



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

**Purpose:**

This Protocol establishes procedures for the referral of a matter by the United States Coast Guard (USCG) to the United States Environmental Protection Agency (EPA) under 33 U.S.C. § 1907(f)(2), and for providing assistance with matters so referred. The EPA and the USCG have designed these procedures to foster cooperation and to prevent the two agencies from inadvertently prosecuting separate actions for penalties against an alleged violator for violations based on the same facts. This Protocol is intended solely to guide employees of the USCG and of the EPA in the referral process. It does not constitute rulemaking by the USCG or the EPA and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The USCG and the EPA may take action at variance with this Protocol and change it at any time.

**Background:**

On June 27, 2011, the EPA and the USCG entered into a Memorandum of Understanding (MOU)<sup>1</sup> setting forth the terms by which the EPA and the USCG will mutually cooperate in carrying out their responsibilities under 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), as amended, 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.

Under 33 U.S.C. § 1907(f), and other authorities, the USCG inspects U.S.-flagged and foreign-flagged vessels for compliance with MARPOL Annex VI requirements during comprehensive inspections of domestic ships required to obtain Certificates of Inspection<sup>2</sup> and Port State Control examinations of

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<sup>1</sup> The EPA-Coast Guard MOU is posted at: <https://www.epa.gov/enforcement/enforcement-marpol-annex-vi-memorandum-understanding-mou>.

<sup>2</sup> See 46 CFR § 2.01-5.

foreign-flagged vessels. In the course of these inspections and examinations, the USCG may discover “deficiencies,”<sup>3</sup> which may or may not rise to the level of “violations.”<sup>4</sup>

The USCG may require immediate correction of a deficiency, or correction of the problem within a specified time frame (e.g., 30 days), allowing the vessel to continue to operate in the interim. Under APPS, the USCG may also issue a detention order, allowing the ship to proceed only when the USCG determines that the ship can do so without presenting an unreasonable threat to the marine environment or the public health and welfare.

Whether or not the USCG issues a detention order,<sup>5</sup> an enforcement action can be pursued for any violations of MARPOL Annex VI under the authority of 33 U.S.C. § 1908. In selecting the appropriate type of enforcement action, USCG personnel should consider such factors as the nature and seriousness of the offense, and the deterrent effect on the individuals involved and on the general public.<sup>6</sup> The lowest level of enforcement action relevant here, the Letter of Warning (LOW<sup>7</sup>), is a

“formal, written notice of an apparent violation, [for] which no monetary or other sanction is appropriate, with consequences for its refusal. Such warnings may be accepted or declined by the receiving individual. When accepted, the Coast Guard treats the underlying offense(s) as proven violations for the purposes of selecting an appropriate enforcement action and penalty for future enforcement actions. When declined, the Coast Guard will proceed with further enforcement action as necessary to assure compliance and deterrence as detailed below. In all cases, the warning will be considered part of the relevant safety record for use in future Coast Guard activities.”<sup>8</sup>

Where 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 MARPOL Annex VI, and that imposition of a fine or civil penalty is appropriate, the USCG has a number of options it may consider. It may issue a Notice of Violation<sup>9</sup> (NOV, also known as a “ticket”). If neither a LOW nor an NOV is appropriately severe, or if the Master or representative of the Owner or Operator refuses to accept an NOV, the USCG may initiate an action for a Class I Administrative Civil Penalty, to be adjudicated by the Coast Guard Hearing

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<sup>3</sup> “A deficiency is any condition, operation, or act pertaining to a vessel or facility that fails to meet acceptable standards including but not limited to those established by applicable international conventions, U.S. laws or regulations, industry standards, equipment manufacturers['] recommendations, ‘good marine practice,’ etc. Examples include equipment which is considered to be unsatisfactory for its intended purpose; vessel or facility operations which place persons, property, or the environment at risk; or inadequate response by personnel to contingency drills.” USCG Marine Safety Manual, Volume V (“MSM, Vol. V”), COMDTINST M16000.10A (April 2008), part C, chapter 3, para.A.2.a.

<sup>4</sup> “A violation is any deficiency resulting from a failure to meet applicable U.S. statutory or regulatory requirements where sufficient evidence exists to initiate administrative, judicial, or criminal proceedings (including suspension and revocation hearings, civil penalty hearings, and criminal prosecution) as appropriate MSM, V. 5, part C, chapter 3, para A.2.b.

<sup>5</sup> 33 U.S.C. § 1904(e).

<sup>6</sup> MSM, Vol. V, part C, chapter 1, para B.3.c.

<sup>7</sup> This is also referred to in the MSM as a “Warning in lieu of civil penalty.”

<sup>8</sup> MSM, Vol. V, part C, chapter 2, para A.1. *Also see* 33 C.F.R. part 1, subpart 1.08.

<sup>9</sup> “A Notice of Violation (NOV) is a formal, written notice of an apparent violation for which a predetermined monetary penalty is appropriate. In all cases, the issuance and final disposition will be considered part of the relevant safety record for use in future Coast Guard activities.” MSM, Vol. V, part C, chapter 3, para B.1.

Office.<sup>10</sup> The USCG may also effect revocation, or withholding of a vessel's customs clearance and demand a Letter of Undertaking (LOU),<sup>11</sup> bond, or other surety "satisfactory to the Secretary" of the Department in which the USCG is operating, as provided for in 33 U.S.C. § 1908(e). The "reasonable cause" determination lies solely within the USCG's discretion, as the LOU, bond, or other surety will be to the satisfaction of the USCG.

In the most serious cases involving knowing violations, the USCG may refer a matter to the Department of Justice (DOJ) for criminal prosecution. In cases not serious enough to be handled as criminal actions, the USCG may take enforcement action itself or it may refer the matter to the EPA, under 33 U.S.C. § 1907(f)(2), for administrative action by the EPA.<sup>12</sup> The USCG will generally not refer violations which are minor enough to be addressed with a LOW or NOV. Where a violation is most appropriately handled as a Class I Administrative Civil Penalty, however, the USCG may consider whether to refer the matter to the EPA.

Factors the USCG will consider when determining whether to refer a matter to the EPA include, but are not limited to; whether or not the violator is a repeat offender, whether the evidence upon which the matter is based has been obtained from the EPA (e.g., fuel-sampling or other EPA assistance), whether the case raises novel issues which the analysis in an Administrative Law Judge opinion might clarify, or where the matter is based on evidence of egregious noncompliance such as entering the North American or the U.S. Caribbean Sea Emission Control Areas (ECA) without having planned for having compliant fuel on board,<sup>13</sup> and the USCG has decided not to refer the matter to the DOJ.

#### **Procedure for Referral of Matters to the EPA for Enforcement:**

Decisions to offer to refer a case to the EPA will generally reside with the appropriate USCG Captain of the Port (COTP), which will usually be the COTP of the port where the violation was discovered. To assist the COTP or other appropriate official in making that decision, the attending Marine Inspector, Port State Control Officer, and/or Investigating Officer will collect the evidence gathered to support the enforcement action. The Coast Guard will effect referral in a written (hard copy or email) document which lists the evidence and which cites to the specific APPS provision and MARPOL Annex VI regulation that was violated. The USCG will also share with the EPA any history of violations, which the USCG would consider if it were pursuing enforcement itself. The referral document will also include a point of contact at the local unit, which conducted the initial inspection, examination, and/or investigation.

A COTP or other official accepting an LOU, bond, or other surety satisfactory is responsible for ensuring that the USCG retains the originals of these documents in a secure manner. The COTP or other official shall send complete copies of said documents, as appropriate, to the EPA.

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<sup>10</sup> MSM, Vol. V, part C, chapter 3, para B.2. *Also see*, 33 C.F.R. part 1, subpart 1.07.

<sup>11</sup> *See* MSM, Vol. V, part C, chapter 1, para I.1.a.1.

<sup>12</sup> As provided at 40 C.F.R. § 22.1(a)(11), where the EPA pursues a matter referred to it by the USCG by bringing a formal administrative action, it will do so in accordance with the EPA's administrative civil penalty procedures under 40 C.F.R. part 22.

<sup>13</sup> SOLAS Chapter V, regulation 34, states that "[t]he voyage plan shall identify a route that takes into account the marine environmental protection measures that apply, and avoids, as far as possible, actions which could cause damage to the environment."

In many cases, whether involving an LOU or other surety or not, there may be emails between the EPA and the USCG bearing upon whether the matter should be referred. Actual referral will only occur, however, when the COTP or other USCG referring authority provides EPA with a written (hard copy or email) notice stating that the USCG is “hereby referring the matter to the EPA under 33 U.S.C. § 1907(f), effective on [date, e.g., date the notice is emailed].” This referral will be sent to Director, Air Enforcement Division, Office of Civil Enforcement.

As APPS speaks only of referral from the USCG to the EPA, any administrative enforcement action beyond that point will rest with the EPA. Nevertheless, the EPA retains its inherent authority to decide, based on its own subsequent investigation, or on other factors, that an enforcement action is no longer warranted in a matter referred to it. Alternatively, where the EPA or the USCG learns of factors after a case is referred, which would warrant proceeding with the case as a criminal prosecution, rather than as an administrative matter, the EPA and the USCG will work together, as appropriate, to refer the case to the DOJ.

For cases referred to the EPA with an LOU, bond, or other surety, the EPA will initiate its enforcement process for cases it accepts for enforcement within 180 days of referral by the USCG. Further, the EPA will regularly advise CG-INV and CG-LMI-E (the Environmental Law Division of the USCG HQ Office of Maritime and International Law) on the status of all referred cases. In addition to the regular status updates, for cases involving a LOU, bond, or other surety, the EPA will immediately consult with the USCG if no enforcement action is anticipated or if it anticipates any significant delay in the case. In conducting its enforcement, the EPA will consult with the USCG on issues of first impression.

#### **EPA-USCG Lines of Communication:**

The EPA and the USCG anticipate that there will be interaction between the EPA’s Office of Civil Enforcement, Air Enforcement Division and local USCG units. The parties in discussion will also involve USCG HQ (or, as appropriate, local USCG legal support) where questions bearing upon the interpretation of the USCG’s legal authorities or USCG policy, e.g., the manner in which the USCG conducts inspections, are at issue.

#### **Information Sharing and Assistance:**

For all MARPOL Annex VI deficiencies related to fuel oil violations, 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 the 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.<sup>14</sup>

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<sup>14</sup> Also see 33 U.S.C. § 1903(d), where APPS expressly provides to the Secretary of the Department in which the USCG is operating authority to “utilize by agreement, with or without reimbursement, personnel, facilities, or equipment of other Federal departments and agencies in administering the MARPOL Protocol, this chapter [APPS], or the regulations thereunder.”

The following points of contact are provided in accordance with this Referral Protocol:

USCG Office of Commercial Vessel Compliance (CG-CVC)

U.S. Coast Guard, Stop 7501  
2703 Martin Luther King Jr. Ave., SE  
Washington, DC 20593-7501  
Phone: 202-372-1230  
Email: [CG-CVC@uscg.mil](mailto:CG-CVC@uscg.mil)

USCG Office of Investigations and Casualty Analysis (CG-INV)

Investigations and Enforcement Division (CG-INV-1)  
U.S. Coast Guard, Stop 7501  
2703 Martin Luther King Jr. Ave., SE  
Washington, DC 20593-7501  
Phone: 202-372-1223  
Email: [HQS-DG-1st-G-PCA-1@uscg.mil](mailto:HQS-DG-1st-G-PCA-1@uscg.mil)

EPA Office of Civil Enforcement, Air Enforcement Division

Attn: Director  
Air Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 2242A  
Washington, D.C. 20460  
Phone: 202-564-5472  
Email: [phillip.brooks@epa.gov](mailto:phillip.brooks@epa.gov) or [kaul.meetu@epa.gov](mailto:kaul.meetu@epa.gov)

**Effective date:**

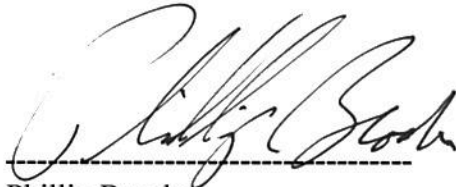
This Revised Protocol supersedes and replaces the Referral Protocol of March 4, 2015. This Revised Protocol is effective when signed by the parties, below, and may be amended by mutual agreement between the EPA and the USCG.

**Approved:**



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Jennifer F. Williams  
Captain, U.S. Coast Guard  
Director of Inspections and Compliance

Date signed: 6/20/19



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

Date signed: 6/10/2019

Attachment: Division of APPS Authorities between USCG and EPA to carry out MARPOL Annex VI

**Division of Authorities between USCG and EPA to carry out MARPOL Annex VI  
Under the Act to Prevent Pollution from Ships<sup>15</sup>**

<b>RESPONSIBILITY</b>	<b>USCG</b>	<b>EPA</b>	<b>APPS AUTHORITY (33 U.S.C.)</b>
Waive Annex VI requirements via an Exemption Permit under regulation 3	Full <sup>16</sup>	No	§ 1903(a) <sup>17</sup>
Conduct Onboard Inspections	Full	No	§ 1904(c), § 1907(f)(1), and § 1903(a)
Detain a vessel	Full	No	§ 1904(e)(2)
Review detention order	Full	No	§ 1904(g)
Effect revocation of clearance to leave port	Full	No	§ 1904(f)
Investigate evidence of violations of and enforce regulations 17 and 18	Joint	Joint	§ 1907(f)(3)
Investigate evidence of all other violations	Full	Limited (depends on referral by USCG)	§ 1907(b) (USCG) § 1907(f)(3)(EPA)
Enforcement of provisions outside regulations 17 and 18	Full	Limited (depends on referral by USCG)	§ 1903(b)(3), § 1907(f)(2)(EPA) § 1903(a)(USCG)
Issue EIAPP (Engine International Air Pollution Prevention certificates)	No	Full	§ 1903(b)(1)
“Administer” Annex VI regulations 12, 13, 14, 15, 16, 17, 18	Joint	Joint	§ 1903(b)(2)(EPA) § 1903(a)(USCG)
Issue regulations to “carry out” <sup>18</sup> Annex VI regulations 12, 13, 14, 15, 16, 17, 18	Joint	Joint	§ 1903(c)(2)(EPA)
Issue regulations to “carry out” Annex VI (all other Annex VI regulations)	Full	No	§ 1903(c)(1)

<sup>15</sup> APPS is the starting point for an analysis of the respective responsibilities of the EPA and the USCG to administer Annex VI. The attachment of this chart to the Referral Protocol is not intended to foreclose the use of other authorities, which the USCG or the EPA has identified as the source of a particular power.

<sup>16</sup> USCG relies on EPA for assistance in evaluating decisions relating to air emission impacts and engine performance.

<sup>17</sup> “Unless otherwise specified in this chapter [APPS], the Secretary [DHS] shall administer and enforce the MARPOL Protocol...” Authority to administer regulation 3 is not specified in APPS.

<sup>18</sup> APPS implements the treaty (to a large part directly); APPS says that EPA and USCG may issue regulations to “carry out” the provisions of MARPOL. EPA’s regulations are codified at 40 CFR part 1043.