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### **GUIDANCE FOR BEST PRACTICE FOR MEMBER STATE/COASTAL STATE**

- 1 The Marine Environment Protection Committee, at its seventy-sixth session (10 to 17 June 2021), approved the revised *Guidance for best practice for Member State/coastal State*, as set out in the annex.
- 2 Member Governments are invited to bring the annexed Guidance to the attention of their Administration, industry, relevant shipping and fuel industry organizations, shipping companies and other stakeholders concerned, as appropriate.
- 3 This circular revokes MEPC.1/Circ.884.

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## ANNEX

### GUIDANCE FOR BEST PRACTICE FOR MEMBER STATE/COASTAL STATE

#### 1 Introduction

1.1 These best practices are intended to assist Member States in carrying out their responsibilities under MARPOL Annex VI, to ensure effective implementation and enforcement of statutory requirements of that Annex.

1.2 It should be noted that these best practices are not intended to create any responsibilities for Member States beyond what is required in MARPOL Annex VI.

1.3 Non-Parties to MARPOL Annex VI are also encouraged to make use of these best practices.

#### 2 Definitions

For the purpose of this best practice guidance:

2.1 *Fuel oil purchaser/Purchaser*: Secures and pays for bunkers delivered to a ship at the operator side (user) and not a trader. The "Fuel oil purchaser/Purchaser" can be a shipowner's operator or a charterer's operator; and is often used in contracts as counterpart of the supplier.

2.2 *III Code*: IMO Instruments Implementation Code adopted by the Organization by resolution A.1070(28).

2.3 *MARPOL Convention*: International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocols of 1978 and 1997 relating thereto, as amended.

2.4 *Physical supplier/Supplier*: Buys, owns and stores fuel oil and sells bunkers; distributes bunkers from pipelines, trucks and/or barges; may blend products to meet the customer's specifications; may own or charter a distribution network or may hire a barge provider from supply to supply; issues the bunker delivery note (BDN).

2.5 *Register of local suppliers of fuel oil*: A register of those local suppliers of fuel oil which includes that contact information which is required on the bunker delivery note as per appendix V of MARPOL Annex VI, as well as a homepage address, and if the fuel oil supplier has a quality management system (voluntary, based on supplier's own information, reference to supplier's homepage).

2.6 *MARPOL delivered sample*: means the sample of fuel oil referred to in regulation 18.8.1 of MARPOL Annex VI.

2.7 *Shipowner*: the Company which holds the International Safety Management Document of Compliance for the ship under the International Safety Management (ISM) Code.

2.8 *Trader*: The trader buys bunkers from a physical supplier and sells to a purchaser without holding the product physically.

### 3 Goals

3.1 Parties should strive to fully understand their obligations and responsibilities as Member, flag, port and coastal States and to carefully communicate those obligations and responsibilities to the ships operating under their authority and the fuel oil suppliers located in their jurisdictions.

3.2 The best practices set forth in this document reflect a set of goals that should be strived for to assure fuel oil used on board ships meets statutory requirements, as follows:

- .1 Strive to ensure that existing requirements under MARPOL Annex VI are effectively applied:
  - .1 Implementation and enforcement of MARPOL requirements is an obligation by the III Code; and
  - .2 Guidance for port State control, including guidance on control of sulphur content of any fuel oil used on board ships, is given in the *2019 Guidelines for port State control under MARPOL Annex VI Chapter 3* (MEPC.321(74)). Member States should refer to amendments to appendix VI of MARPOL Annex VI<sup>1</sup> when verifying the sulphur content of fuel oil.
- .2 Relevant parts of the *2019 Guidelines for port State control under MARPOL Annex VI Chapter 3* (MEPC.321(74)) related to examination of the bunker delivery notes and associated samples or records thereof;
- .3 As appropriate under domestic regulatory arrangements, strive to address the reliability of the local bunker suppliers under the jurisdiction of the Member State/coastal State, under its domestic legal authority;
- .4 Provide practical information on the effective implementation of a Member State/coastal State's obligations under MARPOL Annex VI, including recommendations on appropriate action that could be taken should an issue be raised in a Member States/coastal States jurisdiction; and
- .5 Provide practical information and encourage the use of guidance in the form of best practices developed by IMO (fuel oil purchasers) and industry (fuel oil suppliers) to fuel oil purchasers and fuel oil suppliers, as appropriate, to ensure the provision of fuel oils in accordance with the fuel oil quality requirements of MARPOL Annex VI. Making the information and guidance available on relevant websites is a good method for disseminating information.

### 4 Best practices

4.1 The following best practices reflect aspects of the goals described above and are intended to help Member States/coastal States to achieve them. Best practices may include only those aspects deemed most appropriate for each national government, but they should all observe the provisions of regulation 18 as per Goal 1 (strive to ensure existing requirements of MARPOL Annex VI are effectively applied).

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<sup>1</sup> MEPC.1/Circ.882 on *Early application of the verification procedures for a MARPOL Annex VI fuel oil sample* (regulation 18.8.2 or regulation 14.8).

4.2 Best practices with respect to provisions of regulation 18 of MARPOL Annex VI are as follows:

Regulation 18.1: Best practice/experience on how to promote availability of compliant fuel oil:

- .1 Member States/coastal States should promote the availability of fuel oils which comply with MARPOL Annex VI and require suppliers under their jurisdiction to provide fuel oils that comply with the requirements of regulation 14 and regulation 18.3 of MARPOL Annex VI;
- .2 any measures to promote the availability of fuel oils in ports should not lead to distortion of competition. It should be left to individual fuel oil suppliers to make investment decisions based on the market opportunities they see; and
- .3 Member States/coastal States should provide timely information on upcoming regulations to suppliers under their jurisdiction, including revisions of the information required on the bunker delivery note.

Regulation 18.2: Best practice for handling of notifications of the non-availability of fuel oil that complies with MARPOL Annex VI based on experience until now, including a harmonized format for such notifications:

- .1 Member States/coastal States should strive to follow the procedure for reporting compliant fuel oil non-availability and make use of the related standard format as developed by the Organization when notifying other Parties.

Regulation 18.3: Fuel oil quality:

- .1 Regulation 18.3 requires fuel delivered to ships to comply with a number of qualitative requirements. However, no specifications (i.e. ISO 8217) or routine testing scheme exists, which would guarantee that a fuel complies with such qualitative requirements. In cases where it is documented that the fuel delivered does not comply with those qualitative requirements of the regulation the port State/coastal State should take action against the supplier; and
- .2 Member States/coastal States should encourage fuel oil suppliers under their jurisdiction to use detailed fuel specifications, as well as the *Guidance on best practice for fuel oil suppliers for assuring the quality of fuel oil delivered to ships* (MEPC.1/Circ.875/Add.1).

Regulation 18.7: Best practices for inspection of bunker delivery notes by competent authorities:

- .1 Member States/port States should verify the availability of bunker delivery notes on board and their compliance with MARPOL Annex VI, appendix V during all port State control inspections.

Regulation 18.8.2: Best practice/guidance on when an Administration would require the MARPOL delivered sample to be analysed, and if a written statement should be delivered to the ship if the MARPOL sample is required for analyses:

- .1 Analysis of the MARPOL delivered sample may be relevant if there are indications that the bunker delivery note is not representative of the fuel oil delivered. An indication could be information from another port State that the bunker delivery note or the MARPOL delivered sample as required by regulation 18 of MARPOL Annex VI presented to a port State control officer were not in compliance with the relevant requirements;
- .2 It could also be a notification from a ship that the sulphur analysis resulting from a commercial analysis does not match the bunker delivery note;
- .3 If a port State/Member State has reasons to believe that the bunker delivery note issued by a supplier is not representative for the fuel oil delivered, it may want to request an analysis of the MARPOL delivered sample; and
- .4 If the MARPOL delivered sample is claimed for analysis, a written statement should be provided to the ship stating which State claimed the sample and the reasons. If a port State/Member State/coastal State claims the MARPOL delivered sample, the flag State should be informed.

Regulation 18.9: Best practice on:

- .1 Member States/coastal States and the maintaining of a register of local suppliers of fuel oil:
  - .1 Information which should be included in the register of fuel oil suppliers:
    - .1 Name, address and telephone number of marine fuel oil supplier as requested on the bunker delivery note (appendix V to Annex VI), as well as home page address;
    - .2 A copy of "standard" bunker delivery note from the supplier (voluntary as there is no requirement for suppliers to submit a "standard" bunker delivery note to the authority); and
    - .3 Information if supplier has a Quality Management system (voluntary, based on suppliers own information, reference to supplier's homepage).
  - .2 Member States/coastal States have an obligation under MARPOL Annex VI to require those fuel oil suppliers to provide a bunker delivery note containing at least the information specified in appendix V to MARPOL Annex VI, accompanied by a MARPOL delivered sample of the fuel oil delivered that has been sealed and signed by the supplier's representative and the master or officer in charge of the bunker operation on completion of bunkering operations:

- .1 How to check that local fuel oil suppliers provide a bunker delivery note and a fuel oil sample?
- Member State/coastal State could visit barges and terminals and check that the supplier provides a bunker delivery note and a MARPOL delivered sample, and that the MARPOL delivered sample is taken correctly, and they could take their own sample during delivery, preferably from the rail of the receiving ships or from on board bunker barge or shore terminal supplying the bunker.
- .3 Member States/coastal States undertake to require local suppliers to retain a copy of the bunker delivery note for at least three years for inspection.
- The Member State/coastal State should implement provisions in their national regulation that enables them to address situations where suppliers are found to deliver fuel oil that does not comply with the associated bunker delivery note.
- .1 how to check that local suppliers retain a copy of the bunker delivery note?
- .4 Member States/coastal States undertake to take action as appropriate against fuel oil suppliers that have been proven to deliver fuel oil that does not comply with that stated on the bunker delivery note.
- .1 Member States/coastal States that receive documentation of delivery of fuel oil to a ship that does not comply with that stated on the bunker delivery note by a fuel oil supplier within their jurisdiction should verify whether any action as appropriate needs to be taken regarding the fuel oil supplier.
- .5 Member States/coastal States undertake to inform the Party or non-Party under whose jurisdiction a bunker delivery note was issued of cases of delivery of proven non-compliant fuel oil and to inform the Organization of all cases where fuel oil suppliers have failed to meet the requirements specified in regulation 14 or 18 of MARPOL Annex VI; and
- .6 Member States/coastal States undertake to inform the flag State of any ship that have received non-compliant fuel from a supplier under their jurisdiction and to inform the Organization of all cases where fuel oil suppliers (under their jurisdiction) have failed to meet the requirements specified in regulation 14 or 18 of MARPOL Annex VI.
- .1 Which information is to be included when informing Administrations and the Organization?
- .1 name of supplier as stated on bunker delivery note;

- .2 description of the nature of violation;
- .3 laboratory analysis of the MARPOL delivered sample<sup>2</sup>; and
- .4 was a penalty applied, and if so, what was the size of the penalty.

4.3 Best practices should address statutory requirements under MARPOL Annex VI but could also include additional aspects, as appropriate, that a Member State may consider to apply if appropriate for their internal needs, provided such additional aspects do not adversely affect international harmonization. These may include:

- .1 considering actions as deemed appropriate, under national legal arrangements, with respect to promoting the availability of compliant fuel oils, consistent with regulation 18.1 of MARPOL Annex VI; and
- .2 considering a licensing scheme for bunker suppliers. The indicative example of a bunker licence in the appendix to this Annex should be used by Member States or other relevant authorities for implementing the scheme if they desire to do so, taking into account their respective national legal arrangements and conditions.

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<sup>2</sup> The analysis should be carried out in accordance with ISO 8754:2003 by a laboratory accredited for the purpose of conducting the test in accordance with ISO/IEC 17025 or an equivalent standard.

## APPENDIX

**INDICATIVE EXAMPLE OF LICENCE FOR FUEL OIL SUPPLY (BUNKERING)**

**Licence number: BUN-20XX-XX**

**The harbour master/ competent authority of.....**

On [date] [full details of Bunker supplier requesting licence (including name, company, address, etc.)] requests a licence to operate as a supplier of fuel oil intended for combustion purposes for propulsion or operation on board a ship.

**Considering:**

- Article XX of the [related port/national law].

**Taking into account:**

- The company has shown to have all the necessary custom licences and documents which are mentioned in the [related port/national laws] in order to conduct the operation as mentioned in this licence.

**Decides:**

- I to issue a licence as supplier of fuel oils to the applicant, being the above-mentioned company, as requested above;
- II that the licence is valid for the period of dd-mm-yyyy to dd-mm-yyyy (five years), with the possibility of being renewed;
- III that the information as produced with the application is part of the licence; and
- IV to adhere the following regulations and restrictions to the licence access including the possibility of the licence being withdrawn due to failure of complying with them.

## **1 Definitions**

For the purpose of this licence:

- 1.1 **SOLAS:** International Convention for the Safety of Life at Sea, 1974, as amended.
- 1.2 **MARPOL:** International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocols of 1978 and 1997 relating thereto, as amended.
- 1.3 **Bunker(s):** Hydrocarbon based fuel for ship consumption. Primarily derived from petroleum sources, may also contain hydrocarbons from synthetic or renewable sources. Bunkers are chiefly classified as distillate or residual fuel oils usually referred to as "fuel oils" in IMO documents.
- 1.4 **Bunker supplier/Supplier:** Manufactures or buys, owns, stores and sells bunkers. Distributes bunkers from pipelines, trucks and/or barges. May blend products to meet the customer's specifications. May own or charter a distribution network or may hire delivery services from a third party. Issues the Bunker Delivery Note (BDN).



1.5 *Bunker barge provider*: Owner/operator of tankers or barges providing transportation services for a physical supplier. Usually issues the BDN on behalf of the supplier.

1.6 *Truck provider*: Owner/operator of tank trucks. Usually issues BDN on behalf of the supplier.

1.7 *Bunker facility*: The ship(barge), supply pipeline or truck which delivers the bunkers to the ship.

1.8 *Cargo officer/Supplier's representative*: Person appointed by the bunker supplier to be responsible for the delivery of bunkers to the ship and is responsible for the completion of the documentation to be provided to the receiving ship.

1.9 *Bunker buyer/Purchaser*: Secures and pays for bunkers delivered to a ship at the operator side (user) and not a trader. Can be a shipowner's operator or a charterer's operator; and often used in contracts as counterpart of the supplier.

1.10 *Quality-oriented fuel oil supplier*: A fuel supplier with a quality management system certified in accordance with an internationally recognized standard (ISO 9001 or equivalent), and which may be registered with the Member State and licensed, and therefore can be expected to be on time, meet the statutory requirements, supply the quantity and quality stated on the BDN, provide support and be able to address relevant issues.

1.11 *Bunker Surveyor*: A surveyor that is independent from the other parties in the bunkering process and holds the appropriate qualifications, documented through an accreditation or certificate.

## **2 Permitted operations**

This licence relates to the delivery of bunkers intended for use as fuel oil on board ships that call at the ports within the jurisdiction of the competent authority providing this licence.

## **3 Reservation**

The condition under which this Licence for Fuel Oil Supply is granted can at any time be adjusted ex officio by the Harbour Master/competent authority, as a result of any changes relating to the policy regarding fuel quality and quantity requirements and management systems. Existing licence holders should be given a reasonable period to adjust to any changes in the requirements.

## **4 Registration of bunker facilities**

The bunker supplier applying for the licence should register all bunker facilities owned/operated by them by writing to the Port Authority/competent authority together with all the necessary supporting documentation including, but not limited to, the following:

- .1 details about the owner of the bunker facility;
- .2 details about the bunker facility including capacity;
- .3 information of the size of the bunker facility and ship size to be serviced from the facility, if necessary;
- .4 suitability of the bunker facility; and
- .5 date from which the bunker facility will be available for use.

The bunker licence, any changes thereto and all related data and information on the bunkering facilities notified in accordance with the abovementioned documentation should be maintained and available for inspection at all times at the office address of the holder of the bunker licence.

A copy of the bunker licence and any changes thereto should be present and available for inspection at all times at all the bunker facilities covered by the licence.

## **5 Cancellation of registration**

If the bunker facility is to be used for any purpose other than bunkering, the bunker facility's registration should be cancelled ahead of the change of purpose. Only registered bunker facilities should be used for the delivery of bunkers. The products on board/delivered by the bunker facility should be properly measurable, weighed and sampled.

## **6 Revoking of bunker licence**

A licence may be temporarily suspended or revoked based on proven cases that the conditions of the licence have been breached, following a due process to allow a full investigation into the alleged breaches.

The licence should be suspended or revoked if:

- .1 the licence holder has not conducted bunker delivery for a period of more than one year;
- .2 it is proven that no or incomplete notification has been made of a bunkering operation;
- .3 the licence holder does not fulfil the obligations and conditions stated in the licence; or
- .4 the holder has breached relevant Port bye laws or other regulations as applicable.

## **7 Quality management system (QMS)**

The holder of the licence should be a quality-oriented fuel supplier, as defined in sub-paragraph 1.10. They should provide evidence of this to bunker buyers if required. The QMS documentation should include references to the standards which the supplier will adhere to along with any independent third-party accreditation of the QMS or elements of the QMS and all the necessary related procedures and certification.

## **8 Availability**

When product availability and schedules allow, the holder of the licence should be available to deliver bunkers to a ship in the port for which the holder is entitled to conform with the licence.

The bunker facility should be suitable and comply with the relevant legislation regarding the transport of bunkers.

## **9 Notification of operations**

Before commencing bunkering of ships, or as soon as practicable, the licence holder should submit an operational notification to the Port Authority stating:

- .1 name of the licence holder and licence number;
- .2 registration number of the bunker facility that will be used in the operation;
- .3 name and IMO number/MMSI/Call sign of the ship receiving the bunkers;
- .4 location of bunkering operation;
- .5 grades and quantities per type of bunkers intended for the ship; and
- .6 date and expected time of the commencement of the bunkering operation.

The aforementioned notifications should be reported electronically, at an electronic address to be determined by the Harbour Master and using a message definition and message protocol to be determined by the Harbour Master.

## **10 Quality requirements**

The licence holder should ensure that the bunkers delivered from the registered bunker facilities owned/operated by them will meet the specifications agreed with the bunker buyer and at all times with regulation 4.2 of SOLAS Chapter II-2, MARPOL Annex VI and any other standard required by the competent authority issuing the licence.

## **11 Quantity requirements**

The quantity reported in the BDN is the legally binding statutory value. When delivery has taken place in the presence of a bunker surveyor, as defined in sub-paragraph 1.11, that quantity provision should be stated as normative and binding in the survey report as drawn up by the bunker surveyor. The correct delivered quantity should be determined and calculated using a standard that is acceptable to the competent authority issuing the licence.

## **12 Bunkering operation**

The licence holder should ensure that the following procedures are followed during each and every bunkering operation that involves registered bunker facilities owned/operated by them.

12.1 Clear communications should be established between supplier (bunker barge, truck or terminal) and the receiving ship and emergency stop, and response actions agreed prior to any bunkering activities commencing

12.2 In order to address the health and safety risk to crew on both the supply ship and receiving ship, all parties involved in the bunkering operation should wear adequate personal protective equipment (PPE) and take due care to prevent skin contact with bunkers and exposure to hazardous fumes.

12.3 All supply pipelines and hoses should be thoroughly cleared of residue prior to every new delivery.

12.4 Line clearing of bunker hose(s)/pipelines should be carried out at the end of the pumping operation. Once line clearing is completed, the remaining contents in the hose should be drained back into the bunker tanker's cargo tank.

12.5 There should be segregated pipelines/hoses and bunker connections for supply of materially different types of product, e.g. for residual and distillate grades, and for high and low sulphur bunkers to prevent cross-contamination of products.

12.6 Collection of a representative sample should be performed for each separate grade being delivered. If more than one tanker/barge or truck is used to supply the ship, a separate set of representative sample(s) should be taken and a separate BDN issued for each tanker/barge or truck.

12.7 Representative loading samples should be taken when barges/trucks are loading product cargoes at a terminal, and they should be provided with a certificate of quality (CoQ) for the product being loaded onto the barge/truck.

12.8 A point of contact/reporting centre for complaints and compliance issues should be available to both ships lifting bunkers and bunker suppliers/barge operators. The point of contact should be made clear on the licence document and communicated to the receiving ship.

## **12.9 Representative sampling during supply of bunkers**

12.9.1 To ensure samples are representative, a single primary sample for each grade of fuel delivered from each tanker/barge or truck should be drawn continuously throughout the entire product transfer by either an automatic sampler or manual continuous drip sampler.

12.9.2 The entire process, including sealing and labelling the sample containers, should be witnessed by representatives for both parties (the party supplying a cargo or product and the receiving party). The final resulting sample containers for each grade of fuel delivered should be sealed and labelled with unique sample seal numbers which are countersigned by representatives for both parties. The resulting unique sample seal numbers should be recorded on the relevant documentation (e.g. the BDN), which should be countersigned by representatives for both parties.

12.9.3 The supplier's representative commercial samples should be retained by the supplier for a minimum of 30 days. In the event of a quality dispute arising during the sample retention period, the samples should be retained until the dispute has been resolved.

12.9.4 Suppliers should follow the *2009 Guidelines for the sampling of fuel oil for determination of compliance with the revised MARPOL Annex VI* (resolution MEPC.182(59)) which state that the supplier should provide a MARPOL sample drawn by the supplier's representative at the receiving ship's bunker inlet manifold. If for safety or practical reasons the supplier's representative cannot move between the barge and the receiving ship to be physically present, the process may be observed visually by alternative means as per mutual agreement and in line with local regulations/requirements.

## **12.10 Documentation**

12.10.1 Suppliers should provide BDNs as per regulation 18.5 of MARPOL Annex VI to the receiving ship and safety data sheets (SDS) in line with the requirements of SOLAS regulation VI/5-1. The bunker supplier should ensure that the bunkers delivered to ship are in conformity with the details provided on the BDN and SDS.

