

L.N. 135 of 2018

Air Pollution Control (Fuel for Vessels) Regulation

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Air Pollution Control (Fuel for Vessels) Regulation

(Made by the Secretary for the Environment under section 43 of the Air Pollution Control Ordinance (Cap. 311) after consultation with the Advisory Council on the Environment)

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 1 January 2019.

2. Interpretation

In this Regulation—

accepted Convention certificate (獲認可公約證明書) means a certificate in the form prescribed by the International Convention for the Safety of Life at Sea, 1974 as amended from time to time;

agent (代理人), in relation to a vessel, means a person acting in Hong Kong as an agent for the owner of the vessel;

compliant fuel (合規格燃料) means—

- (a) low sulphur marine fuel;
- (b) liquefied natural gas; or
- (c) any fuel approved under section 16(1);

fuel switch operation to compliant fuel (轉換合規格燃料) means an operation to change the fuel used by a vessel from non-compliant fuel to compliant fuel;

fuel switch operation to non-compliant fuel (轉換不合規格燃料) means an operation to change the fuel used by a vessel from compliant fuel to non-compliant fuel;

low sulphur marine fuel (低硫船用燃料) means a petroleum-derived liquid fuel—

- (a) used, or intended for use, by a vessel; and
- (b) with sulphur content not exceeding 0.5% by weight;

master (船長) has the meaning given by section 2 of the Shipping and Port Control Ordinance (Cap. 313);

non-compliant fuel (不合規格燃料) means any fuel other than compliant fuel;

ocean going vessel (遠洋船隻) means—

- (a) a vessel that holds an accepted Convention certificate;
- (b) a vessel that holds a certificate, other than an accepted Convention certificate, that—
 - (i) is issued by a government authority of the Mainland; and
 - (ii) permits the vessel to sail along the coast of the Mainland; or
- (c) a vessel that—
 - (i) is of 500 gross tonnage or over; and
 - (ii) holds a certificate relating to any item of inspection of the vessel and issued by a government authority of a place outside Hong Kong (other than an accepted Convention certificate or a certificate referred to in paragraph (b)),

but does not include a vessel that plies exclusively within river trade limits;

owner (擁有人), in relation to a vessel, means—

- (a) the charterer of the vessel;
- (b) the manager of the vessel; or
- (c) the following person—
 - (i) if the vessel is owned by a state and operated by a person registered in that state as the operator of the vessel—that person; or
 - (ii) in a case not falling within subparagraph (i)—any person registered as the owner of the vessel or, if no person is registered as the owner of the vessel, any person who owns the vessel;

river trade limits (內河航限) has the meaning given by section 2 of the Shipping and Port Control Ordinance (Cap. 313);

specified machinery (指明機械), in relation to a vessel, means the following machinery of the vessel—

- (a) the main engine;
- (b) the auxiliary engine;
- (c) the boiler; and
- (d) the generator;

stay period (停留期間), in relation to a vessel, means a period—

- (a) beginning when the vessel enters the waters of Hong Kong and ending when the vessel exits those waters; and
- (b) during which the vessel continuously stays in those waters;

vessel (船隻) has the meaning given by section 2 of the Shipping and Port Control Ordinance (Cap. 313).

3. **Application**

This Regulation does not apply to—

- (a) a warship or any other vessel on military service; or
 - (b) a vessel if—
 - (i) the vessel enters the waters of Hong Kong solely for one or more of the following purposes—
 - (A) reducing risks to the safety of the vessel;
 - (B) sheltering from stress of weather;
 - (C) landing a sick or injured person;
 - (ii) the owner or the master of the vessel has notified the Director of Marine of the purpose referred to in subparagraph (i) before the vessel enters those waters; and
 - (iii) the vessel does not carry any compliant fuel for operating its specified machinery when it enters those waters.
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Part 2

Fuel to be Used by Vessels

Division 1—Prohibition of Use of Non-Compliant Fuel

4. Application of Part 2

Subject to section 3, this Part applies to a vessel in the waters of Hong Kong.

5. Use of non-compliant fuel prohibited

- (1) A vessel must not use non-compliant fuel for combustion purposes for operating any of its specified machinery.
- (2) If subsection (1) is contravened, the owner and the master of the vessel each commits an offence.
- (3) A person who commits an offence under subsection (2) is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

6. Defence for offence under section 5

- (1) If a person is charged with an offence under section 5(2), it is a defence for the person to prove—
 - (a) that the person—
 - (i) exercised all due diligence to prevent the contravention of section 5(1); but
 - (ii) was misled by the supplier of the fuel used by the vessel to operate its specified machinery at the material time as to the sulphur content of the fuel;

- (b) that the person—
 - (i) exercised all due diligence, from the beginning of the vessel's voyage to Hong Kong until the material time, to obtain low sulphur marine fuel for operating the vessel's specified machinery in the waters of Hong Kong; but
 - (ii) failed to obtain the fuel; or
 - (c) that the vessel was in an emergency situation that did not permit it to comply with section 5(1) at the material time.
- (2) In this section—
- material time*** (達例時間) means the time when section 5(1) is contravened.

Division 2—Exemption

7. Exemption from section 5(1)

- (1) The Authority may—
 - (a) if satisfied that a vessel uses technology that can reduce the emission of sulphur dioxide when the vessel is in the waters of Hong Kong at least as effectively as the use of low sulphur marine fuel at that time, exempt the vessel from section 5(1) or renew an exemption granted for the vessel; or
 - (b) if satisfied that compliance with section 5(1) will pose a risk to the safety of a vessel, exempt the vessel from that section.
- (2) An exemption may be subject to any conditions the Authority considers appropriate to impose at any time.

- (3) A condition imposed after the grant or renewal of the exemption must not take effect unless the Authority gives at least 7 days' prior written notice to the owner, the master or the agent of the vessel.
- (4) The breach of a condition renders the exemption invalid during the continuance of the breach.

8. Validity period of exemption

- (1) The Authority may, under section 7(1)(a)—
 - (a) grant an exemption for a maximum of 3 years; and
 - (b) renew an exemption, each time for a maximum of 3 years.
- (2) The Authority may grant an exemption under section 7(1)(b) for 1 stay period.

9. Application for exemption

- (1) The owner, the master or the agent of a vessel may apply to the Authority for an exemption or a renewal of an exemption under section 7(1) for the vessel.
- (2) The application—
 - (a) must be in writing and in the form specified by the Authority; and
 - (b) must be accompanied by the documents specified in the form.
- (3) The Authority may require the applicant to provide any further information or documents that the Authority considers necessary for determining the application.
- (4) The Authority must notify the applicant in writing of the Authority's determination of the application.

- (5) If, in an application under this section, a person provides to the Authority any information or document that is false or misleading in a material particular, the person commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 3 months.

10. When application for exemption must be made

- (1) An application for an exemption under section 7(1)(a) must be made—
- (a) for a grant of an exemption—at least 14 days before the date on which the first exempted stay period to which the application relates is intended to commence; and
 - (b) for a renewal of an exemption—not earlier than 3 months before, and not later than 14 days before, the date on which the exemption expires.
- (2) An application for an exemption under section 7(1)(b) must be made at least 14 days before the date on which the exempted stay period to which the application relates is intended to commence.
- (3) In this section—

exempted stay period (獲豁免停留期間), in relation to a vessel, means a stay period for which an exemption under section 7(1) is intended to be relied on for the vessel at any time during the stay period.

11. Revocation of exemption

The Authority may, by written notice to the owner, the master or the agent of a vessel, revoke an exemption under section 7(1) for the vessel if the Authority has reasonable grounds to believe that—

- (a) a condition of the exemption has been breached; or

- (b) any information or document provided to the Authority in support of the application for the exemption is false or misleading in a material particular.
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Part 3

Record in Log Book and Document Keeping

12. Application of Part 3

Subject to section 3, this Part applies to an ocean going vessel in the waters of Hong Kong.

13. Record in log book

- (1) The following particulars in respect of a vessel must be recorded in a log book of the vessel in accordance with subsection (2)—
 - (a) the date and time when the vessel enters the waters of Hong Kong;
 - (b) the date and time when the vessel exits the waters of Hong Kong;
 - (c) the date and time when a fuel switch operation to compliant fuel is completed on the vessel;
 - (d) the position of the vessel when a fuel switch operation to compliant fuel is completed on the vessel;
 - (e) the volume and sulphur content of the compliant fuel carried on the vessel for operating its specified machinery when a fuel switch operation to compliant fuel is completed on the vessel;
 - (f) the date and time when a fuel switch operation to non-compliant fuel commences on the vessel;
 - (g) the position of the vessel when a fuel switch operation to non-compliant fuel commences on the vessel; and

- (h) the volume and sulphur content of the compliant fuel carried on the vessel for operating its specified machinery when a fuel switch operation to non-compliant fuel commences on the vessel.
- (2) The particulars must be recorded as soon as practicable after the occurrence to which the particulars relate.
- (3) If subsection (1) is contravened, the owner and the master of the vessel each commits an offence.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (5) It is a defence for a person charged with an offence under subsection (3) to prove that the person had reasonable excuse for contravening subsection (1).
- (6) For the purposes of this section—
 - (a) a fuel switch operation to compliant fuel is completed when the fuel pipes leading to all of the specified machinery of the vessel concerned are filled only with compliant fuel; and
 - (b) a fuel switch operation to non-compliant fuel commences when a fuel pipe leading to any of the specified machinery of the vessel concerned begins to be filled with non-compliant fuel.

14. Keeping of documents

- (1) The log book of a vessel in which any particulars are recorded under section 13(1) and section 4 of the Schedule must—
 - (a) be kept on the vessel for a period of 3 years after the date on which the particulars are recorded; and

- (b) be readily available for inspection at all reasonable times during the period.
- (2) A bunker delivery note that relates to any fuel delivered to a vessel for operating its specified machinery must—
 - (a) be kept on the vessel for a period of 3 years after the date of delivery; and
 - (b) be readily available for inspection at all reasonable times during the period.
- (3) If a fuel switch operation is necessary for a vessel to comply with section 5(1), the written procedures for conducting a fuel switch operation to compliant fuel on the vessel must—
 - (a) be kept on the vessel; and
 - (b) be readily available for inspection at all reasonable times.
- (4) If subsection (1), (2) or (3) is contravened, the owner and the master of the vessel each commits an offence.
- (5) A person who commits an offence under subsection (4) is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
- (6) It is a defence for a person charged with an offence under subsection (4) to prove that the person had reasonable excuse for contravening subsection (1), (2) or (3) (as the case requires).

15. Authority may request copies of documents

- (1) The Authority may, by written notice, require the owner or the master of a vessel to submit to the Authority, within the time specified in the notice, a copy of any document that is required under section 14(1), (2) or (3) or section 5 of the Schedule to be kept on the vessel.

- (2) If a person fails to comply with a notice issued to the person under subsection (1), the person commits an offence.
 - (3) If a person, in purported compliance with a notice issued under subsection (1), submits a copy of any document that contains information that is false or misleading in a material particular, the person commits an offence.
 - (4) A person who commits an offence under subsection (2) or (3) is liable on conviction to a fine at level 5 and to imprisonment for 3 months.
 - (5) It is a defence for a person charged with an offence under subsection (2) to prove that the person had reasonable excuse for failing to comply with the notice.
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Part 4

Miscellaneous Matters

16. Approval of fuel as compliant fuel

- (1) The Authority may approve any fuel, other than low sulphur marine fuel or liquefied natural gas, as compliant fuel.
- (2) The Authority must not approve any fuel unless the Authority is satisfied that its use can reduce the emission of sulphur dioxide at least as effectively as the use of low sulphur marine fuel.
- (3) The Authority must publish an approval by a general notice in the Gazette.

17. Determination of sulphur content of fuel

For the purposes of this Regulation, the sulphur content of a fuel must be determined in accordance with the test method set out in any of the following documents—

- (a) EN ISO 14596:2007: “Petroleum products—Determination of sulfur content—Wavelength-dispersive X-ray fluorescence spectrometry” published by the European Committee for Standardization;
- (b) EN ISO 20884:2011: “Petroleum products—Determination of sulfur content of automotive fuels—Wavelength-dispersive X-ray fluorescence

spectrometry” published by the European Committee
for Standardization.

Part 5

Repeal and Transitional Provisions

18. Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation repealed

The Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation (Cap. 311 sub. leg. AA) is repealed.

19. Transitional and savings provisions relating to Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation

The transitional and savings provisions in the Schedule have effect.

Schedule

[ss. 14, 15 & 19]

Transitional and Savings Provisions Relating to Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation

1. Meaning of *former Regulation*

In this Schedule—

former Regulation (《原有規例》) means the Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation (Cap. 311 sub. leg. AA) as in force before 1 January 2019.

2. Exemption granted under former Regulation

(1) If—

- (a) an exemption was granted or renewed under section 6(1)(a) of the former Regulation; and
- (b) the exemption is still in force immediately before 1 January 2019,

the exemption continues to have effect on and after 1 January 2019 as if it had been granted under section 7(1)(a), and expires on the date on which the exemption would have expired under the former Regulation but for the repeal of it.

(2) If—

- (a) an exemption was granted under section 6(1)(b) of the former Regulation; and
- (b) the exemption is still in force immediately before 1 January 2019,

the exemption continues to have effect on and after 1 January 2019 as if it had been granted under section 7(1)(b), and expires at the time at which the exemption would have expired under the former Regulation but for the repeal of it.

- (3) Despite section 7(1)(a), an exemption referred to in subsection (1) may not be renewed on its expiry.
- (4) If, immediately before 1 January 2019, an exemption referred to in subsection (1) or (2) was subject to any conditions under section 6(2) of the former Regulation, the conditions are deemed to be imposed on the exemption under section 7(2) on 1 January 2019 and are exempted from section 7(3).

3. Pending application made under former Regulation

If, before January 2019—

- (a) an application under section 7(1) of the former Regulation for an exemption has been made in compliance with section 7(2) of that Regulation; and
- (b) the Authority has not notified the applicant under section 7(6) of that Regulation,

the application is deemed to be made under section 9(1) in compliance with section 9(2).

4. Occurrence before January 2019 not yet recorded

- (1) Section 8 of the former Regulation continues to apply to an unrecorded occurrence as if that Regulation had not been repealed.
- (2) In this section—

unrecorded occurrence (無記錄事情) means an occurrence—

- (a) that takes place before January 2019;
- (b) the particulars of which would have been required to be recorded under section 8(1) of the former Regulation but for the repeal of it; and
- (c) the particulars of which have not yet been recorded in a log book of the vessel concerned at the time when this Regulation comes into operation.

5. Documents kept under former Regulation

Section 9 of the former Regulation continues to apply in relation to a bunker delivery note or log book required to be kept under that section as if that Regulation had not been repealed.

6. Notice issued before January 2019

Section 10 of the former Regulation continues to apply to a notice that satisfies the following conditions as if that Regulation had not been repealed—

- (a) the notice was issued under section 10(1) of that Regulation;
- (b) the time specified in the notice expires after December 2018; and
- (c) the notice has not been complied with.

7. Approval granted under former Regulation

An approval granted under section 11(1) of the former Regulation is deemed to be granted under section 16(1).

8. This Schedule not to derogate from section 23 of Interpretation and General Clauses Ordinance

The transitional and savings provisions in this Schedule are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), except as otherwise provided in this Schedule.

WONG Kam-sing
Secretary for the Environment

28 June 2018

Explanatory Note

The main object of this Regulation is to provide for the mandatory use of certain fuels by vessels when they are in the waters of Hong Kong. It also provides for the requirement to keep records and documents in respect of certain vessels.

2. Part 1 are preliminary provisions that provide for the commencement, interpretation and application of this Regulation. In particular, section 2 contains the definitions of *compliant fuel* and *non-compliant fuel*—
 - (a) *compliant fuel*—means certain fuel with sulphur content not exceeding 0.5% by weight, liquefied natural gas or any fuel approved by the air pollution control authority (*Authority*); and
 - (b) *non-compliant fuel*—means fuel that is not compliant fuel.

Part 2

3. Division 1 of Part 2 deals with the prohibition of the use of non-compliant fuels by vessels when they are in the waters of Hong Kong.
4. Section 4 states that Part 2 applies to vessels in the waters of Hong Kong. Section 5 prohibits the use of non-compliant fuel by a vessel to operate its machinery when the vessel is in the waters of Hong Kong. If the prohibition is contravened, the owner and the master of the vessel each commits an offence. Section 6 contains defences for the offence under section 5.

5. Division 2 of Part 2 (sections 7 to 11) deals with exemption from the prohibition under section 5. Section 7 empowers the Authority to exempt a vessel from the prohibition on using non-compliant fuel under certain circumstances. Section 8 provides for the validity period of an exemption granted by the Authority. Section 9 explains how to apply for an exemption and makes it an offence to provide false or misleading information or document in an application. Section 10 explains when an application for exemption must be made. Section 11 empowers the Authority to revoke an exemption under certain circumstances.

Part 3

6. Section 12 states that Part 3 applies to an ocean going vessel in the waters of Hong Kong. *Ocean going vessel* is defined in section 2.
7. Section 13 requires certain particulars to be recorded in a log book of an ocean going vessel. Those particulars relate to the entering and exiting of the waters of Hong Kong by an ocean going vessel and fuel switch operations (which mean switching from using non-compliant fuel to compliant fuel and vice versa). If the requirement is contravened, the owner and the master of the ocean going vessel each commits an offence.
8. Section 14 requires certain documents to be kept on an ocean going vessel. If the requirement is contravened, the owner and the master of the ocean going vessel each commits an offence. Section 15 empowers the Authority to require the submission of copies of those documents and makes it an offence for failing to comply with the Authority's request and for submitting false or misleading copies.

Part 4

9. Section 16 empowers the Authority to approve a fuel as compliant fuel under certain circumstances.
10. Section 17 provides for the test methods for determining the sulphur content of a fuel.

Part 5

11. Section 18 repeals the Air Pollution Control (Ocean Going Vessels) (Fuel at Berth) Regulation (Cap. 311 sub. leg. AA) (*former Regulation*).
12. Section 19 is a transitional provision relating to the former Regulation.

Schedule

13. The Schedule sets out the details of the transitional and savings provisions.