



Friday 3rd August 2012

Bulletin 837 - 08/12 - Enforcement of New Fuel Limitations on all Vessels Operating in US Waters from 1st August 2012 - USA

From 1st August the US Government will be enforcing new standards in the North American ECA. All vessels operating within 200 nautical miles of US shores will be required to burn fuel oil containing a maximum sulphur content of 1.00% m/m (10,000 ppm).

Quote

On June 27, 2012, the U.S. Environmental Protection Agency (EPA) and the U.S. Coast Guard (USCG) announced signing a memorandum of understanding agreeing to jointly enforce U.S. and international air pollution requirements for vessels operating in U.S. waters. The agreement sets out the terms of the USCG and EPA cooperation for the enforcement of new advanced emissions standards off the coast of North America as required by Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL).

Annex VI to MARPOL, implemented in the U.S. under the Act to Prevent Pollution from Ships (APPS), sets out air emissions standards, including fuel sulphur limits. Annex VI requires ships operating in designated geographical areas known as Emission Control Areas (ECA) to meet the most advanced standards for fuel sulphur and other pollutants. Beginning on August 1, 2012, the new standards will come into force in the North American ECA, which includes waters adjacent to the Pacific, Atlantic and Gulf coasts along with the eight main Hawaiian Islands. Any vessel operating within 200 nautical miles of U.S. shores, will be required to burn fuel oil containing a maximum sulphur content of 1.00% m/m (10,000 ppm). The law requires that a vessel burn compliant fuel or use emission controls producing equivalent results when operating within the North American ECA. Violations of the emission standards within the North American ECA may result in criminal and/or civil liability.

The USCG will verify a foreign flagged vessel's use of a compliant fuel oil or an equivalent control, e.g. an exhaust gas-cleaning device approved by the vessel's flag state, during Port State Control Inspections. Accordingly, in order to demonstrate compliance with the Annex VI fuel oil sulphur standard while operating in the North American ECA, a vessel is required to maintain and, if requested, make available to the United States government the following:

1. Bunker delivery notes for vessels 400 gross tonnage and above[1];

2. Fuel oil samples taken at the time of fuel oil delivery;
3. Written fuel oil changeover procedures evidencing how and when the fuel oil changeover is done in order to ensure that only compliant fuel oil is burned;
4. The fuel oil changeover logbook demonstrating the volume of compliant fuel oil in each tank and evidencing the date, time and position of the vessel when any fuel oil changeover operation is completed prior to entry into or after exit of a designated ECA.

Annex VI to MARPOL anticipates the possibility that despite best efforts, a vessel may be unable to obtain compliant fuel oil prior to entering the North American ECA. Best efforts to secure compliant fuel oil include, but are not limited to, investigating alternate sources of fuel oil before beginning a voyage or en route before entering the North American ECA. If, notwithstanding best efforts, the vessel is unable to stem compliant fuel prior to entering the North American ECA, the vessel must notify the United States and the vessel's flag administration.

The United States government has the authority to consider all the relevant circumstances including best efforts to obtain compliant fuel in determining the appropriate action, if any, to take for a vessel's non-compliance. Accordingly, if a vessel operator wants the United States government to consider efforts taken to secure compliant fuel oil prior to entering the ECA, the vessel operator should submit a Fuel Oil Non-Availability Report as soon as the vessel determines that it will be unable to burn compliant fuel oil in the North American ECA, but no later than 96 hours prior to entering the North American ECA. This report should highlight actions taken to attempt to procure compliant fuel, including a description of all attempts made to locate alternative sources of compliant fuel oil and the reasons why compliant fuel oil was not available before entering the North American ECA. It should be noted that the United States government does not consider the cost of compliant fuel oil to be a valid reason for claiming non-availability. The Fuel Oil Non-Availability Report must be signed by an authorized representative of the operating company and contain the following affirmation:

I certify under penalty of law that the statements and information made herein are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines and imprisonment pursuant to 18 U.S.C. § 1001.

The United States government will consider this information in deciding what action, if any, it will take when the ship enters the North American ECA using non-compliant fuel oil. The United States government is currently in the process of implementing an electronic system to receive Fuel Oil Non-Availability Reports. In the interim, operators may submit Fuel Oil Non-Availability Reports to the following e-mail address: marine-eca@epa.gov

In summation, beginning on August 1, 2012, all vessels operating within 200 miles of the United States' coastline will be required to use a fuel oil containing a maximum sulphur content of 1.00% m/m (10,000 ppm). In the event a vessel cannot procure compliant fuel oil, it must immediately alert the United States and its flag administration and plan to submit a Fuel-Oil Non-Availability Report to the United States government no later than 96 hours before entering the North American ECA.

For more information regarding the new fuel oil requirements for vessels operating within the North American ECA and what specific information should be included in a Fuel Oil Non-Availability Report, please do not hesitate to call on us at info@chaloslaw.com.

[1] While bunker delivery notes are not required for ships less than 400 gross tonnage, owners and operators of such vessels may maintain appropriate fuel oil records that document the sulphur content.

UNQUOTE

Noting points above

- 3) Evidence would include a Company policy in place and integrated into the vessels SMS.
- 4) Records of operations should be made in the relevant parts of the Oil Record Book.

For guidance regarding Fuel Oil Non-availability reporting, see LP bulletin 832 issued 06/07/12

Source of Information:

Chalos & Co, P.C
New York, USA
info@chaloslaw.com