



Nontank Vessel Response Plan Final Rule—Finally

New Development

The U.S. Coast Guard issued its long-awaited Final Rule addressing nontank vessel response plans (“NTVRP”) on September 30, 2013. The Final Rule is effective October 30, 2013, and requires owners and operators of nontank vessels to prepare and submit NTVRPs by January 30, 2014. The Final Rule implements a 2004 statutory mandate expanding oil spill response planning standards from tank vessels (implemented in 1993) to self-propelled nontank vessels of 400 gross tons or greater operating on waters within three miles of the United States. The requirements for nontank vessels are similar to those for tank vessel requirements. The Final Rule is available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-22059.pdf>.

Background

The Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293), signed into law on August 9, 2004, contained a provision requiring owners and operators of self-propelled nontank vessels of 400 gross tons or greater to prepare and submit NTVRPs to the Coast Guard by August 8, 2005. On February 4, 2005, the Coast Guard issued Navigation and Vessel Inspection Circular Number 01-05, which was later amended by Navigation and Vessel Inspection Circular Number 01-05, CH-1 (“NVIC 01-05, CH-1”), dated January 13, 2006, in order to provide interim guidance for the development and review of NTVRPs pending the implementation of regulations.

Regulations, however, were not issued over the next several years. Due to the delay in promulgating regulations, the Coast Guard issued a notice on June 23, 2008 informing U.S. and foreign-flag nontank vessel owners and operators that, effective August 22, 2008, it would begin enforcing the requirement to prepare and submit an NTVRP for nontank vessels based on the requirements contained in the law.

A Notice of Proposed Rulemaking (“NPRM”) was published on August 31, 2009. The NPRM is available at: <http://edocket.access.gpo.gov/2009/pdf/E9-20310.pdf>. In addition, our previous advisory regarding the NPRM is available at: www.blankrome.com/index.cfm?contentID=37&itemID=2059. It took more than four years to issue the Final Rule, which in many respects closely mirrors NVIC 01-05, CH-1 and the tank vessel regulations, as discussed in more detail below.

Discussion of Response Plan Requirements

The Final Rule requires owners and operators of self-propelled nontank vessels of 400 gross tons or greater to prepare and submit NTVRPs to the Coast Guard for approval. The new regulations, which appear as 33 C.F.R. Part 155, Subpart J, are intended to align as much as possible with existing tank vessel response plan requirements. However, while all tank vessels are required to meet functional requirements, the NTVRP requirements are tailored to nontank vessels based on a risk assessment to minimize the burden on vessels that pose less risk to the environment should a casualty occur. Specifically, NTVRP requirements are scaled according to combined fuel and cargo oil capacity in three groups:

- (1) less than 250 barrels;
- (2) less than 2,500 barrels, but greater than or equal to 250 barrels, and
- (3) 2,500 barrels or greater.

Nontank vessels in category 3 above (2,500 barrels or greater) generally must meet the same functional planning requirements as tank vessels. As the Coast Guard points out, some larger nontank vessels now carry a volume of oil as great as, or greater than, tank vessels.

Generally, all NTVRPs must identify a qualified individual having full authority to implement removal actions, identify and ensure by contract or other approved means the availability of personnel and equipment to respond to a discharge, and describe training, equipment testing, drills, and roles of individuals in the event of a discharge. Depending on fuel and cargo capacity, vessels must have NTVRPs that meet response resource requirements for an average most probable discharge (“AMPD”), maximum most probable discharge (“MMPD”), or worst case discharge (“WCD”). In addition, NTVRPs must address a variety of types of resources, such as salvage, lightering, fire fighting, dispersants, aerial tracking, shoreline protection, and shoreline cleanup. Response resources required for each category are summarized in the below matrix.

Nontank vessel’s fuel and cargo oil capacity	AMPD	MMPD	WCD	Salvage	Emergency lightering	Fire Fighting	Dispersant ³	Aerial Tracking ⁴	Shoreline protection	Shoreline cleanup
2,500 barrels or greater	NO ¹	YES	YES	YES	YES	YES	YES	YES	YES	YES
Less than 2,500 barrels, but greater than or equal to 250 barrels	NO ¹	YES	NO	YES ²	YES ²	YES ²	YES ²	YES ²	YES	YES
Less than 250 barrels	NO ¹	YES ²	NO	YES ²	NO	NO	NO	NO	NO	NO

1. For nontank vessels carrying oil as fuel only. Nontank vessels carrying oil as cargo must meet AMPD response resources in 33 CFR 155.5050(d)(1) as applicable.
2. The indicated response resources that must be located within the stipulated response times in the specified geographic areas need only be identified and planned for in the VRP, but not ensured available by contract. Submission of a written consent from the response resource provider must accompany the VRP for approval. This is considered an acceptable “other approved means.” See 33 CFR 155.5020. “Contract or other approved means”, paragraph (5).
3. Dispersant response resources are only required for waters where dispersant pre-authorization has been authorized IAW the Area Contingency Plan. See 33 CFR 155.5050(i).
4. Aerial oil spill tracking response resources are not required for inland areas.

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In addition to differences in required response resources, requirements for training and exercises also vary depending on the fuel and cargo oil capacity of the vessel. For example, there is a provision that, in certain circumstances, allows a planholder to submit an Alternative Training and Exercise Program, which can be developed by a third party or industry organization and which can then be approved by the Coast Guard after a determination that it provides an equivalent level of training and exercise preparedness.

The Coast Guard also made a number of changes in the Final Rule in response to comments received on the NPRM, including the revision of definitions for consistency, removing the requirement to have original, notarized copies of the NTVRP onboard, allowing electronic submission, removing the annual review reporting requirement, and allowing the submission of one plan for multiple vessels, among others. With regard to Shipboard Oil Pollution Emergency Plans (“SOPEP”), the Coast Guard clarified that if a U.S.-flag nontank vessel holds a Coast Guard approved NTVRP and is in compliance with NTVRP regulations, the Coast Guard will consider the SOPEP regulations met. Furthermore, there are provisions allowing for one-time port waivers for remote areas.

Conclusion

Depending on the detail in current NTVRPs, the amount of work required to update an NTVRP could be considerable. As such, nontank vessel owners and operators should review the NTVRP requirements for their vessels as soon as possible and then submit NTVRPs in accordance with the Final Rule by January 30, 2014.

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