

Dated: June 18, 1998.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

RIN 2133-AB32

[Docket No. MARAD-98-3468]

### 46 CFR Part 298

#### Proposed Amendments to the Title XI; Closing Documentation and Application

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Maritime Administration (MARAD) is considering changes to the existing application form used by the agency in evaluating whether to issue, under Title XI of the Merchant Marine Act, 1936, as amended, a commitment to guarantee obligations for the construction of vessels in shipyards located in the United States or for the modernization of such yards, and the documentation forms used by the agency in closing such commitments. The purpose of this proposed rule is to solicit public review and comment of the proposed changes to the application form and the closing documentation.

**DATES:** Comments should be submitted on or before August 31, 1998, to the address listed below.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590-001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday except Federal Holidays. An electronic version of the new application forms and the closing documents is available from the persons listed below on computer disk or on the World Wide Web at <http://marad.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Richard Lorr, Office of Chief Counsel, Maritime Administration, MAR-223, Room 7228, 400 Seventh Street, SW, Washington, DC 20590, telephone 202-366-5168 or fax 202-366-7485 with respect to the closing documentation, and Jean E. McKeever, Office of Ship

Financing, Maritime Administration, MAR-530, Room 8122, 400 Seventh Street, SW, Washington, DC 20590, telephone 202-366-5744 or fax 202-366-7901 with respect to the application forms.

**SUPPLEMENTARY INFORMATION:** On February 17, 1998, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) and request for comments on whether MARAD should amend its existing regulations or alter its existing administrative practices governing the Title XI application process, standards for evaluation and approval of applications, and the process of documentation for closing of commitments to guarantee obligations. The ANPRM was issued in response to Executive Order 12862 issued by President Clinton which called for agencies to strive for a "customer-driven government" that matches or exceeds the best service available in the private sector.

MARAD requested that its customers, shipyard and shipowner executives, their lawyers, accountants, investment bankers and other professionals, who have used or are familiar with the Title XI program, provide MARAD with their views about how the Title XI program could be improved. MARAD requested specific comments on several topics including the following:

1. Whether changes to the current application form (Form MA-163) are needed and, if so, what specific changes would make the application process more efficient without eliminating critical information needed by MARAD;
2. Whether there should be separate application forms for export vessels, U.S.-flag vessels, and shipyard modernizations, and what specific information should be requested by each;
3. Whether MARAD should waive the requirement in the application form for the submission of plans and specifications if a vessel design has previously been approved by MARAD;
4. Whether MARAD should permit electronic filing of all or a part of a Title XI application;
5. Whether MARAD should create special closing documentation to govern shipyard modernization guarantees; and
6. Whether the current closing documentation on a commitment to guarantee imposes requirements that are unnecessary and redundant, and what changes should be made to the standard documentation.

The response of commenters to these questions and the actions that MARAD is proposing are described below. Upon receipt of further public comment to the

proposed application forms and closing documentation, MARAD will make final changes to the application forms and the documentation. MARAD is preparing a separate Notice of Proposed Rulemaking covering any conforming changes with respect to the content of the application forms and the documentation and the other regulatory issues that were raised in the ANPRM, but are not addressed herein.

#### The Application Form

Four commenters addressed the application form and requested that the agency simplify and streamline the existing form. Five commenters recommended that there be a separate application form for shipyard modernizations and four commenters recommended an additional, separate application form for export vessel projects.

MARAD has responded favorably to most of these recommendations. MARAD has simplified and reorganized the application, and deleted questions that were unnecessary or redundant, and clarified questions that were ambiguous. MARAD is also placing the new application forms on our home page and is printing the forms on letter-size paper instead of legal-size paper.

MARAD created a separate application form for shipyard modernizations, but did not draft a separate application form for export vessels because the differences between the domestic and the export applications were not substantial enough to justify the extra form. However, the proposed vessel application form has a separate section dealing with export transactions.

MARAD believes that the net result is clearer application forms which are easier to follow and complete and which will impose a reduced preparation time on applicants and should allow for a more expeditious processing of applications. MARAD welcomes any further suggestions commenters have to the two proposed forms.

#### Plans and Specifications

The four commenters on the issue of approved vessel designs believe that MARAD should not require the submission of plans and specifications for vessel designs previously approved by MARAD. MARAD agrees and the application form has been amended accordingly.

#### Electronic Filing

Seven commenters responded to this issue. A number of them thought that electronic filing would raise

confidentiality concerns, while still others thought that paper filing is not unduly burdensome. A few commenters said that electronic filing of non-confidential information should be allowed as a means of expediting the process. Neither MARAD nor the Department of Transportation has the current capacity to utilize electronic filing efficiently or to ensure the confidentiality of information submitted. The Department is currently working on resolving these issues as part of its centralized docket system. When such a system is in place, MARAD will consider offering electronic filing to applicants as an option.

### Shipyard Documentation

Five commenters stated that they believed MARAD should create special documents to govern closings on commitments to guarantee shipyard modernizations. Most commenters recognized that the differences between the land transactions involved in shipyard modernization projects and the maritime transactions involved in vessel guarantees merited different closing documentation. In addition, commenters requested that MARAD simplify the documentation. In response, MARAD has prepared a separate set of closing documents for shipyard modernizations. A decision was made not to include a land mortgage since these mortgages vary considerably under local law.

### U.S.-Flag and Export Closing Documents

Eight commenters informed us that the existing documents are redundant, inconsistent with current financing practices, unnecessarily voluminous and cumbersome, and difficult to understand. They said that the current documents deter use of the program instead of facilitating its use. They asked MARAD to streamline its documents to reduce unnecessary work and legal fees and other expenses and to make the documentation clearer.

The proposed closing documentation has been rewritten to address many of these concerns. The proposed documentation for the financing of vessels and shipyard modernizations has been simplified and rewritten in plainer English. The length of the vessel documents has been reduced by about 45% (for an uncomplicated transaction) to about 135 pages from about 250 pages. Naturally, the size of the documentation will vary depending on the need for intercreditor agreements, subordination agreements, corporate guarantees, and other complexities that

arise out of the individual considerations of any specific transaction. Most importantly, MARAD believes that the proposed revisions to the documents have been made without sacrificing any of the essential rights of the government, shipowners, shipyards or other parties.

In response to requests for documents to cover private placements of obligations without the use of an Indenture Trustee, the agency has developed an even more compact set of documents to cover guarantees of direct debt instead of the necessarily more complicated public bond offerings. These documents eliminate the need for a bond purchase agreement, a trust indenture, bonds, and an authorization agreement. They may be especially useful in attracting smaller applications, but they can be used in larger transactions as well. Depending on the size of the credit agreement and promissory note negotiated by the bank or other direct lender, the documentation needed in these nontrustee transactions could be reduced by about another 40 pages to about 95 pages in their entirety.

By offering the maritime industry and its underwriters and attorneys the opportunity to use these clearer, more streamlined and contemporary financial documents, MARAD will make the Title XI program more attractive to shipowners and shipyards without compromising the interests of the government. By reducing the burden and cost, MARAD will carry out its statutory mission more effectively. MARAD welcomes review of and comments on these documents.

By Order of the Maritime Administrator.

Dated: July 24, 1998.

**Joel C. Richard,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Part 392

[FHWA Docket No. FHWA-98-4202]

RIN 2125-AD75

#### Railroad Grade Crossing Safety

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Hazardous Materials Transportation Authorization Act of

1994 requires the amendment of the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit operators of commercial motor vehicles (CMVs) from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping. The FHWA, therefore, proposes to make this amendment which is intended to reduce the incidence of collisions between trains and CMVs. Comments and information are requested about railroad grade crossings that lack sufficient clearance for some CMVs to be driven completely through the crossing before being required to stop by a stop sign, highway traffic signal, or similar traffic control device. The FHWA intends to have a public meeting in Washington, D.C. during the comment period to discuss this subject matter.

**DATES:** Data and information concerning railroad-highway crossings from State agencies must be received no later than September 28, 1998. Comments from motor carriers and other interested parties must be received no later than November 27, 1998.

**ADDRESSES:** All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to Docket Clerk, U.S. DOT Dockets, Room PL-401, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Lehrman, Office of Motor Carrier Research and Standards, (202) 366-0994, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

#### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and