

AMSA REGULATORY CONSULTATION

Draft *Marine Order 97 (Marine pollution prevention – air pollution) Amendment Order 2019* (Amendment Order) is open for consultation until 29 October 2019

We invite you to make comment on this draft Amendment Order at

<https://www.amsa.gov.au/news-community/consultations/have-your-say-make-submission>

Who does this Order apply to?

Marine Order 97 (Marine pollution prevention – air pollution) 2013 (MO97) deals with the prevention of air pollution from vessels and gives effect to Annex VI of MARPOL. MO97 applies to regulated Australian vessels, domestic commercial vessels, recreational vessels and foreign vessels.

What are the key changes?

IMO resolutions MEPC.176(58) and MEPC.280(70) had set the maximum sulphur content in fuel oil *for use* on board vessels at 0.10% in an emission control area (ECA) and 0.50% outside an ECA effective from 1 January 2020. Additionally, Resolution MEPC.305(73) amended MARPOL Annex VI prohibiting the *carriage for use* of fuel oil with sulphur content of more than 0.50% from 1 March 2020. MO97 needs to be amended in this regard. Opportunity is also taken to update MO97 to clarify some important requirements.

The main changes:

- Update prescribed limit for sulphur content in fuel oil to remove expired limits (effective 1 January 2020)
- Implement provisions for the prohibition of carriage of non-compliant fuel on board (effective 1 March 2020)
- Provide for the use of an Annex VI approved equivalent (e.g. exhaust gas cleaning system (EGCS)) not just inside but also outside an emission control area (ECA) for Australian ships and for foreign ships within Australian waters as an alternative to using compliant fuel.
- Mandate fuel oil non-availability reporting (FONAR) for Australian ships both inside and outside ECAs and foreign ships within Australian waters
- Clarify requirements related to bunker supply to vessels

Commencement

Commencement of the Amendment Order is subject to enactment of the ***Protection of the Sea (Prevention of Pollution from Ships) Amendment (Air Pollution) Bill 2019*** (POTS Act Amendment Bill). It is intended that the Amendment Order will commence on **1 January 2020 and 1 March 2020** as relevant synchronising with commencement of the POTS Act Amendment Bill to give effect to MARPOL VI amendments.

The table below compares sections in the current MO97 and the relevant amendments applicable to those sections including any new section added by the Amendment Order. The green highlighted references are the new sections, subsections, paragraphs etc. added by the POTS Act Amendment Bill, which is available at the following links:

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6414

<https://www.legislation.gov.au/Details/C2019B00184>

Marine Order 97 (Marine pollution prevention – air pollution) 2013	Draft Marine Order 97 (Marine pollution prevention – air pollution) Amendment Order 2019	Notes on changes All new sections are yellow highlighted
	Schedule 1 Amendments about use of low sulphur fuel	Schedule 1 is expected to commence on 1 January 2019
<p>Division 7 Matters prescribed for the Pollution Prevention Act</p> <p>30 Sulphur content of fuel oil — prescribed limits generally</p> <p>For paragraphs 26FEG(1)(b) and (2)(a) of the Pollution Prevention Act, the following limits for the sulphur content of fuel oil are prescribed:</p> <p>(a) before 1 January 2020 — 3.50% m/m; (b) after 31 December 2019 — 0.50% m/m.</p>	<p>30 Sulphur content of fuel oil — prescribed limits</p> <p>(1) For paragraph 26FEG(1)(b) of the Pollution Prevention Act, the prescribed limit is 0.50% m/m. (2) For paragraph 26FEH(4)(a) of the Pollution Prevention Act, the prescribed limit is 0.10% m/m.</p>	<p>Changes are based on MARPOL VI amendments and POTS Act Amendment Bill 2019.</p> <p>Removed the obsolete sulphur content limit and simplified. Also relocated Sulphur limit on fuel for Emission Control Area in one section</p>
<p>31 Sulphur content for fuel oil — SO_x emission control conditions</p> <p>(1) For paragraph 26FEH(4)(a) of the Pollution Prevention Act, the following limits are prescribed for the sulphur content of fuel oil mentioned in that paragraph: (a) before 1 January 2015 — 1.00% m/m; (b) after 31 December 2014 — 0.10% m/m. (2) For subparagraph 26FEH(4)(b)(i) of the Pollution Prevention Act: (a) an exhaust gas cleaning system must be operated in compliance with the 2015 Guidelines; and (b) the prescribed level of emission of sulphur oxides is as shown in Table 1 of the 2015 Guidelines for the sulphur content (within the limits prescribed by subsection (1)) of the fuel oil being used. (3) For subparagraph 26FEH(4)(b)(ii) of the Pollution Prevention Act, a waste stream arising from the operation of an exhaust gas cleaning system may be discharged only if: (a) there is continuous monitoring and recording of the waste stream; and (b) the waste stream is within the limits mentioned in section 10 of the 2015 Guidelines. (4) In this section: 2015 Guidelines means 2015 Guidelines for exhaust gas cleaning systems adopted by IMO Resolution MEPC.259(68), as in force from time to time. <i>Note</i> Subparagraph 26FEH(4)(b)(i) of the Pollution Prevention Act allows use of a technological method for reducing the total emissions of sulphur oxides from a ship, other than an exhaust gas cleaning system. However, when this Order was made, no other technological method existed.</p>	<p>30A Prescribed level of total emission of sulphur oxides</p> <p>For paragraphs 26FEGA(4)(b) and 26FEHA(2)(b) of the Pollution Prevention Act, the prescribed level is shown in Table 1 of the 2015 Guidelines</p> <p>30B Operation of Annex VI approved equivalents</p> <p>(1) For paragraph 26FEGA(1)(b) and subparagraph 26FEH(4)(b)(ii) of the Pollution Prevention Act, an Annex VI approved equivalent must be used in accordance with the 2015 Guidelines.</p> <p>(2) For paragraph 26FEGA(1)(c) and subparagraph 26FEH(4)(b)(iii) of the Pollution Prevention Act, a waste stream arising from the operation of an exhaust gas cleaning system may be discharged only if: (a) there is continuous monitoring and recording of the waste stream; and (b) the waste stream is within the limits mentioned in section 10 of the 2015 Guidelines.</p> <p>31 Notification of fuel non-availability</p> <p>For paragraphs 26FEGA(7)(b), 26FEGA(7)(c), 26FEHA(5)(b) and 26FEHA(5)(c) of the Pollution Prevention Act, (a) notification must be on the approved form; and (b) notification must occur as soon as the person responsible for obtaining fuel oil for use on board the ship becomes aware that it will not be possible to obtain compliant fuel oil; and (c) a copy of the notification must be kept on board the ship for 3 years <i>Note</i> The approved form is available on the AMSA website: at http://www.amsa.gov.au.</p>	<p>Current section 31 is restructured and split for updating and clarity with provision for EGCS or other approved arrangements with headings changed for appropriateness</p> <p>New section - reporting requirement for notification of fuel non-availability</p>
<p>32 Flushing fuel oil service systems</p> <p>For paragraphs 26FEI(1)(d) and (2)(d) of the Pollution Prevention Act, the following limits for the sulphur content of fuel oil are prescribed: (a) before 1 January 2015 — 1.00% m/m; (b) after 31 December 2014 — 0.10% m/m.</p>	<p>32 Flushing fuel oil service systems</p> <p>For paragraphs 26FEI(1)(d) and 26FEI(2)(d) of the Pollution Prevention Act, the prescribed limit is 0.10% m/m</p>	Updated to remove obsolete sulphur content limit
<p>33 Record of prescribed fuel-changeover operation :</p> <p>(2) For paragraph 26FEJ(1)(a) of the Pollution Prevention Act, an entry must: (a) be made as soon as only fuel oil with a sulphur content of less than 1.5% m/m is being burned; and (b) include:</p>	<p>Paragraph 33(2)(a)</p> <p><i>omit</i> 1.5% <i>insert</i> 0.10% by mass</p>	Updated to remove obsolete sulphur content limit

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(i) the volume of low-sulphur fuel oil (up to 4.5% sulphur content) in each tank; and (ii) the date, time and position of the vessel when any fuel-changeover operation is completed.	Subparagraph 33(2)(b)(i) <i>omit</i> 1.5% <i>insert</i> 0.10% m/m	
	33A Approval of Annex VI approved equivalent (1) For subsection 26FEKA(2) of the Pollution Prevention Act: (a) a prescribed officer may approve, as an Annex VI approved equivalent, a system or method mentioned in that subsection if the system or method complies with the 2015 Guidelines; and (b) an issuing body is a prescribed officer. (2) A decision about an application for approval of an Annex VI approved equivalent is a reviewable decision for section 17 of <i>Marine Order 1 (Administration) 2013</i>	Approval mechanism provided for Annex VI approved equivalent
	Schedule 2 Amendments about carriage of low sulphur fuel	Schedule 2 is expected to commence on 1 March 2019
	Section 30B <i>omit</i> 26FEHA(5)(b) and 26FEHA(5)(c) <i>insert</i> 26FEHA(5)(b), 26FEHA(5)(c), 26FEHA(6)(b) and 26FEHA(6)(c)	Amending 30B added by Schedule 1 for updating in accordance with MARPOL/POTS Act amendment coming into force on 1 March 2019 in relation to carriage of fuel oil
	Schedule 3 Other changes	Schedule 3 expected to commence on 1 January 2019
6 Definitions	Section 6 , before definition of Annex VI, <i>insert</i> 2015 Guidelines means 2015 Guidelines for exhaust gas cleaning systems adopted by IMO Resolution MEPC.259(68) and as amended from time to time	Replicated subsection 31(4) of the current Order with the Note removed as superfluous. The definition has been moved to the definition section because the term is now used in more than in one section
	Section 6 , after the definition of IEE certificate <i>insert</i> m/m means mass by mass	Definition of m/m added
Note 2 Some terms used in this Order are defined in the Navigation Act or Pollution Prevention Act, including: <ul style="list-style-type: none">• AMSA• foreign vessel• inspector• recognised organisation (for organisations that have been prescribed for the definition — see <i>Marine Order 1 (Administration) 2013</i>)• regulated Australian vessel	Section 6, note 2 <i>omit</i> <ul style="list-style-type: none">• inspector <i>insert</i> <ul style="list-style-type: none">• inspector• issuing body• prescribed officer	Definitions of issuing body and prescribed officer added

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7 Reference to the Administration	Add a new Note: Note 1 Annex VI and the 2015 Guidelines refer to the competent authority as the body responsible for certain functions under Annex VI. Each party to MARPOL must have a competent authority. Under the Pollution Prevention Act, the functions of the competent authority are performed by 'a prescribed officer'. This will normally be AMSA but the holder of a particular office within AMSA, or another person, may be prescribed (see subsection 3(2) of the Pollution Prevention Act).	To clarify that "competent authority" for the purpose of MARPOL Annex VI and the 2015 Guidelines is AMSA. The current Note becomes Note 2
8 Application (1) This Order applies to a vessel that is: (a) a regulated Australian vessel; or (b) a foreign vessel; or (c) a recreational vessel; or (d) a domestic commercial vessel. (2) However, this Order does not apply to a vessel that is owned or operated by a country other than Australia and used, for the time being, on government non-commercial service. (3) Also, the following provisions do not apply to a foreign vessel or a recreational vessel that does not have Australian nationality: (a) section 9; (b) Division 2; (c) Division 2B, apart from sections 20B and 20C; (d) subsections 22(3) and (6); (e) section 25; (f) Division 6; (g) sections 31 to 34; (h) section 37. (4) For this Order, Annex VI is taken to apply to a vessel that is owned and operated by the Commonwealth and is used, for the time being, on government non-commercial service. <i>Note</i> The application of this Order is subject to subsection 33(2) of the Pollution Prevention Act and section 12 of the Navigation Act. Those provisions have the effect that parts of this Order that give effect to parts of MARPOL do not apply to certain vessels in an area if a law of a State or the Northern Territory or the national law gives effect to the same parts of MARPOL for vessels in the area.	Subsections 8(2) to (4) substitute (2) However , the following provisions do not apply to a foreign vessel or a recreational vessel that does not have Australian nationality: (a) section 9; (b) Division 2; (c) Division 2B, apart from sections 20B and 20C; (d) subsections 22(3) and (6); (e) section 25; (f) Division 6; (g) sections 31 to 34; (h) section 37.	Schedule 3 of the POTS Act Amendment Bill disapplies the Act to warships and naval auxiliaries including foreign government vessels on non-commercial service. Therefore, subsection 8(2) is redundant. However, the amendment does not exclude Australian government vessels engaged in non-commercial service and as such subsection (4) becomes superfluous.
9A Review of decisions A decision under section 20E is a reviewable decision for section 17 of <i>Marine Order 1 (Administration) 2013</i>	A decision under section 20F is a reviewable decision for section 17 of <i>Marine Order 1 (Administration) 2013</i>	Corrected a wrong reference
	Division 1A Requirement of Annex VI 9B Convention requirements A vessel must comply with the requirements of Annex VI that apply to the vessel.	New Division New section to clarify that all requirements of Annex VI applies to both foreign and Australian flag vessels.
20A Requirements for foreign vessels (2) A vessel to which Annex VI applies must comply with the requirements of Annex VI that apply to the vessel and have the certificates that it is required to have according to Regulations 5 and 6 of that Annex.	20A Requirements for foreign vessels (2) A vessel to which Annex VI applies must have the certificates that it is required to have in accordance with Regulations 5 and 6 of that Annex.	Modified as a consequence of the new section 9B
34 Register of Local Suppliers of Fuel Oil (1) For paragraph 26FEM(3)(a) of the Pollution Prevention Act, AMSA must: (a) maintain the Register of Local Suppliers of Fuel Oil based on information given in: (i) Local Fuel Suppliers' Initial Declarations completed in accordance with subsection (2); and	34 Register of Local Suppliers of Fuel Oil (1) For paragraph 26FEM(3)(a) of the Pollution Prevention Act, the Register of Local Suppliers of Fuel Oil must contain the information given by: (a) an initial application and declaration mentioned in subsection (2); and (b) an annual declaration mentioned in subsection (3).	Updated for the POTS Act Amendment Bill and simplified by re-drafting. A date is specified for annual declaration to be made by local fuel suppliers to remove vagueness.

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<p>(ii) Local Fuel Suppliers' Annual Declarations completed in accordance with subsection (3); and (b) enter in the Register the details provided in those declarations. Note The Register of Local Suppliers of Fuel Oil was established under subsection 26FEM(1) of the Pollution Prevention Act in the way prescribed by Marine Order 97 (Marine pollution prevention – air pollution) 2007. (2) For subparagraph 26FEM(3)(b)(i) of the Pollution Prevention Act, a person seeking registration as a local supplier of fuel oil must complete a Local Fuel Oil Suppliers Initial Declaration and send the completed form to the address shown on the form. Note Approved forms are available on the AMSA website at http://www.amsa.gov.au. (3) If, at any time before the first Annual Declaration is due, any changes occur to information provided in the Initial Declaration, the person who completed the Initial Declaration must send a new Initial Declaration with the new information. Note Approved forms are available on the AMSA website at http://www.amsa.gov.au. (4) For subparagraph 26FEM(3)(b)(ii) of the Pollution Prevention Act, a person registered as a local supplier of fuel oil must complete a Local Fuel Oil Suppliers' Annual Declaration in June or July each year and send the completed form to the address shown on the form.</p>	<p>(2) For subparagraph 26FEM(3)(b)(i) of the Pollution Prevention Act, a person seeking registration on the Register must apply in accordance with the application process set out in <i>Marine Order 1 (Administration) 2013</i>.</p> <p>(3) The application must be on the approved initial application and declaration form. <i>Note</i> The approved form is available on the AMSA website: at http://www.amsa.gov.au.</p> <p>(4) For subparagraph 26FEM(3)(b)(ii) of the Pollution Prevention Act, a person registered on the Register must give AMSA an annual declaration in the approved form by 1 July each year. <i>Note</i> The approved form is available on the AMSA website: at http://www.amsa.gov.au.</p> <p>(5) If the person does not provide an annual declaration as required, AMSA may remove the person's name from the Register.</p> <p>(6) If, at any time before the first annual declaration is due, any change occurs to information given in the initial application and declaration, the person who completed that form must give to AMSA a new initial application and declaration form with the new information.</p>	
<p>35 Bunker delivery note and sample</p> <p>(1) For paragraph 26FEO(1)(d) of the Pollution Prevention Act, a completed bunker delivery note must be given to the master or the officer in charge of the bunker operation on completion of bunkering operations.</p> <p><i>Note</i> AMSA has approved the Bunker Delivery Note set out in Appendix V to Annex VI as the approved form</p>	<p>Subsection 35(1)</p> <p><i>omit</i> paragraph 26FEO(1)(d)</p> <p><i>insert</i> paragraph 26FEO(1A)(c)</p>	<p>Reference updated for the POTS Act Amendment Bill</p>