

procedures for modifying the disability claim process as authorized under §§ 404.906 and 404.943, and in which an administrative law judge has issued a decision (not including a recommended decision) that is less than wholly favorable to you.

(b) *Effect of an administrative law judge's decision.* In a case to which the procedures of this section apply, the decision of an administrative law judge will be binding on all the parties to the hearing unless —

(1) You or another party file an action concerning the decision in Federal district court;

(2) The Appeals Council decides to review the decision on its own motion under the authority provided in § 404.969, and it issues a notice announcing its decision to review the case on its own motion no later than the day before the filing date of a civil action establishing the jurisdiction of a Federal district court; or

(3) The decision is revised by the administrative law judge or the Appeals Council under the procedures explained in § 404.987.

(c) *Notice of the decision of an administrative law judge.* The notice of decision the administrative law judge issues in a case processed under this section will advise you and any other parties to the decision that you may file an action in a Federal district court within 60 days after the date you receive notice of the decision.

(d) *Extension of time to file action in Federal district court.* Any party having a right to file a civil action under this section may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we will use the standards in § 404.911.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

20 CFR part 416, subpart N, is amended as follows:

1. The authority citation for subpart N continues to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. New § 416.1466 is added under the undesignated center heading "APPEALS COUNCIL REVIEW" to read as follows:

§ 416.1466 Testing elimination of the request for Appeals Council review.

(a) *Applicability and scope.* Notwithstanding any other provision in this part or part 422 of this chapter, we are establishing the procedures set out in this section to test elimination of the request for review by the Appeals Council. These procedures will apply in randomly selected cases in which we have tested a combination of model procedures for modifying the disability claim process as authorized under §§ 416.1406 and 416.1443, and in which an administrative law judge has issued a decision (not including a recommended decision) that is less than wholly favorable to you.

(b) *Effect of an administrative law judge's decision.* In a case to which the procedures of this section apply, the decision of an administrative law judge will be binding on all the parties to the hearing unless —

(1) You or another party file an action concerning the decision in Federal district court;

(2) The Appeals Council decides to review the decision on its own motion under the authority provided in § 416.1469, and it issues a notice announcing its decision to review the case on its own motion no later than the day before the filing date of a civil action establishing the jurisdiction of a Federal district court; or

(3) The decision is revised by the administrative law judge or the Appeals Council under the procedures explained in § 416.1487.

(c) *Notice of the decision of an administrative law judge.* The notice of decision the administrative law judge issues in a case processed under this section will advise you and any other parties to the decision that you may file an action in a Federal district court within 60 days after the date you receive notice of the decision.

(d) *Extension of time to file action in Federal district court.* Any party having a right to file a civil action under this section may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the Appeals Council. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we will use the standards in § 416.1411.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 157

[CGD 91-045]

RIN 2115-AF51

Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Final rule; response to petitions for rulemaking.

SUMMARY: On July 30, 1996, the Coast Guard published a final rule requiring the owners, masters, or operators of tank vessels of 5,000 gross tons or more that do not have double hulls and that carry oil in bulk as cargo to comply with certain operational measures. This final rule included a provision requiring, in some cases, owner notification of the vessel's calculated anticipated under-keel clearance which was scheduled to go into effect on November 27, 1996. Following issuance of the final rule, the Coast Guard received comments, several in the form of petitions for rulemaking, expressing concern about the implementation of the owner notification portion of the under-keel clearance provision and requesting an additional opportunity to comment on the provision. On November 27, 1996, the Coast Guard granted this request by suspending the provision and giving the public 90 days to comment on the under-keel clearance requirement in general. After reviewing the additional public comments, the Coast Guard issues a final rule which revises the under-keel clearance requirement for single-hull tank vessels and responds to the petitions for rulemaking.

DATES: This final rule is effective on January 21, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-267-1477.

FOR FURTHER INFORMATION CONTACT: LCDR Suzanne Englebert, Project Manager, Project Development Division, at 202-267-1492 or LT Brian Willis, Vessel Compliance Division, at 202-267-2735.

SUPPLEMENTARY INFORMATION:**Regulatory History**

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled "Operational Measures to Reduce Oils Spills from Existing Tank Vessels without Double Hulls" (61 FR 39770; July 30, 1996).

As the result of the petitions from industry, the Coast Guard published a notice in the **Federal Register** on November 27, 1996 suspending the effective date of the owner notification provision in the under-keel clearance requirement entitled "Operational Measures to Reduce Oil Spills from Existing Tank Vessels without Double Hulls; Partial Suspension of Regulation" (61 FR 60189) and solicited additional comments on the entire under-keel clearance provision contained in the final rule.

Background and Purpose

Background information on operation measures for existing vessels without double hulls is provided in the preambles to the advance notice of proposed rulemaking (ANPRM) (56 FR 56284; November 1, 1991), the notice of proposed rulemaking (NPRM) (58 FR 54870; October 22, 1993), the supplemental notice of proposed rulemaking (SNPRM) (60 FR 55904; November 3, 1995), and the final rule (61 FR 39770; July 30, 1996).

Discussion of Comments

The Coast Guard received 65 letters containing over 190 comments on the under-keel clearance provision of the operational measures July 1996 final rule. Two comments strongly supported the under-keel clearance requirement as written in the final rule. Two other comments requested an extension of the comment period for the partial suspension. One of these, in addition to the party's original petition, requested specific data from the Coast Guard on the basis for the requirement. A copy of the Coast Guard's response to this request was added to the docket. Thereafter, the Coast Guard notified the public of this addition to the docket and permitted the public an additional 30 days to comment (62 FR 3463; January 23, 1997).

The following discussion summarizes the remaining comments and is divided into the following topics: (1) Removal of the under-keel clearance requirement; (2) Owner notification; (3) Applicability; (4) Economic analysis; (5) Master/pilot relationship; and (6) Calculations.

1. Removal of the Under-Keel Clearance Requirement

Fifty-two comments urged the Coast Guard to eliminate the under-keel clearance requirement from the operational measures rulemaking. Twenty-four comments argued that the under-keel clearance requirement circumvents the knowledge and ability of the master and pilot—parties that have historically policed themselves and have the local expertise to safely command the vessel—and should, therefore, be removed. Nineteen of these comments specifically suggested that it was not necessary for the Coast Guard to regulate under-keel clearance, since current industry practice dictates the responsible performance of under-keel clearance calculations by the master. One comment indicated that the anticipated under-keel clearance requirement contained in the operational measures final rule was similar to the recordkeeping aspects of the International Safety Management (ISM) Code and, therefore, redundant. Another comment contended that the rules regarding under-keel clearance were not only unnecessary, but dangerous, and urged their immediate removal. The comment explained that to require a discussion of under-keel clearance at night could result in the loss of night vision and create the potential for more accidents to occur.

The Coast Guard finds that requiring a master to calculate the anticipated under-keel clearance of the ship, discuss the clearance and the transit with the pilot, and ensure that the decisions being made on the bridge comply with company policy reflects good seamanship. Effective communication and passage planning are critical for a large single-hull tankship entering port. The failure of either can contribute to accidents as was presented in the quantitative risk model for the SNPRM. Thus, an anticipated under-keel clearance provision was required. It was recognized in both the SNPRM and the final rule that many companies, masters, and pilots conduct "self-imposed" under-keel clearance planning. The requirement in the final rule ensured all single-hull tankship masters plan, consider, and communicate this crucial aspect of navigation. The current regulations contained in 33 CFR 164.11 require tankship personnel to set the vessel's speed with regard to the vessel's maneuverability when there is small under-keel clearance. They do not require the specific calculation of clearance or the planning of the ship's transit to identify areas of concern. Section 164.11 also does not focus the

discussion of the pilot and master on passage planning or under-keel clearance. This final rule amends the original prescriptive calculation requirement of § 157.455 and removes the owner notification provision, but continues to stress the importance of communications between the pilot and the master about the vessel's transit, including its anticipated under-keel clearance.

The ISM code requirements also do not specifically require that tankship masters calculate the anticipated under-keel clearance of their vessels prior to entering or leaving port. Therefore, as required in this final rule, the master's consideration of the vessel's anticipated under-keel clearance and the owner's issuance of company guidance, complement the ISM code. By recognizing the owner's responsibility in providing safety guidance to the master and focusing that guidance to the time single-hull tankships are most at risk of spilling large quantities of oil (while maneuvering to or from a facility or anchorage), this final rule will reduce the likelihood of future casualties.

The Coast Guard disagrees that the calculation of anticipated under-keel clearance or conferring with company personnel or referring to company guidance poses a safety risk. Bridge personnel have checklists, cargo calculations, pilot information cards, chart plots, and several other items that must be completed prior to transiting a port. During night transits, the requirements are the same. Consultation with the company should not pose difficulty to a master of any ship, in daylight or at night. If it does, safety is hindered by other human factors such as a lack of clearly written guidance, no local contact personnel, or an ineffective means of communication on the bridge, not by an under-keel clearance requirement. Regardless, the Coast Guard has amended the anticipated under-keel clearance requirement by simply requiring the owner or operator to provide written guidance to the tankship master rather than allowing the option of either written policy or contacting company personnel. By only requiring written guidance, the Coast Guard is ensuring a tankship master no longer has to worry about not being able to contact company personnel or leaving the bridge in order to comply with the requirement.

Twenty-four comments recommended that the anticipated under-keel clearance provision be removed and replaced with a non-regulatory requirement that the controlling depth and proper under-keel clearance be established by the Captain of the Port

(COTP), the pilot, or the Port Authority. The comments reasoned that these entities are in the best position to develop criteria, because of their in-depth knowledge of port conditions and their ability to specify the limiting factors applicable to a port.

The Coast Guard does not prohibit the Port Authority or any other port group from meeting and developing guidance for tankships. OPA 90 required the Coast Guard to implement regulatory measures that were both economically and technologically feasible for single-hull tankship prior to their phase-out dates. This final rule implements a planning tool termed "anticipated under-keel clearance" for single-hull tank vessels in order to implement the requirements of section 4115(b) of OPA 90. This rule does not conflict with any existing prescribed port authority under-keel clearance guidance.

One comment argued that the Coast Guard did not properly substantiate the operational measures final rulemaking. The comment proposed that the administrative record constructed by the Coast Guard lacked the factual basis to support a determination to implement an anticipated under-keel clearance requirement for single-hull tankships. The comment argued that an anticipated under-keel clearance requirement was not necessary, because lack of clearance has not been documented as a contributing factor in any oil spills to this date. In addition, the comment contended that the Coast Guard neglected to give the public due notice of the anticipated under-keel clearance owner notification requirement and its assessment in the final rule.

The regulatory analysis for the SNPRM was based on a subjective review of single-hull vessel casualties. Generally, there are multiple causes for each accident which are commonly termed "chain of events." As explained in the SNPRM and the final rule assessment, if a contributory cause of the reviewed casualty was a lack of passage planning, including the failure of the master to review the vessel's draft, depth, or route prior to a port transit, a portion of the spilled oil was documented as being preventable by use of an under-keel clearance requirement. Using the SNPRM's quantitative risk assessment, this spilled oil amount was then reduced by a range of 10 to 23 percent of the original amount to reflect the predicted effectiveness of the proposed anticipated under-keel clearance provision. Predicting the future avoidance of casualties based on a risk assessment is an accepted analytical tool. The fact that a major oil spill cannot be attributed solely to a lack

of under-keel clearance, does not indicate that potential benefits from a focused effort on under-keel clearance do not exist. The lack of calculating anticipated under-keel clearance and discussing the vessel's route prior to entering or leaving a port have partially contributed to past casualties. This past history is enough to substantiate the benefits of a passage planning requirement that focuses on anticipated under-keel clearance to prevent groundings by single-hull tankships.

The Coast Guard contends that the public was afforded due notice and the opportunity to comment on the anticipated under-keel clearance provisions. In the SNPRM the Coast Guard discussed both the mandatory passage planning requirement and the need to involve the vessel's owner in making navigation decisions. In fact, every relevant regulatory document associated with operational measures has stressed the importance the Coast Guard places on owner involvement. In response to adverse comments to the SNPRM's proposed 1/2 meter anticipated under-keel clearance minimum, the Coast Guard removed the uniform under-keel clearance requirement and replaced it with a logical outgrowth of that concept. Both the assessments and the source documents for every incident documented in the assessments were in the public record and were available to the public during this rulemaking. The Coast Guard nevertheless suspended the under-keel clearance requirement and allowed an additional comment period to guarantee that every public concern was thoroughly considered and addressed before it took this final action on under-keel clearance for single-hull tank vessels.

2. Owner Notification

Fifty-four comments urged the Coast Guard to remove the owner notification provisions contained in §§ 157.455(a)(5) and (6) of the operational measures regulation. The comments argued that shore-based personnel contacted for a decision regarding anticipated under-keel clearance could be located thousands of miles away from the port and unfamiliar with the maneuvering characteristics and behavior of the vessel in a loaded condition. In essence, they argued that the master may have to rely on the "expertise" of an unqualified party in another part of the world, who may never have been to sea, and may be half asleep when contacted to make a decision as to whether a vessel should proceed. However, ten comments indicated that, if the Coast Guard deemed it necessary to regulate under-keel clearance, they would support a

requirement that owners or operators provide under-keel guidance through a prescribed policy which could be consulted by the master during transit. One comment fully supported the approach taken by the Coast Guard in the final rule and endorsed it as valid. The comment stated that conscientious operators do, and all operators should, take under-keel clearance into account when planning a voyage. The comment further explained that the pilot's job is made easier knowing that the ship has been loaded with due regard for local draft limitations and that the master and the ship's owner have considered the limitations in planning the vessel's transit.

In the final rule, the Coast Guard issued a requirement that involved the owner or operator at the policy level. In addition, an alternative to supplying written company policy on under-keel clearance was provided allowing the master to contact company personnel. This measure ensured that company policy was checked or management was informed of the vessel's passage situation. This final rule removes the owner notification provision and simply requires company policy to be provided to the master. The responsibility for estimating the anticipated under-keel clearance along the transit route of the vessel, including the facility or anchorage, is now placed on the master. However, the company policy should provide the master the guidance needed to pre-plan the transit and the direct authority to delay the transit or take any action necessary to ensure the vessel's safe navigation.

Three comments noted what they perceived as a "technical defect" in the drafting of § 157.455(a)(6). The provision states that an owner should not allow a vessel to proceed if transit "would not be prudent considering, but not limited to, the anticipated under-keel clearance, any Captain of the Port (COTP) under-keel clearance guidance, and the pilot's recommended clearance." The comments contended that the "but not limited to" phrasing contained in this section implies that the owner's decision to allow a vessel to proceed could be based on unspecified criteria in addition to the specified factors. They argued that since the provision effectively places legal responsibility for imprudence in making under-keel clearance determinations on the owner or operator of a vessel, the Coast Guard should be specific as to the criteria to be applied.

The Coast Guard has removed the phrase "but not limited to" from the anticipated under-keel clearance provision in this final rule. The phrase

was meant to include such things as anticipated traffic, ship-specific maneuvering characteristics with respect to small under-keel clearances, or other existing company policies that may be affected. The company guidance required in this final rule should cover these types of contingencies.

3. *Applicability*

Twenty-one comments requested that the Coast Guard explicitly limit the application of the anticipated under-keel clearance requirement to single-hull tankships, and exclude all other carriers, including, but not limited to, bulk carriers, general cargo carriers, container ships, and Roll-on, Roll-off container ships. In contrast, one comment recommended use of under-keel clearance guidance for all ships, not just tankships without double hulls. The comment explained that some other types of vessels (e.g., dry cargo vessels) routinely carry more oil in bunkers than many tank vessels carry as cargo. Consequently, the comment argued that whatever increased protection to the environment results from requiring under-keel clearance for single-hull tankships should be amplified if such measures are applied to all vessels using the waterways.

The Coast Guard is acting under the authority of section 4115(b) of OPA 90 and does not intend to extend implementation of operational measures to vessels other than vessels of 5,000 gross tons (GT) or more that do not have double hulls and that carry oil in bulk as cargo in this final rule. Implementing the pre-planning guidance and communication requirements of this final rule is prudent on all vessels. However, this rule only prescribes an anticipated under-keel requirement for single-hull tank vessels. If the Coast Guard deemed it appropriate to expand the applicability of this rule to other vessel types, a notice would be issued in the **Federal Register** and the public would be allowed an opportunity to comment. Currently, many COTPs and port authorities are working together to develop non-regulatory solutions to reducing risk within their waterways. The public is encouraged to contact their local COTPs to discuss ongoing port efforts and become involved in these issues.

4. *Economic Analysis*

Eighteen comments questioned the results of the regulatory analysis completed by the Coast Guard and requested that the General Accounting Office study the economic impact of a requirement for the establishment of a minimum under-keel clearance for

single-hull tankships prior to implementation of a final rule. In addition, the comments requested that a small working group, comprised of representatives from industry and the Coast Guard, be established specifically for the purpose of studying the issue of under-keel clearance. Another comment also expressed concern about the potential financial impact of the anticipated under-keel clearance requirement, and contended that the Coast Guard should impose new regulations only after an attempt to enforce current regulations fails and a reasonable risk of harm exists. In contrast, one comment stated that the original anticipated under-keel clearance requirement was reasonable and consistent with modern practice.

The Coast Guard has revised the anticipated under-keel clearance requirement in this final rule to make it less prescriptive. Because the requirement in this final rule contains the original communication and pre-planning under-keel clearance focus for single-hull tank vessels, the Coast Guard estimates that the benefits from this rule will remain as originally predicted until 2015 when these vessels no longer transit in U.S. ports. Because this requirement reflects current industry practice and ensures all single-hull tankships, at the very least, take the time to plan the vessel's passage with respect to under-keel clearance and discuss it with the pilot, the Coast Guard does not agree that an additional economic analysis is needed. If a COTP deems it necessary to require under-keel clearance or draft requirements, a cost analysis would be done and presented to the public for comment prior to implementation. Individual or small industry group participation in local determinations of this sort are used extensively by the Coast Guard to help it develop port requirements.

One comment expressed concern that Protection and Indemnity (P & I) Clubs might decline claims resulting from oil spills based on a determination that an owner, operator, or representative employee was privy to an unsafe practice under the Marine Insurance Act of 1906. Consequently, the company holding the Certificate of Financial Responsibility (COFR), as guarantor, would be obligated to pay the claim, causing insurance rates to rise significantly. As a result, the comment argued that the cost of obtaining a COFR should have been included in the cost calculations for the operational measures final rule.

The Coast Guard developed the original anticipated under-keel clearance requirement to ensure owners

and operators were fully informed of vessel operations prior to transiting port. Although this final rule removes the owner notification provision, it remains a preventive measure and focuses on ensuring the master follows company guidance that contains appropriate information to navigate safely. All of the anticipated under-keel clearance requirements discussed in this rulemaking have focused on planning and prevention. Therefore, the original final rule's cost analysis has not been amended to include the cost of insurance rate increases to those companies who may be found liable for future spills due to their own imprudence.

A separate comment maintained that the imposition of an anticipated under-keel clearance requirement on the single-hull tanker fleet would cause a substantial loss of cargo-carrying capacity, forcing either an increase in the fleet size serving U.S. markets, or an increase in the number of trips required to move a specific quantity of oil. According to the comment, the Coast Guard failed to quantify the cargo loss factor or evaluate its effects in the final rule regulatory assessment. The original final rule assessment estimated the cost of cargo shut-out for single-hull tankships. Because industry indicated that prudent under-keel clearances were already the standard "best practice" for the majority of single-hull vessels, the Coast Guard found that single-hull tankship traffic would not be notably increased by the anticipated under-keel clearance requirement. Therefore, this cost was not included in the assessment.

5. *Master/Pilot Relationship*

One comment requested that the Coast Guard consider allowing the master to discuss draft, anticipated under-keel clearance, and passage planning with the boarding pilot by radio, cellular phone, or some other method, prior to the pilot coming on board. The comment explained that in most ports, the current pilot boarding stations are too close, leaving no time for the pilot to discuss passage planning prior to proceeding to the channel or river.

The Coast Guard encourages masters to contact pilots prior to boarding stations. The operational measure requiring pilot cards (§ 157.450) ensures that discussions between the master and the pilot occur prior to entering port or getting underway. This anticipated under-keel clearance requirement also requires a discussion between the pilot and the master. It is the responsibility of the master to take the time to discuss the vessel's passage with the pilot. Safe

navigation of the vessel hinges on this discussion as well as the competence of the bridge team. There is no regulation that prohibits a master from requesting the pilot to board early or from conferring with the pilot by radio or other means prior to boarding, or engaging in any other communication that helps clarify conditions prior to a port transit.

6. Calculations

Twelve comments expressed dissatisfaction with the anticipated under-keel clearance provision relating to the calculation of squat. Two comments contended that if squat characteristics are to be taken into account for the anticipated under-keel clearance calculation, the regulations should incorporate generic squat equations to avoid the inaccuracies associated with using empirical formulas. One comment specifically recommended that the Coast Guard establish speed curves for various sizes and types of vessels to be used in calculating anticipated under-keel clearance. Another comment suggested that the local COTP, in coordination with the pilots, officially predetermine the transit speed at each critical geographical point for each ship type, size, and draft. The comment contended that if the COTP did not dictate the transit speed for the purpose of calculating squat, artificially low transit speeds that disregard the steering effect could be used in order to obtain a minimum squat value and reduce the ship's calculated navigational draft.

Another comment urged the Coast Guard to prescribe the form of all required calculations in order to ensure uniformity of usage throughout industry, and to facilitate Coast Guard inspections for compliance. One comment recommended that § 157.455(a)(1)(iii) be amended to allow masters to rely on calculations or experience in determining the corresponding effects of the intended transit speed on the vessel. The comment explained that the available formulas for squat are inaccurate for vessels in confined channels and tend to yield a much greater squat than the vessel actually realizes. Three comments suggested that the issue of squat should be a matter of discussion between master and pilot and not required to be determined at the commencement of a voyage. Three other comments argued that unless the Coast Guard was prepared to designate a methodology for determining squat, the calculation of squat should not be required by regulations.

One comment supported the requirement to include squat in the anticipated under-keel clearance calculation. If, according to the comment, § 157.450 requires maneuvering characteristics (including squat characteristics) to be recorded on the wheelhouse poster in accordance with Appendix 2 of IMO Resolution A.601(15), then § 157.455 should be amended by removing the "if known" from the tankship's deepest draft calculation. The comment explained that based on § 157.450, squat characteristics should be known, and that, therefore, the "if known" phrasing should be deleted from § 157.455, in order to make the provisions consistent.

The Coast Guard has removed the prescriptive calculation criteria for the anticipated under-keel clearance requirement in this final rule. Consideration of squat and how it may affect the vessel's maneuverability during a transit is required by § 164.11 for all vessels. This final rule ensures that the master and the pilot discuss the passage plan, including the anticipated under-keel clearance. This discussion should include speed, squat, and maneuverability criteria, as found in the wheelhouse poster in accordance with Appendix 2 of IMO Resolution A.601(15) and their effect on the vessel's safe transit. While the Coast Guard could implement speed restrictions for all single-hull tankships in this rulemaking or provide empirical formulas for squat calculations, it has not. Diverse port needs, vessel characteristics, and port hydrography make such requirements difficult to develop and keep current. Local COTPs, who have knowledge of port-specific needs, may choose to implement these types of requirements. However, if a COTP deems it necessary to require speed restrictions or the calculation of squat formulas, a cost analysis would be done and presented to the public for comment prior to implementation.

Regulatory Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that Order. It required an assessment of potential costs and benefits under section 6(a)(3) of that Order, and is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under ADDRESSES. Revisions to the Assessment completed for the final rule (61 FR

39770; July 30, 1996) are summarized as follows:

The amended anticipated under-keel clearance requirement in this final rule is less prescriptive than the provision the Coast Guard evaluated in the Operational Measures final rule (61 FR 39770). However, because it contains the essential elements contained in the original anticipated under-keel clearance provision—communication, planning, and acting to ensure safe navigation—this amended anticipated under-keel clearance requirement should be effective as the original, more prescriptive, requirement. Therefore, the costs and benefits for this final rule remain as calculated in the original final rule regulatory assessment. The estimated cost of implementing this amended anticipated under-keel clearance requirement remains at \$43.97 million. Implementing this adjusted anticipated under-keel clearance requirement would still yield a 10 to 23 percent risk effectiveness factor in preventing grounding or casualties of single-hull tank vessels. The estimated benefit range remains at 5,279 to 12,142 barrels of unspilled oil in the 19 years this requirement will be in effect. The estimated cost-benefit range for the amended anticipated under-keel clearance in this final rule is \$3,223–\$7,931 per barrel of unspilled oil.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This final rule does not change the cost or benefit estimates of the anticipated under-keel clearance requirement contained in the original final rule. For the reasons discussed in the final rule for operational measures (61 FR 39786), the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will provide assistance to small entities to determine how this rule applies to them. If you are a small business and

need assistance understanding the provisions of this rule, please contact the Coast Guard Captain of the Port (COTP) closest to your vessel's operational area.

Unfunded Mandate

Under the Unfunded Mandate Reform Act (Pub. L. 104-4), the Coast Guard must consider whether this rule will result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation). The Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule.

The cost-benefit analysis done for the original anticipated under-keel clearance requirement remains unchanged for this final rule. The anticipated under-keel clearance requirement contained in this final rule is less prescriptive while achieving the same objective. The anticipated under-keel clearance requirement, as amended in this final rule, 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 objective of the rule.

Collection of Information

This final rule contains no new collection-of-information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As stated in a notice published on December 6, 1996 (61 FR 64618), the Office of Management and Budget (OMB) has approved the collection requirements under OMB control number 2115-0629.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 (October 26, 1987) and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule for the original operational measures final rulemaking and concluded that preparation of an Environmental Impact Statement was not necessary. An Environmental Assessment and a Finding of No Significant Impact are available in the docket for inspection or

copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 157

Cargo vessels, Oil Pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 157 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101-380, 104 Stat. 520; Pub. L. 104-55, 109 Stat. 546.

2. The stay announced at 61 FR 60189, November 27, 1996, is lifted and § 157.455 is revised to read as follows:

§ 157.455 Minimum under-keel clearance.

(a) The owner or operator of a tankship, that is not fitted with a double bottom that covers the entire cargo tank length, shall provide the tankship master with written under-keel clearance guidance that includes—

(1) Factors to consider when calculating the ship's deepest navigational draft;

(2) Factors to consider when calculating the anticipated controlling depth;

(3) Consideration of weather or environmental conditions; and

(4) Conditions which mandate when the tankship owner or operator shall be contacted prior to port entry or getting underway; if no such conditions exist, the guidance must contain a statement to that effect.

(b) Prior to entering the port or place of destination and prior to getting underway, the master of a tankship that is not fitted with the double bottom that covers the entire cargo tank length shall plan the ship's passage using guidance issued under paragraph (a) of this section and estimate the anticipated under-keel clearance. The tankship master and the pilot shall discuss the ship's planned transit including the anticipated under-keel clearance. An entry must be made in the tankship's official log or in other onboard documentation reflecting discussion of the ship's anticipated passage.

(c) The owner or operator of a tank barge, that is not fitted with a double bottom that covers the entire cargo tank length, shall not permit the barge to be towed unless the primary towing vessel

master or operator has been provided with written under-keel clearance guidance that includes—

(1) Factors to consider when calculating the tank barge's deepest navigational draft;

(2) Factors to consider when calculating the anticipated controlling depth;

(3) Consideration of weather or environmental conditions; and

(4) Conditions which mandate when the tank barge owner or operator shall be contacted prior to port entry or getting underway; if no such conditions exist, the guidance must contain a statement to that effect.

Dated: September 15, 1997.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 97-25208 Filed 9-22-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME-046-6996a; A-1-FRL-5894-8]

Approval and Promulgation of Air Quality Implementation Plans; Maine (General Conformity Rule)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the State of Maine for the purpose of implementing General Conformity (Section 176(c)(4)(C) of the Clean Air Act (CAA), and its regulations, 40 CFR part 51, subpart W), which requires federal actions to conform to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. The Maine SIP incorporates by reference the criteria and procedures set forth at 40 CFR part 51, subpart W. This general conformity SIP revision will enable the State of Maine to implement and enforce the Federal general conformity requirements in Maine's nonattainment and maintenance areas at the State and local level. This action is being taken in accordance with the Clean Air Act.

DATES: This action is effective November 24, 1997, unless EPA receives adverse or critical comments by October 23, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office