

SUBCHAPTER D—VESSEL FINANCING ASSISTANCE

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 [Reserved]
- 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.

SOURCE: 65 FR 45152, July 20, 2000, unless otherwise noted.

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 the U.S. Department of Treasury, acting in its capacity under Section 1109 of the Act.

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 pro-

ductivity 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 of 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;

§ 298.3

(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

46 CFR Ch. II (10-1-13 Edition)

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.

[65 FR 45152, July 20, 2000, as amended at 67 FR 61282, Sept. 30, 2002]

§ 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. [Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information (excluding closing documents and documents submitted in connection with defaults) to MARAD, if practicable.]

(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