



## New International Fuel Standard for Vessels Takes Effect

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*[Rachael Lipinski](#) and [Jenna Mandell-Rice](#)*

On January 1, 2020, [the International Maritime Organization \(“IMO”\) implemented a new global sulfur standard for marine fuels \(“IMO 2020”\)](#). The new standard in IMO’s International Convention for the Prevention of Pollution by Ships (“MARPOL”), applies to ships of all sizes and types on both domestic and international voyages, and significantly reduces the amount of sulfur in fuel oil that can be used in ships operating outside designated emission control areas (“ECAs”) to 0.5% by mass. Vessels can comply by either using low sulfur fuel or by installing exhaust gas cleaning systems, otherwise known as scrubbers. The purpose of the new standard is to reduce air pollution from shipping around the world.

The U.S. has a strong history of enforcement under MARPOL, including criminal enforcement for violations. Although reports suggest there will be sufficient low sulfur fuel available to meet the new requirements, the cost of fuel will certainly be a factor. Additionally, we expect questions and developments on wastewater from scrubbers, especially given that the recently passed Vessel Incidental Discharge Act (33 U.S.C. § 1322(p)) will be replacing the current Vessel General Permit. By December 2020, the EPA is required to develop national standards of performance for approximate 30 discharges that are at least as stringent as the existing 2013 Vessel General Permit requirements.

### Background

Ships often use heavy fuel oil, commonly referred to as bunker oil, which is derived as a residue from crude oil distillation. This crude oil contains sulfur, which upon combustion, produces sulfur oxides (“SO<sub>x</sub>”) that can cause impacts on human health and the environment.

In 1973, the IMO adopted MARPOL, the objective of which is to limit ship-borne pollution by restricting operational pollution and reducing the possibility of accidental pollution. Acceptance of MARPOL by a national government obliges it to make the requirements part of the country’s domestic law. Each individual signatory country to MARPOL is responsible for enforcing MARPOL provisions, both as a flag State and through port State control. The U.S. is currently a signatory to Annexes I, II, III, V and VI of MARPOL. The U.S. incorporated MARPOL into U.S. law through the Act to Prevent Pollution from Ships (33 U.S.C. §§ 1901-1915). Annex VI of MARPOL limits the main air pollutants contained in ship exhaust gas, including SO<sub>x</sub>. In 2011, the U.S. Coast Guard and the Environmental Protection Agency (“EPA”) entered into a Memorandum of Understanding to jointly and cooperatively coordinate inspections, investigations, and enforcement actions for MARPOL Annex VI.

Over the past 15 years, MARPOL has gradually set reduced limits on sulfur content—reducing sulfur content from 4.5% in 2005 to 0.5% in 2020. Amendments in 2008 also included more stringent caps—currently 0.1%—for ECAs. ECAs in North America include: designated coastal areas off the U.S. and Canada; the U.S. Caribbean Sea, covering areas Puerto Rico and the U.S. Virgin Islands; the Baltic Sea; and the North Sea. Fuel oil providers already supply fuel (such as marine distillate and ultra-low sulfur fuel oil blends) that meets the 0.1% limit in these areas.

### Practical Implications

To comply with IMO 2020, ships must use fuel oil that is inherently low enough in sulfur. Refineries can blend fuel oil with a high (non-compliant) sulfur content with fuel oil that has a sulfur level below the limit in order to create a compliant fuel oil. Some ship engines may even use fuels that create zero SO<sub>x</sub>, such as liquefied natural gas or biofuels.

Alternatively, ships may comply by installing exhaust gas cleaning systems (scrubbers), which remove SO<sub>x</sub> from boiler and exhaust gases, provided they achieve the same level of emissions reduction. MARPOL Annex VI, Regulation 4 allows Administrations (flag States) to approve as “equivalents”—any “fitting, material, appliance or apparatus to be fitted in a ship or other procedures, alternative fuel

oils, or compliance methods used as an alternative to that required”—that enables the same standards of emission control to be met. While flag states accept scrubbers as equivalents, scrubbers create washwater (also referred to as wastewater) which is subject to specific criteria and certain IMO requirements upon discharge into the ocean. If these criteria cannot be met, it must be delivered to a reception facility. Notably, the guidelines for washwater criteria are currently under review in the IMO Sub-Committee on Pollution Prevention and Response. In the U.S., the 2013 Vessel General Permit outlines requirements for the discharge of scrubber wastewater.

On March 1, 2020 the carriage of fuel oil for use on board ships with a sulfur content that exceeds 0.50% will be banned by MARPOL Annex VI, Regulation 14, unless that ship is fitted with a scrubber. This is intended as an additional measure to support consistent implementation and compliance and provide a means for effective enforcement by States. This does not apply to fuel carried as cargo.

### FOR MORE INFORMATION

Van Ness Feldman closely monitors and counsels clients on water, air, and other environmental regulatory developments. If you would like more information about the implementation of the IMO 2020 sulfur cap, please contact [Rachael Lipinski](#), [Jenna Mandell-Rice](#), or any member of the firm’s Environmental team in Seattle (206) 623-9372 or Washington, D.C. (202) 298-1800.

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