

*Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)*

The rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule merely allows BLM to issue certain grants 60 days sooner than current regulations allow. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 13132, Federalism*

The rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule is strictly administrative in nature. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12988, Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, BLM finds that this rule does not include policies that have tribal implications.

Any consultations with tribes that are necessary for approving a right-of-way grant under our regulations will occur before we notify Congress.

*Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, BLM has determined that this rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. The rule would merely remove the requirement that BLM withhold approval of a right-of-way grant for a pipeline 24 inches or more in diameter for 60 days. This previous requirement could have had an adverse impact on distribution of energy

supplies because it could have delayed approval of pipeline right-of-way grants. The rule would therefore improve the timing of distribution of energy supplies.

*Paperwork Reduction Act*

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*Authors*

The principal authors of this rule are Ian Senio and Michael H. Schwartz of the Regulatory Affairs Group, Washington Office, Bureau of Land Management. The Office of the Solicitor assisted.

**List of Subjects for 43 CFR Part 2880**

Administrative practice and procedures, Common carriers, Pipelines, Public lands rights-of-way, and Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and under the authorities cited below, amend Title 43 of the Code of Federal Regulations, Group 2800, part 2880 as set forth below:

Dated: September 13, 2002.

**Rebecca W. Watson,**

*Assistant Secretary, Land and Minerals Management.*

**PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT**

1. Revise the authority citation for part 2880 to read as follows:

**Authority:** 30 U.S.C. 185.

2. In § 2882.3, revise paragraph (a) to read as follows:

**§ 2882.3 Application processing.**

(a) If the grant involves a pipeline 24 inches or more in diameter, BLM will not issue or renew the grant until after we notify the appropriate committees of Congress in accordance with 30 U.S.C. 185(w).

\* \* \* \* \*

[FR Doc. 02-24610 Filed 9-27-02; 8:45 am]

**BILLING CODE 4310-84-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Parts 10, 12, 14, 28, 54, 56, 62, 63, 67, 68, 108, 116, 120, 125, 183, 189, and 401**

**[USCG-2002-13058]**

**RIN 2115-AG48**

**Shipping—Technical and Conforming Amendments**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule makes editorial and technical changes throughout Title 46 of the Code of Federal Regulations to update the title before it is recodified on October 1, 2002. It corrects addresses, updates cross-references, makes conforming amendments, and makes other technical corrections. This rule will have no substantive effect on the regulated public.

**DATES:** This final rule is effective September 30, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, [USCG-2002-13058], U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Robert Spears, Project Manager, Standards Evaluation and Development Division (G-MSR-2), Coast Guard, telephone 202-267-1099. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

**SUPPLEMENTARY INFORMATION:**

**Discussion of the Rule**

Each year, title 46 of the Code of Federal Regulations (CFR) is recodified on October 1. This rule makes editorial changes throughout the title, corrects addresses, updates cross-references, and makes other technical and editorial corrections to be included in the recodification. Also, we have made changes to 46 CFR part 401 to make it gender neutral. This rule does not change any substantive requirements of existing regulations.

**When the Rule Is Being Made Effective**

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule consists only of corrections, editorial changes, and conforming amendments to 46 CFR, chapters I and III. These changes will have no substantive effect on the public so publishing an NPRM and providing an opportunity for public comment is unnecessary. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

#### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure of \$100 million or more in any one year by a State, local, or tribal government, in the aggregate, or by the private sector. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not effect a taking of private property or otherwise have

taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(a) and (b) of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The changes in this rule correct addresses, update cross-references, make conforming amendments, and make other technical corrections. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

#### List of Subjects

##### 46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

##### 46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

##### 46 CFR Part 14

Oceanographic research vessels, Reporting and recordkeeping requirements, Seamen.

##### 46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

##### 46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

##### 46 CFR Part 56

Reporting and recordkeeping requirements, Vessels.

##### 46 CFR Part 62

Reporting and recordkeeping requirements, Vessels.

##### 46 CFR Part 63

Reporting and recordkeeping requirements, Vessels.

##### 46 CFR Part 67

Reporting and recordkeeping requirements, Vessels.

##### 46 CFR Part 68

Oil pollution, Vessels.

##### 46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

##### 46 CFR Part 116

Fire prevention, Marine safety, Passenger vessels, Seamen.

##### 46 CFR Part 120

Marine safety, Passenger vessels.

##### 46 CFR Part 125

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Seaman.

##### 46 CFR Part 183

Marine safety, Passenger vessels.

##### 46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

**46 CFR Part 401**

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10, 12, 14, 28, 54, 56, 62, 63, 67, 68, 108, 116, 120, 125, 183, 189 and 401 as follows:

**PART 10—LICENSING OF MARITIME PERSONNEL**

1. The authority citation for part 10 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, and 7701; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45, 1.46. Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

**§ 10.105 [Amended]**

2. In § 10.105, remove the words “San Francisco, CA” and add, in their place, the words “Alameda, CA”.

**PART 12—CERTIFICATION OF SEAMEN**

3. The authority citation for part 12 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

**§ 12.05–9 [Amended]**

4. In § 12.05–9(c), remove the word “shall demonstrate” and add, in its place, the words “shall demonstrate”.

**§ 12.25–10 [Amended]**

5. Amend § 12.25–10 as follows:  
a. In paragraph (a), remove the words “steward’s document” and add, in its place, the words “steward’s department”; and  
b. In paragraph (b), remove the word “indorsement” and add, in its place, the word “endorsement”.

**PART 14—SHIPMENT AND DISCHARGE OF MERCHANT MARINERS**

6. The authority citation for part 14 continues to read as follows:

**Authority:** 5 U.S.C. 552; 46 U.S.C. Chapters 103 and 104.

7. In § 14.103 revise paragraph (a), and in paragraph (b) remove the number “703–235–1062” and add in its place the number “202–493–1055”, to read as follows:

**§ 14.103 Addresses of Coast Guard.**

(a) By mail: U.S. Coast Guard National Maritime Center (NMC–4A), 4200

Wilson Boulevard, Suite 630, Arlington, VA 22203–1803.

\* \* \* \* \*

**§ 14.307 [Amended]**

8. In § 14.307(a), remove the words “form CG–719A (Rev. 8–80)” and in their place add the words “form CG–718A (Rev. 3–85)”.

**PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS**

9. The authority citation for part 28 continues to read as follows:

**Authority:** 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

**§ 28.120 [Amended]**

10. Amend § 28.120 as follows:

- a. In the third column of Table 28.120(a) to the section remove the word “Byoyant” and add, in its place, the word “Buoyant”; and  
b. In the third column of Table 28.120(c) to the section remove the word “Solus” and add, in its place, the word “SOLAS”.

**§ 28.270 [Amended]**

11. In § 28.270(a)(4), remove the word “affects” and add, in its place, the word “effects”.

**PART 54—PRESSURE VESSELS**

12. The authority citation for part 54 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.,

**§ 54.01–1 [Amended]**

13. In § 54.01–1(b), under the entry for Manufacturers Standardization Society (MSS), remove the word “Marketing” and add, in its place, the word “Marking”.

**PART 56—PIPING SYSTEMS AND APPURTENANCES**

14. The authority citation for part 56 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

**§ 56.25–5 [Amended]**

15. In § 56.25–5, immediately before the words “Appendix 2”, remove the word “of” and add, in its place, the word “or”.

**§ 56.50–30 [Amended]**

16. In § 56.50–30(b)(1), remove the word “economized” and add, in its place, the word “economizer”.

**§ 56.50–70 [Amended]**

17. In § 56.50–70(b)(2), remove the citation “56.60–25(c)” and add, in its place, the citation “56.60–25(b)”.

**§ 56.60–25 [Amended]**

18. Amend § 56.60–25 as follows:

- a. In paragraph (b)(2), immediately after the words “paragraphs (a)(1) through”, remove “(6)” and add, in its place, “(4)”; and, immediately after the words “in accordance with paragraph”, remove “(b)” and add, in its place, “(a)”; and  
b. In paragraph (b)(3), immediately after the words “paragraphs (a)(1) through”, remove “(6)” and add, in its place, “(4)”.

**§ 56.70–5 [Amended]**

19. In § 56.70–5(a), remove “57.02–4” and add, in its place, “57.02–5”.

**PART 62—VITAL SYSTEM AUTOMATION**

20. The authority citation for part 62 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 62.35–20 [Amended]**

21. In § 62.35–20, remove the note immediately following paragraph (a)(6).

**PART 63—AUTOMATIC AUXILIARY BOILERS**

22. The authority citation for part 63 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 63.01–3 [Amended]**

23. In § 63.01–3(a)(2), remove “(20 gph)” from the end of the sentence.

**PART 67—DOCUMENTATION OF VESSELS**

24. The authority citation for part 67 continues to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.45, 1.46.

**§ 67.19 [Amended]**

25. Amend § 67.19 as follows:

- a. In paragraph (e)(1), remove “(b)” and add, in its place, “(c)”; and  
b. In paragraph (e)(2), immediately after the words “requirements of § 67.35(a)”, remove “(2)”.

## PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

26. The authority citation for part 68 continues to read as follows:

**Authority:** 46 U.S.C. 2103; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. App. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

### § 68.01–5 [Amended]

27. In § 68.01–5(b), remove the word “Commandant” and add, in its place, the words “Director, National Vessel Documentation Center”.

### § 68.01–7 [Amended]

28. In § 68.01–7(c), remove the word “Commandant” and add, in its place, the words “Director, National Vessel Documentation Center”.

### § 68.01–13 [Amended]

29. In § 68.01–13(a), remove the words “§ 67.01–7” and add, in their place, the words “§ 67.9”.

## Appendix A to Subpart 68.01—Oath for Qualification of Corporation as a Citizen of the United States Under the Act of September 2, 1958 (46 U.S.C. 883–1)

30. In Appendix A to Subpart 68.01, remove the words “§ 67.03–9(b)” and add, in their place, the words “§ 67.39(c)”.

## PART 108—DESIGN AND EQUIPMENT

31. The authority citation for part 108 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

### § 108.160 [Amended]

32. In § 108.160(c), remove “§ 108.525(e)” and add, in its place, “§ 108.540(h)(3)(ii)”.

## PART 116—CONSTRUCTION AND ARRANGEMENT

33. The authority citation for part 116 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 116.438 [Amended]

34. In § 116.438(l), immediately after the words “required by paragraph”, remove “(j)” and add, in its place, “(k)”.

### § 116.730 [Amended]

35. In § 116.730, remove “§§ 72.20–10(a), (b), (d), and (e)” and add, in their place, “§§ 72.20–10”.

## PART 120—ELECTRICAL INSTALLATION

36. The authority citation for part 120 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 120.380 [Amended]

37. In § 120.380(f), remove the words “paragraphs (a) and (b) of § 111.93–11 in subchapter J” and add, in their place, the words “§ 58.25–55 in subchapter F”.

## PART 125—GENERAL

38. The authority citation for part 125 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

### § 125.110 [Amended]

39. In § 125.110(a), remove “(G–MSE)” and add, in its place, “(G–MSO)”.

## PART 183—ELECTRICAL INSTALLATION

40. The authority citation for part 183 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 183.380 [Amended]

41. In § 183.380(f), remove the words “paragraphs (a) and (b) of § 111.93–11 in subchapter J” and add, in their place, the words “§ 58.25–55 in subchapter F”.

## PART 189—INSPECTION AND CERTIFICATION

42. The authority citation for part 189 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

### § 189.55–15 [Amended]

43. In § 189.55–15, in paragraph (a)(2), remove the first sentence and add “The plans may be submitted directly to the Commanding Officer, Marine Safety Center, 400 Seventh Street SW., Washington, DC 20590–0001.” in its place; remove paragraph (a)(3); and redesignate paragraph (a)(4) as paragraph (a)(3).

## PART 401—GREAT LAKES PILOTAGE REGULATIONS

44. The authority citation for part 401 continues to read as follows:

**Authority:** 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46(mmm); 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

45. In § 401.110 revise paragraph (a)(9) to read as follows:

### § 401.110 Definitions.

(a) \* \* \*

(9) *Director* means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Commandant (G–MW–1), 2100 Second Street SW., Washington, DC 20593–0001, Attn: Director, Great Lakes Pilotage.

\* \* \* \* \*

### § 401.210 [Amended]

46. Amend § 401.210 as follows:

a. In paragraphs (a)(2), (3), (4), (6), (8), and (9), wherever the word “He” appears, remove it and add, in its place, the word “The individual”;

b. In paragraph (a)(7), remove the words “He agrees that he will” and replace them with the words, “The individual agrees to”; and

c. In paragraph (b), immediately following the words “of his” add the words “or her”.

### § 401.211 [Amended]

47. In § 401.211(a), wherever the word “He” appears, remove it, and add, in its place, the words “The individual”.

### § 401.230 [Amended]

48. Amend § 401.230 as follows:

a. In paragraph (a), immediately following the word “his” add the words “or her”; and

b. In paragraph (b), immediately following the word “he” add the words “or she”.

### § 401.250 [Amended]

49. In § 401.250(d), immediately following the words “deliver his”, add the words “or her”.

### § 401.260 [Amended]

50. In § 401.260, (b) and (c), immediately following the word “his” add the words “or her” wherever it appears in these paragraphs.

### § 401.600 [Amended]

51. In § 401.600, immediately following the word “he” wherever it appears, add the words “or she”, and immediately following the word “his” wherever it appears, add the words “or her”.

Dated: September 20, 2002.

**Joseph J. Angelo,**

*Acting Assistant Commandant, Marine Safety, Security and Environmental Protection.*

[FR Doc. 02-24622 Filed 9-27-02; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 298

[Docket No. MARAD-2002-12425]

RIN 2133-AB47

#### **Amendment of MARAD's Regulations Establishing and Administering Deposit Funds Authorized by Section 1109 of the Merchant Marine Act, 1936, as Amended**

**AGENCY:** Maritime Administration, Transportation.

**ACTION:** Final rule.

**SUMMARY:** Recent legislation modified the Merchant Marine Act, 1936, as amended, by adding a new Section 1109, which authorizes the Secretary of Transportation to hold funds from Title XI obligors as collateral by depositing them with the United States Treasury and investing them in Treasury obligations. As a consequence, these funds need no longer be deposited in private banks. This final rule changes existing procedures to simplify, reduce costs of, and expedite Title XI closings.

**DATES:** The effective date of this final rule is October 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard M. Lorr, Assistant Chief Counsel for Ship Financing, at (202) 366-5882. You may send mail to Mr. Lorr at Maritime Administration, Office of Chief Counsel, Room 7228, 400 Seventh Street, SW., Washington, DC 20590. You may also e-mail Mr. Lorr at [richard.lorr@marad.dot.gov](mailto:richard.lorr@marad.dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On June 12, 2002, we published a notice of proposed rulemaking (NPRM) at 67 FR 40260 soliciting public comment on proposed changes to administering Title XI deposit funds. In the NPRM, we explained the Title XI program deposit funds and the need for the amendments. We received one public comment regarding our proposal. We will address the public comment under the section heading "Response to Public Comment."

The Title XI Program is a loan guarantee program which was

established under Title XI of the Merchant Marine Act, 1936, as amended (the "Act"). The Secretary of Transportation (Secretary) acting by and through the Maritime Administrator administers the Title XI Program.

Title XI provides for the full faith and credit of the United States for the payment of debt obligations for: (1) U.S. or foreign shipowners for the purpose of financing or refinancing either U.S. flag vessels or eligible export vessels constructed, reconstructed, or reconditioned in U.S. shipyards and (2) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately owned general shipyard facility located in the U.S.

The guaranteed obligations (*i.e.*, notes and bonds) are sold in the private sector. The main purchasers of the obligations include banks, pension funds, life insurance companies, and the general public.

In those instances where the Secretary guarantees obligations under Title XI and where the proceeds of the sale of the obligations are to be used for the construction, reconstruction, or reconditioning of a vessel or for a shipyard improvement, all such proceeds constitute security for the Secretary's risks in extending the guarantees, and are to be under the control of the Secretary as governed by applicable agreements between the Secretary and the Title XI debtor. In addition, the documentation of a Title XI transaction requires the Title XI debtor, under certain circumstances, to make deposits into the Title XI Reserve Fund as additional security for the Secretary.

Prior to the enactment of Section 1109, section 1108 authorized the Secretary to hold only a percentage of obligation proceeds in an escrow account (the "Escrow Fund") with the Treasury. The remaining percentage was deposited with a commercial bank in what has become to be known as the "Construction Fund." In addition, the Secretary had no authority under the Act to accept or hold Title XI Reserve Fund deposits. Currently, such deposits, like the Construction Fund, are placed with and held by a commercial bank. The Depository Agreement among the Title XI debtor, the Secretary, and the commercial bank sets forth the terms and conditions under which the funds may be invested, withdrawn, or otherwise paid to the Secretary or the Title XI debtor. The Title XI debtor granted to the Secretary security interests in these accounts and their contents (the "Collateral"), and provided the Secretary an opinion of

counsel on the perfection and first priority of these security interests.

The Uniform Commercial Code (the "UCC") of the various states, for the most part, governs the perfection and priority of the Secretary's security interests in the Collateral. At its financial closings, MARAD's experience has been that, given the provisions of the UCC and especially the recent changes to the UCC, even the most knowledgeable of legal counsel have had difficulty drafting clean legal opinions about the perfection and enforceability of MARAD's security interest in the Collateral held by commercial depositories. As a result of these factors, opinions of counsel have, over time, become increasingly time consuming and costly. On the other hand, there has never been any question about the perfection and enforceability of MARAD's security interest in funds held in the Escrow Fund by the Treasury under MARAD's normal security agreements.

In an effort to ameliorate the situation and to streamline the Title XI closing process, the Secretary determined that an alternate means for holding and investing the proceeds of the obligations was necessary. Since the Escrow Fund was already in place, it seemed only logical to use it for not just a percentage of the proceeds, but for all the proceeds. Accordingly, the Secretary sought the enabling legislation, and section 1109 is the result. The Secretary believes this authority will reduce the cost of obtaining Title XI benefits by simplifying the opinions of counsel and eliminating the costs of engaging commercial banks to hold and invest the proceeds. In addition, it is anticipated that closing documentation will be reduced or simplified.

##### **Response to Public Comment**

One comment was received concerning the NPRM. The commenter states that, in his opinion, Section 1109 of the Act "was intended to solve certain technical problems of the Construction Fund arrangements and legal opinions concerning those arrangements." It is true that one of the purposes of Section 1109 is to permit the agency to abolish the Construction Fund. However, the enactment of Section 1109 was not merely intended to solve problems related to that fund. Section 1109 also permits the Secretary to hold in a Treasury account money in the Title XI Reserve Funds of obligors (which are established for the purpose of holding a portion of an obligor's net operating income in a secured account for the benefit of the Secretary) as well as any other liquid assets that are