as collateral by depositing them with the United States Treasury and investing them in Treasury obligations. As a consequence, these funds need no longer be deposited in private banks. This final rule changes existing procedures to simplify, reduce costs of, and expedite Title XI closings.

DATES: The effective date of this final rule is October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Lorr, Assistant Chief Counsel for Ship Financing, at (202) 366–5882. You may send mail to Mr. Lorr at Maritime Administration, Office of Chief Counsel, Room 7228, 400 Seventh Street, SW., Washington, DC 20590. You may also e-mail Mr. Lorr at *richard.lorr@marad.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2002, we published a notice of proposed rulemaking (NPRM) at 67 FR 40260 soliciting public comment on proposed changes to administering Title XI deposit funds. In the NPRM, we explained the Title XI program deposit funds and the need for the amendments. We received one public comment regarding our proposal. We will address the public comment under the section heading ''Response to Public Comment.''

The Title XI Program is a loan guarantee program which was established under Title XI of the Merchant Marine Act, 1936, as amended (the ''Act''). The Secretary of Transportation (Secretary) acting by and through the Maritime Administrator administers the Title XI Program.

Title XI provides for the full faith and credit of the United States for the payment of debt obligations for: (1) U.S. or foreign shipowners for the purpose of financing or refinancing either U.S. flag vessels or eligible export vessels constructed, reconstructed, or reconditioned in U.S. shipyards and (2) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately owned general shipyard facility located in the U.S.

The guaranteed obligations (*i.e.*, notes and bonds) are sold in the private sector. The main purchasers of the obligations include banks, pension funds, life insurance companies, and the general public.

In those instances where the Secretary guarantees obligations under Title XI and where the proceeds of the sale of the obligations are to be used for the construction, reconstruction, or reconditioning of a vessel or for a shipyard improvement, all such proceeds constitute security for the Secretary's risks in extending the guarantees, and are to be under the control of the Secretary as governed by applicable agreements between the Secretary and the Title XI debtor. In addition, the documentation of a Title XI transaction requires the Title XI debtor, under certain circumstances, to make deposits into the Title XI Reserve Fund as additional security for the Secretary.

Prior to the enactment of Section 1109, section 1108 authorized the Secretary to hold only a percentage of obligation proceeds in an escrow account (the ''Escrow Fund'') with the Treasury. The remaining percentage was deposited with a commercial bank in what has become to be known as the ''Construction Fund.'' In addition, the Secretary had no authority under the Act to accept or hold Title XI Reserve Fund deposits. Currently, such deposits, like the Construction Fund, are placed with and held by a commercial bank. The Depository Agreement among the Title XI debtor, the Secretary, and the commercial bank sets forth the terms and conditions under which the funds may be invested, withdrawn, or otherwise paid to the Secretary or the Title XI debtor. The Title XI debtor granted to the Secretary security interests in these accounts and their contents (the ''Collateral''), and provided the Secretary an opinion of counsel on the perfection and first priority of these security interests.

The Uniform Commercial Code (the ''UCC'') of the various states, for the most part, governs the perfection and priority of the Secretary's security interests in the Collateral. At its financial closings, MARAD's experience has been that, given the provisions of the UCC and especially the recent changes to the UCC, even the most knowledgeable of legal counsel have had difficulty drafting clean legal opinions about the perfection and enforceability of MARAD's security interest in the Collateral held by commercial depositories. As a result of these factors, opinions of counsel have, over time, become increasingly time consuming and costly. On the other hand, there has never been any question about the perfection and enforceability of MARAD's security interest in funds held in the Escrow Fund by the Treasury under MARAD's normal security agreements.

In an effort to ameliorate the situation and to streamline the Title XI closing process, the Secretary determined that an alternate means for holding and investing the proceeds of the obligations was necessary. Since the Escrow Fund was already in place, it seemed only logical to use it for not just a percentage of the proceeds, but for all the proceeds. Accordingly, the Secretary sought the enabling legislation, and section 1109 is the result. The Secretary believes this authority will reduce the cost of obtaining Title XI benefits by simplifying the opinions of counsel and eliminating the costs of engaging commercial banks to hold and invest the proceeds. In addition, it is anticipated that closing documentation will be reduced or simplified.

Response to Public Comment

One comment was received concerning the NPRM. The commenter states that, in his opinion, Section 1109 of the Act ''was intended to solve certain technical problems of the Construction Fund arrangements and legal opinions concerning those arrangements.'' It is true that one of the purposes of Section 1109 is to permit the agency to abolish the Construction Fund. However, the enactment of Section 1109 was not merely intended to solve problems related to that fund. Section 1109 also permits the Secretary to hold in a Treasury account money in the Title XI Reserve Funds of obligors (which are established for the purpose of holding a portion of an obligor's net operating income in a secured account for the benefit of the Secretary) as well as any other liquid assets that are

pledged to the Secretary as collateral for a guarantee. In addition, the same commenter makes three requests concerning the proposed regulations. First, the commenter requests that drafts of any agreements that the Secretary intends to use to administer the provisions of Section 1109 be made available to commenters for their comments before the final regulation is promulgated. Second, the commenter expresses a concern that nothing in the NPRM requires the Secretary to pay the obligor interest on cash balances of the deposit fund as required by Sections 1109(c) and 1109(d)(2) and that if the final rule does not address the issues the agency's agreements should be amended to do so. Finally, the commenter states that the Secretary's authority to retain and offset amounts in the Treasury account does not arise until the obligor has defaulted on the obligations. The commenter believes that the regulations should not extend retention and offset to pre-default circumstances contrary to Section 1109(d)(3).

It is well established that MARAD does not publish the forms of its Title XI documents for review under the Administrative Procedure Act. MARAD's forms are traditionally provided to shipowning companies and to attorneys who practice ship finance law. Copies of the documents are on the agency's Web site, *http://www.marad.dot.gov*. A copy of the Depository Agreement, modified to reflect the provisions of Section 1109, is already publicly available and has been used in recent transactions, although it is not yet on the agency's Web site. Commenters may provide the agency with their views on these agreements at any time. Moreover, these documents are negotiated on a case-by-case basis to the extent warranted by the particularities of each transaction and the questions that are raised concerning the agency's policies by the parties to a closing. Accordingly, there is no reason for MARAD to postpone the effective date of this rule.

With respect to the commenter's second specific concern, that the NPRM does not address the payment of interest on cash balances of the deposit fund, we direct the commenter to the provisions of 46 CFR 298.33(c), (d) and (e) of the agency's regulations, which provisions will apply to the deposit fund, upon adoption of the final rule, and which adequately address the commenter's concerns. These issues are also addressed by Sections 5.04, 5.05, and 5.06 of the General Provisions of the Security Agreement and Section 2 of the Depository Agreement. As to the commenter's third point, neither MARAD's regulations nor its agreements have extended retention and offset to pre-default circumstances. The pertinent regulations and documentation state that the right arises upon the occurrence of an obligor's default.

With one addition, the rule will be adopted in the form proposed. The NPRM deleted the reference to Construction Fund in 46 CFR 298.33(b)(2)(i), but inadvertently neglected to delete § 298.34, entitled Construction Fund. Hence, the final rule will abolish the provisions of § 298.34 and substitute the words ''Removed and Reserved.''

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that it is not a significant regulatory action under section 3(f). It is also not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Due to the limited economic impact of this final rule, no further analysis is necessary. This final rule is intended only to change the location of the Secretary's collateral, previously deposited in commercial banks to an account held at the Treasury. The intended effect is to encourage the construction of ships in U.S. shipyards both for the domestic and the Eligible Export Vessel programs and the modernization and improvement of U.S. general shipyard facilities by improving Title XI program administration.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires MARAD to determine whether this final rule will have a significant economic impact on a substantial number of small entities. Although a substantial number of Title XI applicants may meet the United States Small Business Administration's criteria for small entity, this final rule will not have a significant economic impact because it merely authorizes a change in the location of the Secretary's collateral, previously deposited in commercial banks, which charge depository fees, to an account held at the Treasury. Section 1279b of 46 App. U.S.C. authorizes the deposit of these funds. By changing the location of the account to the Treasury, this final rule will eliminate depository fees. We do not believe that this final rule will have a significant economic impact on a substantial number of small entities.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

We do not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Paperwork Reduction Act

This rulemaking contains requirements that have been approved previously by the Office of Management and Budget (Approval No. 2133–0018).

Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 298

Loan programs—transportation, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, we amend 46 CFR part 298 as follows:

PART 298—OBLIGATION GUARANTEES

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.

§ 298.2 [Amended]

2. In § 298.2, the definition of Depository is amended by removing all words after ''Depository means'' and adding in their place ''the U.S. Department of Treasury, acting in its capacity under Section 1109 of the Act.''

§ 298.21 [Amended]

3. In § 298.21 revise paragraph (f)(2) to read as follows:

§ 298.21 Limits.

* * * * *

(f) * * *

(2) As long as we have not paid the Guarantees, you or other recipient shall promptly deposit these moneys with us to be held by the Depository in accordance with the Depository Agreement.

* * * * *

§ 298.22 [Amended]

4. In § 298.22 revise paragraph (b)(2) to read as follows:

§ 298.22 Amortization of Obligations.

* * * * *

(b) * * *

(2) You establish a fund with the Depository in which you deposit an equal annual amount necessary to redeem the outstanding Obligations at maturity; or

* * * * *

§ 298.33 [Amended]

5. Section 298.33 is amended as follows:

a. In paragraph (a), by removing the word ''us'' and adding the words ''the Depository'' in its place.

b. By removing paragraph (b)(2)(i) and redesignating paragraphs (b)(2) (ii) through (iv) as paragraphs (b)(2) (i) through (iii).

§ 298.34 [Removed and Reserved]

§ 298.35 [Amended]

6. Section 298.35(d) introductory text is revised to read as follows:

§ 298.35 Title XI Reserve Fund and Financial Agreement.

* * * * *

(d) *Deposits.* Unless the Company, as of the close of its accounting year, was subject to and in compliance with the financial requirements set forth in paragraph (b)(2) of this section, the Company shall make one or more deposits to us to be held by the Depository (the Title XI Reserve Fund), as further provided for in the Depository Agreement. The amount of deposit as to any year, or period less than a full year, where applicable, will be determined as follows:

* * * * *

Dated: September 24, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–24695 Filed 9–27–02; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 02–234]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses a petition for clarification or partial reconsideration of the *Collocation Remand Order* (66 FR 43516, August 20, 2001). The document makes clear that nothing in the *Collocation Remand Order* disavows any federal jurisdiction the Commission otherwise has to resolve cross-connect disputes. It also concludes that, under section 201(a) of the Communications Act of 1934, as amended (Communications Act or Act), incumbent LECs must include cross-connect offerings made under section 201 in federal tariffs. This document further concludes that in certain limited circumstances incumbent local exchange carriers (LECs) may rely on individual case basis pricing when establishing rates for cross-connects.

DATES: Effective October 30, 2002, except that the Commission's actions with regard to federal tariffing of the cross-connect requirement and regarding pricing of cross connects in paragraph three of this document are not effective until approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this requirement.

FOR FURTHER INFORMATION CONTACT: John Adams, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580, or via the Internet at *jkadams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration of Fourth Report and Order* (*Order on Reconsideration*) in CC Docket No. 98–147, FCC 02–234, adopted August 14, 2002, and released September 4, 2002. The complete text of this *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order on Reconsideration

1. *Background.* In the *Collocation Remand Order* (66 FR 43516, August 20, 2001) the Commission reevaluated provisions of its collocation rules on remand from the United States Court of Appeals for the District of Columbia Circuit. The Commission addressed, among other matters, whether incumbent LECs are required to provision cross-connects between collocators. The Commission concluded that while an incumbent LEC is not required to allow collocators to install and maintain cross-connects between their collocated equipment themselves, an incumbent LEC must nevertheless provide these cross-connects between two collocators upon reasonable request.

2. *Federal Enforcement of Cross-Connect Requirement.* In the *Collocation Remand Order,* the Commission stated that it anticipated ''that cross-connect disputes, like other interconnection related disputes, can be addressed in the first instance at the state level.'' In the *Order on Reconsideration,* to avoid any uncertainty, the Commission clarifies that nothing in that statement disavows any federal jurisdiction it otherwise might have under the Act to resolve cross-connect disputes. The Commission states that specific questions would be addressed on a case-by-case basis in the event of a complaint.

3. *Federal Tariffing of Cross-Connect Requirement.* The Commission concludes that incumbent LECs must file tariffs for cross-connect offerings made pursuant to section 201 of the