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MEPC.1/Circ.884
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GUIDANCE FOR BEST PRACTICE FOR MEMBER STATE/COASTAL STATE

1 The Marine Environment Protection Committee, at its seventy-fourth session (13 to 17 May 2019) approved the *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.

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 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 VI¹ 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).

¹ 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 sample²; 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 national government could consider to apply if appropriate for their internal needs, provided such additional aspects do not adversely affect international harmonization:

- .1 Member States/coastal States should consider actions it deems appropriate, under domestic legal arrangements, with respect to promoting the availability of compliant fuel oils, consistent with regulation 18.1 of MARPOL Annex VI; and
- .2 Member States or other relevant authorities desiring to do so may decide to establish or promote a licensing scheme for bunker suppliers.

² 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.