



MONTHLY REPORT for ICS

APRIL 2016

NOTE TO THE READER: Reference to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. Please note new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <http://thomas.loc.gov/> by entering the bill number (HR 802, S 2841) in the "search bill text" block found at the center of the page.

Ballast Water Reporting and Recordkeeping – New Reporting Form Must Be Used On May 1, 2016 and Beyond

In our November 2016 update, we advised that the US Coast Guard had finalized its regulations relative to new ballast water reporting and recordkeeping requirements. (See Federal Register, November 24, 2015, pg. 73105-73115). Due to the delay in finalizing the new reporting form which was originally to be used from the effective date of the final rule (February 22, 2016), the US Coast Guard temporarily delayed the mandatory use of that new form. Per an email from Jeff Lantz (USCG), it was noted that since the form had only become available on February 19, 2016 and further noting that this late availability did not give industry sufficient time to adopt to and use the new form by the February 22, 2016 effective date, industry was permitted to continue to use the old form for an unspecified period of time. However, USCG urged the industry to begin using the new form as soon as possible.

The USCG has recently published a notice that informs the industry that the new form must be used beginning on May 1, 2016. Text of the notice is as follows:

The Coast Guard published updated Ballast Water Management Reporting and Recordkeeping requirements on [November 24, 2015](#). Beginning February 22, 2016, the reporting was scheduled to transition to new reporting form as part of these updated regulations. To assist industry in adjusting to the new reporting forms, a transitional period was implemented.

However, beginning May 1, 2016, this transitional period will expire. **The Coast Guard expects vessel owners and operators of vessels equipped with ballast water tanks and bound for ports or places in the United States will only use the new form starting on May 1, 2016.**



Please visit the [National Ballast Information Clearinghouse](#) website for details.

National Preparedness for Response Exercise Program (PREP)
Guidelines
Federal Register, April 11, 2016 (Pgs. 21362-21370)

After multiple somewhat convoluted rounds of request/receipt of comments on the PREP guidelines, the USCG has produced its finalized guidelines and has published Marine Safety Information Bulletin (MSIB) 08-16 which summarizes the somewhat lengthy guidelines document. The new guidelines are effective on June 10, 2016.

The PREP guidelines are applicable to both tank and non-tank vessels.

The PREP guidelines are published and agreed by the National Scheduling Coordination Committee (NSCC) which is composed of four distinct US federal agencies – the Coast Guard (USCG/DHS), the Environmental Protection Agency (EPA), the Pipeline and Hazardous Materials Safety Administration (PHMSA/DOT), and the Bureau of Safety and Environmental Enforcement (BSEE/DOI). Combination of the responsibilities across 4 separate and distinct US government departments/administrations for issuing and exercising the PREP guidelines reflect the need for coordination and collaboration of these agencies during response to a real life situation and thus justifies the need for similar coordination and collaboration in the exercise of response plans. While traditionally the USCG has taken the lead in this process, public sensitivity to emergency response planning and implementation during an actual incident has elevated the importance of this joint effort across all the involved agencies, although admittedly, coordination across 4 very unique bureaucracies can be challenging at best.

In general, the changes to the final guidelines include:

- PREP guidelines address 37 different exercise types which test six different response plans overseen by the four agencies promulgating these guidelines
- changes in definitions and terminologies, to better align terms used in PREP with terms used in other national exercise programs and OPA 90 implementing regulations e.g. "spill management team" (SMT) is now replaced with the term "incident management team" (IMT)
- area level exercises e.g. single functional tests, area level notification exercises and equipment deployments are now referred to as "drills"
- "major" area level exercises testing the entire response structure will now be referred to as "operations-based, functional or full scale exercises (FE/FSEs)



- Planning for all area FE/FSEs will be considered a joint and shared responsibility between the government members of the Area Committee, industry plan holders and their OSROs
- Clarifying provisions related to exercise situations where credit for OSRO deployment may or not be credited among plan holders who have contracted with that particular OSRO
- clarification of the term “containment” to reflect the requirements for containment of oil at the water’s surface versus containment of oil under the water’s surface (now known as “subsea containment”)
- establishes the position that verbal (vs. electronic) notification should be the primary means of communication between key response entities, noting that electronic notification does not confirm to the originator that the communication has actually been received
- clarification of the terms “internal” and “external” where “internal” is now termed “plan holder exercises” and the term “external” will no longer be used
- broadens the definition of OSRO to include all providers that offer any and all spill response resources, including those providing mechanical recover, in-situ burning, dispersants, bioremediation, salvage, source control, aerial surveillance and remote sensing
- clarification of plan holder requirements during government-initiated unannounced exercises (GIUEs) particularly as regards credit given to multiple ship fleets operating in multiple COTP zones
- GIUE credits/non-credits are as follows
 - Facility successfully completing a GIUE is given a 36 month reprieve however other facilities covered under the same plan are still subject to GIUE
 - Vessel successfully completing a GIUE is given a 36 month reprieve regardless of COTP zone
 - Other vessels covered under the same plan as vessel which has successfully completed a GIUE has 36 month reprieve in that COTP zone but may be subject to a GIUE in another COTP

It is recommended that vessel owners:

- Carefully review the new PREP guidelines
- Assess new requirements within the context of your vessel response plans
- Ensure familiarity with Area Contingency Plans in all US ports of call
- Participate in local Area Committee deliberations as much as practical given multiple ship fleets trading to multiple COTP zones involve a number of area committees

MSIB 08-16 may be viewed at https://www.uscg.mil/msib/docs/008_16_4-5-2016.pdf. The 2016 PREP guidelines may be viewed at <https://homeport.uscg.mil/cgi->



[bin/st/portal/uscg_docs/MyCG/Editorial/20160413/2016%20PREP%20Guidelines.pdf?id=cca84f3b9514e5579c680f8611510de83b9025a1](https://www.uscg.gov/st/portal/uscg_docs/MyCG/Editorial/20160413/2016%20PREP%20Guidelines.pdf?id=cca84f3b9514e5579c680f8611510de83b9025a1)

Government Initiated Unannounced Exercises (GIUEs)
(US Coast Guard MER Policy Letter 01-15, Ch-1)

Links to documents: MER Policy Letter 01-15, Ch-1 may be viewed via our drop box link at <https://www.dropbox.com/s/blesox0q97k4iqz/4-30-16%20A%20USCG%20MER%20Policy%20Letter%2001-15%2C%20CH-1%20-%20GIUE.pdf?dl=0>. Please note that as of this date, the Policy Letter is not posted on the USCG vessel response plan website but is expected to be posted on that site in the near term. The USCG vessel response plan website may be viewed at https://homeport.uscg.mil/mycg/portal/ep/channelView.do?channelId=-30095&channelPage=%2Fep%2Fchannel%2Fdefault.jsp&pageTypeId=13489&BV_SessionID=@@@@0450571097.1462023894@@@@&BV_EngineID=cccda dqjejlkekcfngcfkmdfhdfgo.0

The 2016 PREP guidelines may be viewed at https://homeport.uscg.mil/cgi-bin/st/portal/uscg_docs/MyCG/Editorial/20160413/2016%20PREP%20Guidelines.pdf?id=cca84f3b9514e5579c680f8611510de83b9025a1

As noted above, the new PREP guidelines include text addressing GUIEs in general and specifically include:

- clarification of plan holder requirements during government-initiated unannounced exercises (GIUEs) particularly as regards credit given to multiple ship fleets operating in multiple COTP zones
- GIUE credits/non-credits are as follows
 - Facility successfully completing a GIUE is given a 36 month reprieve however other facilities covered under the same plan are still subject to GIUE
 - Vessel successfully completing a GIUE is given a 36 month reprieve regardless of COTP zone
 - Other vessels covered under the same plan as vessel which has successfully completed a GIUE has a 36 month reprieve in that COTP zone but may be subject to a GIUE in another COTP

As part of this process, USCG has issued a new policy letter outlining requirements and expectations for government initiated unannounced exercises (MER Policy Letter 01-15, CH-1), dated February 26, 2016. This policy letter and the new PREP guidelines are concerning in the least as they appear to significantly increase the scope and frequency of drills and exercises with no justified benefit relating to improved response capability or economic analysis justifying the significantly increased cost to the industry that would



result from the application of these new provisions. Among some of the more significant changes included in this policy letter include:

- COTPs with 12 or more MTRs (marine transportation related) facilities must conduct “at a minimum” four GIUEs per year while COTPs with less than twelve MTRs must conduct “at a minimum” two GIUEs per year. (Enclosure 1 to MER Policy Letter 01-15, CH-1). Given that frequency, **AT A MINIMUM**, the GIUEs required across all COTP zones each year total 153. (Keep in mind that vessels calling in multiple COTP zones will be exposed to GIUE requirements in each zone subject to the credit requirements (36 month exception) outlined below). (Paragraph 8(a))
- Vessels and covered facilities are required to participate in GIUEs. Refusal to participate will result in the COTP taking “appropriate enforcement action” as outlined in the Marine Safety Manual, Volume V and the Notice of Violation User’s Guide as referenced in the policy letter e.g. at a minimum, the vessel will be issued a Notice of Violation with an administrative penalty assessment; at the worst, a civil and/or criminal enforcement action may be initiated. In addition, a vessel who refuses to participate in a GIUE will be targeted for a future GIUE and will not receive the benefit of the 36 month exception as outlined below. (Paragraph 8(c) and 8(i)(1))
- GIUEs conducted at an MTR facility may include a vessel berthed at that facility if the scenario includes the vessel as the source of the spill. (Paragraph 8(c))
- A successfully completed GIUE is defined as one where the federal response plan notifications are made in a timely fashion and deployment of the facility’s AMPD equipment meet the 1 hour, 2 hour and possibly even the 4 hour personnel and equipment deployment requirements. (Paragraph 8(c))
- Vessels moored at an MTR facility are not required to ensure the availability of contracted AMPD response equipment and may rely on the facility’s AMPD coverage only if the facility plan holder has explicitly agreed to provide these services. Although not required to be secured by contract, vessels must still meet the AMPD planning standards found at 33 CFR 155.1050(d)(1). Paragraph 8(c))
- GIUE scenarios may include tank vessels engaged in lighterage operations within 12 miles of the US “before, during or after lightering operations”. In this situation, vessels must have OSRO coverage in place by contract which assures response within 1 hour of an event. Given the quoted text and the low likelihood of a spill before or after



lighterage operations (versus during lighterage operations), one must question the scope of this requirement. (Paragraph 8(d))

- Deficiencies identified associated with the GIUE response requirements will be documented,, included in the final results letter with a listing of all deficiencies, and the plan holder will be expected to timely correct those deficiencies. The plan holder would not be given credit for an unsuccessful GIUE even where the deficiencies are timely corrected. (Paragraph 8(i)(2))
- Deficiencies not associated with the GIUE which are observed by USCG personnel will also be documented, but this finding will not impact the final evaluation of whether the GIUE requirements were successfully met (or not). (Paragraph 8(i)(3))
- Note enclosure (2) to the policy letter, GIUE Implementation Workbook, contains significant detail on the planning, execution and assessment for GIUEs. Some of the more troublesome and/or expansive issues identified are listed below.
- Section C.4 contains provisions for the response plan review by the USCG prior to initiation of the GIUE. Two specific provisions, review of the shipboard spill mitigation procedures and review of the planned exercise program including the full plan exercise every three years, appear to be more expansive than is necessary in preparation for the GIUE.
- Section C.6 discusses the GIUE in terms of testing to an AMPD scenario however introduces bunkering operations into the scenario mix as well as lightering operations. Although the focus during bunkering operations is on the lightering barge/vessel, inclusion of bunkering operations introduces the scenario where a non-tank vessel receiving bunkers, may actually be impacted by the GIUE execution.
- Section C.6 also notes the purpose of the GIUE is to assure timely operation of the notification system and that containment boom and recovery devices can be deployed by the 1 hour and 2 hour requirement deadlines.
- Section C.6 (a) affirms the application of PREP objectives to the GIUE and specifically includes a section on safety (“ensure response actions comply with all company, Coast Guard and regulatory safety standards”).
- Although the GIUE is expected to take no more than 4 hours from start to finish, given that some vessel personnel will likely be involved during



the GIUE, the question arises as to whether the vessel can or should continue with normal cargo operations during the GIUE, given the safety implications. In addition, use of vessel crew during the GIUE, may impact the hours or work/rest requirements.

- Section C.6 (b)(2) not surprisingly affirms that the plan holder is responsible for costs incurred during its response during the GIUE.
- Section D.4 outlines the exercise credit provisions. In general, the successful GIUE will result in credit for (1) QI notification exercise (2) equipment deployment exercise and (3) unannounced exercise. Vessels will be given a 36 month reprieve from participating in a GIUE in any COTP zone. However, other vessels covered by the exercised response plan will only receive the 36 month reprieve in the COTP zone where the GIUE was conducted e.g. those vessels may be subject to a GIUE in another COTP zone.
- Given the response structure which includes vessels, vessel owner shoreside response staff and contracted spill response assets, the credit provisions above seem to ignore the fact that but for the vessel itself, the vessel owner's shoreside personnel and contracted response personnel in a scenario where the vessel response plan covers multiple vessels, are likely to be the same regardless of the COTP zone in which the initial GIUE is conducted. Application of these provisions will significantly impact response personnel and equipment given that vessels covered under multiple vessel response plans, are calling in multiple COTP zones. Taken to the ridiculous, the 153 annually required GIUEs across all COTP zones, will exercise these resources to the point of fatigue and failure and arguably would seriously impact their ability to respond to a real spill.

FUNDAMENTAL CONCEPTS/QUESTIONS:

- The industry is fully supportive of exercising vessel response plans in a manner which can reasonably be expected to improve response capabilities.
- Current requirements (prior to issuance of this revised policy letter), adequately and frequently test various components of vessel response plans including notification requirements and equipment deployment as well as full plan exercises required every 3 years.
- Given the successful exercises and actual spill responses involving vessel response plans in the past, what is the USCG trying to "fix" by drastically increasing the exercise requirements? If it ain't broke, don't fix it.



- Note that PREP/GIUE include MTR facilities, land based transportation sectors, vessels and offshore facilities. (PREP Guidelines are issued by USCG, EPA and DOT (Pipeline and Hazardous Materials Safety Administration). If one of these sectors is lacking based on prior response performance, why apply new requirements to those sectors that have performed exceptionally versus correcting response deficiencies in the sectors that are seen to be lacking?
- The justification for exercising response plans is to assure a comprehensive and timely response to an actual spill. Introducing requirements that significantly increase the scope and frequency of exercises and overly stress plan holders and service providers and associated response equipment, may actually reduce the likelihood that response to an actual spill will be adequate and timely. Exercises are supposed to enhance response to an actual event, not diminish that capability.
- Finally, it can be argued that the USCG (and other involved agencies) has exceeded their statutory authority and in fact, added additional requirements in the form of the PREP guidelines and GIUE policy letter that actually violate their own regulations. At the very least, adding new requirements to the existing ones, should be undertaken as part of a rulemaking initiative and not slid in the back door in the form of guidelines. Although the USCG invited comments on both initiatives, it is difficult to see where any of the comments received from any sector of the response community was actually considered and incorporated into these final documents.
- Requiring these new requirements to be subject to a formal rulemaking, will permit the submission of comments by interested parties (as was the case here) but will also require the agencies to formally respond to those comments (agree, disagree) with reasons for their decision on a particular issue and perhaps equally important, will require them to perform an economic analysis weighing the benefits of proposed changes with the costs associated with implementing these additional requirements.

NEXT STEPS: It may be recalled that CSA and the American Salvage Association convened a meeting in Washington DC several years ago, bringing together all sectors of the response community. Government agencies were invited but did not attend, allegedly because of concerns with provisions of the Administrative Procedures Act relating to ex parte communications (off the record) restrictions applicable to ongoing initiatives e.g. the revised PREP guidelines were in the process of being developed. Given the “final” nature of



the PREP guidelines and the GIUE policy letter, CSA proposes to do the following:

- Convene a meeting of interested parties representing all sectors of the response community (vessel owners, QIs, OSROs, SMFF providers) to discuss possible ways forward to bring these issues before the USCG and other involved agencies. (First meeting scheduled for May 2, 2016)
- Develop a position paper/letter identifying concerns with the new PREP guidelines and GIUE policy letter for communication to senior USCG personnel. This document should be accompanied by a matrix identifying changes/added requirements in the new documents, prior requirements, and comments on why or why not these changes should be supported or opposed. The ultimate "ask" in this letter is for the USCG to initiate a formal rulemaking procedure for the reasons noted in the section above.

USCG Policy Letter on Vessel Security Plan, Alternative Security Program and FSP Renewals

USCG issued this Policy Letter on the renewal timeline and process for Vessel Security Plans (VSP), Alternative Security Programs (ASP) and Facility Security Plans (FSP).

[CG-5P Policy Letter 01-16- VSP ASP FSP Plan Renewal](#)

The renewal VSP, ASP and FSP's must be submitted to the USCG 60 days prior to the expiration of the current approved plan. If submitted 60 days prior, USCG will guarantee the vessel or facility will have no interruption in service due to an expired plan and USCG will allow temporary deviations from the regulations if they are unable to approve the plan in 60 days on a case by case basis. As a reminder, the Vessel Security Assessment must be reviewed, validated and the Assessment report updated in the VSP before the VSP is submitted to USCG Marine Safety Center for renewal.

Discharge Removal Equipment for Vessels Carrying Oil **(Federal Register, April 7, 2016, pg. 20247-20249)**

The US Coast Guard has issued its final rule requiring the carriage of discharge removal equipment for vessels carrying oil in bulk as cargo. This final rule is effective on May 9, 2016. The final rule does not introduce any new requirements but rather makes final the provisions of an interim rule originally published on December 22, 1993 which was subsequently changed over the past 20 years.

Reinforcing the provisions of the interim rule, the final rule expressly requires:



- Carriage requirements for equipment and supplies for containing and removing on-deck oil spills applicable to oil tankers and offshore oil barges mandating carriage of equipment and supplies for containing and removing on-deck oil spills (155.205(400 feet and greater),155.210 (less than 400 feet))
- Carriage requirements for equipment and supplies for containing and removing on-deck oil spills applicable to inland oil barges. (155.215)
- Carriage requirements for equipment and supplies for containing and removing on-deck oil spills applicable to vessels carrying oil as a secondary cargo. (155.220)
- Additional requirements applicable to oil tankers and offshore oil barges mandating the vessel is "properly equipped for the internal transfer" cargo. (155.225)
- Emergency towing arrangements (and other provisions) for offshore oil barges (155.230)
- Emergency towing arrangements (and other provisions) for oil tankers of 20,000 DWT or greater (155.235)
- Oil tankers and offshore oil barges must have access to onshore, computerized equipment to calculate damage stability and residual structural strength.
- Damage stability and residual strength requirements for oil tankers and offshore oil barges (155.240)
- Damage stability and residual strength requirements for oil tankers and offshore oil barges (155.245)
- Spill prevention coaming and oil draining requirements re: the oil discharge containment requirements. (155.310)

As regards applicability of this rule, it clearly focuses on vessels carrying oil in bulk. However, it is important to note that there is a requirement to have discharge removal equipment available during fueling or bunkering operations as per the Declaration of Inspection and the non-tank vessel response plan (VRP). Given the references in this final rule to spill containment and other equipment, it is expected that non-tank vessels would be required to have equipment on board needed to respond to a small (12 barrel or less) deck spill which could occur during bunkering operations.

A copy of the final rule may be downloaded at:

<https://www.gpo.gov/fdsys/pkg/FR-2016-04-07/pdf/2016-07977.pdf>

Oil Spill Removal Organization (OSRO) Guidelines
(USCG Marine Safety Information Bulletin (MSIB) 07-16)

The US Coast Guard has revised the OSRO guidelines which obviously focus on the requirements applicable to OSROs which will become effective on November 30, 2016. A summary of these changes may be found in MSIB 07-16. It should be noted that while the guidelines cover oil spill response



equipment including responses for Group V cargoes (sinkers), both tank and non-tank vessels must ensure their compliance with the requirements that they have “contracts and/or other approved means” to ensure the availability of OSROs needed to respond in the case of a cargo spill as well as fuel/bunker spills.

Specific changes in this version of the OSRO guidelines include:

- New annual review requirements of the current OSRO guidelines which will be conducted at the beginning of each calendar year
- Editorial changes to clarify previous language, add context or remove redundant language
- Creation of a new classification in the OSRO guidelines for Group V oils (“nonfloating oils” or “sinkers”) and the corresponding OSRO application procedures to allow for the assessment of an applicant OSRO’s capability to adequately respond to spills of Group V oils
- Relative to this new classification, on November 30, 2016, all current Group V OSRO listings in the Response Resource Inventory will be removed and thus plan holders handling/storing/transporting Group V oils after that time will need to ensure OSROs listed in their vessel response plan have been qualified under the new classification process

Copies of MSIB 07-16 and the updated OSRO guidelines may be viewed at: https://homeport.uscg.mil/mycg/portal/ep/contentView.do?contentType=2&channelId=-30095&contentId=547348&programId=114825&programPage=%2Fep%2Fprogram%2Feditorial.jsp&pageTypeId=13489&BV_SessionID=@@@@1527683770.1461099230@@@@&BV_EngineID=ccceadgjedkfhdlcfngcfkmdfhdfdn.0

CARB Marine Notice 2016-1 – California Ocean-Going Vessel Fuel Regulation to Remain in Effect Subject to Reevaluation in Two Years

The California Ocean Going Vessel Fuel regulation was first finalized in 2008 and amended in 2011. The final regulation contains sunset provisions whereby CARB will periodically review and will cease to apply the California fuel regulations if “the US adopts and enforces requirements that will achieve emissions reductions within the Regulated California Waters that are equivalent” to those achieved by the California regulations.

CARB has recently conducted its review of IMO and US requirements applicable to vessels trading in California waters and has determined that the current IMO/US requirements do NOT achieve equivalent reductions consistent with the existing California regulations.



As part of this review, CARB reviewed several factors including (1) differences in the scope of application of requirements under the ECA regulations versus the California OGV fuel regulation (2) impacts on California resulting from certain exemptions granted under the IMO/ECA requirements (3) relative emissions from compliance options permitted under the ECA but not directly allowed under the California regulations (scrubbers) and (4) differences between the state and federal enforcement programs.

CARB concludes that "the federal ECA alone would not likely achieve equivalent emission reductions within Regulated California Waters". They go on to state that they will reevaluate the relative emissions reductions in two years which will also allow the "federal enforcement program to become established". This last comment is a bit troubling since it is our opinion that the federal enforcement program is already established admittedly using a progressive enforcement posture which allows the regulators and regulated community to fully understand and remedy various non-compliance situations including those involving non-availability of compliant fuel or discrepancies in bunker delivery note and post load analysis test results.

CARB also goes on to state that the additional two years will allow their staff to fully evaluate potential emissions impacts from vessels using alternative technologies e.g. low sulfur fuel vs. scrubbers used with higher sulfur fuel or vessels using low sulfur heavy fuel oils.

The ultimate goal, shared by the regulated community, federal and state regulators is that eventually the federal program will be the sole regulatory program applicable to ocean-going vessels but only when CARB deems the federal program produces emissions reductions equivalent to or less than the existing California fuel regulations.

Copies of the CARB Marine Notice 2016-1 and the current California regulations may be viewed at <http://www.arb.ca.gov/ports/marinevess/ogv.htm>

USCG Marine Safety Alert - EPIRB Recall

USCG Marine Safety Alert: <http://www.uscg.mil/hq/cg5/cg545/alerts/0316.pdf>

SAFELINK EPIRBs by Kannad Marine have been recalled due to a potential defect that could prevent the EPIRB from operating in an emergency. USCG strongly recommends all users of the Kannad SAFELINK EPIRBs replace them as soon as possible and NOT use it as a primary Search and Rescue beacon onboard your vessel.

Dedicated Recall Website: website: <http://www.safelinkepirbsupport.co.uk>



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