

LP BULLETIN

Friday 27 June 2008

Bulletin 586 - 6/08 - Nontank Vessel Response Plan - USA

Members trading ships to and from the US will be interested in a new Coast Guard requirement for nontank ships to submit a response plan. Operators of tankers trading to US waters will already be familiar with the requirement to lodge an oil spill response plan with the US Coast Guard.

The United States Coast Guard issued a notice on 23 June 2008 to inform US and foreign-flag nontank ship owners and operators that, effective 22 August 2008, it will begin enforcing the requirement to prepare and submit a nontank vessel response plan (NTVRP) for certain nontank ships.

Background

As explained by Blank Rome LLP in their Maritime Developments Advisory No. 5 (March 2005) available at

<http://www.blankrome.com/index.cf>

[m?contentID=37&itemID=82](http://www.blankrome.com/index.cf?contentID=37&itemID=82), the Coast Guard and Maritime Transportation Act of 2004 (Pub. L. 108-293) (the Act), which was signed into law on 09 August 2004, required owners and operators of all nontank ships of 400gt or greater (as measured under the International Tonnage Convention) to prepare and submit NTVRPs to the Coast Guard by 08 August 2005.



The Coast Guard issued Navigation and Vessel Inspection Circular Number 01- 05, which was amended by Navigation and Vessel Inspection Circular Number 01-05, CH-1 (NVIC 01-05, CH-1), in order to provide interim guidance for the development and review of NTVRPs.

Regulations were never issued, however, and the Coast Guard issued a notice and request for comments on 24 June 2005 because of the uncertainty related to enforcement and application of the NTVRP requirements. This notice stated that the Coast Guard would not enforce the Act until regulations were issued and in effect. In the meantime, the Coast Guard encouraged ship owners and operators to seek interim authorisation letters through the voluntary process laid out in NVIC 01-05, CH-1. Despite the non-enforcement notice, owners and operators were still required to develop and submit NTVRPs.

Discussion

As some nontank ships have still not submitted NTVRPs and because nontank ships also pose the risk of serious bunker spills, the Coast Guard will screen all nontank ships prior to their first arrival in the United States for the submission of NTVRPs. The “Cosco Busan” oil spill reinvigorated the interest in this rather dormant rulemaking. It is worth noting, however, that the “Cosco Busan” did, in fact, have an NTVRP in place.

The initial Coast Guard enforcement will focus on nontank ships of at least 1,600gt. The local Coast Guard Captain of the Port may place operational restrictions on non-compliant ships under the authority of regulations issued under the Ports and Waterways Safety Act (PWSA). The Coast Guard will rely on PWSA for enforcement actions until its NTVRP regulations are promulgated due to the uncertainty of enforcement authority under the Act pending issuance of the regulations.

Conclusions and Recommendations

This change in enforcement policy now formalises the need for owners and operators of nontank ships that trade with the United States to ensure that they have submitted up-to-date and comprehensive vessel response plans to avoid becoming subject to Coast Guard enforcement actions. It is imperative that owners and operators submit their NTVRPs to the Coast Guard as soon as possible. If they have previously submitted such plans, they should ensure that those submitted vessel response plans are still current.

Coast Guard guidance about this important development can be accessed at the USCG website using the following link: <http://www.uscg.mil/hq/g-m/nvic/NVIC%2001-05,%20CH-1.pdf>

Source of information: Blank Rome LLP
Maritime Developments Advisory No. 17 issued June 2008
www.blankrome.com