

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 32**

[FRL-5886-5]

Suspension, Debarment and Ineligibility for Contracts, Assistance, Loans and Benefits**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; technical amendments.

SUMMARY: This rule makes certain technical amendments to the Environmental Protection Agency's rule governing suspension and debarment under nonprocurement programs (40 CFR Part 32), to reflect the Agency's internal reorganization of the Office of Administration and Resources Management (OARM) and the Office of Grants and Debarment (OGD).

EFFECTIVE DATE: September 8, 1997.

FOR MORE INFORMATION CONTACT: Robert F. Meunier, EPA Suspending and Debarment Official, (3901F), 401 M Street, S.W., Washington, DC 20460. Telephone: (202) 564-5399; or E-Mail to: meunier.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:**A. Background**

On October 1, 1995, the OARM and the OGD implemented plans of internal reorganization that, among other things, created the full-time position of the EPA Suspending and Debarment Official. Under that plan, the nonsupervisory suspension and debarment duties previously performed by the OGD Director were delegated to the Suspending and Debarment Official. Similarly, the appellate duties previously performed by the Assistant Administrator for OARM were delegated to the Director, OGD. The following rule changes are made to reflect those changes. In addition, a typographical error in the definition of the term "conviction" is corrected.

Rulemaking Analysis**B. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." However, it has been sent to the Office of Management and Budget for review for consistency with the OMB Common Rule. In addition, this rule will not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), or require prior consultation with State officials as

specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 *et seq.*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Public Comments

The EPA has not solicited public comments on this final rule.

List of Subjects in 40 CFR Part 32

Environmental protection,
Administrative practice and procedure.

Dated: September 29, 1997.

Alvin M. Pesachowitz,

Acting Assistant Administrator, Office of Administration and Resources Management.

For the reasons set out in the preamble, 40 CFR Part 32 is amended as follows:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: E.O. 701 *et seq.*; 12549; 42 U.S.C. *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*; E.O. 12689; E.O. 11738; Pub. L. 103-355 Sec. 2455.

§ 32.105 [Amended]

2. In § 32.105, the definition of "Conviction" is amended by removing the word "or" the first time it appears and adding in its place the word "of".

3. In § 32.105, the definition of "Debarment Official," is amended by removing paragraph (3).

4. In § 32.105, the definition of "Suspending Official," is amended by removing paragraph (3).

§ 32.335 [Amended]

5. In § 32.335, paragraph (a) is amended by removing the term

"Assistant Administrator for Administration and Resources Management" and adding in its place the term "Director, Office of Grants and Debarment". Paragraphs (a), (b), (c) and (d) are amended by removing the six references to the term "Assistant Administrator" and adding in their places the term "OGD Director".

§ 32.430 [Amended]

6. In § 32.430, paragraph (a) is amended by removing the term "Assistant Administrator for Administration and Resources Management" and adding in its place the term "Director, Office of Grants and Debarment". Paragraphs (a), (b), (c) and (d) are amended by removing the six references to the term "Assistant Administrator" and adding in their places the term "OGD Director".

[FR Doc. 97-23693 Filed 9-5-97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**46 CFR Part 298**

[Docket No. R-171]

RIN 2133-AB31

Citizenship Requirements for Owners and Charterers of Vessels With Obligation Guarantees**AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations at 46 CFR part 298 to conform with provisions contained in Pub. L. 104-239. These provisions eliminate certain U.S. citizenship requirements for participants in MARAD's obligation guarantee program ("Title XI program"). MARAD's citizenship requirements for participants in the Title XI program will be modified as follows: For vessels operating, or to be operated, in the U.S. foreign commerce, no proof of Section 2 citizenship is required; for eligible export vessels and general shipyard facilities, no proof of Section 2 citizenship is required; and for vessels to be operated in the domestic trade, the applicant and any bareboat charterer will be required to establish Section 2 citizenship by affidavit at the time of application only.

DATES: This rule is effective September 10, 1997.

FOR FURTHER INFORMATION CONTACT: Doris Lansberry, Office of the Chief Counsel, Telephone (202) 366-5712.

SUPPLEMENTARY INFORMATION: MARAD's regulations at 46 CFR part 298, Obligation Guarantees, implement Title XI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1271 *et seq.*) ("Act"), which 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 in United States shipyards, as well as the modernization and improvement of U.S. shipyards ("general shipyard facilities").

Applications for obligation guarantees are made to MARAD, acting under authority delegated by the Secretary to the Maritime Administrator. Prior to amendment of the Act in 1993, obligation guarantees could be issued only for debt incurred by applicants qualifying as citizens of the United States as defined in Section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802) ("Section 2 citizens").

Subtitle D of Title XIII of Pub. L. 103-160, enacted in 1993, expanded the Title XI program by authorizing obligation guarantees to finance the construction, reconstruction, or reconditioning of eligible export vessels (to be documented under the laws of a country other than the United States) and modernization and improvement of shipyards in the United States.

Applicants for obligation guarantees for shipyard modernization and improvement and for eligible export vessels under Pub. L. 103-160 are not required to be Section 2 citizens. Also, the Section 2 citizenship requirements found in Sections 1103 and 1104 of the Act were eliminated. The requirement that applicants for obligation guarantees had to be Section 2 citizens was removed from Section 1103(a) and the phrase "owned by citizens of the United States," which modified the phrase "a vessel or vessels," was removed from Section 1104A. However, the requirement set forth in Section 1101(b) of the Act that vessels financed under the Title XI program had to be owned by Section 2 citizens was not eliminated. Therefore, MARAD determined, in 1993, that the Section 2 citizenship requirement for the original Title XI program remained. Subsequently, Congress amended Sections 1101(b), 1104B(a) and 1110(a) of the Act by striking the language "owned by citizens of the United States" in each of these Sections (Section 11 of Pub. L. 104-239, the Maritime Security Act of 1996).

Notice and Request for Comments

MARAD published a notice in the **Federal Register** on November 5, 1996, indicating that where its regulations were in conflict with the new law, such requirements were no longer valid. In addition, MARAD requested comments on the following issues:

1. Does MARAD have the legal authority to give retroactive effect to the elimination of its general U.S. citizenship test for existing participants in its obligation guarantee program?
2. If MARAD has such authority, to what extent should it exercise that authority?
3. With respect to owners of vessels with obligation guarantees that operate in the United States domestic ("coastwise") trade, for which U.S. citizenship requirements remain, can MARAD's security interest in these vessels be sufficiently protected if it adopts the self-certification process used by the United States Coast Guard for purposes of issuing a coastwise trade endorsement?
4. Should U.S. citizens be given priority for loan guarantees over noncitizens for operation of U.S. flag vessels in foreign commerce in the event of scarcity of funds for Title XI obligation guarantees?

MARAD received comments from seven interested parties in response to this Notice. Three commenters are owners of vessels operating either in the foreign or coastwise trade. One commenter is a law firm representing the views of the law firm and not the views of any of its clients. One commenter is an individual representing personal views. Another commenter is a law firm representing the "personal views" of the Subcommittee on Coast Guard Documentation, U.S. Citizenship and Related Matters of the Committee on Marine Financing of the Maritime Law Association. Still another commenter is a law firm representing the views of one of its clients operating vessels in the coastwise trade. Most commenters believed that MARAD has the authority to eliminate the citizenship requirement for obligation guarantees retroactively even though the statute did not specifically address this issue, and that MARAD should exercise such authority. Most commenters expressed the view that the Section 2 citizenship requirements in the existing Title XI contracts are either waivable or that MARAD has discretion to enforce or not to enforce contractual obligations. One commenter referenced the U.S. Supreme Court's decision in *Landgraf v. USI Film Products*, 511 U.S. 244, 128 L.Ed.2d

229, 114 S.Ct. 1483 (1994), which established tests for determining whether a new statute has retroactive effect. The tests set forth in *Landgraf* are whether the law, if applied retroactively, would impair rights the party had prior to enactment of the law, increase the party's liability for past conduct, or impose new duties with respect to previous transactions. This commenter maintained that elimination of the Section 2 citizenship requirements would not be an impairment of rights held by existing Title XI contract holders, nor an increase in any liability under such contracts, nor the imposition of new duties on existing Title XI contract holders. To the contrary, the commenter believed that Title XI contract holders should be relieved of the duty to file Affidavits of U.S. Citizenship, as well as any consequences and/or liabilities that may result from failure to file such Affidavits.

One commenter stated that citizenship requirements for existing obligation guarantees terminated when the Title XI citizenship amendments became law.

Five of the seven commenters indicated that MARAD should rely upon the self-certification process used by the United States Coast Guard for determining Section 2 citizenship where it remains a requirement of the Title XI program, with one commenter expressing the view that MARAD should have the right to ask for additional information if it is deemed necessary.

As to whether a priority system needs to be established in the event of limited Title XI funds, four commenters opposed such a system, and two stated that U.S. citizens should be given priority for obligation guarantees over noncitizens. The reasons given for establishing a priority were that American taxpayers provide the needed funding for the Title XI program and that giving U.S. citizens priority furthers the purpose of the Act by providing a U.S. citizen-owned fleet needed for defense purposes. The four commenters opposing a priority system cited the absence of any such provision in the Act.

Having considered all the views expressed by the commenters, MARAD is now amending its regulations at 46 CFR part 298 to conform to the statutory changes set forth in Pub. L. 104-239. Additional changes will be required to implement financing provisions of Pub. L. 104-324 (October 19, 1996), the Coast Guard Authorization Act of 1996. Those will be the subject of a separate rulemaking.

Congressional intent in Pub. L. 104-239 is unequivocal as to prospective application of Section 2 citizenship requirements for owners of vessels operating or to be operated in U.S. foreign commerce. The intent is to eliminate the requirement. As stated by Senator Lott in a public letter exchange on the Maritime Security Act "[a]n interpretation of the Title XI program now allows a U.S. corporation that is eligible to obtain a loan guarantee if it places the vessel under foreign registry, but prohibits a guarantee from being issued if that same corporation desires to place the vessel under U.S. flag. Section 11 of [Pub. L. 104-239] would correct this unintended interpretation so that such a U.S. corporation eligible to own a U.S.-flag vessel would be able to obtain a guarantee without being forced to place the vessel under foreign flag." Letter dated March 20, 1996, from Senator Lott to Senator McCain (copy on file at the Maritime Administration).

It is equally clear that Congress retained the requirement of 46 App. U.S.C. 12106 that vessel owners engaged in the coastwise trade must be Section 2 citizens, whether participating in the Title XI program or otherwise. MARAD considered relying on the self-certification process of the Coast Guard as proof of such citizenship for application purposes. However, the Coast Guard process of documenting a vessel is only performed *after* a vessel is delivered. Typically, in Title XI transactions, MARAD is requested to approve commitments prior to delivery and documentation of vessels. MARAD needs to perform its due diligence to ascertain the citizenship of an applicant that is intending to own or operate vessels in the U.S. coastwise trade prior to issuing an irrevocable commitment under Title XI.

Section 1104A(d)(1)(A) of the Act (46 App. U.S.C. 1274(d)(1)(A)) provides that the Secretary shall not extend any guarantee unless the Secretary finds that the proposed project is economically sound. In those instances where an applicant for Title XI benefits intends to operate vessels in U.S. coastwise trade, MARAD's analysis of economic soundness includes the applicant's qualifications to operate in said trade, including all applicable citizenship requirements. This analysis is required because, among other reasons, the revenues from operations are the source of debt service payments, and if the applicant fails to qualify for the intended operations, the proposed project would not be economically sound. Therefore, MARAD will continue to require that all applications for obligation guarantees for U.S.

coastwise trade vessels include an affidavit of U.S. citizenship in the form prescribed in its regulations at 46 CFR part 355.

MARAD has decided to adopt the suggestion of several commenters and rely on the self-certification required by the Coast Guard for vessel operators in the coastwise trade to ensure that Title XI obligors in that trade maintain their eligibility. Annual affidavits will no longer be required. Generally, no citizenship filing will be required. As does the Coast Guard, MARAD reserves the right to ask for additional information from Title XI obligors if it is deemed necessary. MARAD believes this significant deregulatory action will be effective.

MARAD has considered whether Congress intended to give retroactive effect to the elimination of its ongoing requirement to certify as to U.S. citizenship for existing participants in its obligation guarantee program, and, if so, whether MARAD should exercise that authority. *Landgraf, supra*. MARAD has concluded that no private party rights under the Title XI program would be impaired by the elimination of the citizenship requirement for Title XI obligors operating in the U.S. foreign commerce, nor would its own due diligence interests be impaired. Therefore, MARAD has determined that no proof of citizenship need be required for Title XI obligors with respect to vessels operating, or to be operated, in the U.S. foreign commerce. Unlike the Title XI coastwise trade program under which MARAD's due diligence interests would be impaired by the complete elimination of citizenship requirements, due to increased risk to the project, there is no comparable risk for U.S. foreign commerce operations. MARAD's Title XI program requirement for identification of the real party at interest in the Title XI transaction for vessels in U.S. foreign trade can be met through review of the documents required in the application process, just as that requirement is met presently in the Title XI export vessel program.

Finally, MARAD has decided not to impose a priority system for Section 2 citizens in the event of limited Title XI funds. In recent years, it has been rare that availability of Title XI funds has limited the approval of eligible projects. More importantly, it is MARAD's experience that Title XI transactions are unique with different vessels, markets, operators, collateral, shipyards, military utility, and dollar value of guarantee. It is not likely that two transactions would be equivalent in all respects but one would meet Section 2 citizenship requirements and the other not. MARAD

will continue, as required by Section 1104(g)(1) of the Act, to consider the status of pending applications to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States before issuing a commitment to guarantee obligations for an eligible export vessel.

To summarize, MARAD's citizenship requirements for participants in the Title XI program will be modified as follows: (1) for vessels operating, or to be operated, in the U.S. foreign commerce, no proof of Section 2 citizenship is required; (2) for eligible export vessels and general shipyard facilities, no proof of Section 2 citizenship is required; and (3) for vessels to be operated in the domestic trade, the applicant and any bareboat charterer will be required to establish Section 2 citizenship by affidavit at the time of application only.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review); Department of Transportation (DOT) Regulatory Policies and Procedures; Pub.L. 104-121

This rulemaking is not considered to be an economically significant regulatory action under E.O. 12866, and is also not considered a major rule for purposes of Congressional review under Pub. L. 104-121. It is not considered to be a significant rule under E.O. 12866 or DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Therefore, it has not been reviewed by the Office of Management and Budget. This rule merely conforms MARAD's regulations at 46 CFR Part 298 to provisions contained in Pub. L. 104-239 with respect to removal of some citizenship requirements for participation in MARAD's Title XI Program. Accordingly, pursuant to provisions of the Administrative Procedure Act, 5 U.S.C. 553 (c) and (d), MARAD finds that notice and public comment are unnecessary and that this rule may become effective in less than 30 days after its publication.

Federalism

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

Regulatory Flexibility

The Acting Maritime Administrator certifies that this rulemaking will

reduce the economic burden on Title XI Program participants and will therefore not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

This final rule has no environmental impact and an environmental impact statement is not required.

Paperwork Reduction Act

This rulemaking contains no new information collection requirements. It reduces certain information collection requirements that have been approved by the Office of Management and Budget under control number 2133-0012.

Unfunded Mandates

Under the Unfunded Mandate Reform Act (Pub. L. 104-4) The Maritime Administration must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). The Act also requires that the Maritime Administration identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that will achieve the objectives of the rule.

As stated above, by this rule the Maritime Administration is significantly reducing a regulatory burden, citizenship reporting requirements, on the public. This final rule does not result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and is the least burdensome alternative that will achieve the objectives of the rule.

List of Subjects in 46 CFR Part 298

Loan programs—transportation, Maritime carriers, Mortgages.

Accordingly, 46 CFR part 298 is amended as follows:

1. The authority for 46 CFR Part 298 continues to read as follows:

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

2. Section 298.2 is amended by removing the paragraph designations, and adding the following definitions, in alphabetical order:

§ 298.2 Definitions.

* * * * *

Citizen of the United States means a person who, if an individual, is a Citizen of the United States by birth,

naturalization or as otherwise authorized by law or, if other than an individual, meets the requirements of Section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802), as further described at 46 CFR 221.3(c).

* * * * *

Commitment Closing means a meeting of various participants or their representatives in a Title XI financing at which a commitment to issue Guarantees is executed and the forms of the Obligations and the related Title XI documents are also either agreed upon or executed.

* * * * *

3. Section 298.10 is revised 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 which is operating in or will be operated in the U.S. coastwise trade, the applicant and any other Person, (including the shipowner and any bareboat charterer), shall establish its United States citizenship, within the definition "citizen of the United States" in § 298.2.

(b) *Prior to Letter Commitment.* The applicant and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship shall, prior to the issuance of the Letter Commitment, establish United States citizenship in form and manner prescribed in 46 CFR part 355.

(c) *Commitment Closing.* Unless otherwise waived by the Secretary for good cause, at least 10 days prior to every Commitment Closing, all Persons identified with the project who have previously established United States citizenship in accordance with paragraphs (a) and (b) of this section shall submit pro forma Supplemental Affidavits of Citizenship which have previously been approved as to form and substance by the Secretary, and on the date of such closing such Persons shall submit to the Secretary three executed copies of such Supplemental Affidavits of Citizenship evidencing the continuing United States citizenship of such Persons bearing the date of such closing.

(d) *Additional information.* If additional material is determined at any time to be essential to clarify or support evidence of U.S. citizenship, such material shall be furnished by the applicant, the Obligor or any Person identified in paragraph (a) of this section upon request by the Maritime Administration.

Dated: September 2, 1997.

By order of the Acting Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 97-23676 Filed 9-5-97; 8:45 am]

BILLING CODE 4910-81-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 64

[CC Docket 90-571; DA 97-1800]

Telecommunications Relay Services, and the Americans With Disabilities Act of 1990

AGENCY: Federal Communications Commission.

ACTION: Suspension of final rule; Order.

SUMMARY: Notice is hereby given that in an Order on Telecommunications Relay Services ("TRS") and the Americans with Disabilities Act of 1990 ("Order"), CC Docket No. 90-571, adopted on August 20, 1997 and released on August 21, 1997, the Common Carrier Bureau ("Bureau") suspended enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one additional year until August 26, 1998. Because the existing technology to provide coin sent-paid calls through the TRS centers has serious deficiencies and no technological solution appears imminent, the Bureau recommended that the Commission conduct a rulemaking during the one year suspension to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record. During the suspension period, the Bureau directed carriers to continue to make payphones accessible to TRS users under the "Alternative Plan." The Alternative Plan has enabled TRS users to make relay calls from payphones using alternative payment methods since 1995 and has educated TRS users about their abilities to make such calls. In addition, because parties disagree over the effectiveness of the Alternative Plan, the Bureau directed carriers to comply with several additional consumer education requirements designed to improve TRS users' awareness of their ability to make relay calls from payphones.

EFFECTIVE DATES: Section 64.604(a)(3) is suspended effective September 8, 1997 through August 26, 1998. The collections of information for this order will become effective no sooner than October 8, 1997 upon approval of OMB.