

United States
Coast Guard

National Pollution Funds Center

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COAST GUARD COMMANDANT ANNOUNCES VESSEL FINANCIAL RESPONSIBILITY RULE

Admiral Robert E. Kramek, the Commandant of the U.S. Coast Guard, announced the issuance of the long-awaited Certificate of Financial Responsibility (COFR) rule, which specifies what types of evidence vessel owners and operators must submit to the Coast Guard to demonstrate the ability to pay damages and removal costs in the event of oil or hazardous substance spills. The COFR rule implements portions of the Oil Pollution Act of 1990 (OPA 90) and the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), both of which require vessel owners and operators to present "evidence of financial responsibility" of their ability to pay up to the limits specified in each law. OPA 90, which concerns discharges of oil, was enacted partly in response to the *EKKON VALDEZ* incident. Superfund deals with releases of hazardous substances other than oil. This rule was approved by the Secretary of Transportation and the Office of Management and Budget.

The administrative process of developing the COFR rule has been carefully watched and commented on by international shipping interests, who have voiced concern over the financial responsibility and liability aspects of OPA 90. The new financial responsibility requirements draw heavily from the original September 1991 rulemaking proposal, but the Coast Guard has made a number of technical and implementation schedule changes in response to industry comments. Shipowners and operators will be allowed to demonstrate financial responsibility through types of self-insurance that require tangible assets, as well as insurance guaranties and surety bond guaranties. However, the Coast Guard has not adopted various maritime industry proposals to allow the use of membership in shipowner associations (known as P6I Clubs) as self-insurance without tangible assets.

Several shipowners' organizations proposed the creation of a Mandatory Excess Insurance Facility (MEIF), which would provide high levels of liability coverage as well as serve as a guarantor for the purpose of providing COFR coverage. This proposal was not accepted by the Coast Guard because it would require substantial legislation. However, even though it

involves primarily non-COFR-related issues, Admiral Kramek has recommended that the concept be further considered as a means of addressing shipowners' concerns about their inability to purchase multi-billion dollar levels of oil pollution liability coverage in the commercial market. That amount of insurance far exceeds any COFR-related financial responsibility requirements.

Insurers and other providers of financial responsibility (called guarantors) will be subject to direct action from claimants, as provided in OPA 90. However, the rule restates and reinforces OPA 90's provision that a guarantor's liability under direct action is strictly limited to the amount of the guaranty provided. A guarantor is, by law, not subject to unlimited liability.

The Coast Guard also prepared a final Regulatory Impact Analysis (RIA). The RIA concludes that the rule will not cause severe economic disruption (a "train-wreck"). Even if shipowners continue to prohibit their PGI Clubs from providing the OPA 90 financial responsibility guaranties, commercial sources say they will make the guaranties available.

Although the rule is effective upon publication, the Coast Guard is allowing 90 days for comments, particularly on the changes made from the September 1991 proposal. After reviewing all comments and making necessary changes, the Coast Guard will publish a final rule.

An implementation schedule that allows a non-disruptive transition to compliance with the new rule has been provided. Self-propelled tank vessels generally will be the first category of vessels required to comply with the new rule, by December 28, 1994. Tank barges must be in compliance by July 1, 1995. Non-tank vessels must comply when their existing COFRs expire, beginning December 28, 1994.

Further questions concerning vessel financial responsibility may be directed to the Coast Guard's National Pollution Funds Center at (703)235-4709.

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