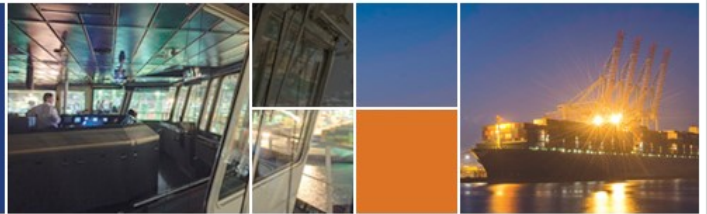




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Claiming Safety Exemption From Complying With California and United States Low-Sulfur Fuel Use Regulations

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Background

Vessels operating in waters off the California coast are subject to both state and U.S. federal regulations aimed at reducing sulfur-dioxide and diesel particulate emissions from oceangoing vessels. At the federal level, vessels are subject to MARPOL Annex VI's low-sulfur fuel use regulations which apply within 200 nautical miles of the United States' coast, called the North American Emission Control Area ("ECA"). Vessels within 24 nautical miles of the California coast must also comply with the California Air Resources Board's ("CARB") low-sulfur fuel use regulations. Both regulations require vessels to use fuel with a sulfur content of 0.1% (1,000 ppm) or less within these proscribed areas.

With prompt action and adequate documentation, vessel masters can avoid civil penalties for non-compliant fuel use in regulated waters. CARB's regulations entitle that agency to pursue civil penalties ranging from US \$1,000 to \$1,000,000/day, depending on the egregiousness of the violation. Furthermore, U.S. federal government can pursue its own civil penalties for the same occurrence in the amount of US \$70,117/day.



MARPOL Annex VI's and CARB's "Safety" Exemptions

MARPOL Annex VI and CARB's regulations allow for an exemption from their respective low-sulfur fuel use requirements where doing so would present safety concerns.

California - CARB Safety Exemption

CARB's safety exemption is designed to provide the master of a vessel with an exemption where compliance would "endanger the safety of the vessel, its crew, its cargo or its passengers due to severe weather conditions, equipment failure, fuel contamination, or other extraordinary reasons beyond the master's reasonable control." See: 13 Cal. Code Regs. § 2299.2(c)(5).

If the master of the vessel determines that the use of low-sulfur fuel would lead to such a scenario, the master should immediately take the necessary steps to remedy the situation, including potentially using non-compliant fuel. However, the master must also make efforts to limit the use of non-compliant fuel where reasonable. For example, if a master finds that the main engine cannot operate reliably on the compliant fuel without risking a propulsion loss, and the master is unable to take corrective action to mitigate the problem while the vessel is underway, then the master can switch to heavy fuel oil to see if this alleviates the problem. To limit the use of the non-compliant fuel within the regulated area, the master should consider whether it is feasible to safely sail outside 24 nautical miles from the California coast to conduct repairs, or whether the vessel may safely slow its speed to reduce non-compliant fuel consumption.

Federal - MARPOL Annex VI Regulation 3.1.2

MARPOL Annex VI provides a similar safety exemption. Regulation 3.1.2 provides that MARPOL Annex VI's low-sulfur fuel requirements shall not apply to any emission necessary for the purpose of securing the safety of a ship, or any emission resulting from damage to ship or its equipment provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the emission for purpose of preventing or minimizing the emission.

Claiming the Exemptions

California - CARB Safety Exemption

Obtaining CARB's safety exemption requires a two-step process. First, a party must submit to CARB a Safety Exemption Claim Form (available at https://www.arb.ca.gov/ports/marinevess/documents/marinenote2011_5.pdf) within 24 hours after the end of each episode for which a safety exemption is used. Second, within four calendar days of the submission of the Safety Exemption Claim Form, the party must submit to CARB documents (in English) establishing the conditions necessitating the safety exemption and the date(s), local time, and position of the vessel (latitude and longitude) in California Waters (i.e., 24 nautical miles off the California Coast) at the beginning and end of the time period during which the exemption is claimed. CARB requires that the master also submit steps that will be taken to avoid or minimize repeated claims of the exemption. After receiving this information, CARB will determine whether or not to grant the exemption.

Federal - Claiming Exemption Under MARPOL Regulation 3.1.2

The process for claiming an exemption under IMO Regulation 3.1.2 is much less defined. MARPOL Annex VI, Regulation 3.1.2 is administered by the USCG. However, a vessel's flag state also has jurisdiction related to MARPOL violations. Accordingly, a vessel should promptly notify both the USCG and its flag state of any non-compliant fuel use within the North American ECA. The USCG will take into consideration the extent to which a master has reported the circumstances of non-compliance to its flag Administration and requested an exemption from the Flag consistent with IMO Regulation 3.1.2.

Vessels should be mindful that events necessitating the use of non-compliant fuel may also trigger separate USCG notification requirements. For example, where a master switches to heavy fuel oil in response to a threatened or actual loss of propulsion, the master may be required to notify the USCG of a hazardous condition or marine casualty. A separate report to the USCG and submission of USCG Form 2692 may be required in addition to notification of non-compliant fuel use.

Conclusion

Vessel masters must comply with State and Federal low-sulfur fuel use requirements while in regulated U.S. and California waters. However, where compliance would endanger the safety of the vessel, its crew, or cargo, a master may seek an exemption from these regulations if (1) the master takes immediate action to remedy the situation and, (2) restricts the use of non-compliant fuel to the extent possible.

When a vessel uses non-compliant fuel in regulated waters, the master should take the following steps to ensure compliance with California and Federal requirements:

1. Immediately (within 24 hours) submit a Safety Exemption Claim Form to CARB;
2. Immediately notify flag State of the non-compliant fuel use;

3. Immediately notify USCG of the non-compliant fuel use;
4. Immediately notify USCG of any related hazardous condition and, if appropriate, submit a USCG Form 2692;
5. Within four days, submit to CARB documents establishing the conditions necessitating the safety exemption.



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