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46 CFR Part 298

Putting Customers First in the Title XI
Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

[Docket No. MARAD-98-3468]

RIN 2133-AB32

Putting Customers First in the Title XI Program

AGENCY: Maritime Administration, Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule which amends certain provisions of the existing regulations implementing Title XI of the Merchant Marine Act, 1936, as amended ("Act"). This rule amends existing regulations by simplifying existing administrative practices governing the following areas: the ship financing guarantee process; and standards for evaluation and approval of applications. These changes will make the entire process easier for applicants.

EFFECTIVE DATE: This final rule is effective on August 21, 2000.

FOR FURTHER INFORMATION CONTACT: Linda W. Reaves, Financial Analyst, Office of Ship Financing, Maritime Administration, Room 8122, 400 Seventh Street SW., Washington, DC 20590. Telephone 202 366-1899.

SUPPLEMENTARY INFORMATION: 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. MARAD administers financial assistance under Title XI of the Act in the form of obligation guarantees for all types of vessel construction and shipyard modernization and improvement, except for fishing vessels. 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, ("NOAA"), pursuant to NOAA regulations, which appear at 50 CFR part 253. The Title XI program enables applicants to obtain long-term financing on terms and conditions that may not otherwise be available. Applications for obligation guarantees are made to the Maritime Administration (we, us, or our), acting under authority delegated by the

Secretary, to the Maritime Administrator. Once an applicant submits a Title XI application to us and prior to execution of a guarantee, we must, among other things, make determinations of economic soundness of the project, and the applicant's financial and operating capability.

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."

Plain Language

Executive Order 12866 and the President's memorandum on plain language in government writing of June 1, 1998, require each agency to write all rules in plain language. The Department of Transportation and MARAD are committed to plain language in government writing; therefore, this final rule is written in plain language. This final rule is written in plain language for easier understanding and does not change the substance of the proposed rule published at 64 FR 44152 (August 13, 1999), except as explained in the Discussion of Public Comments and the Rulemaking Text Section. Our goal is to improve the clarity of the regulation.

Advance Notice of Proposed Rulemaking

An advance notice of proposed rulemaking (ANPRM), published on February 17, 1998 (63 FR 7744), solicited comments on ten sets of questions which were grouped into the following categories:

- The standard application Form MA-163, including the requirement for vessel plans and specifications.
- The requirements for information on the applicant's and/or 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.

Our consideration of comments received in response to the categories above concerning the application form and closing documents were published separately in a **Federal Register** Notice dated July 30, 1998 (63 FR 40690). The other comments received from nine commenters on the ANPRM were reviewed and taken into consideration in preparation of a notice of proposed rulemaking discussed below. These comments, in general, dealt with applicant and operator qualifications, financial requirements, and economic soundness.

Notice of Proposed Rulemaking

In response to customer feedback on the ANPRM, we published a notice of proposed rulemaking (NPRM) on August 13, 1999, in the **Federal Register** (64 FR 44152). The NPRM reflected all comments received in response to the ANPRM. MARAD is now issuing this final rule concerning Title XI program administration which reflects consideration of all comments received in response to the NPRM.

Discussion of Public Comments and Rulemaking Text

The discussion that follows summarizes the comments submitted to MARAD by six commenters on the NPRM, states why particular recommendations/suggestions have or have not been adopted and the rationale therefore. Note that where the first letter of one or more words is capitalized, that term is defined in § 298.2 Definitions. The discussion also notes where

proposed changes have been adopted to the Title XI regulations and the rationale therefore, and where relevant, states why particular recommendations/suggestions have not been adopted. Additionally, we have made clarifications throughout 46 CFR Part 298 for easier understanding and to more fully express implications. Such clarifications do not change the substance of the regulations. We have rewritten the entire part 298 in plain language. The following sections have only plain language and no substantive changes from the existing part 298: §§ 298.10 Citizenship; 298.17 Evaluation of applications; 298.26 Lease Payments; 298.27 Advances; 298.37 Examination and audit; 298.39 Exemptions; 298.40 Defaults; and 298.42 Reporting Requirements—financial statements.

We have adopted the following changes to Obligation Guarantees regulations at 46 CFR Part 298. The amendments are summarized as follows:

Section 298.1 Purpose

This section has been modified to advise that “you” and “we” have been used throughout in writing this part in plain language. You and your refer to the applicant for Title XI assistance unless we note or imply otherwise. We, us, and our refer to the Maritime Administration, the Secretary of the Maritime Administration, or the Secretary of Transportation.

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, as follows, are based principally on statutory derivations:

“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.

“Guarantee Fee” is changed to delete the reference to an annual fee and continuing Guarantees. In accordance with the Act, 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.

“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.

“Shipyard Project” is a defined term added to this section which was not previously proposed in the NPRM.

Shipyard Project refers to either Advanced Shipbuilding Technology or Modern Shipbuilding Technology.

Section 298.3 Applications

In § 298.3 of the NPRM, we proposed to modify certain provisions to reflect current practices and procedures and to clarify certain provisions. Additionally, we proposed to delete the priority given to applications from general shipyard facilities formerly in 298.3(e) that have engaged in naval vessel construction and that have pilot projects for shipyard modernization and vessel construction because 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.

One commenter recommended that MARAD not eliminate the provision that gives priority for processing applications from General Shipyard Facilities that have engaged in naval vessel construction. The commenter stated that Congress adopted this element when it enacted the National Shipyard Initiative in recognition of the need to sustain the defense shipbuilding industrial base and the basis for the priority and the procedure are just as valid today as they were when Congress enacted the National Shipbuilding Initiative. Additionally, the commenter stated that the mere fact that all existing funds that the Department of Defense (DOD) transferred to MARAD has been expended does not justify the elimination of the procedure.

MARAD Response: We believe that the President’s plan for the National Shipbuilding Initiative (NSI) is to assist the shipbuilding industry to compete internationally. The NSI was also planned as a transitional program structured to assist in the transition from naval to commercial markets. The NSI regulations provide that in making loan guarantee commitments using funds provided under the NSI, priority shall be given to applications from shipyards that have engaged in naval vessel construction. This provision does not apply to other funds appropriated to the Title XI program. Funds appropriated for the NSI from DOD for this transitional period did not extend beyond 1998, and all such funds have been expended.

Therefore, this priority provision has no application. MARAD’s elimination of priority given to applications from shipyards that have engaged in naval vessel construction is consistent with the plans of the NSI to facilitate the transition period, permitting funds appropriated to expire in five years, and therefore not intended as an ongoing

priority. Because Title XI financing continues to be available for shipyard modernization and export vessels, Title XI assistance to the shipbuilding industry to compete internationally continues. If Congress elects to appropriate additional funds or DOD transfers funds, if required, a priority processing procedure could be reimplemented without an inordinate undertaking by us. Therefore, we have adopted our proposal to eliminate the priority provision to General Shipyard Facilities of this section.

We have adopted, as proposed in the NPRM, under this section a change to reflect that only two sets of documentation must be submitted to us for review.

This section is also changed 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, we 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.

Also, this section is changed 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.

Finally, this section was modified to change the word “financing” to “refinancing” to clarify the provision that states that we will give priority processing for applications that request financing construction of equipment or vessels less than one year old as opposed to the “refinancing” of existing equipment or vessels that are one year old or older.

Section 298.11 Vessel Requirements

Under § 298.11 of the NPRM, we proposed to: (1) Clarify that the vessel must be constructed in the United States; (2) provide that we may contact the shipyard to request that it submit additional technical data, backup cost details, and other evidence if we have insufficient data; (3) delete the last sentence of paragraph (c) which is redundant with the last sentence of paragraph (a) of this section, and (4) conform the regulations to our present practices which permit a U.S.-flag constructed vessel to meet the highest classification standard of the American Bureau of Shipping or 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.

In response to the NPRM, one commenter requested that MARAD not modify the provision of paragraph (c) of § 298.11 to conform to MARAD's present practice which permit a U.S.-flag constructed vessel to meet the highest classification standard of the American Bureau of Shipping or of a classification society other than the American Bureau of Shipping (ABS) so long as the society meets the inspection standards of the United States Coast Guard. The commenter stated that statute and the Title XI regulations require A-1, ABS classification and that these provisions refer to another standard, not another society.

MARAD Response: We disagree with the commenter's interpretation that the existing provision provides that ABS is the only acceptable classification society for U.S.-flag vessels. We had previously made a review of this provision and based on the results of our review interpreted the provision to permit a U.S.-flag constructed vessel to meet the highest classification standard of a classification society other than the ABS so long as the society meets the inspection standards of the United States Coast Guard. Hence, we adopted the practice of permitting other classification societies. We have considered the commenter's position; yet, we affirm our position to permit other classification societies. Because the phrase "or other such standards as may be approved by the United States Coast Guard" does not specify "ABS" standards, we do not believe another society is precluded. Therefore, as proposed in the NPRM, the regulations are being modified to clearly permit a U.S.-flag constructed vessel to meet the highest classification standard of a classification society of ABS or other classification society so long as the society meets the inspection standards of the United States Coast Guard.

Section 298.11 is changed, as proposed in the NPRM, to clarify that the vessel must be constructed in the United States. This section is also revised to provide that we may contact the shipyard to request that it submit additional technical data, backup cost details, and other evidence if we have insufficient data.

Additionally, this section is changed to clarify that all Vessels other than Eligible Export Vessels must be documented under U.S. registry.

Section 298.12 Applicant and Operator's Qualifications

We concur with comments that too much information is requested in this section, particularly with respect to the applicant's existing vessels, and certain

background data. Therefore, this section has been modified to reduce the information required. With respect to the suggestion that we utilize the endorsement of industry associations, the regulations do not preclude our consideration of such an endorsement when evaluating the applicant's and/or operator's qualifications.

A paragraph is 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

In the NPRM, we did not propose any changes to this section, as suggested by a commenter to the ANPRM, to eliminate the requirement for a waiver in order for foreign items to be included in Actual Cost. Our 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. We believe such a practice would have an adverse impact on the U.S. shipbuilding industry as a whole. However, request for waivers to include foreign items have not been unreasonably withheld, so that the no-foreign content requirement without a waiver has not had a negative impact on the shipyards or shipowners. Therefore, we will continue to review inclusion of foreign items on a case-by-case basis. A correction was made in this section to state that in deciding whether to grant a waiver for foreign components and services you must submit a certification that the "domestic" item is not of sufficient quality. The existing regulations inadvertently refer to the "foreign" item.

We believe that the current inclusion of the illustration in this section of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is unnecessary and confusing. Therefore, we are deleting the illustration and the one sentence which refers to the illustration in existing § 298.13(a)(2)(i).

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

We have adopted our proposal to permit, in the case of Eligible Export Vessels, financial statements that are not reconciled to U.S. generally accepted accounting principles (GAAP) if a satisfactory justification is provided concerning the inability to reconcile.

We further adopted the proposed change to eliminate the requirement for a debt amortization schedule and sources and uses statement, and to incorporate current financial definitions.

We have adopted the proposal to eliminate the special financial requirements set forth in this section 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. In order to make clear that there is only one set of financial requirements, the word "primary" before financial requirements is deleted here and later in the regulation under § 298.35.

Section 298.14 Economic Soundness

Under § 298.14 of the NPRM, we proposed to reduce or eliminate information required under this section. We proposed to add a new paragraph which differentiates between applications for vessel financing and shipyard modernization projects.

We proposed to clarify the criteria used for economic soundness finding by including provisions of MAO 520-1 relating to economic soundness.

We also proposed requirements concerning the ability of the project to service its 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.

One commenter stated that the requirement for a detailed breakdown of estimated daily operating expenses needs to be clarified and that it would be inappropriate to require a detailed breakdown of individual salaries and wages as this would be unduly cumbersome and cover proprietary information that would need to be protected from Freedom of Information Act (FOIA) requests. The commenter further stated that all that should be required is an aggregate cost of salary for the shipyard.

MARAD Response: The daily operating expense information requested for a Title XI application is information that is necessary for us to make an assessment of cash flow for the project. The application does not request individual wages and salaries but an item of expense for wages. With respect to disclosure of proprietary information, the applicant can assert a claim of exemption from disclosure under a FOIA request of any proprietary information submitted in connection with the company's application. We do not believe that providing a breakdown of estimated daily operating expenses

would be unduly cumbersome as this type of information is typically prepared for the company's own projections in the initial planning stages of its proposed project. Therefore, we have not eliminated the requirement to provide us with a detailed breakdown of daily operating expenses.

We have adopted the NPRM's proposed changes to § 298.14. We recognize that much of the information requested under § 298.14 was developed for applications from companies involved in a liner service. We have taken steps to simplify the regulations by reducing or eliminating requested information. Specifically, certain paragraphs under this section requesting information on expenses, have been deleted and are replaced by a new paragraph which will encompass all expenses. The new paragraph differentiates between applications for vessel financing and shipyard modernization projects.

We have not added a requirement to the economic soundness section concerning the applicant's financial strength because the existing requirements of § 298.13, Financial Requirements, already require us to make certain determinations concerning the financial position of the ultimate transaction credit.

In order to clarify the criteria used for economic soundness findings, we adopted the NPRM's proposal to include in this section the provisions of MAR 520-1 relating to economic soundness. Specifically, we have modified this section 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 us to analyze cash flow, the applicant is requested to provide a five-year forecast of operating cash flow.

Section 298.15 Investigation Fee

As proposed in the NPRM, this section is revised by correcting the reference to the filing fee to \$5,000.

Section 298.16 Substitution of Participants

As proposed, this section is revised to delete the last sentence which references an annual guarantee fee.

Section 298.18 Financing Shipyard Projects

Under § 298.18, we proposed 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.

One commenter stated that the proposed elimination of the weighted consideration given for transitioning from naval to commercial shipbuilding is totally inconsistent with the goals of the National Shipbuilding Initiative and is inconsistent with the emphasis that DOD and the Navy have placed on major shipbuilders to transition back to commercial shipbuilding.

MARAD Response: We proposed to eliminate one of the factors in considering Guarantees for financing Advanced or Modern Shipbuilding Technology. We disagree with the commenter that our proposal to eliminate the initial criteria to financing Advanced or Modern Shipbuilding Technology projects to aid in transitioning from naval to commercial shipbuilding is inconsistent with the goals of the National Shipbuilding Initiative (NSI). It is our position that promoting the growth and modernization of the U.S. merchant marine and U.S. shipyards in general also assists in sustaining the defense shipbuilding base as the workforce and facilities for defense and commercial shipbuilding are to some extent interchangeable. Therefore, we do not believe that elimination of the initial criteria provision of whether the Guarantee will aid in the transition from naval shipbuilding to commercial ship construction would have an adverse effect on the defense shipbuilding base. Therefore, as proposed, we are eliminating the provision in our regulations requiring applications for Advanced or Modern Shipbuilding Technology projects to aid in transitioning from naval to commercial shipbuilding.

Section 298.19 Financing Eligible Export Vessels

We have made a conforming change not previously proposed under this section to eliminate the entire paragraph referencing use of funds transferred from DOD to the Title XI program. As discussed under § 298.3, funds transferred from DOD to the Title XI program have been expended and therefore regulations regarding such funds have no application.

We have adopted, as proposed, under this section to make a modification by deleting the reference to the Export-Import Bank of the United States to now refer to the Inter-agency Country Risk Assessment System 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

We have adopted, as proposed, under this section, 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

We have adopted, as proposed, under this section, to specify that no foreign, federal, state or local taxes, user fees, or other governmental charges shall be included in Actual Cost. Additionally, we have changed the reference to the Federal Ship Financing Account to the Credit Reform Financing Account to reflect the current account title for deposits held by us with respect to moneys received in connection with construction contracts.

Section 298.22 Amortization of Obligations

We have adopted, as proposed, to replace the parenthetical phrase "straight line basis" with the phrase "level principal" to reflect our current terminology. Additionally, other references to "straight line basis" in this section have been changed to "level principal". Reference to "level debt" amortization in this section have been changed to "level payment" to reflect current finance terminology.

Section 298.23 Refinancing

We have adopted, as proposed, under this section to clarify our 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. Additionally, we have eliminated the reference to "mortgage insurance" or "contracts of insurance" in this section and throughout this part, including § 298.43 as we no longer issue mortgage insurance and all loans financed with mortgage insurance have expired.

Section 298.24 Financing a Vessel More Than a Year After Delivery

We proposed to delete § 298.24 because we believed there is no current authority for us to finance facilities and equipment related to marine operations.

Two commenters objected to the proposed deletion of § 298.24. The commenters believed that deletion of this section is not warranted and our

reasoning is an incorrect statement of our authority.

MARAD Response: We have reconsidered our proposal to delete § 298.24 and have determined that we may finance facilities and equipment related to marine operations under limited circumstances. Based on our interpretation of the Act, we have revised this section to clarify the provisions for issuing Guarantees to finance older vessels and using Title XI debt proceeds to finance vessels or facilities and equipment related to marine operations.

Section 298.30 Nature and Content of Obligations

We have adopted, as proposed, under this section, to clarify that an indenture trustee is not required under our documents.

Section 298.31 Mortgage

We have adopted, as proposed, to correct that, except for Eligible Export Vessels, a mortgage must be filed with the United States Coast Guard's National Vessel Documentation Center. The existing regulations require, except for Eligible Export Vessels, that the mortgage be filed with the United States Coast Guard at the Vessel's port of record.

Section 298.32 Required Provisions in Documentation

Proposed § 298.32 regarding the furnishing of insurance and a performance bond remain 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, our interests as a guarantor must be fully protected. Furthermore, inasmuch as § 298.21 provides for performance bond premiums to be included as an item of Actual Cost and therefore financeable up to a maximum of 87½ percent, we find that the bonding requirement does not constitute an inordinate out of pocket expense.

We have adopted as proposed to modify § 298.32 to delete the word "annual" in this section 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 the Title XI Obligors. Additionally, we have clarified that with respect to Shipyard Projects, the contract must contain provisions for making periodic payments for the work in accordance with an agreed schedule, submitted by the "contractor". The existing regulations only make reference to a "shipyard" containing this provision in its contract for construction of a vessel.

Section 298.33 Escrow Fund

We have adopted, as proposed, to modify this section to conform to the documentation in the general provisions of the new security agreement.

Section 298.34 Construction Fund

Under § 298.34, we proposed to clarify the requirements regarding the construction fund and to eliminate the current redundancies of this section regarding withdrawals and deposits, the procedure for which is described in § 298.33.

One commenter believes that we should eliminate the requirement for a construction fund and disburse to the Obligor the bond proceeds applicable to cost already paid equaling 87.5% or 75%, as applicable. Basically, the commenter stated that there is no statutory authority for the construction fund set out in the proposed § 298.34 and that in Section 1108 of the Merchant Marine Act, 1936, (the Act) Congress intended for all payments for eligible costs to be shared 12.5% or 25% by the Obligor through payment of equity and 87.5% or 75% out of the Title XI guaranteed bond proceeds. The commenter further stated that MARAD has consistently misinterpreted Section 1108 of the Act and required payment by the Obligor of 12.5% or 25% of the entire cost of the project up front before any payment out of the bond proceeds thereby increasing the cost of the project to the Obligor because the cost of equity is indisputably greater than the cost of debt. The commenter stated that because this interpretation does not comport with the Act, MARAD had to create a device called the Construction Fund in order to deposit bond proceeds that could not be deposited in the escrow fund due to the explicit language of Section 1108 but also could not be paid to the shipbuilder or to reimburse the Obligor because of MARAD's incorrect requirement for payment of 12.5% or 25% of the entire cost of the project prior to any disbursement of the escrow fund.

MARAD Response: We disagree with the commenter's assertion that we have no statutory authority for creation of the Construction Fund. Section 1104A(c)(1)

of the Act provides that "The security for the guarantee of an obligation by the Secretary under this title may relate to more than one vessel and may consist of any combination of types of security." Section 1103(c) of the Act requires the Obligor to provide 12.5% or 25% equity in the project. It is entirely consistent with the statutory requirement that the applicant have all of its equity raised before the issuance of a commitment to guarantee. To provide us with the assurance that this equity is available for the project and not diminished, we require that the Obligor expend its 12.5% or 25% on the project before our collateral is at risk. This is analogous to a downpayment requirement when purchasing a significant asset. In addition, with the applicant funding the equity up front, the applicant has the greatest incentive to make the project a financial success.

The commenter also indicated that our funding requirements result in a higher cost to the applicant as the cost of equity is greater than the cost of debt. If we were to adopt the funding mechanism proposed by the commenter, we would require that any unused equity funds be placed in non-risk type of investment similar to those utilized by the Escrow and Construction Funds. In this case the earnings on the equity would approximate the earnings on the debt and therefore there would not be a greater cost by utilizing the full amount of the equity funds before utilizing the Title XI proceeds. We believe that requiring the Obligor to provide the initial expenditures for the project is in the Government's best interest and the Construction Fund accomplishes this goal.

We believe that it is in the best interest of the Government to require the initial expenditures for the project to be provided by the Obligor and therefore would need a mechanism such as the Construction Fund to accomplish this goal. Therefore, we are not accepting the commenters proposal to eliminate the Construction Fund.

Section 298.35 Title XI Reserve Fund and Financial Agreement and Financial Agreement

We proposed to modify § 298.35 entirely. We proposed to delete the provision regarding financial covenants for companies meeting the special financial requirements because this provision had not been elected by applicants in the recent past. The references to an applicant being governed by either the section 12 or section 13 requirements are deleted and all companies will be subject to the same two sets of covenants. The first set

of covenants, the primary covenants, is to apply to all companies regardless of their financial condition and the second set of covenants, referred to as supplemental covenants, is to apply to only those companies that do not meet the specific financial conditions.

One commenter stated that the covenant regarding restriction on mergers or sales (a primary covenant) is unduly restrictive and needs to be clarified to ensure that we do not consent only when the integrity of a loan would be jeopardized by the sale or merger.

MARAD Response: The Title XI Reserve Fund and Financial Agreement requires our consent prior to the Obligor entering into a merger or sale. The purpose of requiring our consent prior to a merger or sale is to allow us the opportunity to do a due diligence review of the transaction to determine whether or not the transaction would have an adverse effect or impose unacceptable risk to the Government. To accomplish this review, each merger or sale must be analyzed on a case-by-case basis prior to effectuating the transaction. Therefore, we believe that our review and prior consent are warranted, and we have not modified this provision.

One commenter provided comments on a proposed provision of the Title XI Reserve Fund and Financial Agreement dealing with the restriction the Agreement places on the Obligor with respect to payment of dividends. The commenter believes that the dividend restrictions are excessively restrictive to well capitalized Sub-Chapter S corporations or Limited Liability Companies (LLCs) who qualify as "strong" companies (positive working capital and debt to equity ratio less than 2 to 1), whose tax liabilities flow through to their owners and thus may require "tax dividends" to those owners to reimburse them for payment of said liabilities.

MARAD Response: The purpose of the dividend restriction is to provide further assurance that funds are available for payment of principal and interest due on the Obligations. We recognize the unique tax situation of sub-chapter S corporations and LLCs and, when we deem appropriate, we consent to dividend payments for tax purposes. We do not believe an amendment to the dividend provision is necessary as special provisions are negotiated in the Title XI Reserve Fund and Financial Agreement to address these situations on a case-by-case basis. Therefore, we have not modified this section to reduce the restrictions with respect to the payment of dividends.

Additionally, we have adopted, as proposed, to modify this section in its entirety. The section regarding financial covenants for companies meeting the special financial requirements has been deleted in its entirety pursuant to the discussion above in § 298.13. The references to a Title XI company being governed by either section 12 or section 13 company are deleted and all Title XI companies will be subject to the same two sets of covenants. One set of covenants will be imposed regardless of the company's financial conditions (primary covenants) and the second set of covenants will only apply if the company does not meet the specific financial conditions (supplemental covenants). Also, we have deleted the paragraph in the existing regulations referring to dividend restrictions applicable to companies who are parties to an operating-differential subsidy contract because we no longer issue operating-differential subsidy contracts and have no plans to resume.

Section 298.36 Guarantee Fee

We have adopted, as proposed, to delete the word "annual" in describing the Guarantee fee. The Guarantee is no longer required annually but is now a one-time fee due upon issuance of our guarantee. In the NPRM we inadvertently proposed to delete in paragraph (e) of this section, the provision stating that the Guarantee fee is non-refundable. Section 1104 A(e)(4) of the Act provides that the Guarantee fee is not refundable. Accordingly, we have included a statement the Guarantee fee is non-refundable.

We proposed to include in this section, a statement that "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". In order to reflect the current source for the discount rate, we have changed this statement to provide that "In calculating the present value used in determining the amount of the Guarantee Fee to be paid, we will use a discount rate based on information contained in the "President's annual Budget".

Section 298.41 Remedies After Default

We have adopted, as proposed, to delete that Security proceeds to us will be applied to guarantee fees as there will be no guarantee fees due because all guarantee fees are now paid concurrently with the issuance of Obligations.

Section 298.43 Applicability of the Regulations

We have deleted the reference to "contracts of insurance" and "mortgage contracts" because we no longer issue "contracts of insurance" or "mortgage contracts" and all such loans previously insured have expired.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have reviewed this final rule under Executive Order 12866 and have determined that it is not a significant regulatory action under section 3(f). It is also not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Due to the limited economic impact of this final rule, no further analysis is necessary. These amendments are intended only to simplify and clarify the procedural requirements for obtaining Guarantees, principally to expedite the process for our review of applications. The intended effect is to encourage the construction of ships in U.S. shipyards both for the domestic and the Eligible Export Vessel programs and the modernization and improvement of U.S. general shipyard facilities by improving Title XI program administration.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires MARAD to determine whether this final rule will have a significant economic impact on a substantial number of small entities. Although a substantial number of Title XI applicants may meet the United States Small Business Administration's criteria for small entity, these amendments to part 298 simplify and clarify the procedural requirements for obtaining loan Guarantees under the Title XI ship financing program. These simplifications and clarifications will merely expedite our application review process. While the simplified procedures will enhance customer service, these procedures will not result in a significant economic impact. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The

regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13084

We do not believe the revised regulations evolving from this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Paperwork Reduction Act

This rulemaking contains requirements that have been approved previously by the Office of Management and Budget (Approval No. 2133-0005, 2133-0012, and 2133-0018).

Unfunded Mandates Reform Act

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

Regulation Identifier Number (RIN)

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

List of Subjects in 46 CFR Part 298

Loan programs-Transportation, Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Vessels.

Accordingly, 46 CFR part 298 is revised to read as follows:

PART 298—OBLIGATION GUARANTEES

Subpart A—Introduction

Sec.

- 298.1 Purpose.
- 298.2 Definitions.
- 298.3 Applications.

Subpart B—Eligibility

- 298.10 Citizenship.
- 298.11 Vessel requirements.
- 298.12 Applicant and operator's qualifications.
- 298.13 Financial requirements.
- 298.14 Economic soundness.
- 298.15 Investigation fee.
- 298.16 Substitution of participants.
- 298.17 Evaluation of applications.
- 298.18 Financing Shipyard Projects.
- 298.19 Financing Eligible Export Vessels.

Subpart C—Guarantees

- 298.20 Term, redemptions, and interest rate.
- 298.21 Limits.
- 298.22 Amortization of Obligations.
- 298.23 Refinancing.
- 298.24 Financing a Vessel more than a year after delivery.
- 298.25 Excess interest or other consideration.
- 298.26 Lease payments.
- 298.27 Advances.

Subpart D—Documentation

- 298.30 Nature and content of Obligations.
- 298.31 Mortgage.
- 298.32 Required provisions in documentation.
- 298.33 Escrow fund.
- 298.34 Construction fund.
- 298.35 Title XI Reserve Fund and Financial Agreement.
- 298.36 Guarantee Fee.
- 298.37 Examination and audit.
- 298.38 Partnership agreements and limited liability company agreements.
- 298.39 Exemptions.

Subpart E—Defaults and Remedies, Reporting Requirements, Applicability of Regulations.

- 298.40 Defaults.
- 298.41 Remedies after default.
- 298.42 Reporting requirements—financial statements.
- 298.43 Applicability of the regulations.

Subpart F—Administration [Reserved]

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

Subpart A—Introduction

§ 298.1 Purpose.

This part prescribes regulations implementing Title XI of the Merchant Marine Act, 1936, as amended, governing Federal ship financing assistance (46 App. U.S.C. 1271 *et seq.*). This part uses "you" and "we" throughout. You and your refer to the applicant for Title XI financing assistance unless we note or imply otherwise. We, us, and our refer to the Maritime Administration, the Secretary of the Maritime Administration, or the Secretary of Transportation, as applicable.

§ 298.2 Definitions.

For the purpose of this part:

Act means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 through 1294).

Actual Cost of a Vessel or Shipyard Project means, as of any specified date, the aggregate, as determined by us, of all amounts paid by or for the account of the Obligor on or before that date and all amounts which the Obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such Vessel or Shipyard Project.

Advanced Shipbuilding Technology means:

(1) Numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(2) Novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers; and

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

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).

Closing means a meeting of various participants or their representatives in a Title XI financing, at which a commitment to issue Guarantees is executed, or at which all or part of the Obligations are authenticated and issued and the proceeds are made available for a purpose set forth in section 1104(a) of the Act, or at which a Vessel is delivered and a Mortgage is executed as security to us or a Shipyard Project is completed and a Mortgage or other security is executed to us.

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.

Depository means a bank or other financial institution organized and doing business under the laws of the United States, any State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico that is authorized under such laws to exercise corporate trust powers, is a member of the Federal Deposit Insurance Corporation, and accepts deposits for purposes of implementing the program authorized by Title XI of the Act; but in the case of an Eligible Export Vessel can also mean, with our specific approval of foreign branches, but not the foreign subsidiaries, of such United States financial institutions.

Depreciated Actual Cost of a Vessel or Shipyard Project means the Actual Cost of the Vessel or Shipyard Project, as defined in this section (less a residual value of 2½ percent of United States shipyard construction cost or, in the case of Shipyard Project, a residual value as appropriate), depreciated on a straightline basis over the useful life of the Vessel or Shipyard Project as determined by us, not to exceed twenty-five years from the date the Vessel or Shipyard Project was delivered by the shipbuilder or manufacturer or, if the Vessel or Shipyard Project has been reconstructed or reconditioned, the Actual Cost of the Vessel or Shipyard Project depreciated on a straightline basis from the date the Vessel or Shipyard Project was delivered by the shipbuilder or manufacturer to the date of such reconstruction or reconditioning, on the basis of the original useful life of the Vessel or Shipyard Project, and from the date of said reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the Vessel or Shipyard Project determined by us, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straightline basis and on the basis of a useful life of the Vessel or Shipyard Project determined by us.

Documentation means all or part of the agreements relating to an entire Title XI financing which must be furnished to us, irrespective of whether we are a party to each agreement.

Eligible Export Vessel means a Vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

Eligible Shipyard means a private shipyard located in the United States.

General Shipyard Facility means:

(1) For operations on land, any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment, or rebuilding of any Vessel, including graving docks, building ways, ship lifts, wharves and pier cranes; the land necessary for any structures or appurtenances; and equipment necessary for the performance of any function referred to in this definition; and

(2) For operations other than on land, any Vessel, floating drydock, or barge constructed in the United States, within the meaning of § 298.11(a), and used for, or a type that is usually used for, activities referred to in paragraph (1) of this definition.

Guarantee means the contractual commitment of the United States of America, represented by us, endorsed on each Obligation, to make payment to the Obligee or an agent, upon demand, of the unpaid interest on, and the unpaid balance of the principal of such Obligation, including interest accruing between the date of default and the date of payment.

Guarantee Fee means the fee payable to us in consideration for the issuance of the Guarantees.

Indenture Trustee means a bank with corporate trust powers, or a trust company, with a capital and surplus of at least \$25,000,000, which is located in and organized and doing business under the laws of the United States, any State or territory thereof, the District of Columbia or the Commonwealth of Puerto Rico, which has duties under the terms of a Trust Indenture, entered into with the Obligor, providing for the issuance and registration of the ownership and transfer of Obligations, the disbursement of funds held in trust by the Indenture Trustee for the redemption and payment of interest and principal with respect to Obligations, demands by the Indenture Trustee for payment under the Guarantees in the event of default and the remittance of payments received to the Obligees. Pursuant to our specific authorization, the Indenture Trustee may also authenticate the Guarantees.

Letter Commitment means a letter from us to you, setting forth specific determinations made by us with respect to your proposed project, as required by the Act and regulations of this part, and stating our commitment to execute Guarantees, subject to compliance by you with any conditions specified therein.

Maritime Administration means the agency created within the Department of Transportation by Reorganization Plan No. 21 of 1950 (64 Stat. 1273), amended

by Reorganization Plan No. 7 of 1961 (75 Stat. 840), as amended by Public Law 91-469 (84 Stat. 1036).

Modern Shipbuilding Technology means a technology to be introduced into the shipyard that is comprised of the best available proven technology, techniques, and processes appropriate to advancing the state-of-the-art of the applicant shipyard, or exceeds the best available processes of American shipbuilding, and that will enhance its productivity and make it more competitive internationally.

Mortgage means a first Preferred Mortgage on any Vessel or a first mortgage with respect to a Shipyard Project.

Obligation means any note, bond, debenture, or other evidence of indebtedness, as defined in section 1101(c) of the Act, issued for one of the purposes specified in section 1104(a) of the Act.

Obligee means the holder of an Obligation.

Obligor means any party primarily liable for payment of principal or interest on any Obligation.

Paying Agent means any Person appointed by the Obligor to pay the principal of or interest on the Obligations on behalf of the Obligor.

Person means any individual, estate, foundation, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated organization or other acceptable legal business entity, government, or any agency or political subdivision thereof.

Preferred Mortgage means:

(1) In the case of a mortgage on a Vessel documented under United States law, whenever made, a mortgage that—

(i) Includes the whole of a Vessel;

(ii) Is filed in substantial compliance with 46 U.S.C. 31321;

(iii) Covers a documented Vessel or a Vessel for which an application for documentation has been filed that is in substantial compliance with the requirements of 46 U.S.C. Ch. 121 and the regulations prescribed under that Chapter by the United States Coast Guard; and

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

(2) In the case of a mortgage on an Eligible Export Vessel, whenever made, a mortgage that—

(i) Constitutes a mortgage that is established as security on an Eligible Export Vessel under the laws of a foreign country;

(ii) Was executed under the laws of that foreign country and under which laws the ownership of the Vessel is documented;

(iii) Is registered under the laws of that foreign country in a public register at the port of registry of the Vessel or at a central office;

(iv) Otherwise satisfies the requirements of 46 U.S.C. 31301(6)(B) to constitute a Preferred Mortgage; and

(v) Has us as the mortgagee, or such other mortgagee as is permitted by the applicable foreign law and approved by us.

Related Party means as that term is defined by generally accepted accounting principles outlined in paragraph 24 of Statement of Financial Accounting Standards No. 57, Related Party Disclosures.

Secretary means the Secretary of Transportation, acting by and through the Maritime Administrator, Department of Transportation, the Maritime Administrator or any official of the Maritime Administration to whom is duly delegated the authority, from time to time, to perform the functions of the Secretary of Transportation or the Maritime Administrator, Department of Transportation.

Secretary's Note means a promissory note from the Obligor to the Secretary in an amount equal to the aggregate amount of the Obligations, which is issued simultaneously with the Guarantees.

Security Agreement means the primary contract between the Obligor and the Secretary, providing for the transfer to the Secretary by the Obligor of all right, title and interest of the Obligor in certain described property (including rights under contracts in existence or to be entered into), and containing other provisions relating to representations and responsibilities of the Obligor to the Secretary as security for the issuance of Guarantees.

Shipyard Project means Advanced Shipbuilding Technology and Modern Shipbuilding Technology or both unless otherwise specified.

Vessel means all types of vessels, whether in existence or under construction, including passenger, cargo and combination passenger-cargo carrying vessels, tankers, towboats, barges and dredges which are or will be documented under the laws of the United States, floating drydocks which have a capacity of at least thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels, which are owned by citizens of the United States; except that an Eligible Export Vessel will not be documented under the laws of the United States.

§ 298.3 Applications

(a) *Process and certification.* When you apply for a commitment to execute Guarantees, you must:

(1) Complete Form MA 163 and send it to the Secretary, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(2) Certify the application in the manner that Form MA 163 prescribes.

(b) *Required information.* You must include all required information on Form MA 163 or in attached exhibits and schedules submitted with the application. You must also include the following regarding the Vessel or Vessels, if applicable:

(1) Any demise charters,

(2) Time charters in excess of six months,

(3) Contracts of affreightment,

(4) Drilling contracts, and/or

(5) Other contractual arrangements.

(c) *Declaration of Lobbying form.* You must also file the Declaration of Lobbying form as required by 31 U.S.C. 1352 with the initial application as part of the formal submission.

(d) *Attachments.* Each exhibit, schedule, and attachment must contain a statement, on the first page clearly identifying the document as an attachment to the application. You must state on each attachment the:

(1) Name of the applicant; and

(2) Date of the application.

(e) *Amendment.* You must mark "Amendment," on any amendment of data contained in the application. Each first page must contain a statement clearly identifying the document as an amendment to your application and must include the:

(1) Name of the applicant;

(2) Date of application; and

(3) Certification required on Form MA 163.

(f) *Application time schedule.* You must submit each application to us at least four (4) months prior to the anticipated date by which you require a Letter Commitment.

(1) We may consider applications with less than four (4) months notice, prior to the anticipated date by which you require a Letter Commitment, if you submit written documentation to us that extenuating circumstances exist.

(2) During the first fifteen (15) calendar days after you submit your application, we will preliminarily review your application for adequacy and completeness.

(i) If we find that your application is incomplete, or if we require additional data, we will notify you promptly in writing, and you will have fifteen (15) calendar days, from the date of each

request for additional information, to correct deficiencies.

(ii) If you have not corrected the deficiencies or have not made substantial progress toward correcting them, within the 15 calendar days, then we may terminate the processing of your application without prejudice.

(3) Once we consider your Title XI application complete, we will act on the application within a period of 60 calendar days, unless for good cause, we find it necessary to extend the 60 day period.

(4) If you do not complete your application and we do not act upon your application within four (4) months from the submission date, unless we extend the time period, we will notify you in writing that processing of the application is terminated and that you may reapply at a later date.

(i) If we terminate your application without prejudice, we will not require you to pay a new filing fee for a later application for a similar project that you file within one year of the termination date.

(ii) If you submit an application for a substantially different project, you must pay a new filing fee. We will determine whether the application is substantially different on a case-by-case basis.

(5) If we issue you a Letter Commitment, you must submit two (2) sets of the Closing documentation to us for review at least six (6) weeks prior to the anticipated Closing. The six weeks time period will give us time to complete an adequate review of the documentation. You must use our standard form of documentation.

(g) *Degrees of risk.* When processing applications, we will consider the different degrees of risk involved with different applications.

(h) *Additional assurances.* Before we approve your application, we may require additional assurances if you are not a well established firm with strong financial qualifications and strong market shares seeking financing guarantees for replacement vessels in an established market in which projected demand exceeds supply. The additional assurances may include:

(1) Firm charter commitments;

(2) Parent company guarantees;

(3) Greater equity participation;

(4) Private financing participation;

(5) Security interest on other property; and

(6) Similar arrangements to any of these additional assurances.

(i) *Filing Fee.* When you submit your application, you must include a \$5,000 filing fee, which will be non-refundable, irrespective of whether we issue a Letter Commitment. However, the \$5,000

filing fee is credited toward the investigation fee described in § 298.15(b).

(j) *Confidential Information.* (1) If we receive a request for release of your information, we will notify you. If you believe that your application, including attachments, contains information you consider to be trade secrets or commercial or financial information and privileged or confidential, or otherwise exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), you may assert a claim of confidentiality. When submitting your application, you should mark "Confidential" on the pages that you consider confidential. The same requirement applies to any amendment to the application.

(2) *FOIA requests.* We will apply the procedures contained in the Department of Transportation's regulations at 49 CFR 7.17 regarding FOIA requests for information that the submitter has designated as confidential. We will consider your claim of confidentiality at the time someone requests the information under FOIA.

(3) *Statement of objections.* If we receive a request for release of your information, we will notify you. We will give you a reasonable period of time to give us a written, detailed statement explaining your objections to our release of the information. We will not give you notice if:

- (i) We determine that we should not disclose the information;
 - (ii) The information has been lawfully published or made available to the public; or
 - (iii) Law (other than 5 U.S.C. 552) requires us to disclose the information.
- (4) *Our notification of intent to disclose.* If your objections to release of the information do not persuade us, we will notify you of our intent to disclose in a reasonable number of days before we intend to disclose the information. The written notice will include:
- (i) A statement explaining our reasons for not accepting the submitter's disclosure objections;
 - (ii) A description of the business information that we will disclose; and
 - (iii) A specific disclosure date.

(k) *Priority.* We will give priority for processing applications to:

- (1) Vessels capable of serving as a United States naval and military auxiliary in time of war or national emergency.
- (2) Requests for financing construction of equipment or vessels less than one year old as opposed to the refinancing of existing equipment or vessels that are one year old or older,

(3) Any applications involving the purchase of vessels currently financed under Title XI if the purpose is to process the assumption of the obligations.

(4) Applications from those willing to take guarantees for less than the normal term for that class of vessel.

(5) *Eligible Export Vessels.* We may issue a commitment to guarantee Obligations for an Eligible Export Vessel if we determine, in our sole discretion, that the issuance of a commitment to guarantee Obligations for an Eligible Export Vessel will not cause us to deny an economically sound application to issue a commitment to guarantee Obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States, after considering:

(i) The status of pending applications for commitments 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;

(ii) The economic soundness of the applications referred to in paragraph (k)(5)(i) of this section; and

(iii) The amount of guarantee authority available.

(Unless indicated otherwise in this part 298, information collection requirements have been approved by the Office of Management and Budget under control number 2133-0018.)

Subpart B—Eligibility

§ 298.10 Citizenship.

(a) *Applicability.* Before you receive 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, you and any other Person, (including the shipowner and any bareboat charterer), must establish your United States citizenship, within the definition of "Citizen of the United States" in § 298.2.

(b) *Prior to Letter Commitment.* Before we issue the Letter Commitment, you and any Person identified in paragraph (a) of this section, who is required to establish United States citizenship must establish United States citizenship in the form and manner stated in 46 CFR part 355.

(c) *Commitment Closing.* (1) Within 10 days before every Commitment Closing, unless we waive this requirement for good cause, you and all Persons identified with the project who have previously established United States citizenship in accordance with

paragraphs (a) and (b) of this section, must submit pro forma Supplemental Affidavits of Citizenship which we have approved for Closing as to form and substance, and

(2) On the date of the Closing, three (3) executed copies of Supplemental Affidavits of Citizenship that:

- (i) Show evidence of the continuing United States citizenship of the Persons in paragraph (a) of this section; and
- (ii) Bear the date of the Closing.

(d) *Additional information.* If we request additional material essential to clarify or support evidence of U.S. citizenship, you, the Obligor, or any Person identified in paragraph (a) of this section must submit the additional information.

(Approved by the Office of Management and Budget under control number 2133-0012.)

§ 298.11 Vessel requirements.

When you apply for a Guarantee, the Vessel for which you intend to receive financing for construction, reconstruction, or reconditioning must meet the following criteria:

(a) *United States Construction.* A Vessel, including an Eligible Export Vessel, financed by an Obligation Guarantee must be constructed in the United States. United States construction means that the Vessel is assembled in a shipyard geographically located within the United States.

(1) A U.S.-flag Vessel must meet the applicable United States Coast Guard requirements.

(2) An Eligible Export Vessel must be constructed in accordance with the requirements of the International Maritime Organization and must meet the applicable:

- (i) Laws, rules, and regulations of its country of documentation,
- (ii) Treaties, conventions on international agreements to which that country is a signatory, and
- (iii) Laws of the ports it serves.

(b) *Actual Cost.* We must approve your estimated Actual Cost for the construction, reconstruction, or reconditioning of a Vessel as a condition for issuance of the Letter Commitment. The estimated cost of the Vessel may include escalation for the anticipated construction period of the Vessel. We may contact the shipyard directly and may require you to have the shipyard that has contracted to build the Vessel to submit additional technical data, backup cost details, and other evidence if we have insufficient data.

(c) *Class, condition, and operation.* The Vessel must 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:

(1) The American Bureau of Shipping (ABS), or

(2) 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

(3) 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 us, to United States classification societies.

(4) Except in the case of an Eligible Export Vessel, the Vessel must be in compliance with all applicable laws, rules, and regulations as to condition and operation, including, but not limited to, those administered by the:

(i) United States Coast Guard,
(ii) Environmental Protection Agency,
(iii) Federal Communications Commission,

(iv) Public Health Service, or
(v) Their respective successor agencies, and

(vi) All applicable treaties and conventions to which the United States is a signatory, including, but not limited to, the International Convention for Safety of Life at Sea.

(d) *Documentation.* (1) An Eligible Export Vessel must be documented in a country that is party to the International Convention for Safety of Life at Sea, or other treaty, convention, or international agreement governing vessel inspection to which the United States is a signatory, and must comply with the applicable laws, rules, and regulations of its country of documentation, all applicable treaties, conventions on international agreements to which that country is a signatory, and the laws of the ports it serves.

(2) All other Eligible Vessels must be documented under U.S. registry.

(e) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by us, or any regulatory body, or for previous inadequate maintenance and

repair, will not constitute reconstruction or reconditioning within the meaning of this paragraph.

(f) *Condition survey.* If your application involves a reconstructed or reconditioned Vessel, you must make the Vessel available at a time and place acceptable to us so that we may conduct a condition survey. You must:

(1) Pay the cost of the condition survey.

(2) Ensure that the scope and extent of the condition survey will not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age.

(3) Ensure that the Vessel meets the standard of the survey necessary for retention of class (if the Vessel is classified), and

(4) Ensure that the operating records of the Vessel reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

(g) *Metric Usage.* Our preferred system of measurement and weights for Vessels and Shipyard Projects is the metric system.

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* We will not issue a Letter Commitment without a prior determination that you, the bareboat charterer, or other Person identified in the application as the operator of the Vessel(s) or Shipyard Project, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel(s) or Shipyard Project which serve as security for the Guarantees. You must also comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order for us to assess the likelihood that the project will be successful, we need information about you and the proposed project. To permit this assessment, you must provide the following information in your application for Title XI guarantees:

(1) *Incorporated companies.* If you or any bareboat charterer is an incorporated company, you must 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 you or any bareboat charterer is a partnership, limited partnership, limited liability company, joint venture, association, or unincorporated company, you must 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, we will specify the information that the entity must submit regarding its identity and ownership.

(4) You and any bareboat charterer must 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 you or the bareboat charterer are controlled or exercised by any person who is not the holder of legal title to such interest.

(5) You and any bareboat charterer must 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 (for example, shares owned and whether voting or non-voting).

(c) *Business and affiliations of applicants.* You must include:

(1) A brief description of your principal business activities during the past five years.

(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 you.

(3) The nature of the business transacted by each listed entity and the relationship between these entities. This information may be presented in the form of a chart.

(4) Whether any of the affiliated entities have previously applied for or received Title XI assistance.

(5) 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.

(6) 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.

(7) A list of your banking references:

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

(ii) Nature of relationship; and

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

(d) *Management of applicant.* You must include:

(1) A brief description of the principal business activities during the past five years of each officer, director, partner or member you 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 you with which any person listed in paragraph (d)(1) 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.* You must provide:

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

(2) A general description of the vessels currently owned and/or operated by you or your 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 a Shipyard Project, a brief description of the general character (that is, the number of building ways, launch method, drydocks and size) and location (that is, water depth, length of riverfront) of the principal properties of the applicant employed in its business. You must also describe any financial encumbrances.

(f) *Operating ability.* (1) You must submit a detailed statement showing your ability to successfully operate the financed Vessel(s).

(2) If a company other than you will operate the Vessel(s), then the information in paragraph (f)(1) of this section must be provided for the operating company together with a copy of the operating agreement.

(3) You must submit a copy of any management agreement(s) between you and any related or unrelated organization(s) which will affect the management of the Title XI Vessel or shipyard.

(4) In the case of an Eligible Shipyard, which is an applicant for a guarantee for a Shipyard Project, a detailed statement must be submitted showing your ability to successfully operate the Shipyard Project and construct/reconstruct Vessels, including name, education, background of, and licenses held by, all senior supervisory personnel concerned with the physical operation of the Shipyard Project.

(5) Where an operator has an historical performance record, we will consider this record in evaluating your operating ability. For newly formed entities, we will evaluate the performance of affiliates and/or companies associated with the principals (where the principals have a significant degree of control) in determining your operating ability. However, unless the affiliates or principals have an obligation with respect to the debt, we will not consider historical performance in evaluating your creditworthiness.

§ 298.13 Financial requirements.

(a) *In general.* To be eligible for guarantees, you and/or your parent organization (when applicable), and any other participants in the project having a significant financial or contractual relationship with you must submit information, respectively, on their financial condition. You must submit this information at the time of the application. You must supplement this information if we require it in subsequent requests. You must submit information satisfactory to us to show that financial resources are available to support the Title XI project.

(b) *Cost of the project.* You must submit the following cost information with respect to the project:

(1) *Vessel financing Guarantees.* A detailed statement of the estimated Actual Cost of construction, reconstruction, or reconditioning of the Vessel(s) including those items which would normally be capitalized as Vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to Vessel(s) delivery.

(2) *Foreign components.* (i) You must exclude each item of foreign components and services from Actual Cost, unless we specifically grant a

waiver for the item. We will not grant a waiver for major foreign components of the hull and superstructure.

(ii) In deciding whether to grant a waiver for foreign components and services, we will consider your certification, to be reviewed by us, stating that:

(A) A foreign item or service is not available in the United States on a timely or price-competitive basis, or

(B) The domestic item or service is not of sufficient quality.

(iii) Although excluded from Actual Cost, foreign components of the hull and superstructure can be regarded as owner-furnished equipment that may be used in satisfying your equity requirements imposed by paragraph (f) of this section.

(3) *Costs incurred by written contracts.* If any of the costs have been incurred by written contracts such as shipyard contract, management or operating agreement, you should forward signed copies with the application. We may require you to have the contracting shipyard submit back-up cost details and technical data. You must submit this information in the format given in the Title XI application procedures.

(4) *Shipyard Project.* In the case of Shipyard Project, a detailed statement of the actual cost of such technology, including those items which would normally be capitalizable. If you incurred any of the costs through written contracts, you should forward signed copies of the contract with the application. We may require you to have manufacturers submit back-up cost details and technical data. You must submit this information in the format given in the Title XI application procedures.

(5) *Shore facilities, cargo containers, etc.* A detailed statement showing the actual cost of any shore facilities, cargo containers, etc., required to be purchased in conjunction with the project.

(6) *Additional project costs.* A detailed statement showing any other costs associated with the project which were not included in paragraphs (b)(1) through (5) of this section, such as:

(i) Legal and accounting fees;

(ii) Printing costs;

(iii) Vessel insurance;

(iv) Underwriting fees;

(v) Fee to a Related Party; and

(vi) Other fees.

(7) *Request for Actual Cost Approval and Reimbursement.* If the project involves refinancing, you must also submit the exhibit entitled Request for Actual Cost Approval and Reimbursement, its summary sheet and

supplemental schedules at the time of filing the application.

(c) *Financing.* (1) You must:

(i) Describe, in detail, how the costs of the project (sums referred to in paragraph (b) of this section) will be funded and the timing of such funding.

(ii) Include any vessel trade-ins, related or third party financings, etc.

(iii) Provide the proposed terms and conditions of all private funding, from both equity and debt sources and clearly identify all parties involved.

(iv) Obtain our approval of the terms and conditions for co-financing (involving a blend of Title XI and private financing for the debt portion), including the ability of the co-financiers to exercise their rights against collateral shared with us for any transaction.

(v) Demonstrate with financial statements that at least 12½ percent, or 25 percent as applicable, of the construction or reconstruction costs of the Vessel(s) or the cost of the Shipyard Project will be in the form of equity and not additional debt, except to the extent allowed by paragraph (h) of this section.

(vi) Disclose all of the Vessel(s), Shipyard Project financing in the format given in the Title XI application procedures.

(2) *Financial Information.* You must provide us with financial statements, prepared in accordance with U.S. generally accepted accounting principles (GAAP), and include notes that explain the basis for arriving at the figures except that for Eligible Export Vessels, your financial statements must 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. The financial statements must include the following:

(i) The most recent financial statements for you, your parent company and other significant participants, as applicable (year end or intermediate), and the three most recent audited statements with details of all existing debt. If you are a new entity and are to be funded from or guaranteed by external source(s), you must provide such statements for such source(s);

(ii) Your pro forma balance sheet and that of any 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; and

(iii) Your pro forma balance sheets and that of the guarantor (if applicable) for five years after the Closing.

(Approved by the Office of Management and Budget under control number 2133-0005.)

(d) *Financial definitions.* For the purpose of this section and §§ 298.35 and 298.42 of this part:

(1) "Company" means any Person subject to financial requirements imposed under paragraph (f) of this section and in § 298.35, as well as the reporting requirements imposed by § 298.42.

(2) "Working Capital" means the excess, if any, of current assets over current liabilities, both determined in accordance with GAAP and adjusted as follows:

(i) In determining current assets you must exclude:

(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, you must deduct any excess of untermiated voyage expenses over untermiated voyage revenue and add 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" or "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 does not include:

(i) Any receivables from any stockholder, director, Officer or employee (or their family) 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. You must include any guarantee or other liability for the debt of any other Person not otherwise included on the balance sheet.

(5) "Capitalizable Cost" means the aggregate of the Actual Cost of the Vessel or Shipyard Project and those other items which customarily would be capitalized as Vessel costs or Shipyard Project costs under GAAP.

(6) "Depreciated Capitalizable Cost" means the Capitalizable Cost of a Vessel or Shipyard Project, depreciated on a straightline basis over the same useful life as determined by us for Actual Cost, and depreciated as required by § 298.21(g).

(e) *Applicability.* The financial resources must be adequate to meet the Equity requirements in the project and Working Capital requirements, as set forth in paragraph (f) of this section.

(1) The various financial requirements shall be met by the owner of the Vessel or Vessels or Shipyard Project to be security to us for the Guarantees, except that if the owner is not the operator, the overall financial requirements will be allocated among the owner, the operator and other parties as determined by us.

(2) The Company must satisfy the applicable financial requirements, in addition to any other financial requirements already imposed or which may be imposed upon it in connection with other Vessels financed under the Title XI program or in connection with other Shipyard Project financed under the Title XI program.

(3) A determination as to whether the Company has satisfied all financial requirements shall be based on the assumption that the projected financing has been completed. Accordingly, you must submit:

(i) A pro forma balance sheet at the time of the application, reflecting any adjustment made pursuant to paragraph (f)(1)(i) of this section, and

(ii) A revised pro forma balance sheet, reflecting the completion of the projected financing, at least five business days before the first Closing at which the Obligations are issued.

(f) *Financial requirements at Closing.* Financial requirements can apply to one or more Companies, and are determined as follows:

(1) Owner as operator. Where the owner is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) Working Capital. The Company's Working Capital shall not be less than one dollar. This Working Capital requirement is based on the premise that the Company engages in a service-type activity with only normal vessel inventory. If Working Capital includes other inventory, in addition to such normal Vessel inventory, we may adjust the requirement as appropriate. Also, if we determine that the Company's

Working Capital includes amounts receivable that it reasonably could not expect to collect within one year, we may make adjustments to the Working Capital requirements.

(ii) Long-Term Debt. The Company's Long-Term Debt must not be greater than twice its Equity.

(iii) Equity (net worth). The Company's Equity must be:

(A) The greater of:

(1) 50 percent of its Long-Term Debt;

or
(2) 90 percent of its Equity as shown on the last audited balance sheet, dated not earlier than six months before the date of issuance of the Letter Commitment; or

(B) Such other amount as may be specified by us.

(2) Lessee or charterer as operator. Where a lessee or charterer is to be the Vessel operator, minimum requirements at Closing usually are as follows:

(i) Working Capital. The operator's Working Capital requirement will be the same as that which would have otherwise been imposed on the owner as operator under paragraph (f)(1)(i) of this section and based on the same premise stated in that paragraph.

(ii) Long-Term Debt. The operator's Long-Term Debt will be the same as that which would have otherwise been imposed on the owner as operator under paragraph (f)(1)(ii) of this section.

(iii) Equity (net worth). The operator's equity requirement will be the same as that which would have otherwise been imposed on the owner as operator under paragraph (f)(1)(iii) of this section.

(iv) The owner's Equity shall at least be equal to the difference between the Capitalizable Cost or Depreciated Capitalizable Cost of the Vessel (whichever is applicable) and the total amount of the Guarantees.

(3) Owner as General Shipyard Facility. Where the owner of Shipyard Project is a General Shipyard Facility, minimum requirements at Closing will be the same as those set forth in paragraph (f)(1) of this section for an owner as operator.

(g) *Adjustments to financial requirements at Closing.* If the owner, although not operating a Vessel, assumes any of the operating responsibilities, we may adjust the respective Working Capital and Equity requirements of the owner and operator, otherwise applicable under paragraph (f) of this section, by increasing the requirements of the owner and decreasing those of the operator by the same amount.

(h) *Subordinated debt considered to be Equity.* With our consent, part of the Equity requirements applicable under

paragraphs (c) and (f) of this section may be satisfied by debt, fully subordinated as to the payment of principal and interest on the Secretary's Note and any claims secured as provided for in the Security Agreement or the Mortgage. Repayment of subordinated debt may be made only from funds available for payment of dividends or for other distributions, in accordance with requirements of the Title XI Reserve Fund and Financial Agreement (described in § 298.35). Such subordinated debt shall not be secured by any interest in property that is security for Guarantees under Title XI, unless the Obligor and the lender enter into a written agreement, satisfactory to us, providing, among other things, that if any Title XI financing or advance by us to the Obligor shall occur in the future, such security interest of the lender shall become subordinated to any indebtedness to us incurred by the Obligor and to any security interest obtained by us in that property or other property, with respect to the subsequent indebtedness.

(i) *Modified requirements.* We may waive or modify the financial terms or requirements otherwise applicable under this section and §§ 298.35 and 298.42, upon determining that there is adequate security for the Guarantees. We may impose similar financial requirements on any Person providing other security for the Guarantees.

§ 298.14 Economic soundness.

(a) *Economic Evaluation.* We shall not issue a Letter Commitment for guarantees unless we find that the proposed project, regarding the Vessel(s) or Shipyard Project for which you seek Title XI financing or refinancing, will be economically sound. The economic soundness and your ability to repay the Obligations will be the primary basis for our approval of a Letter Commitment. We will consider the value of the collateral for which we will issue the Obligations as only a secondary consideration in determining your ability to repay the Obligations.

(b) *Basic feasibility factors.* In making the economic soundness findings, we shall consider all relevant factors, including, but not limited to:

(1) The need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(2) The market potential for the employment of the Vessel or utilization of the Shipyard Project of a General Shipyard Facility over the life of the guarantee;

(3) Projected revenues and expenses associated with employment of the Vessel or utilization of the Shipyard Project of a General Shipyard Facility;

(4) Any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the Vessel or utilization of the Shipyard Project of a General Shipyard Facility;

(5) For inland waterways, the need for technical improvements including but not limited to increased fuel efficiency, or improved safety; and

(6) Other relevant criteria.

(c) *Project Feasibility.* To demonstrate the economic feasibility of the project over the Guarantee period, you must submit the following information:

(1) *Purpose.* A detailed purpose for the obligations to be guaranteed.

(2) *Necessary exhibits.* Necessary exhibits to support your project feasibility as supplements to the application.

(3) *Relevant market information.* Information regarding the relevant market including a written narrative of the market (or potential market) for the project including full details on the following, as applicable:

(i) Nature and amount of cargo/passengers available for carriage and your projected share (provide also the number of units; that is containers, trailers, etc.);

(ii) Services or routes in which the Vessel(s) will be employed, including an itinerary of ports served, with the arrival and departure times, sea time, port time, hours working or idle in port, off hire days and reserve or contingency time, proposed number of annual sailings and number of annual working days for the Vessel(s) or, with respect to Shipyard Project, how the equipment will be employed;

(iii) Suitability of the Vessel(s) or Shipyard Project for their anticipated use;

(iv) Significant factors influencing your expectations for the future market for the Vessel(s) or Shipyard Project, for example, competition, government regulations, alternative uses, and charter rates; and

(v) Particulars of any charters, contracts of affreightment, transportation agreements, etc. You should supplement the narrative by providing copies of any marketing studies and/or supporting information (for instance, existing or proposed charters, contracts of affreightment, transportation agreements, and letters of intent from prospective customers).

(vi) The potential for purchasing existing equipment of a reasonable