



Client Alert 24-2019

December 16, 2019

MARPOL Annex VI

U.S. Enforcement of IMO 2020 Sulfur Cap

On December 5, 2019, the **U.S. Coast Guard (USCG)** conducted a public meeting in **Washington, D.C.**, on the consistent implementation of regulation **14.1.3 of MARPOL Annex IV (Global 0.50 percent Sulfur Limit)**. This meeting covered **USCG guidance to vessel operators on MARPOL Annex VI provisions for implementing the Global 0.5% Fuel Sulfur Limit**, as well as associated guidance developed through the IMO.

The USCG's Office of Commercial Vessel Compliance (CG-CVC) gave a presentation on their enforcement of the IMO 2020 Sulfur cap. This presentation included an overview of the USCG's Port State Control (PSC) program, updates on policy and reporting of fuel oil non-availability. The important points included in this presentation are listed below, for your guidance:

A) The U.S. has enforced Emission Control Areas (ECAs) since 2012, via a Memorandum of Understanding (MOU) between the USCG and Environmental Protection Agency (EPA). **In most U.S. regions, no changes in enforcement policy are anticipated on/after January 1, 2020 since the ECAs remain in effect, where the Sulfur content in fuel must not exceed 0.1%.**

B) General compliance and enforcement policy will remain consistent with [CG-CVC Policy Letter 12-04 Change I](#).

C) **U.S. regions outside the ECAs (e.g. Western Alaska, Guam, American Samoa) will amend existing protocols from January 1, 2020 to ensure compliance with the 2020 Global 0.5% Sulfur cap.**

D) For vessels complying with Marpol Annex VI Reg 14 through equivalent controls, i.e. an **Exhaust Gas Cleaning System (EGCS)**, enforcement action is predicated on several key factors:

- If operating an EGCS, has the vessel's Flag Administration posted a certificate of equivalency on the IMO GISIS database?
- If facing problems with the EGCS, was the issue reported to the USCG (relevant COTP – Captain of the Port)?
- Did the vessel attempt to acquire compliant fuel before entering the ECA?

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E) Vessels not using EGCS and operating on compliant fuel are required to submit a report to their Flag Administration if/when unable to acquire compliant fuel. This must also be reported to the competent authority at the U.S. port of destination, in the form of a **Fuel Oil Non Availability Report (FONAR)**. Details are available in **Marine Safety Information Bulletin [MSIB 005-19](#)**. It should be noted that:

- **As of July 2019, all FONARs must be submitted to the USCG COTP at the port of arrival via email. FONARs are no longer to be sent to the EPA.** Please contact ECM for the relevant COTP's email address when required.
- **Cases will still be investigated by the USCG to determine their validity and necessary follow-up, ranging from no action to detaining the vessel and/or pursuing civil penalties.** The matter may also be referred to the EPA.

F) Compliance verification and action by the USCG:

- Inspectors will continue to review Bunker Delivery Notes (BDN), fuel changeover procedures and relevant documentation to verify Marpol Annex VI compliance.
- More detailed inspections will be conducted when clear grounds for doing so are established, such as:
 - 1) Lack of, or inconsistent BDNs
 - 2) Crew not following changeover procedures
 - 3) Faults/errors on EGCS
- The range of action taken can include issuing deficiencies, **detaining the vessel, taking fuel samples for analysis and referring the matter to the EPA and/or U.S. Department of Justice (DOJ)**, as appropriate.

G) **Measures to be taken when non-compliant fuel is found on board:** If, after March 1, 2020, non-compliant fuel is found on board and the vessel does not have an operational EGCS, the USCG will require the vessel operator to perform **any of the following, based on the totality of the situation:**

- Offload non-compliant fuel at the current port
- Take on compliant fuel appropriate for the duration of the subsequent voyage
- Allow the vessel to sail using compliant fuel, then offload non-compliant fuel at a subsequent destination (or repair inoperable EGCS, if fitted). This would require coordination with the port state at the vessel's destination, to ensure the approach is acceptable.
- Remain consistent with IMO guidelines MEPC.321(74) and MEPC.1/Circ.881.

H) Enforcement action: The USCG will utilize one or more of the following options:

- Letter of Warning
- Notice of Violation (NOV) : \$2,000 - \$10,000
- Civil Penalty up to \$74,552 for each violation. **Note : Each day of a continuing violation is a separate violation.**
- Refer the case to the EPA, as per the USCG-EPA Protocol of Referrals under Marpol Annex VI, June 2019.
- Refer the case to the U.S. DOJ for criminal enforcement.

The seriousness with which Marpol Annex VI violations will be viewed was underscored by a brief description from the USCG of a recent case referred by them to the DOJ. This involved **a tanker operator that was found to have utilized non-compliant fuel on multiple occasions within the U.S. Caribbean Sea ECA, over a 2-year period. Evidence of transfers from cargo to fuel tanks and falsification of entries in the Oil Record Book was found, and case settlement resulted in \$3,000,000 in fines against the vessel owner/operator. Culpable mariners were also fined for their involvement.**

USCG contact details for additional information:
CGCVC@uscg.mil and PortStateControl@uscg.mil

Please contact us at ecm@ecmmaritime.com with any questions. We also recommend a review of our recent Client Alert 22-2019 (issued November 22, 2019) for more details on ECA guidelines and enforcement. As always, our Client Alerts remain accessible via the Client Access section at www.ecmmaritime.com.
