

months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. *Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.219(b) is revised to read as follows:

§ 117.219 Pequonnock River

* * * * *

(b) The Stratford Avenue Bridge, mile 0.1, at Bridge port, shall open on signal; except that, from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m., the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: July 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99-20959 Filed 8-12-99 8:45 am]

BILLING CODE 4910-15-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN44-02-7269b; FRL-6415-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a supplemental revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area, located in Ramsey County Minnesota. The supplemental SIP was submitted by the State for the purpose of bringing about the attainment of the PM National Ambient Air Quality Standards (NAAQS) and is in response to our July 22, 1997, conditional approval (62 FR 39120), of a February 9, 1996 SIP revision for Red Rock Road. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as

a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received by September 13, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 22, 1999.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 99-20548 Filed 8-12-99; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. MARAD-98-3468]

RIN 2133-AB14

Putting Customers First in the Title XI Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration ("MARAD") is seeking public comment

on a proposed rule which modifies certain provisions of the existing regulations which implement Title XI of the Merchant Marine Act, 1936, as amended ("Act"). This rule intends to improve administration of the Title XI program. Title XI guarantees are issued for all types of vessel construction and shipyard modernization and improvement projects, except for fishing vessels. The part of the Title XI program related to fishing vessels is administered by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 13, 1999.

ADDRESSES: You should mention the docket number that appears at the top of this document and submit your written comments to: Docket Management, Room PL-401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. You may call Docket Management at (202) 366-9324. Comments may also be submitted by electronic means via the Internet at <http://dmses.dot.gov/submit/>. You may visit the docket room to inspect and copy documents at the above address from 10 a.m. to 5 p.m., local time, Monday through Friday, except on Federal holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: You may call Mitchell D. Lax of the MARAD Office of Ship Financing, at (202) 366-5744, or you may write to him at the following address: MAR-530, Room 8122, 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the MARAD Chief Counsel at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).
- On that page, click on "search."
- On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "MARAD-1999-1234," you would type "1234."

- After typing the docket number, click on "search."

- On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

- You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Title XI of the Act authorizes the Secretary of Transportation (Secretary) to guarantee debt issued for the purpose of financing or refinancing: (a) the construction, reconstruction or reconditioning of U.S.-flag vessels or eligible export vessels built in United States shipyards, and (b) the construction of advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States. You should submit Title XI applications to MARAD acting under authority delegated by the Secretary to the Maritime Administrator. Prior to execution of a guarantee, we must, among other things, make determinations of economic soundness of the project, and your financial and operating capability. The Title XI program enables you to obtain long-term financing on terms and conditions that may otherwise not be available.

National Performance Review

In response to a 1993 recommendation from Vice President Gore's National Performance Review team, President Clinton issued Executive Order 12862, September 11, 1993, calling for a revolution within the Federal Government to change the way it does business by putting customers first and striving for a customer-driven government that matches or exceeds the best service available in the private sector. In October 1997, the National Performance Review team reported that Federal agencies, implementing the Executive Order, had launched a massive effort to improve governmental service and had made a noticeable difference.

On December 1, 1997, in a memorandum to heads of Operating Administrations and Departmental offices at the United States Department of Transportation, Secretary of Transportation Rodney E. Slater urged all Departmental offices and heads of Operating Administrations to ask their customers what is important to them in the kinds and quality of services they

want and what is their level of satisfaction with existing services. Secretary Slater emphasized that it is "this customer feedback that will be the basis for improving, revising, adding, or deleting standards when it makes sense and, ultimately, for helping us become a more customer focused DOT."

ANPRM

We published an advanced notice of proposed rulemaking (ANPRM) on February 17, 1998, in the **Federal Register** (63 FR 7744) and are now issuing this notice of proposed rulemaking concerning program administration and how it can be improved. The ANPRM requested that you provide us with your views about how the Title XI program is administered and how it could be improved. Specifically, we solicited comments on ten sets of questions, which can be grouped into the following general categories:

- The standard application Form MA-163, including the requirement for vessel plans and specifications.
- The requirements for information on your and/or your operator's qualifications.
- The requirements for financial information and certain financial tests.
- The requirements for information on economic soundness and the economic soundness criteria.
- The inclusion in the Title XI regulations of the provisions of Maritime Administrative Order (MAO) No. 520-1, Amendment 2.
- The documentation requirements for a closing on a commitment to guarantee obligations.

On July 30, 1998, a notice was published in the **Federal Register** advising that the Title XI application form and closing documentation had been modified. The modifications were made after consideration of your comments received in response to the ANPRM and the notice invited your further comments on the modifications. Comments on the proposals were due by the end of August, 1998. Because most of the revisions of the application form and the closing documentation are not within the scope of this rulemaking, your comments received on these issues are not discussed herein, except to the limited extent that certain of the application and documentation requirements are contained in the Title XI regulations.

The ANPRM stated that any changes to the existing regulation that we proposed would be the subject of a future notice of proposed rulemaking. Our proposed changes are the subject of this rule. The following is a summary of

the comments we received by nine commenters on the ANPRM which are divided into the above-mentioned categories, with the omission of the categories concerning the application form and closing documentation, for the reason previously discussed.

Applicant and Operator Qualifications

We solicited your comments as to whether the requirements for information on the your and/or your operator's qualifications referenced in section 298.12 are unnecessary, redundant or not generally required in commercial transactions of this type. Additionally, we solicited your comments as to whether the requirements ask sufficient information to permit us to screen out inexperienced and inappropriate applicants and operators. Finally, we solicited comments on what specific changes, if any, you thought should be made to the Title XI regulations.

As a general matter, you stated that too much information is required in section 298.12 regarding the applicant's and operator's qualifications, particularly for established companies and exceeds that ordinarily requested in commercial transactions. One commenter stated that this section is largely formatted and phrased for U.S. based firms and should be rewritten to focus more broadly on the global community. The commenter suggested that national shipping or shipbuilder's associations could endorse an applicant's qualifications. Another commenter stated that listing all vessels owned and operated is unnecessary as a brief statement for each type of equipment with the number and average vessel age should suffice. The commenter also maintained that naming each officer, director, and their principal business activity for the past five years is unnecessary as operational proficiency of company personnel is addressed under the economic soundness section of the regulations.

Regarding the applicant and operator qualification requirements, one commenter stated that tough requirements should be maintained to ensure that the Title XI project fosters long term Title XI goals. Another commenter suggested that the shipowner's operating ability should be addressed only insofar as it bears on market-share viability and preserving the ship asset value.

Financial Requirements

We asked whether the financial information requested in section 298.13 is unnecessary or redundant and if it is sufficient to permit us to make valid

determinations. We also solicited comments on whether the financial requirements pose impractical or excessive tests and on suggested changes to the regulations.

With regard to the financial information requirements, comments were received concerning the requirement that, in the case of an eligible export vessel application, the applicant may provide financial information in the normal accounting system you are using provided that it is an accepted accounting system in your country of origin and provided that you submit a reconciliation of the major differences between the accounting system employed and U.S. Generally Accepted Accounting Principles (GAAP). Several commenters believe that the requirement for reconciliation of financial statements with GAAP is time-consuming, burdensome, and unnecessary. One commenter stated that we should either have the ability to analyze the financial statements as prepared by the applicant or should retain an accounting firm to handle the reconciliation to GAAP. Other commenters stated that we should accept statements prepared in accordance with international accounting standards.

We received several comments on the question of whether the financial requirements in section 298.13 pose impractical or excessive tests. One commenter stated that any significant changes to the financial requirements to make them more lenient would be unfair to previous applicants who were required to meet, and would still be subject to, the existing requirements. Another commenter thought that the existing qualifying requirements were too rigid and not current with commercial practice which focuses on coverage ratios. A third commenter stated that MARAD needs to assess an applicant's market share or its balance sheet but not both.

With respect to specific requirements, one commenter believes that the requirement for the Owner as Operator to maintain an equity level of 90 percent of the equity as shown on its most recent audited financial statement should be eliminated because this requirement is excessively restrictive to the Owner; the requirement of a 2:1 debt to equity ratio as well as the working capital requirements should be sufficient to ensure debt repayment. Another commenter believes that we should be more flexible with regard to the requirement for subordination of debt considered as equity.

We received some comments concerning the need for a waiver for the

inclusion of foreign material in vessel actual cost. One commenter recommended that all exclusions of foreign components and services in Title XI financing be waived so that U.S. shipyards have the greatest opportunity to attract new foreign customers. The commenter stated that many foreign shipowners specify outfitting, propulsion, bridge electronics or accommodation items that are original equipment manufactured in foreign countries in large part because the U.S. manufacturing industry has stopped producing the items or does not meet global standards. The commenter stated that "principles that apply to automobiles or computers may be considered so that the U.S. steel, assembly labor and overhead costs are the principal factors required for Title XI guarantees. When the U.S. share of the global shipbuilding market approaches five percent, then the existing restrictions could be reevaluated and reapplied." Another commenter believes that the exclusion of foreign content from actual cost is seen as arrogant in the international marketplace and adds difficulty to selling for export. The commenter states that a foreign buyer often has a distinct main engine preference because of his existing fleet and usually wants equipment he can resupply or repair locally. The commenter recommended that we scrap the foreign content waiver or revise it to conform to the Export-Import Bank's 15 percent foreign content allowance with no waiver and a higher percentage with a waiver.

Economic Soundness

We requested comments concerning the information requirements for an economic soundness determination under Section 298.14. We asked if the information required is unnecessary or redundant and if it is sufficient to permit us to make valid determinations. We also requested comments as to whether the requirements pose impracticable or excessive tests and what specific changes should be made.

Regarding the information required under section 298.14, one commenter stated that it is excessive. Another commenter said that the economic soundness criteria should be streamlined. A third commenter recommended consideration of additional economic factors such as double hull or safety or environmental requirements.

As to the criteria on which an economic soundness finding is based, several commenters suggested we should look not only at the cash flow generated by the project to determine if

the borrower will have the ability to repay the Title XI debt but also at the overall financial strength of the applicant. Two commenters said that the economic soundness should be judged not only on the applicant's ability to ultimately repay the obligations but also upon the ability to successfully operate the project as a stand-alone project. Another respondent said that the applicant's demonstrated ability to repay its debts should be our primary criteria for approval and that we should place a greater emphasis on the applicant's overall credit and operational quality as opposed to the economic soundness of a project. One commenter said that the economic soundness criteria should consider the overall corporate entity rather than the specific project. Two respondents stated that the criteria should be tailored to the specific purpose of the application (vessel financing vs. shipyard modernization).

MAO 520-1, Amendment 2

We solicited as to whether the provisions of MAO 520-1, Amendment 2, should be included in the regulations. The administrative guidelines in the MAO were intended to clarify our existing policies and procedures with respect to economic considerations employed in evaluating Title XI applications.

Four commenters stated that the MAO provisions should be incorporated into the Title XI regulations to provide clarification and additional information as our requirements. Two of these commenters believe that the inclusion of the MAO will properly place emphasis on operating cash flow, with one commenter adding that historical operating experience will be emphasized as well. Another commenter stated that any changes in core policy should be determined before determining what policy belongs in the regulations.

Miscellaneous Issues

We received several comments on miscellaneous other requirements of the Title XI program. Two commenters opposed the lump sum prepayment feature of the guarantee fee, stating respectively that it is a disincentive to attracting business to U.S. shipyards and that it amounts to a prepayment penalty. One commenter stated that the performance bonding requirement and progress payment feature of construction period financing makes construction period financing prohibitive in terms of cost. Another commenter urged that we more proactively assist U.S. shipbuilders in

obtaining business by expediting the Title XI review process and approving more risky projects. Finally, a commenter suggested that we consider disclosing to all applicants the range of fees charged by bond underwriters and the customary spread over the Treasury curve.

We advised in the ANPRM that, to seek further clarification of the written issues raised in response to the ANPRM, we may subsequently hold a public meeting if we believe that such a meeting would be helpful. Following a review of the detailed and specific comments received in response to the ANPRM, we have determined that such a public meeting is not necessary.

Whenever reference is made in these regulations to forms prescribed by us 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

The discussion that follows notes where changes are proposed to be made to the Title XI regulations and the rationale therefor, and, where relevant, states why particular recommendations/suggestions have not been adopted.

We are proposing to amend our Obligation Guarantees regulations at 46 CFR Part 298. The proposed amendments are summarized as follows:

Section 298.2 Definitions

Section 298.2 is intended to provide convenient reference to the meaning of significant terminology used in Part 298. The definitions are based principally on statutory derivation and reflect the letter designation of the paragraphs respectively, contained in the final rule published on May 9, 1996, as amended on September 8, 1997, or as proposed to be redesignated in this rulemaking. As proposed:

Paragraph (c), "Advanced Shipbuilding Technology" is changed in order to include other modernization elements which are not previously listed in the definition and which contribute to a shipyard's efficiency or productivity.

Paragraph (n), "Guarantee Fee" is changed to delete the references to an annual fee and continuing Guarantees. The regulations now require that the guarantee fee for the entire term of the financing be paid in advance at the initial funding of the transaction, with no refund in the event the Obligations are retired early.

Paragraph (o), "Indenture Trustee" is changed to increase the amount of combined capital and surplus an indenture trustee must have to at least \$25,000,000 as the current amount of \$3,000,000 is not adequate.

Section 298.3 Applications

Paragraph (b) is amended to reflect that only two sets of documentation must be submitted to the Secretary for review.

Paragraph (d) is amended to delete the provision that, if an applicant does not claim a Freedom of Information Act (FOIA) exemption at the time an application or amendment is filed, MARAD will not oppose any subsequent request for disclosure pursuant to FOIA. Deletion of this provision reflects actual agency practice, which is to allow a request for exemption under FOIA at any time.

Paragraph (e) is amended to clarify that priority will be given for processing applications for vessels capable of serving as United States naval and military auxiliary in time of war or national emergency. In addition, the priority given to applications from general shipyard facilities that have engaged in naval vessel construction and that have pilot projects for shipyard modernization and vessel construction is being eliminated due to the fact that all the funds previously appropriated to the Department of Defense and transferred to the Department of Transportation for the Title XI program have been expended.

Section 298.11 Vessel Requirements

Paragraph (a) of this section is being amended to clarify that the vessel must be constructed in the United States.

Paragraph (b) of this section is revised to provide that the Secretary may contact the shipyard to request that it submit additional technical data, backup cost details, and other evidence if the Secretary has insufficient data.

Paragraph (c) of this section is being amended to delete the last sentence which is redundant with the last sentence of paragraph (a) of this section and to conform the regulations to our present practices which permit a U.S.-flag constructed vessel to meet the highest classification standard of a classification society other than the

American Bureau of Shipping so long as the society meets the inspection standards of the United States Coast Guard.

Section 298.12 Applicant and Operator's Qualifications

MARAD concurs that too much information is requested in this section particularly with respect to the applicant's existing vessels, and certain background data, and the section has been modified to reduce the information required. With respect to the suggestion that the endorsement of industry associations be utilized by MARAD, the regulations do not preclude MARAD's consideration of such an endorsement when evaluating the applicant's and/or operator's qualifications.

A paragraph is being added to this section to reflect the MAO 520-1 provision requiring that an operator's historical performance record be considered in evaluating operating ability.

Section 298.13 Financial Requirements

MARAD is not proposing an amendment to paragraph (a)(2) of this section to eliminate the requirement for a waiver in order for foreign items to be included in Actual Cost. MARAD's interest is in promoting a shipbuilding industry including both shipyards and suppliers. Therefore, it would be inappropriate to permit wholesale use of foreign items in Title XI financings when comparable items are available from U.S. suppliers. MARAD believes such a practice would have an adverse impact on the U.S. shipbuilding industry as a whole. However, requests for waivers to include foreign items have not been unreasonably withheld by MARAD, so that the no-foreign-content requirement without a waiver has not had a negative impact on the shipyards or shipowners. Therefore, MARAD will continue to review inclusion of foreign items on a case-by-case basis.

MARAD believes that the current inclusion in paragraph (a)(2) of the illustration of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is unnecessary. Therefore, MARAD is deleting the illustration from the paragraph and the one sentence which refers to the illustration in the paragraph of the regulation.

The reference to guarantee fees in paragraph (a)(2)(iv) is being deleted as guarantee fees are eligible for inclusion in Actual Cost.

MARAD is proposing to amend paragraph (a)(4) to permit, in the case of Eligible Export Vessels, the acceptance

of financial statements that are not reconciled to U.S. GAAP if a satisfactory justification is provided concerning the inability to reconcile. MARAD proposes to further amend the paragraph to eliminate the requirement for a debt amortization schedule and sources and uses statement, and to incorporate current financial definitions.

MARAD does not believe a change in financial requirements at Closing as set forth in paragraph (d) is necessary because applications are analyzed on a case-by-case basis and, where MARAD deems the existing qualifying financial requirements to be inappropriate, Section 298.13(h) authorizes the waiver of or modifications to the financial requirements if there is adequate security for the Guarantees. This authority allows MARAD to consider coverage ratios as appropriate.

MARAD believes that the 90 percent equity test in paragraph (d)(1)(ii)(B) of this section is useful and is not proposing an amendment to this paragraph. While the working capital and leverage tests are essential in analyzing the financial condition of the company, they do not necessarily identify reductions in net worth which are often an important element in determining a company's financial condition. Moreover, as the net worth amount is established only once, at the initial funding of the transaction, companies that are meeting their projected revenues and expenses should be able to continue to meet this requirement. Therefore, elimination of the 90 percent net worth requirement is not warranted.

MARAD is proposing elimination of the special financial requirements set forth in paragraph (e) due to the restrictive nature of the covenants that accompany these requirements and the fact that companies have not elected this alternative in the recent past. Therefore, in order to make clear that there is only one set of financial requirements, the word "primary" is being deleted from paragraph (d) and, later in the regulation, paragraphs 298.35(b), 298.35(e), and 298.35(e)(5).

MARAD is not proposing to change paragraph (g) of this section which allows the applicant to fund the 12½ percent equity requirement with subordinated debt. If MARAD allows greater flexibility with regard to the subordination requirements, the repayment of the Title XI debt portion of the transaction could be jeopardized.

Section 298.14 Economic Soundness

MARAD recognizes that much of the information requested under section 298.14 (a)(2)(iii) and (iv) was developed

for applications from companies involved in a liner service. MARAD has taken steps to simplify the regulations by reducing or eliminating requested information. Specifically, sections 46 CFR 298.14(a)(2)(iii), (iv), and (v), requesting information on expenses, have been deleted and are replaced by a new paragraph (iii) which will encompass all three parts. The new paragraph differentiates between applications for vessel financing and shipyard modernization projects.

MARAD does not propose to add a requirement to the economic soundness section concerning the applicant's financial strength because the existing requirements of Section 298.13, Financial Requirements, already require MARAD to make certain determinations concerning the financial position of the ultimate transaction credit.

In order to clarify the criteria used for economic soundness findings, MARAD proposes to include in this section the provisions of MAO 520-1 relating to economic soundness. Specifically, section (b) is being amended to include requirements concerning the ability to service debt at the time of delivery which will be based on market conditions at that time, and that primary consideration shall be given to operating cash flow. To enable MARAD to analyze cash flow, the applicant is requested to provide a five-year forecast of operating cash flow.

Section 298.15 Investigation Fee

Paragraph (b) of this section is being revised by correcting the reference to the filing fee to \$5,000.

Section 298.16 Substitution of Participants

Paragraph (a) of this section is being amended to delete the last sentence which references an annual guarantee fee.

Section 298.18 Financing Advanced or Modern Shipbuilding Technology

Paragraph (a) of this section is being amended to eliminate from the initial criteria for Guarantee approval consideration of whether Guarantees will aid in the transition of a shipyard from naval to commercial shipbuilding. MARAD believes that giving weight to this factor could discourage otherwise desirable modernization projects from shipyards that have not engaged in naval vessel construction.

Section 298.19 Financing Eligible Export Vessels

Paragraph (b)(3) of this section is being modified by deleting the reference to the Export-Import Bank of the United

States since the Export-Import Bank's risk assessments are reflected in the Inter-Agency Country Risk Assessment System.

Section 298.20 Term, Redemptions and Interest Rate

Paragraph (a)(2) of this section is being amended to clarify that for multiple vessels the maturity date of the Guarantees may be less than but in no event more than twenty-five years from the date of delivery from the shipyard of the last of multiple vessels but that the amount of the Guarantees shall relate to the depreciated actual cost of the multiple vessels as of the date of the Closing.

Section 298.21 Limits

This section is being amended to specify that no foreign, federal, state or local taxes, user fees, or other governmental charges shall be included in actual cost.

Section 298.22 Amortization of Obligations

The parenthetical phrase "straight line basis" is to be replaced with the phrase "level principal" to reflect current GAAP terminology.

Section 298.23 Refinancing

This section has been amended to clarify MARAD's position regarding the refinancing of debt on Advanced or Modern Shipbuilding Technology. Refinancing of non-Title XI debt on Advanced or Modern Shipbuilding Technology is not permitted.

Section 298.24 Financing Facilities and Equipment Related to Marine Operations

This section is deleted in its entirety as there is no current authority for MARAD to finance facilities and equipment related to marine operations.

Section 298.30 Nature and Content of Obligations

This section is amended to clarify that an indenture trustee is not required under MARAD's documents.

Section 298.31 Mortgage

This section has been amended to correct that a mortgage shall be filed with the United States Coast Guard's National Vessel Documentation Center.

Section 298.32 Required Provisions in Documentation

Section 298.32 (a)(1) remains unchanged. Under the current Title XI regulations, the Secretary may waive or modify the performance bond requirement, upon determining that the

shipyard or manufacturer of Advanced or Modern Shipbuilding Technology has sufficient financial resources and operational capacity to complete the project. In instances where sufficient resources cannot be demonstrated, MARAD's interests as a guarantor must be fully protected. Furthermore, inasmuch as Section 298.21 of this part provides for performance bond premiums to be included as an item of actual cost and therefore financeable up to a maximum of 87½ percent, MARAD finds that the bonding requirement does not constitute an inordinate out of pocket expense.

MARAD proposes to modify Section 298.32 to delete the word "annual" in paragraph (b)(4) in reference to citizenship filing requirements. The citizenship requirements for the Title XI program were modified by a final rule which was published in the **Federal Register** and became effective on September 8, 1997, which no longer required the filing of annual citizenship affidavits for Title XI obligors.

Section 298.33 Escrow Fund

This section has been modified to conform to the documentation in the general provisions of the new security agreement.

Section 298.34 Construction Fund

This section has been modified to clarify the requirements regarding the construction fund and to eliminate the current redundancies in paragraphs (b) and (c) of this section regarding withdrawals and deposits, the procedure for which is described in Section 298.33 of this Part. MARAD requires that the items and amounts for which reimbursement is requested have been satisfactorily completed. To require otherwise, i.e., to issue interim payments prior to completion of work, would increase MARAD's overall project risk. MARAD must insure that adequate security exists for guarantees entered into during construction.

In response to requests by commenters to terminate the construction fund, legislation has been submitted to broaden our authority to hold bond proceeds in the escrow fund and to eliminate the need for a construction fund—see section 3 of H.R. 1557 introduced on April 26, 1999.

Section 298.35 Reserve Fund and Financial Agreement

This section has been modified in its entirety. Paragraph (c) of this section regarding financial covenants for companies meeting the special financial requirements has been deleted in its entirety pursuant to the discussion

above in section 298.13(e). The references to a Title XI company qualifying as either a section 12 or section 13 company are deleted and two sets of covenants for all Title XI companies are provided. One set of covenants will be imposed regardless of the company's financial condition (primary covenants) and the second set of covenants will only apply if the company does not meet the specific financial conditions (supplemental covenants).

Section 298.38 Partnership Agreements

MARAD proposes to modify this section to cover limited liability companies as well as partnership agreements.

Section 298.41 Remedies After Default

As all guarantee fees are to be paid up-front, it is proposed that paragraph (c)(1) of this section be deleted.

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 a significant regulatory action. The rule is not likely to result in an annual effect on the economy of \$100 million or more. Also, it has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures. 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 export markets and to modernize and improve general shipyard facilities in the United States.

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 the efficient administration of the Title XI program.

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 because 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.

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, the Maritime Administration proposes to 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.

2. Section 298.2 is amended as follows:

a. By adding at the end of paragraph (2) of the definition of "Advanced Shipbuilding Technology" a semi-colon and the word, "and" and a new paragraph (3) to read as set forth below.

b. By revising the definition of *Guarantee Fee*, to read as set forth below.

c. By amending the definition of *Indenture Trustee*, by removing the number "\$3,000,000" and adding in its place the number "\$25,000,000".

d. By revising paragraph (2)(iv) of the definition of *Preferred Mortgage*, to read as set forth below.

§ 298.2 Definitions.

* * * * *

Advanced shipbuilding technology

* * *

(3) Other elements contributing to a shipyard's efficiency or productivity assisting it to more effectively operate in the shipbuilding industry.

* * * * *

Guarantee fee means the fee payable to the Secretary in consideration for the issuance of the Guarantee.

* * * * *

Preferred Mortgage * * *

(2) * * *

(iv) Is otherwise in compliance with the provisions of Chapter 313 of Title 46 of the U.S. Code.

* * * * *

§ 298.3 [Amended]

3. Section 298.3 is amended as follows:

a. By removing the words "exhibit and schedule" in the fourth sentence of paragraph (a), and adding in their place the words "exhibits, schedules and attachments".

b. By removing the number "four" in the first sentence of paragraph (b)(2) and adding in its place the number "two".

c. By removing the third sentence in paragraph (d).

d. By amending the first sentence of paragraph (e) by adding before the word "naval", the words "United States" and removing the third sentence of this paragraph.

§ 298.11 [Amended]

4. Section 298.11 is amended as follows:

a. By adding in the first sentence of paragraph (a), between the words "Guarantee" and "is", the phrase "must be constructed in the United States. It shall be" and removing the word "is".

b. By adding in the second sentence of paragraph (b), between the words "Secretary" and "may", the phrase "may directly contact the shipyard and".

c. By revising the first sentence of paragraph (c), to read as follows: "The Vessel shall be constructed, maintained, and operated so as to meet the highest classification, certification, rating, and inspection standards for Vessels of the same age and type imposed by the American Bureau of Shipping (ABS) or another classification society that also meets the inspection standards of the United States Coast Guard with respect to the documentation of U.S.-flag vessels, or in the case of an Eligible Export Vessel, such standards as may be imposed by a member of the International Association of Classification Societies (IACS) classification societies to be ISO 9000 series registered or Quality Systems Certificate Scheme qualified IACS

members who have been recognized by the United States Coast Guard as meeting acceptable standards with such recognition including, at a minimum, that the society meets the requirements of IMO Resolution A.739(18) with appropriate certificates required at delivery, so long as the home country of the IACS member accords equal reciprocity, as determined by the Secretary, to United States classification societies."

d. By removing the last sentence of paragraph (c).

5. Section 298.12 is revised to read as follows:

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel or Advanced or Modern Shipbuilding Technology, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel(s) or Advanced and Modern Shipbuilding Technology which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant or any bareboat charterer is an incorporated company, it shall submit the following identifying information:

(i) Name of company, place and date of incorporation, and tax identification number, or if appropriate, international identification number of the company;

(ii) Address of principal place of business; and

(iii) Certified copy of certificate of incorporation and bylaws.

(2) *Partnerships, limited partnerships, limited liability companies, joint ventures, associations, unincorporated companies.* If the applicant or any bareboat charterer is a partnership, limited partnership, limited liability company, joint venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of entity, place and date of formation, and tax identification

number, or if appropriate, international identification number of entity;

(ii) Address of principal place of business; and

(iii) Certified copy of certificate of formation, partnership agreement or other documentation forming the entity.

(3) *Other entities.* For any entity that does not fit the descriptions in paragraphs (b)(1) and (b)(2) of this section, MARAD will specify the information that the entity shall submit regarding its identity and ownership.

(4) The Applicant and any bareboat charterer shall provide a brief statement of the general effect of each voting agreement, voting trust or other arrangement whereby the voting rights of any interest in the Applicant or bareboat charterer are controlled or exercised by any person who is not the holder of legal title to such interest.

(5) The Applicant and any bareboat charterer shall provide the following information regarding the entity's officers, directors, partners or members:

(i) Name and address;

(ii) Office or position; and

(iii) Nationality and interest owned (e.g. shares owned and whether voting or non-voting).

(c) *Applicants: Business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past five years of applicant;

(2) A list of all business entities that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with the applicant. Also indicate the nature of the business transacted by each entity and the relationship between these entities. This information may be presented in the form of a chart. Indicate whether any of the affiliated entities have previously applied for or received Title XI assistance;

(3) A statement indicating whether the applicant, any predecessor or affiliated entity has been in bankruptcy or reorganization under any insolvency or reorganization proceeding and if so, give details; and

(4) A statement indicating whether the applicant or any predecessor or affiliated entity is now, or during the past five years has been, in default under any agreement or undertaking with others or with the United States of America, or is currently delinquent on any Federal debt, and if so, provide explanatory information.

(5) A list of the applicant's banking references:

(i) Principal bank(s) or lending institutions(s)—name and address

(ii) Nature of relationship

(iii) Individual references. Name(s), telephone and fax number of banking officer(s).

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past five years of each officer, director, partner or member of the applicant listed in paragraph (b)(5) of this section and if these persons (have) act(ed) as executive officers in other entities, indicate the names of these entities and whether such entities have defaulted on any U.S. Government debt, and

(2) The name and address of each organization engaged in business activities which have a direct financial relationship to those carried on or to be carried on by the applicant with which any person listed in paragraph (d)(2) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the principal assets employed in the business of the applicant, other than vessels. Describe financial encumbrances, if any;

(2) Provide a general description of the vessels currently owned and/or operated by the applicant or its affiliates and a description of the areas of operation; and,

(3) In the case of an Eligible Shipyard which is an applicant for a guarantee for Advanced or Modern Shipbuilding Technology, a brief description of the general character (i.e., number of building ways, launch method, drydocks and size) and location (i.e., water depth, length of riverfront) of the principal properties of the applicant employed in its business. Describe financial encumbrances, if any.

(f) *Operating ability.* (1) In the case of an applicant for a vessel financing Guarantee, the applicant shall submit a detailed statement showing its ability to successfully operate the Vessel(s). If a company other than the applicant will operate the Vessel(s), then this information shall be provided for the operating company together with a copy of the operating agreement.

(2) The applicant shall submit a copy of any management agreement(s) between the applicant and any related or unrelated organization(s) which will affect the management of the Title XI vessel or shipyard.

(3) In the case of an Eligible Shipyard which is an applicant for a guarantee for Advanced or Modern Shipbuilding Technology, a detailed statement shall be submitted showing the ability of the

applicant to successfully operate the shipbuilding technology, including name, education, background of, and licenses held by, all senior supervisory personnel concerned with the physical operation of the shipbuilding technology.

(4) Where an operator has an historical performance record, this record shall be considered in evaluating the operating ability of the applicant. For newly formed entities, the performance of affiliates and/or companies associated with the principals (where the principals have a significant degree of control) shall be evaluated in determining the operating ability of the applicant. However, unless the affiliates or principals have an obligation with respect to the debt, historical performance shall not be considered in evaluating the creditworthiness of the application.

6. Section 298.13 is amended as follows:

a. By removing the sixth sentence in paragraph (a)(2)(i) and the illustration entitled "Illustration-Cost of Foreign Components Satisfying Equity Requirements." in their entirety.

b. By removing the words, "guarantee fees," in paragraph (a)(2)(iv).

c. By removing all references to the word, "primary", in paragraph (d).

d. By revising paragraph (a)(4) to read as set forth below.

e. By revising paragraphs (b)(2) through (b)(4), to read as set forth below.

f. By removing existing paragraph (e), and redesignating paragraphs (f), (g) and (h) as paragraphs (e), (f) and (g).

g. By removing "paragraphs (d) and (e)" in newly designated paragraph (e) and adding "paragraph (d)" in its place.

h. By removing "paragraphs (a)(3), (d) and (e)" in newly designated paragraph (f) and adding "paragraphs (a)(3) and (d)" in its place.

§ 298.13 Financial requirements.

* * * * *

(a) * * *

(4) Financial information. The applicant shall provide the following financial statements, footnoted to explain the basis for arriving at the figures:

(i) The most recent financial statement of the applicant, its parent and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If the applicant is a new entity and is to be funded from or guaranteed by external source(s), it shall provide the above mentioned statements for such source(s) (for eligible export vessels, the applicant's financial statements shall be

in accordance with U.S. generally accepted accounting principles (GAAP) if formed in the U.S. or reconciled to GAAP if formed in a foreign country unless a satisfactory justification is provided explaining the inability to reconcile);

(ii) A pro forma balance sheet of the applicant and guarantor (if applicable) as of the estimated date of execution of the Guarantees reflecting the assumption of the Title XI Obligations, including the current liability (for eligible export vessels, the applicant's financial statements shall be in accordance with GAAP if formed in the U.S. or reconciled to GAAP if formed in a foreign country unless a satisfactory justification is provided explaining the inability to reconcile); and,

(iii) Pro forma balance sheets of the applicant and guarantor (if applicable) for five years subsequent to the Closing.

(b) * * *

(2) *Working Capital* shall mean the excess of current assets over current liabilities, both determined in accordance with GAAP and adjusted as follows:

(i) In determining current assets there shall be deducted:

(A) Any securities, obligations or evidence of indebtedness of a Related Party or of any stockholder, director, officer or employee (or any member of his family) of the Company or of such Related Party, except advances to agents required for the normal current operation of the Company's vessels and current receivables arising out of the ordinary course of business and not outstanding for more than 60 days; and

(B) An amount equal to any excess of untermiated voyage revenue over untermiated voyage expenses.

(ii) In determining current liabilities there shall be deducted any excess of untermiated voyage expenses over untermiated voyage revenue.

(iii) In determining current liabilities there shall be added one half of all annual charter hire and other lease obligations (having a term of more than six months) due and payable within the succeeding fiscal year, other than charter hire and such other lease obligations already included and reported as a current liability on the Company's balance sheet.

(3) *Equity (net worth)* means, as of any date, the total of paid-in capital stock, paid-in surplus, earned surplus and appropriated surplus, and all other amounts that would be included in net worth in accordance with GAAP, but exclusive of:

(i) Any receivables from any stockholder, director, Officer or employee of the Company or from any

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* means, as of any date, the total notes, bonds, debentures, equipment obligations and other evidence of indebtedness that would be included in long term debt in accordance with GAAP. There shall also be included any guarantee or other liability for the debt of any other Person not otherwise included on the balance sheet.

7. Section 298.14 is amended as follows:

a. By adding after the first sentence in paragraph (a) the following two sentences: "The economic soundness and the applicant's ability to repay the Obligations shall be the primary basis for the Secretary's approval of a Letter Commitment. The collateral value of the asset for which Obligations are to be issued shall be only a secondary consideration in determining the applicant's ability to repay the Obligations."

b. By amending paragraph (a)(2)(ii) to add the following sentence after the first sentence and before the second sentence: "Vessel revenue projections shall include shipping/hire rates for current market conditions or market conditions expected to exist at the time of vessel delivery, taking into account seasonal or temporary fluctuations."

c. By revising paragraph (a)(2)(iii) to read as set forth below.

d. By revising paragraph (a)(2)(iv) to read as set forth below.

e. By removing paragraph (a)(2)(v).

f. By adding to paragraph (b)(1)(i) the words "or for" after the word "by".

g. By adding new paragraphs (b)(2) and (b)(3) to read as set forth below.

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* * * *

(2) *Project Feasibility.* * * *

(iii) *Expenses.* (A) For applications for vessel financing, a statement of estimated vessel expenses including the following (where applicable):

(1) A detailed breakdown of estimated vessel daily operating expenses, including wages, insurance, maintenance and repair, fuel, etc. and a detailed projection of anticipated costs associated with long term maintenance of the vessel(s) such as drydocking and major mid-life overhauls, with a time frame for these events over the period of the Guarantee;

(2) If applicable, a detailed breakdown of those expenses associated with the vessel(s) voyage, such as port fees,

agency fees and canal fees that are assessed as a result of the voyage; and

(3) A detailed breakdown of annual capital costs and administrative expenses, segregated as to:

- (i) Interest on debt;
- (ii) Principal amortization; and
- (iii) Salaries and other administrative expenses (indicate basis of allocation).

(B) For applications for Advanced or Modern Shipbuilding Technology, a statement of estimated expenses related to the Advanced or Modern Shipbuilding Technology, including the following (where applicable):

(1) A detailed breakdown of estimated daily operating expenses for the shipyard, such as wages, including staffing, and aggregated to a straight-line, overtime and fringe benefits; utility costs; costs of stores, supplies, and equipment; maintenance and repair cost; insurance costs; and, other expenses (indicate items included); and

(2) A detailed breakdown of annual capital costs and administrative expenses, segregated as to: interest on debt; principal amortization; and salaries and other administrative expenses (indicate basis of allocation).

(iv) *Forecast of Operations.* Utilizing the revenues and expenses provided in paragraphs (a)(2)(ii) and (iii) of this section, the applicant shall provide a forecast of operating cash flow, as defined in paragraph (b)(3) of this section, for the Title XI project for the first full year of operations and the next four years. The cash flow statements should be footnoted to explain the assumptions used.

(b) * * *

(2) In cases where market conditions are inadequate for the applicant to service the Obligation indebtedness at the time of vessel delivery, or shipyard modernization completion, applications may be approved only if there are sufficient outside sources of cash flow to service such indebtedness.

(3) With respect to the asset for which Obligations are to be issued, the operating cash flow to Obligation debt service ratio over the term of the Guarantee shall be in excess of 1:1. Operating cash flow is defined as revenues less operating and capital expenses including taxes paid but exclusive of interest, accrued taxes, depreciation and amortization for the Title XI asset. Debt service is defined as interest plus principal.

§ 298.15 [Amended]

8. Section 298.15 is amended by removing the figure "\$1,000" in the second sentence of paragraph (b), and adding in its place the figure "\$5,000".

§ 298.16 [Amended]

9. Section 298.16 is amended by removing the last sentence of paragraph (a).

§ 298.18 [Amended]

10. Section 298.18 is amended by removing the words, "will aid in the transition from naval shipbuilding to commercial ship construction for domestic and export sales", from the second sentence of paragraph (a).

§ 298.19 [Amended]

11. Section 298.19 is amended by removing the words "by the Export-Import Bank of the United States and country risk analyses" from the last sentence of paragraph (b)(3).

§ 298.20 [Amended]

12. Section 298.20, paragraph (a)(2) is amended by adding after the word "Guarantees" and before the semi-colon, the words "but that the amount of the Guarantees shall relate to the amount of the depreciated actual cost of the multiple Vessels as of the Closing".

13. Section 298.21 is amended by revising paragraph (c)(7) to read as follows:

§ 298.21 Limits.

* * * * *

(c) * * *

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

* * * * *

§ 298.22 [Amended]

14. Section 298.22 is amended by removing from the second sentence of the introductory text the parenthetical phrase "straight line basis" and adding in its place the phrase "level principal".

15. Section 298.23 is revised to read as follows:

§ 298.23 Refinancing.

The Secretary may approve guarantees with respect to Obligations to be secured by one or more Vessels or Advanced or Modern Shipbuilding Technology and issued to refinance: existing Title XI debt only for Advanced or Modern Shipbuilding Technology, and existing debt for Vessels, whether or not covered by Title XI mortgage insurance or Guarantees, so long as the existing debt has been issued for one of the purposes set forth in Sections 1104(a)(1) through (4) of the Act. Section 1104(a)(1) of the Act requires that, if the existing indebtedness was incurred more than one year after the delivery or redelivery of the related Vessel or Advanced or Modern Shipbuilding Technology, the proceeds of such Obligations shall be applied to

the construction, reconstruction or reconditioning of other Vessels or Advanced or Modern Shipbuilding Technology. The Secretary may permit the refinancing of existing debt but only if any security lien on the Vessel(s) or Advanced or Modern Shipbuilding Technology is discharged immediately prior to the placing of any Mortgage thereon by the Secretary. The applicant shall satisfy all the eligibility requirements set forth in subpart B of this part, including economic soundness, as may be necessary.

§ 298.24 [Removed and Reserved]

16. Section 298.24 is removed and reserved.

§ 298.30 [Amended]

17. Section 298.30 is amended by adding in the first sentence after the word "Trustee", before the period, the words "if any".

18. Section 298.31 is amended by revising paragraph (a)(5) to read as follows:

§ 298.31 Mortgage.

(a) * * *

(5) The Mortgage shall be filed with the United States Coast Guard's National Vessel Documentation Center, or with the proper foreign authorities with respect to an Eligible Export Vessel, and with respect to assets of a General Shipyard Facility a Mortgage and security interest shall be filed with the proper authorities within the appropriate state and shall be delivered to the Secretary after being recorded.

* * * * *

§ 298.32 [Amended]

19. Section 298.32, is amended by removing the word "annual" in the first sentence of paragraph (b)(4).

20. Section 298.33 is revised to read as follows:

§ 298.33 Escrow fund.

(a) *Escrow Fund Deposits.* At the time of the sale of the Obligations, the Obligor shall deposit with the Secretary in an escrow fund (the "Escrow Fund") all of the proceeds of that sale unless the Obligor is entitled to withdraw funds under paragraph (b) of this section. The Obligor shall also deposit into the Escrow Fund on the Closing date an amount equal to six months interest at the rate borne by the Obligations, unless the Secretary shall find the existence of adequate consideration or accept other consideration in lieu of the interest deposit.

(b) *Escrow Fund Withdrawals.* (1) The Secretary shall, within a reasonable time after written request from the Obligor,

disburse from the Escrow Fund directly to the Indenture Trustee, any Paying Agent for such Obligations, or any other Person entitled thereto, any amount which the Obligor is obligated to pay, or to the Obligor for any amounts it has paid, on account of the items and amounts or any other items approved by the Secretary, *provided that*, the Secretary is satisfied with the accuracy and completeness of the information contained in the following submissions:

(i) A responsible officer of the Obligor shall deliver an officer's certificate, in form and substance satisfactory to the Secretary, stating that:

(A) There is neither a default under the construction contract nor the Security Agreement;

(B) There have been no occurrences which have or would adversely and materially affect the condition of the Vessel, its hull or any of its component parts, or the Technologies;

(C) The amounts of the request is in accordance with the construction contract including the approved disbursement schedule and each item in these amounts is properly included in the Secretary's approved estimate of Actual Cost;

(D) With respect to the request, once the contractor is paid there will be no liens or encumbrances on the applicable Vessel, its hull or component parts, or the Technologies for which the withdrawal is being requested except for those already approved by the Secretary; and

(E) If the Vessel or Technologies has already been delivered, it is in class and is being maintained in the highest and best condition. The Obligor shall also attach an officer's certificate of the shipyard and other general contractors, in form and substance satisfactory to the Secretary, stating that there are no liens or encumbrances as provided in paragraph (d) of this section and attaching the invoices and receipts supporting each proposed withdrawal to the satisfaction of the Secretary.

(ii) No payment or reimbursement under this Section shall be made:

(A) To any Person until the Construction Fund, if any, has been exhausted,

(B) To any Person until the total amount paid by or for the account of the Obligor from sources other than the proceeds of such Obligations equals at least 12½% of the Actual Cost of the Vessel or Technologies is made;

(C) To the Obligor which would have the effect of reducing the total amounts paid by the Obligor pursuant to paragraph (B) of this section; or

(D) To any Person on account of items, amounts or increases

representing changes and extras or owner furnished equipment, if any, unless such items, amounts and increases shall have been previously approved by the Secretary; *provided, however*, that when the amount guaranteed by the Secretary equals 75% or less of the Actual Cost and the Obligor demonstrates to the Secretary's satisfaction the ability to pay in the remaining 25%, then after the initial 12½% of Actual Cost has been paid by or on behalf of the Obligor for such Vessel or Technologies and up to 37½% of Actual Cost has been withdrawn from the Escrow Fund for such Vessel or Technologies, the Obligor shall pay the remaining Obligor's equity of at least 12½% (as determined by the Secretary) before additional monies can be withdrawn from the Escrow Fund relating to such Vessel or Technologies.

(2) The Secretary shall not be required to make any disbursement except out of the cash available in the Escrow Fund. If any sale or payment on maturity shall result in a loss in the principal amount of the Escrow Fund invested in securities so sold or matured, the requested disbursement from the Escrow Fund shall be reduced by an amount equal to such loss, and the Obligor shall pay to any Person entitled thereto, the balance of the requested disbursement from the Obligor's funds other than the proceeds of such Obligations.

(3) If the Secretary assumes the Obligor's rights and duties under the Obligations or the Secretary pays the Guarantees, all amounts in the Escrow Fund (including realized income which has not yet been paid to the Obligor), shall be paid to the Secretary and be credited against any amounts due or to become due to the Secretary under the Security Agreement and the Secretary's Note.

(4) Other rights and duties with respect to withdrawals from the Escrow Fund shall be set out in the closing documentation in form and substance satisfactory to the Secretary.

(c) *Investment and liquidation of the Escrow Fund.* The Secretary may invest the Escrow Fund in obligations of the United States. The Secretary shall deposit the Escrow Fund into an account with the U.S. Treasury Department and upon agreement with the Obligor, shall deliver to the U.S. Treasury Department instructions for the investment, reinvestment and liquidation of the Escrow Fund. The Secretary shall have no liability to the Obligor for acting in accordance with such instructions.

(d) *Income on the Escrow Fund.* Unless there is an existing default, any

income realized on the Escrow Fund shall be paid to the Obligor upon receipt by the Secretary of such income.

(e) *Termination date of the Escrow Fund.* The Escrow Fund will terminate 90 days after the delivery date of the last Vessel or Technologies covered by the Security Agreement (the "Termination Date"). In the event that on such date the payment of the full amount of the aggregate Actual Cost of all of the Vessels or Technologies has not been made or the amounts with respect to such Actual Cost are not then due and payable, then the Obligor and the Secretary by written agreement shall extend the Termination Date for such period as they shall determine is sufficient to allow for such contingencies. Any amounts remaining in the Escrow Fund on the Termination Date which are in excess of 87½% or 75% of Actual Cost, as the case may be, shall be applied to retire a pro rata portion of the Obligations.

21. Section 298.34 is revised to read as follows:

§ 298.34 Construction fund.

(a) *Circumstances requiring deposits.* When the Security Agreement provides for an Escrow Fund and the Obligor submits a claim to the agency that it has previously paid for items of Actual Cost and is seeking reimbursement at the Closing, the Obligor shall also make Construction Fund deposits as follows. At the time of the sale of the Obligations, the Obligor shall deposit with the Depository cash equal to the principal amount of the Obligations issued at such time less the sum of the aggregate principal amount then required to be in the Escrow Fund and the amount in excess of 12½ or 25 percent of Actual Cost or Depreciated Actual Cost, as applicable (whichever is payable under § 298.33(e)) which the Secretary determines has been paid by or for the account of the Obligor. The Secretary shall have a security interest in and control over the Construction Fund and its proceeds. The balance of the proceeds from the sale of the Obligations, after depositing the amounts required to be deposited in the Escrow Fund and/or the Construction Fund, shall be retained by the Obligor.

(b) *Withdrawals and redeposits.* The Secretary shall, subject to the satisfaction of any applicable conditions contained in the Security Agreement, periodically approve disbursements from the Construction Fund under the same procedures and conditions as from the Escrow Fund in § 298.33(e), except the request for withdrawal will not be subject to § 298.33(e)(1) and (h)(1). The administration of the Construction Fund

shall also be subject to the terms and conditions of § 298.33(i), (j), and (k).

22. Section 298.35 is amended as follows:

a. By revising paragraph (b) to read as set forth below.

b. By removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f).

§ 298.35 Reserve Fund and Financial Agreement.

* * * * *

(b) *Financial covenants.* There will be two sets of covenants. One set is covenants that will be imposed regardless of the Company's financial condition (primary covenants). The other set of covenants will be imposed only if the Company does not meet specific financial conditions (supplemental covenants). The primary and supplemental covenants are to be set forth in the Agreement. Covenants shall be imposed on the Company as follows:

(1) *Primary covenants.* So long as Guarantees are in effect the Company shall not, without the prior written consent of the Secretary:

(i) Except as hereinafter provided, make any distribution of earnings, except as may be permitted by paragraphs (b)(1)(i)(A) or (B) of this section:

(A) From retained earnings in an amount specified in paragraph (b)(1)(i)(C) of this section, *provided that*, in the fiscal year in which the distribution of earnings is made there is no operating loss to the date of such payment of such distribution of earnings, and there was no operating loss in the immediately preceding three fiscal years, or there was a one-year operating loss during the immediately preceding three fiscal years, but such loss was not in the immediately preceding fiscal year, and there was positive net income for the three year period;

(B) If distributions of earnings may not be made under paragraph (b)(1)(i)(A) of this section, a distribution can be made in an amount equal to the total operating net income for the immediately preceding three fiscal year period, *provided that*, there were no two successive years of operating losses, in the fiscal year in which such distribution is made, there is no operating loss to the date of such distribution, and the distribution of earnings made would not exceed an amount specified in paragraph (b)(1)(i)(C) of this section;

(C) Distributions of earnings may be made from earnings of prior years in an aggregate amount equal to 40 percent of

the Company's total net income after tax for each of the prior years, less any distributions that were made in such years; or the aggregate of the Company's total net income after tax for such prior years, *provided that*, after making such distribution, the Company's Long Term Debt does not exceed its Net Worth. In computing net income for purposes of this paragraph (b)(1)(i)(C), extraordinary gains, such as gains from the sale of assets, shall be excluded;

(ii) Enter into any service, management or operating agreement for the operation of the Vessel or the Technologies (excluding husbanding type agreements), or appoint or designate a managing or operating agent for the operation of the Vessel or the Technologies (excluding husbanding agents) unless approved by the Secretary;

(iii) Sell, mortgage, transfer, or demise charter the Vessel or the Technologies or any assets to any non-Related Party except as permitted in paragraph (b)(1)(vii) of this section or sell, mortgage, transfer, or demise charter the Vessel or any assets to a Related Party, unless such transaction is at a fair market value as determined by an independent appraiser acceptable to the Secretary, and a total cash transaction or, in the case of demise charter, the charter payments are cash payments;

(iv) Enter into any agreement for both sale and leaseback of the same assets so sold unless the proceeds from such sale are at least equal to the fair market value of the property sold;

(v) Guarantee, or otherwise become liable for the obligations of any other Person, except in respect of any undertakings as to the fees and expenses of the Indenture Trustee, except endorsement for deposit of checks and other negotiable instruments acquired in the ordinary course of business and except as otherwise permitted in this section;

(vi) Directly or indirectly embark on any new enterprise or business activity not directly connected with the business of shipping or other activity in which the Company is actively engaged;

(vii) Enter into any merger or consolidation or convey, sell, demise charter, or otherwise transfer, or dispose of any portion of its properties or assets (any and all of which acts are encompassed within the words "sale" or "sold" as used herein), *provided that*, the Company shall not be deemed to have sold such properties or assets if the net book value of the aggregate of all the assets sold by the Company during any period of 12 consecutive calendar months does not exceed ten percent of the total net book value of all of the

Company's assets; the Company retains the proceeds of the sale of assets for use in accordance with the Company's regular business activities; and the sale is not otherwise prohibited by paragraph (b)(1)(iii) of this section. Notwithstanding any other provision of this paragraph (b)(1)(vii), the Company may not consummate such sale without the prior written consent of the Secretary if the Company has not, prior to the time of such sale, submitted to the Secretary the financial statement referred to in paragraph (a) of this section, and any attempt to consummate a sale absent such approval shall be null and void *ab initio*.

(2) *Supplemental Covenants which may become applicable.* Unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, the Company's Working Capital is equal to at least one dollar, the Company's Long-Term Debt does not exceed two times the Company's Net Worth and the Company's Net Worth is at least the amount specified by the Secretary, the Company shall not, without Secretary's prior written consent:

(i) Withdraw any capital;

(ii) Redeem any share capital or convert any of the same into debt;

(iii) Pay any dividend (except dividends payable in capital stock of the Company);

(iv) Make any loan or advance (except advances to cover current expenses of the Company), either directly or indirectly, to any stockholder, director, officer, or employee of the Company, or to any other Related Party;

(v) Make any investments in the securities of any Related Party;

(vi) Prepay in whole or in part any indebtedness to any stockholder, director, officer, or employee of the Company, or to any Related Party, which has a stated maturity of more than one year from such date;

(vii) Increase any direct employee compensation (as hereafter defined) paid to any employee in excess of \$100,000 per annum; nor increase any direct employee compensation which is already in excess of \$100,000 per annum; nor initially employ or re-employ any person at a direct employee compensation rate in excess of \$100,000 per annum; provided, however, that beginning with January 20, 1999, the \$100,000 limit may be increased annually based on the previous years' closing Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics. For the purpose of this subsection, the term "direct employee compensation" is the total amount of any wage, salary, bonus

commission, or other form of direct payment to any employee from all companies with guarantees under the Act as reported to the Internal Revenue Service for any fiscal year.

(viii) Acquire any fixed assets other than those required for the maintenance of the Company's existing assets, including normal maintenance and operation of any vessel or vessels owned or chartered by the Company;

(ix) Either enter into or become liable (directly or indirectly) under charters and leases (having a term of six months or more) for the payment of charter hire and rent on all such charters and leases which have annual payments aggregating in excess of an amount specified by the Secretary;

(x) Pay any indebtedness subordinated to the Obligations or to any other Title XI obligations;

(xi) Create, assume, incur, or in any manner become liable for any indebtedness, except current liabilities, or short term loans, incurred or assumed in the ordinary course of business as such business presently exists;

(xii) Make any investment whether by acquisition of stock or indebtedness, or by loan, advance, transfer of property, capital contribution, guarantee of indebtedness or otherwise, in any Person, other than obligations of the United States, bank deposits or investments in securities of the character permitted for monies in the Title XI Reserve Fund; and,

(xiii) Create, assume, permit or suffer to exist or continue any mortgage, lien, charge or encumbrance upon, or pledge of, or subject to the prior payment of any indebtedness, any of its property or assets, real or personal, tangible or intangible, whether now owned or thereafter acquired, or own or acquire, or agree to acquire, title to any property of any kind subject to or upon a chattel mortgage or conditional sales agreement or other title retention agreement, except loans, mortgages and indebtedness guaranteed by the Secretary under Title XI of the Act or related to the construction of a vessel approved for Title XI by the Secretary, and liens incurred in the ordinary course of business as such business presently exists.

§ 298.36 [Amended]

23. Section 298.36 is amended as follows:

a. By removing the word "Annual" from the heading of the section.

b. By amending paragraph (a) by removing the words in the first sentence "Secretary shall charge the Obligor an annual fee (Guarantee Fee)" and adding

in their place the words "the Guarantee Fee rate shall be set".

c. By removing the third and fourth sentences of paragraph (e) and adding one sentence in their place to read as follows: "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 annual rates."

24. Section 298.38 is revised to read as follows:

§ 298.38 Partnership and limited liability company agreements.

Partnership and limited liability company agreements shall be in form and substance satisfactory to the Secretary prior to any Guarantee closing, especially relating, but not limited to, four basic areas:

(a) Duration of the entity,

(b) Adequate partnership or limited liability company funding requirements and mechanisms,

(c) Dissolution of the entity and withdrawal of a general partner or member and

(d) The termination, amendment, or other modification of the entity without the prior written consent of the Secretary.

§ 298.41 [Amended]

25. Section 298.41 is amended by removing paragraph (c)(1) and redesignating existing paragraphs (c)(2) through (c)(6) as new paragraphs (c)(1) through (c)(5).

Dated: August 6, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99-20757 Filed 8-12-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 99-5100]

RIN 2127-AG49

Consumer Information Regulations; Seat Belt Positioners

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for rulemaking; notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend our consumer information

regulations to require seat belt positioners to be labeled as not suitable for children of a certain age, e.g., under 6 years old, or a certain height. Seat belt positioners alter the positioning of vehicle lap and shoulder belts on children. We found in tests of some of the devices that they inadequately restrained a 3-year-old child dummy and reduced the performance of vehicle belts restraining a 6-year-old child dummy. We are also requesting information on the alternative of establishing a minimum performance standard for seat belt positioners. We have issued this document in response to a petition for rulemaking from the American Academy of Pediatrics.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 12, 1999.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call Docket Management at 202-366-9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at 202-366-0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at 202-366-2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Overview

This document grants a petition for rulemaking from the American Academy of Pediatrics (AAP) requesting that NHTSA amend Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems" (49 CFR 571.213) (Standard 213), to include performance requirements applicable to aftermarket, add-on seat belt positioners. These devices alter the positioning of vehicle lap and shoulder belts. The statements on the packaging for some of these devices indicate that they are suitable for improving the fit of the belts on children, which in some cases includes 3- to 6-year-olds, and small adults.

The agency dynamically tested three types of belt positioning devices in 1994, using 3-year-old and 6-year-old dummies. We tested the dummies by restraining them in lap/shoulder belts