



MAR - 4 2015



UNITED STATES COAST GUARD AND UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REVISED PROTOCOLS ON REFERRALS UNDER MARPOL ANNEX VI AS IMPLEMENTED BY THE ACT TO PREVENT POLLUTION FROM SHIPS

Background:

On June 27, 2011, the United States Environmental Protection Agency (EPA) and the United States Coast Guard (USCG) entered into a Memorandum of Understanding (MOU) setting forth the terms by which the EPA and the USCG will mutually cooperate in implementation of Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) as implemented by the Act to Prevent Pollution from Ships (APPS), Pub. L. No. 96-478, 94 Stat. 2297 (1980), as amended; codified in 33 U.S.C. §§ 1901-1912. The MOU sets forth the broad areas of primary responsibility and cooperation for each agency and directs the agencies to develop protocols to implement the terms, and ensure the effectiveness of the MOU.

The USCG inspects U.S. and foreign flag vessels for compliance with Annex VI requirements during comprehensive domestic inspections (Certificate of Inspection) and Port State examinations of foreign flag vessels. As part of these examinations, the USCG may discover violations which are documented as deficiencies. Deficiencies are recorded by the USCG and, depending on the severity, may result in the issuance of a "no-sail" (domestic) or detention (foreign) order to the vessel operator. For less severe deficiencies, the USCG may take no action or may require correction of the problem within a specified time frame (e.g., 30 days), allowing the vessel to continue to operate. For more severe deficiencies, the USCG may still take no action, or they may pursue enforcement action by issuing a Notice of Violation (NOV) or a civil penalty for resolution within the Coast Guard, or they may refer the case to the EPA or the Department of Justice.

Purpose:

33 U.S.C. § 1907(f) authorizes the USCG to inspect ships for determination of compliance with Annex VI, and to take enforcement actions upon discovery of Annex VI violations. 33 U.S.C. § 1908(e) authorizes the USCG to demand a Letter of Undertaking (LOU), bond or other surety satisfactory in lieu of revoking or withholding a vessel's customs clearance when reasonable cause exists to believe the owner, operator or person in charge may be subject to a fine or civil penalty under APPS. 33 U.S.C. § 1907(f)(2) authorizes the USCG to take enforcement action or to refer violations to the EPA for enforcement action. This Protocol establishes procedures for such referrals.

Protocol:

If the USCG has reasonable cause to believe a ship, its owner, operator or person in charge, may be subject to a fine or civil penalty for a violation of Annex VI, the USCG may demand a LOU, bond or other surety satisfactory in lieu of revoking the vessel's customs clearance under 33 U.S.C. § 1908(e). The "reasonable cause" determination lies solely within the USCG's discretion and the LOU, bond, or other surety satisfactory will be to the satisfaction of the USCG. The USCG will collect the evidence to support the enforcement action and will cite to the specific APPS provision and Annex VI regulation that was violated.

Enforcement:

Based on the evidence, the USCG may undertake enforcement action or may refer the matter to the EPA. Factors the USCG will use when determining whether to refer a matter to the EPA include, but are not limited to; repeat offenders with a previous NOV, evidence obtained from a case involving EPA fuel-sampling or other assistance, or egregious noncompliance of entering the ECA without compliant fuel onboard.

EPA referrals:

Matters referred to the EPA involving a LOU, bond, or other surety satisfactory will be sent via registered mail, or other traceable mail delivery system. Notification of the referral will also be transmitted electronically to the USCG Office of Commercial Vessel Compliance (CG-CVC) and the USCG Office of Investigation (CG-INV). The receipt of evidence, along with the original LOU, bond, or the surety satisfactory, if applicable, constitutes the formal referral and triggers the EPA's authorities under 33 U.S.C. § 1907(b). The USCG will retain copies of the evidence and LOU, bond or other surety satisfactory at the local unit. All other matters referred to the EPA may be transmitted electronically, with CG-CVC and CG-INV carbon-copied.

For matters referred to the EPA with a LOU, bond, or other surety satisfactory, the EPA will initiate its enforcement process within 180 days. Further, the EPA will advise CG-INV quarterly on the status of all referred matters. In addition to the quarterly status update, for cases involving a LOU, bond, or other surety satisfactory, the EPA will immediately consult with the USCG if no enforcement action is anticipated or for any significant delay in the case. In conducting its enforcement, the EPA will consult with the USCG on issues of first impression.

In matters referred to the EPA, the USCG will include a point of contact at the local unit. For all other matters, including anything that arises prior to a referral, the EPA will coordinate with CG-CVC or CG-INV.

FONARs:

Fuel Oil Non-Availability Reports (FONARs) are self-disclosures made by a vessel owner, operator or other authorized representative pursuant to MARPOL Annex VI, Regulation 18.2.4. In accordance with USCG and EPA policy, FONARs should be submitted electronically to the EPA via EPA's Central Data Exchange. The EPA will share the FONAR submittal information with the USCG upon the USCG's request. All FONARs received by EPA are considered matters "referred" to the EPA for purposes of investigation and/or enforcement action. The EPA will use its discretion to determine the appropriate enforcement action, including no action, on all FONARs received.

Information Sharing and Assistance:

For all other Annex VI deficiencies related to fuel oil violations where the USCG does not take any enforcement action or refer to the EPA, CG-CVC will summarize the deficiencies monthly and transmit this report via email to designated individuals at the EPA for purposes of information sharing between the parties. This report does not constitute a referral.

Upon request of the EPA, the USCG will notify the EPA of a vessel's return to a U.S. port. Consistent with the MOU, the USCG and EPA will assist one another, including technical assistance, on a case-by-case basis when requested in writing pursuant to 14 U.S.C. § 141.

The following points of contact are provided in accordance with this referral protocol:

USCG Office of Commercial Vessel Compliance (CG-CVC)

Chief, Foreign and Offshore Vessel Compliance Division (CG-CVC-2)

U.S. Coast Guard, Stop 7501

2703 Martin Luther King Jr. Ave., SE

Washington, DC 20593-7501

Phone: 202-372-1230

Email: ECA-foreignFlag@uscg.mil or ECA-USFlag@uscg.mil

USCG Office of Investigations (CG-INV)

U.S. Coast Guard, Stop 7581

2703 Martin Luther King Jr. Ave., SE

Washington, DC 20593-7501

Phone: 202-372-1223

Email: ECAViolation@uscg.mil

EPA Office of Civil Enforcement, Air Enforcement Division

USEPA Headquarters, William Jefferson Clinton Building

Office of Enforcement and Compliance Assurance Air Enforcement Division

Attn: National Marine Enforcement Coordinator

1200 Pennsylvania Avenue, N. W., Rm # 1117B

Washington, DC 20004

Phone: 202-564-5472

Email: ECAEnforcement@epa.gov

Effective date:

This Revised Protocol will supersede and replace the previous referral protocol of February 21, 2014. This Revised Protocol is effective as of the signature of the parties below, and may be amended by mutual agreement between the EPA and the USCG.

Approved:



J. C. Burton
Captain, U.S. Coast Guard
Director of Inspections and Compliance



Phillip Brooks
Director, Air Enforcement Division
U. S. Environmental Protection Agency