



Client Alert I-2020

January 16, 2020

Implementation of MARPOL Annex VI Revised Guidance from USCG (CVC-WI-022)

The **U.S. Coast Guard Office of Commercial Vessel Compliance (CG-CVC)** recently released a Mission Management Statement (MMS) **Work Instruction (WI)** on the **Implementation of their Compliance/Enforcement Policy for MARPOL Annex VI Regulation 14, including the IMO 2020 Sulfur Cap.**

The updated guidance in this WI outlines how the U.S. Coast Guard (USCG) will enforce MARPOL Annex VI requirements for sulfur content in fuel oil that is used, or carried for use, on all vessels within either of the two U.S. Emission Control Areas (ECA), since the IMO fuel oil sulfur cap was reduced from 3.50% m/m to 0.50% m/m effective January 1, 2020. The WI also outlines initial guidance to USCG units not within either ECA. Additionally, the WI updates and consolidates the guidance previously contained within CG-CVC Policy Letter 12-04 Change 1, which has been cancelled with immediate effect.

The above-mentioned WI and both enclosures, including an updated version of the USCG's ECA and Global Sulfur Cap Job Aid (Enclosure #1), can be viewed [here](#).

We encourage vessel operators and related stakeholders to review the contents of this WI and enclosures, as they cover regulatory requirements as well as guidance to USCG units on review and verification of those requirements. In addition, the WI provides a summary of the USCG's policy on enforcement of detected violations, as well as a table (Enclosure #2) showing the division of authority between the USCG and the Environmental Protection Agency (EPA) to implement MARPOL Annex VI under the Act to Prevent Pollution from Ships (APPS).

Important subjects covered in this WI are highlighted below. Please read these in conjunction with the detailed descriptions provided in the WI and enclosures, for a complete overview of applicable regulations:

I. Verification of compliant fuel

- a) In the two ECAs encompassing the US, the USCG will continue to enforce ECA requirements by reviewing Bunker Delivery Notes (BDNs), checking vessel logs for information regarding where the vessel changed over to ECA compliant fuel and confirming the vessel has written change-over procedures.
- b) Additionally, since the United States is a Party to Annex VI and bound to enforce it, the USCG will review BDNs and check logs to determine whether the vessel is complying with the applicable 0.50% fuel sulfur limit when operating beyond US waters.
- c) The same control procedures will apply to vessels in US waters outside the ECA (e.g. Guam, American Samoa, Western Alaska).

ECM Corporate Headquarters

1 Selleck Street—Suite 1C
Norwalk, CT 06855, USA

24 Hr. Tel: 1.203.857.0444 email: ecm@ecmmaritime.com
Fax: 1.203.857.0428 website: www.ecmmaritime.com

II. Ships fitted with equivalent controls (EGCS/Scrubbers)

a) Under Annex VI, Regulation 14 and APPS, the USCG is responsible for administering regulations related to Annex VI Regulation 4 (equivalents). Equivalency submittal and processing procedures are as follows:

- **U.S. flagged ships:** Equivalency requests shall be submitted to the USCG at the following address:
Commandant (CG-CVC-I); Attn: Annex VI; U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr Ave SE, Washington, DC 20593-7501
OR
Via email to CG-CVC@uscg.mil.
The email subject line should include the following text:
U.S. Flag – ECA/SOx Equivalent Controls – Vessel Name – Official Number
- **Foreign flagged ships:** Foreign-flagged ships that receive an Annex VI equivalency must ensure the flag state submits the equivalency data to the MARPOL Annex VI public area of IMO's **Global Integrated Shipping Information System (GISIS)** prior to the ship entering either US ECA. The USCG may review any submissions it receives, but will use the GISIS database to confirm the validity of an Annex VI equivalency.

III. Fuel Oil Non-Availability Report (FONAR)

- a) The discrepancies in FONAR submission procedures contained in CG-CVC Policy Letter 12-04 Change I (as highlighted in our Client Alert 22-2019) have been removed with the cancellation of that letter.
- b) Vessels that are unable to obtain sufficient compliant fuel as per either ECA (0.10%) or IMO 2020 (0.50%) sulfur limits (as the case may be) **should submit a FONAR to the cognizant USCG Captain of the Port (COTP) for the port of destination.**
- c) While there is no specific format for this notification, it is recommended that ships use the format provided in Appendix I of Resolution MEPC.320(74), 2019, “*Guidelines for Consistent Implementation of the 0.50% Sulphur Limit Under Annex VI: FONAR.*”
- d) Details of additional and/or follow-up information to accompany a FONAR are provided in Section E(6)(e) of the WI.

IV. Equipment Casualty or Failure

- a) For vessels using EGCS, the **USCG has clarified their stance on Short Term Exceedances as defined in MEPC.1/Circ.883. Such short term exceedances of less than 1 hour are now acceptable** (see description on page 21 of the ECA Job Aid enclosed with the WI).

V. Enforcement of Detected Violations

Three methods of enforcement have been described, in accordance with the type and severity of each violation. It should be noted that in all cases, the likelihood of vessel detention remains high:



Client Alert I-2020

January 16, 2020

Implementation of MARPOL Annex VI

Revised Guidance from USCG (CVC-WI-022)

- a) **USCG detection of violations that are not to be referred to the EPA for Enforcement Action:** The COTP/OCMI retains the ability to pursue USCG enforcement action including but not limited to: Letter of Warning, Notice of Violation (NOV) and Civil Penalty
- b) **USCG detection of violations referred to the EPA for enforcement action (non-criminal):** Decisions to offer to refer a case to the EPA will generally reside with the appropriate USCG COTP, which will usually be the COTP where the violation was discovered.
- c) **USCG Detection of Violations, evidence of Criminal Liability:** The USCG will be the lead Agency to conduct the investigation under the authority of 14 USC 522 where evidence of criminal liability on the part of the mariner, owner, operator or other involved party is found (e.g., intentional use of non-compliant fuel oil, with falsified log books). In these cases the EPA will assist as needed and if required, the matter could be referred to the Department of Justice (DOJ).

Questions and/or comments should be directed to ECM at ecm@ecmmaritime.com

For official replies to matters covered in this WI and guidance from the USCG, queries should be directed to the Office of Commercial Vessel Compliance (CG-CVC) at CG-CVC@uscg.mil.

Note : Recipients that are unable to view the WI posted online via our link to the dco.uscg.mil portal are welcome to contact us directly, to receive a .pdf copy of the entire WI and enclosures (33 pages) via email.

ECM Corporate Headquarters

1 Selleck Street—Suite 1C

Norwalk, CT 06855, USA

24 Hr. Tel: 1.203.857.0444 email: ecm@ecmmaritime.com

Fax: 1.203.857.0428 website: www.ecmmaritime.com