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BLOG

U.S. Coast Guard Updates Policy on Vessel Exhaust Scrubber Approvals

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With the January 1, 2020 start date for tough new limits on the sulfur content of marine fuels (commonly referred to as IMO 2020) only a month and a half away, the U.S. Coast Guard released on November 18, 2019, an update to its "Guidelines for Compliance and Enforcement of the [U.S.] Emission Control Areas."

However, the update included only one minor procedural change to the way the Coast Guard will validate a vessel's claim of an "equivalency" to fuel sulfur content standards and leaves unchanged a reference to a now-revoked policy requiring vessels to submit "Fuel Oil Non-Availability Reports" (FONARs). The updated Guidance also fails to answer a number of pressing enforcement policy questions raised by the upcoming IMO 2020 start date.

IMO 2020 requires effective January 1, 2020, that vessels operating anywhere in the world must use marine fuel oil with a sulfur content of not more than 0.50% by weight and vessels operating within Emission Control Areas (ECAs) must use fuel oil with a sulfur content of not more than 0.10% by weight. That represents a significant change from the fuels currently permitted which may have sulfur contents up to 3.50% at sea, and up to 1.00% in an ECA.

As an alternative to using compliant fuel oil, the regulations under the International Convention for the Prevention of Pollution from Ships (known as MARPOL) permit vessels to use exhaust gas "scrubbers" that remove sulfur oxides (SOx) from the vessels' emissions. The flag-state approval of a scrubber as providing an equivalent level of emissions control is commonly referred to as an "equivalency."

In the original version of the Coast Guard Guidelines as released in July 2012, the Coast Guard stated that it would independently review proposals for equivalencies on foreign flag vessels to ensure compliance with U.S. law. The updated version just released states the Coast Guard will now rely upon flag-state submissions made to the International Maritime Organization's Global Integrated Shipping Information System to confirm the validity of a MARPOL emissions equivalency.

The rest of the Policy Letter remains the same as originally set out in 2012. As a result, it fails to note a significant development from June 2019 affecting vessels arriving in the U.S. that are unable to obtain compliant low-sulfur fuel. Prior to that development, vessels were required to submit a FONAR to the U.S. Environmental Protection Agency reporting the unavailability of compliant fuel. However, in June 2019, the EPA discontinued the FONAR system and in its place the Coast Guard established a policy requiring vessels unable to procure compliant fuel to notify the cognizant Coast Guard Captain of the Port directly. The Captain of the Port will then evaluate the actions taken by

the vessel and its manager to find compliant fuel, whether they used a prudent voyage plan, the validity of the bunker delivery note certifying the qualities of the fuel oil used by the vessel, and whether the flag state was notified.

As with investigations involving oil discharges, the Coast Guard may be expected to pay particular attention to the integrity of vessel records. For example, earlier this year the government prosecuted the owner and the operator of the motor tanker *Ocean Princess* for, among other things, falsifying bunker delivery notes in connection with the use of non-compliant fuel in the Caribbean ECA. In an earlier case, the government prosecuted the vessel manager for, among other things, falsifying a voyage plan document to obstruct the Coast Guard's investigation into an allision.

As the implementation date for IMO 2020 draws closer, the industry may expect further guidance from the Coast Guard concerning the enforcement of MARPOL air emission regulations.

To that end, the Coast Guard will be holding a public meeting in Washington, D.C. on December 5, 2019, to discuss its plans for implementing the IMO 2020 sulfur limits and its enforcement plans.

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