



DECEMBER 30, 2014

CIRCULAR NO. 39/14

TO MEMBERS OF THE ASSOCIATION

Dear Member:

NORTH AMERICAN ECA AND NEW FUEL SULFUR CONTENT REQUIREMENTS

Members are requested to note that, on January 1, 2015, the maximum sulfur content for fuel oil utilized while a vessel is in, or transiting, the North American Emission Control Area (ECA) will be reduced to 0.1% (1,000 ppm).

The United States Coast Guard (USCG) and United States Environmental Protection Agency (EPA) have announced that they will step up efforts to ensure compliance with Annex VI of MARPOL. This will include the taking of appropriate enforcement action. MARPOL Annex VI, which establishes these sulfur requirements, is implemented domestically in the US through the Act to Prevent Pollution from Ships (APPS).

Accordingly, during any USCG Port State Control inspection in the US, Members should expect a detailed review of bunker delivery notes, sulfur and oil record books and other records relating to compliance with the ECA low sulfur regulations. Members should also be aware that the USCG and EPA are also developing plans for joint-boardings, which will include fuel oil sampling and on site sulfur screening.

Commencing January 1, 2015, US authorities expect vessel owners and operators to comply with the new sulfur standards by using *any* compliant fuel that is available, even if that requires using distillate fuels or marine gas oil (MGO), where the sulfur content may be as low as 15 ppm or less. The EPA Guidance on Use of Distillate Fuel for North American ECA Compliance, November 2014 addresses this issue, and is attached as Appendix I.

As soon as a Member becomes aware that its vessel will transit the North American ECA, "*best efforts*" must be utilized to obtain ECA compliant fuel at *each and every* port on the intended voyage, as needed. While there is no requirement to deviate from the intended voyage to obtain compliant fuel, US authorities do not consider changing berths or anchorages within a port to be a deviation.

In the event, despite best efforts, compliant fuel is not available at any port on the intended voyage, compliant fuel *must* be obtained at the first US port of call (if available), prior to further transit within the ECA. The cost of procuring compliant fuel at any port on the intended voyage is not a valid basis to claim unavailability.

Industry sources have indicated that compliant distillates, including MGO, are widely attainable at nearly every primary port. Accordingly, after January 1, 2015, it is expected that instances of a vessel being unable to stem compliant low sulfur fuel will be minimal, if not positively rare.

If low sulfur fuel is not available, Members must extensively document their best efforts to comply. While the US authorities have not provided an exhaustive list of what evidence will suffice to show best efforts, it is recommended that all inquiries and requests regarding procurement of compliant fuel, including emails and telephone exchanges (reduced to writing), be well documented and



preserved. Members should also file a Fuel Oil Non-Availability Report (FONAR) when compliant fuel is unavailable. A FONAR must be filed at least 96 hours prior to entering the ECA. However, Members should file a FONAR as soon as it is known that compliance with the ECA requirements will not be possible. It is anticipated that there will be heightened scrutiny of *all* FONAR applications filed after January 1, 2015.

Civil enforcement actions for violations will be referred to the EPA. Criminal enforcement actions for violations will be referred by the USCG to the US Department of Justice.

Given the potential costs associated with non-compliance, Members should plan early and thoroughly for entry into the North American ECA. Even when compliant fuel has been obtained and utilized, all documentation demonstrating use and compliance, including, but not limited to, change over procedures, proper and complete entries in the sulfur and oil record books, bunker delivery notes, fuel oil samples, fuel oil invoices and specifications or test results, and exchanges with suppliers, should be comprehensive, complete and preserved. In the event compliant fuel is not available, "best efforts" must be meticulously documented, and an accurate, truthful and timely FONAR should be submitted.

Members are encouraged to seek immediate advice from the Club regarding any questions or concerns regarding compliance with the new low sulfur limits which come into force on January 1, 2015. In addition, for further general guidance, the IMO has published a set of FAQs on the new requirements as attached in Appendix II, together with a link to the IMO website on the subject.

Yours faithfully,


Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

APPENDIX I

EPA GUIDANCE ON USE OF DISTILLATE FUEL - NOV 2014

EPA Guidance on Use of Distillate Fuel for North American ECA Compliance

Question: Does the U.S. Government require the use of lower sulfur distillate (such as 15 ppm distillate fuel) for compliance with the 0.10% m/m ECA fuel sulfur standard, which begins 1 January 2015, if no other compliant fuel is available?

Answer: Yes. Beginning 1 January 2015, under Annex VI, the North American and United States Caribbean Sea ECAs require that the sulfur content of the fuel oil used onboard ships operating in these areas may not exceed 0.10% m/m. The United States expects that a ship will use any compliant fuel that is available containing no more than 0.10% m/m sulfur content, including using distillate fuel or marine gas oil with a much lower sulfur content, even at or below 15 ppm sulfur. In the instance that engine operating requirements, or fuel parameters such as flashpoint or viscosity, are a concern with the use of a lower sulfur marine distillate, please see [EPA's Fuel Oil Non-Availability Report guidance](#). Fuel oil that complies with the 0.10% m/m sulfur standard is expected to be available for ships that plan to operate in the North American and United States Caribbean Sea ECAs.

APPENDIX II

IMO SULPHUR LIMITS FAQ

Sulphur limits in emission control areas from 1 January 2015

- **What are the new requirements relating to sulphur emissions?**

Ships trading in designated emission control areas will have to use fuel oil on board with a sulphur content of no more than 0.10% from 1 January 2015, against the limit of 1.00% in effect up until 31 December 2014.

The interpretation of “fuel oil used on board” includes use in main and auxiliary engines and boilers. Exemptions are provided for securing the safety of the ship or saving life at sea, or as a result of damage to a ship or its equipment. Also, provisions for trials for ship emission reduction and control technology research provide for a time limited exemption.

- **What treaty do these new rules come under?**

The stricter rules come into effect under the International Convention for the Prevention of Pollution from ships (MARPOL) Annex VI (Regulations for the Prevention of Air Pollution from Ships), specifically under regulation 14, which covers emissions of Sulphur Oxides (SO_x) and particulate matter from ships. These requirements were adopted in October 2008 by consensus and entered into force in July 2010.

- **Where are the emission control areas referred to?**

The emission control areas established under MARPOL Annex VI for SO_x are: the Baltic Sea area; the North Sea area; the North American area (covering designated coastal areas off the United States and Canada); and the United States Caribbean Sea area (around Puerto Rico and the United States Virgin Islands).

- **How can ships meet the new requirements?**

Ships can meet the new requirements by using low sulphur fuel oil such as Marine Gas Oil (sometimes called distillates). An increasing number of ships are also making use of gas as a fuel as this contains no sulphur and when ignited leads to negligible Sulphur Oxide emissions. This has been recognised in the development by IMO of the International Code for Ships using Gases and other Low Flashpoint Fuels (IGF Code), which has been approved in principle and is expected to be adopted in 2015.

Under “Equivalent” provisions also adopted in 2008, ships may meet the SO_x requirements by using approved equivalent methods, such as an apparatus or piece of equipment (for example, Exhaust Gas Cleaning Systems or “scrubbers”, which “clean” the emissions before they are released into the atmosphere). In this case, the equivalent arrangement must be approved by the ship’s Administration (the flag State) that is a State Party to MARPOL Annex VI.

- **What is the best way to meet the requirements?**

It is up to the ship operator to decide. If an alternative method is used, this has to be approved by the Administration (flag State) that is a State Party to MARPOL Annex VI.

- **What controls will there be?**

Flag States must issue an International Air Pollution Prevention (IAPP) Certificate to the ship. This includes a section to state that the ship uses fuel oil with a sulphur content that does not exceed the applicable limit value as documented by bunker delivery notes; or uses an approved equivalent arrangement.

Ships taking on fuel oil for use on board should have a bunker delivery note, which states the sulphur content of the fuel oil supplied. Samples may be taken for verification.

Port and coastal States can use port State control to verify that the ship is compliant. They could also use surveillance, for example air surveillance to assess vessel smokestack plumes, and other techniques to identify potential violations.

- **What sanctions will there be for not complying?**

Sanctions are established by individual Parties to MARPOL, as flag and port States. There is no established fine or sanction set by IMO – it is down to the individual State Party.

- **Can switching fuel cause problems?**

If a ship is switching fuel as it goes into an emission control area then this needs to be done safely and cleanly, to avoid any technical problems and to ensure that the emission limits are not breached inside the ECA.

MARPOL Annex VI regulation 4.6 requires ships using separate fuel oils to carry a written procedure showing how the fuel oil change-over is to be done, allowing sufficient time for the fuel oil service system to be fully flushed of all fuel oils exceeding the applicable

sulphur content prior to entry into an Emission Control Area. The volume of low sulphur fuel oils in each tank as well as the date, time, and position of the ship when any fuel-oil-change-over operation is completed prior to the entry into an Emission Control Area or commenced after exit from such an area, must be recorded in such log-book as prescribed by the Administration.

Industry organizations have issued guidance notes on the need for care and attention when switching fuel, to avoid any potential problems that could result from fuel switching.

- **How many Parties does MARPOL Annex VI have?**

Currently, MARPOL Annex VI has 77 Parties, representing 94.77% of world merchant shipping tonnage.

- **What about outside these ECAS?**

Outside the emission control areas, the current limit for sulphur content of fuel oil is 3.50%, falling to 0.50% m/m on and after 1 January 2020. The 2020 date is subject to a review, to be completed by 2018, as to the availability of the required fuel oil. Depending on the outcome of the review, this date could be deferred to 1 January 2025.

- **Where can I find out more?**

Read more [here](#).
