

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.*

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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

of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW. (LE-131), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, (617) 565-3508, at the EPA Region I address above.

**SUPPLEMENTARY INFORMATION:** Section 176(c) of the Clean Air Act, as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and part D of the Act. EPA promulgated a final rulemaking on November 30, 1993 consisting of 40 CFR part 93, subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans," which applied to Federal agencies immediately (hereafter referred to as the General Conformity rule); and 40 CFR part 51, subpart W, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans," which established requirements for States in submitting SIPs. The general conformity rules, except for the 40 CFR 51.851(a) language requiring State submission of a SIP revision, are repeated at 40 CFR part 93, subpart B. The General Conformity rule establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The General Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and non-Federal entities (§ 51.851(b)). The federal General Conformity rule has been incorporated by reference so Maine's rule is no more stringent than the federal rule and does not impose any additional controls on non-federal entities.

On October 11, 1996, the State of Maine submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of incorporating by reference 40 CFR 51.850, 51.852, 51.853, 51.854, 51.855, 51.856, 51.857, 51.858, 51.859 and 51.860 thereby establishing general conformity criteria and procedures in the Maine SIP. This proposed SIP revision was the subject of a public hearing held on August 14, 1996 in accordance with federal and state administrative requirements. The Maine Board of Environmental Protection adopted "State Chapter 141—Conformity of General Federal Actions," that became effective September 28, 1996. The Maine Office of the Attorney General has certified Chapter 141 as to form and legality.

### I. Summary of SIP Revision

The purpose of the General Conformity Rule is to ensure that all Federal actions [except for Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) which are regulated under Transportation Conformity], conform to the appropriate SIP developed pursuant to Section 110 and part D of the CAA. Section 176(c) of the CAA, 42 U.S.C. 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP that has been approved or promulgated pursuant to the CAA. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area; (2) interfere with provisions in the applicable SIP for maintenance of any standard; (3) increase the frequency or severity of any existing violation of any standard in any area; or (4) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA ties conformity to attainment and maintenance of the NAAQS. Conformity therefore applies only in areas that are non-attainment or maintenance with respect to any of the criteria pollutants under the CAA: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter (PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>). The rule covers direct

and indirect emissions of criteria pollutants or their precursors that are reasonably foreseeable and caused by a Federal action.

### II. Evaluation of the State's Submittal

Pursuant to the requirements under Section 176(c)(4)(C) of the CAA the Maine DEP submitted a SIP revision to the EPA on October 11, 1996. The EPA found this submittal to be complete on November 14, 1996. In its submittal, the State adopted through incorporation by reference, "EPA's general conformity rule 40 CFR part 51, subpart W, §§ 51.850, 51.852, 51.853, 51.854, 51.855, 51.856, 51.857, 51.858, 51.859, and 51.860" (as published on November 30, 1996 at 58 FR 63247-63253), in Chapter 141 of the Maine Department of Environmental Protection Air Regulation entitled, "Conformity of General Federal Actions".

General conformity is required for all areas which are designated nonattainment or maintenance for any NAAQS criteria pollutant. The State of Maine currently has six areas where the general conformity rule must be implemented: three areas designated ozone nonattainment; one area designated ozone maintenance; one designated particulate matter (PM<sub>10</sub>) maintenance area; and one designated sulfur dioxide (SO<sub>2</sub>) maintenance area. The ozone areas for which conformity determinations are required and which are governed by general conformity include the following counties: Hancock; Waldo; Knox; Lincoln; Androscoggin; Kennebec; Cumberland; Sagadahoc; York. The PM<sub>10</sub> maintenance area for which conformity determinations are required and which is governed by general conformity includes a portion of Aroostock County (within city of Presque Isle). And finally, the SO<sub>2</sub> maintenance area for which conformity determinations are required and which is governed by general conformity is the municipality of Millinocket.

### III. Statutory and Regulatory References

The Maine Office of Attorney General determined that this SIP revision will be enforceable pursuant to Maine statutory law (i.e., 38 M.R.S.A. Section 585 which states "The board may establish and may amend standards, herein called "emission standards," limiting and regulating in a just and equitable manner the amount and type of air contaminants which may be emitted to the ambient air within a region. Such emission standards shall be designated to prevent air pollution and to achieve and maintain the ambient air quality

standards within the region in which applicable" and 38 M.R.S.A. Section 585-A which states "The Board may establish and amend regulations to implement ambient air quality standards and emission standards"). Finally, Section 110 of the Clean Air Act Amendments requires each state to adopt and submit to the Administrator a plan providing for the implementation, maintenance and enforcement of air quality standards and control programs.

#### **IV. EPA Action**

The EPA is approving the general conformity SIP revision for the State of Maine. The EPA has evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal general conformity rules set forth at 40 CFR part 51, subpart B. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 24, 1997, unless, by October 23, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 24, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### **V. Administrative Requirements**

##### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### *C. Unfunded Mandates Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

##### *D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### *E. Petitions for Judicial Review*

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 9, 1997.

**John P. DeVillars,**

*Regional Administrator, Region I.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

## Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(44) to read as follows:

### § 52.1020 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(44) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on October 11, 1996.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated October 11, 1996 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 141 of the Maine Department of Environmental Protection Air Regulation entitled, "Conformity of

General Federal Actions," effective in the State of Maine on September 28, 1996.

3. In § 52.1031 Table 52.1031 is amended by adding a new entry for state citation Chapter 141: General Conformity Rule to read as follows:

### § 52.1031 EPA-approved Maine regulations.

\* \* \* \* \*

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
141	Conformity of General Federal Actions.	9/11/96	September 23, 1997.	62 FR 49611	(c)(44) "Chapter 141: Conformity of General Federal Actions".

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD 039-3019; FRL-5896-1]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; 15% Rate of Progress Plan for the Maryland Portion of the Metropolitan Washington, D.C. Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting conditional approval of the State Implementation Plan (SIP) revision submitted by the State of Maryland, for the Maryland portion of the Metropolitan Washington, D.C. serious ozone nonattainment area, to meet the 15 percent reasonable further progress (RFP, or 15% plan) requirements of the Clean Air Act (the Act). EPA is granting conditional approval of the 15% plan, submitted by the State of Maryland, because on its face the plan achieves the required 15% emission reduction, but additional documentation to verify the emission calculations is necessary for full approval. Additionally, the plan relies upon Maryland's inspection and maintenance (I/M) program that received final conditional approval on July 31, 1997 (62 FR 40938). This action

is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective on October 23, 1997.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at (215) 566-2095 or via e-mail, at the following address: donahue.carolyn@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to reduce volatile organic compounds (VOC) emissions by 15% from 1990 baseline levels. The Metropolitan Washington, D.C. area is classified as a serious ozone nonattainment area and is subject to the 15% plan requirement. The Metropolitan Washington, D.C. ozone nonattainment area consists of the entire District of Columbia ("the District"), five counties in the Northern Virginia area and five counties in

Maryland. The Maryland portion consists of Calvert, Charles, Frederick, Montgomery and Prince George's Counties.

Virginia, Maryland, and the District all must demonstrate reasonable further progress for the Metropolitan Washington, D.C. nonattainment area. These three jurisdictions, in conjunction with municipal planning organizations, collaborated on a coordinated 15% plan for the nonattainment area. This was done with the assistance of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning.

The State of Maryland submitted the 15% plan SIP revision for the Maryland portion of the Metropolitan Washington, D.C. nonattainment area on July 12, 1995. On June 5, 1997, EPA published a notice of proposed rulemaking (NPR) in the **Federal Register** proposing conditional approval of the 15% plan (62 FR 30821). EPA's rationale for granting conditional approval to this Maryland 15% plan, and the details of the July 12, 1995 submittal are contained in the June 5, 1997 NPR and the accompanying technical support document and will not be restated here.

##### II. Public Comments and EPA Responses

EPA received a letter in response to the June 5, 1997 NPR from the Sierra Club Legal Defense Fund (SCLDF). The