

S.I. No. 119/2008 — Sulphur Content of Heavy Fuel Oil, Gas Oil, and Marine Fuels Regulations 2008

S.I. No. 119 of 2008

SULPHUR CONTENT OF HEAVY FUEL OIL, GAS OIL, AND MARINE FUELS REGULATIONS 2008

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 2nd May, 2008.

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Acts 1972 to 2007, and by sections 10, 13, 14 and 53 of the Air Pollution Act, 1987 (for the purpose of giving effect to Council Directive 1999/32/EC ¹) relating to a reduction in the sulphur content of certain liquid fuels and amending Council Directive 93/12/EC ² and Council Directive 2005/33/EC ³ as regards the sulphur content of marine fuels, amending Directive 1999/32/EC, hereby makes the following Regulations:—

Citation

1. These regulations may be cited as the Sulphur Content of Heavy Fuel Oil, Gas Oil, and Marine Fuels Regulations 2008.

Entry into Force

2. These Regulations shall come into operation on the 1st day of May 2008.

Definitions

3. (1) In these Regulations:

“the Act” means the Air Pollution Act, 1987 (No. 6 of 1987);

“the Agency” means the Environmental Protection Agency established under Section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“authorised person” has the meaning assigned to it by the Act but for the purpose of these Regulations includes an inspector as defined in the Sea Pollution Act, 1991 (No. 27 of 1991);

“the Directive” means Council Directive 1999/32/EC;

“the 2005 Directive” means Council Directive 2005/33/EC;

“the Large Combustion Plants Regulations” means the Large Combustion Plants Regulations, 2003 (S.I. No. 644 of 2003);

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“person” means any natural or legal person; and

“the 2001 Regulations” means the Air Pollution Act 1987 (Sulphur Content of Heavy Fuel Oil and Gas Oil) Regulations 2001 (No. 13 of 2001).

(2) In these Regulations—

(a) any reference to an article or sub-article which is not otherwise identified is a reference to an article or sub-article of these Regulations;

(b) any reference to the State includes a reference as defined in Section 3(2) of the Oil Pollution of the Sea (Civil Liability and Compensation) Act, 1998 (No. 11 of 1998) as amended by Section 3(b) of the Oil Pollution of the Sea (Civil Liability and Compensation) (Amendment) Act, 1998 (No. 13 of 1998);

(c) a letter, word, phrase or symbol which has been assigned a meaning by the Directive, or is used in the Directive, has that meaning where the context requires except where otherwise indicated;

(d) a reference to an International Standard (ISO) is a reference to a standard published by the International Organisation for Standardisation; and

(e) a reference to a European Standard (EN) is a reference to an EN as adopted by the National Standards Authority of Ireland and published as an I.S. EN, and a reference to a provisional European Standard (prEN) is a reference to a prEN published by the European Committee for Standardisation (CEN).

Objective and Scope

4. (1) These regulations limit the emissions of sulphur dioxide resulting from the combustion of certain types of petroleum derived liquid fuels, by imposing limits on the sulphur content of such fuels as a condition of their use within the State and within its territorial seas.

(2) The objective of these Regulations is to reduce the harmful effects of sulphur dioxide emissions, resulting from the combustion of certain types of petroleum derived liquid fuels, on human beings and the environment.

(3) These Regulations shall not apply to:

(a) fuels intended for the purposes of research and testing;

(b) fuels intended for processing prior to final combustion;

(c) fuels to be processed in the refinery industry;

(d) fuels used by warships and other vessels on military service;

(e) any use of fuels in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea;

(f) any use of fuels in a ship necessitated by damage sustained to it or its equipment, provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage. This shall not apply if the owner or master acted either with intent to cause damage, or recklessly; and

(g) fuels used on board vessels employing approved emission abatement technologies in accordance with the 2005 Directive.

Maximum Sulphur Content of Heavy Fuel Oil

5. (1) A person shall not use heavy fuel oil, the sulphur content of which exceeds 1% by mass.

(2) The provisions of sub-article (1) shall not apply to heavy fuel oils used:

(a) in a Type A plant, as defined by article 2(1) of the Large Combustion Plants Regulations, and where the emissions of sulphur dioxide from the plant are equal to or less than 1700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis, and where, from 1 January 2008, the emissions of sulphur dioxide from combustion plants subject to article 8(1) and 9(1) of the Large Combustion Plants

Regulations are equal to or less than those resulting from compliance with the emission limit values for new plants specified in the Schedules to the said Regulations;

(b) in a Type B plant, as defined by article 2(1) of the Large Combustion Plants Regulations, and where the plant complies with the relevant sulphur dioxide emission limit values specified in the Schedules to the said Regulations;

(c) in a Type C plant, where the emissions of sulphur dioxide from the plant are less than or equal to 1700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis; and

(d) for combustion in a refinery where the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, excluding combustion plants specified in sub-article (a) or from 1 January 2008, to those which fall under sub-article (b), and irrespective of the type of fuel or fuel combination used, does not exceed 1700 mg/Nm³.

(3) Notwithstanding the exemptions contained in sub-article (2), a combustion plant operator shall not use heavy fuel oil with a sulphur concentration greater than that allowed for under sub-article (1) without prior written approval from the Agency.

Maximum Sulphur Content of Gas Oil

6. A person shall not use gas oil, the sulphur content of which exceeds 0.1% by mass.

Maximum Sulphur Content of Marine Fuel

7. (1) A person shall not use marine fuel, the sulphur content of which exceeds 1.5% by mass, in any passenger ship operating on regular services to or from any port within the European Community.

(2) A person shall not place on the market marine fuel, including marine diesel oils, in the State if the sulphur content exceeds 1.5% by mass.

(3) On and from 1 January 2010 a person shall not place on the market marine gas oil, the sulphur content of which exceeds 0.1% by mass.

(4) On and from 1 January 2010, a person shall not use marine fuels, the sulphur content of which exceeds 0.1% by mass, in:

(a) an inland waterway vessel, or

(b) a ship at berth, subject to Article 4b 1(b) of the 2005 Directive.

(5) Sub-article (4) shall not apply to:

- (a) ships at berth for less than 2 hours according to published timetables,
- (b) inland waterway vessels while at sea, or
- (c) ships which switch off all engines and use shore side electricity while at berth in a port.

Shipping Logbooks and Register of Suppliers of Marine Fuels

8. (1) An authorised person shall require the correct completion of ships' logbooks, including the time of any fuel-changeover operation, as a condition of ships' entry into port.

(2) Sustainable Energy Ireland shall maintain a register of suppliers of marine fuels.

(3) For the purposes of sub-article (2), suppliers of marine fuels shall register with Sustainable Energy Ireland within 3 months of the signing of this instrument.

(4) Suppliers of marine fuels shall provide, within three months of the end of the preceding calendar year, an annual report to Sustainable Energy Ireland on the volume, sulphur content and energy content of marine fuels supplied in that year.

(5) A person supplying marine fuels to a ship shall provide:

(1) (a) a bunker delivery note stating the sulphur content of the fuel; and

(b) a sealed sample in respect of which written confirmation of receipt shall be obtained from an appropriate person.

(2) In this sub-article "appropriate person" means the owner of, or person who appears for the time being in charge of, the ship.

(6) Authorised officers shall be granted unfettered access, as required, to ships' logbooks and bunker delivery notes.

The Use and Trials of New Emission Abatement Technologies

9. The requirements of article 7 shall not apply to ships using emission abatement technology, approved in accordance with Article 4c of the 2005 Directive, provided that the said ships:

(a) continuously achieve emission reductions which are at least equivalent to those which would be achieved through the limits on sulphur in fuel specified in the

2005 Directive;

(b) are fitted with continuous emission monitoring equipment; and

(c) have records to demonstrate that any waste streams discharged into enclosed ports, harbours and estuaries have no impact on ecosystems, based on criteria communicated by port authorities to the International Maritime Organisation.

10. The Minister may, in accordance with the procedures laid out in Article 4c of the 2005 Directive, approve trials of ship emission abatement technologies within the jurisdiction of the State and its territorial seas during which the use of marine fuels meeting the requirements of article 7 shall not apply.

Sampling of Fuels

11. (1) An officer of the Revenue Commissioners may, at any place, take a sample of heavy fuel oil, gas oil or marine fuel, for the purposes of these Regulations.

(2) An authorised person may, at any place, take a sample of marine fuel for the purposes of these Regulations.

(3) Sampling of marine fuel by authorised officers shall be undertaken in accordance with the requirements of Article 6, paragraph 1a of the 2005 Directive and sub-article (4).

(4) Sampling of marine fuels not covered by article 7 may also be carried out for monitoring purposes.

(5) The authorised person or the officer of the Revenue Commissioners taking a sample shall—

(a) notify forthwith an appropriate person that a sample is so taken, and,

(b) if so required by the appropriate person at the time of the giving of notification, divide the sample into two parts, seal and mark each part and leave one part with the appropriate person.

(6) In this article “appropriate person” means the owner of, or any person who appears for the time being in charge of, the premises or ship at, or from, which the sample is taken.

Analysis of Fuels

12. (1) The reference method for determining the sulphur content of heavy fuel oil and marine fuels shall be that defined by ISO method 8754 (1992) and prEN ISO 14596.

(2) The reference method for determining the sulphur content of gas oil shall be that defined by EN method 24260 (1987), ISO 8754 (1992) and prEN ISO 14596.

(3) The arbitration method for determining the sulphur content of heavy fuel oil and gas oil, including marine fuels, shall be prEN ISO 14596.

(4) The statistical interpretation of the results of the verification of the sulphur content of the gas oils pursuant to these Regulations shall be carried out in accordance with ISO standard 4259 (1992).

Non-Compliant Marine Fuel Samples

13. (1) Following analysis of a marine fuel sample, an authorised officer or an officer of the Revenue Commissioners may require a marine fuel supplier to take any appropriate remedial actions to bring any non-compliant marine fuel that is discovered into compliance.

(2) Notwithstanding sub-article (1), it shall be an offence for marine fuel suppliers to deliver fuel that does not comply with the specification stated on a bunker delivery note.

Offences

14. An offence under these Regulations may be prosecuted by an authorised person or an officer of the Revenue Commissioners.

Penalties

15. A person who contravenes or fails to comply with a provision of these Regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding twelve months, or to both such fine and such imprisonment.

Revocations

16. (1) The 2001 Regulations are hereby revoked.

(2) References in any other instrument to the Regulations revoked under sub-article (1) shall be construed as references to these Regulations, as appropriate.

GIVEN under my Official Seal,

29 April 2008

JOHN GORMLEY

Minister for the Environment, Heritage and Local Government

EXPLANATORY MEMORANDUM

(This is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations give effect to Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels, as amended by Directive 2005/33/EC.

The 1999 Directive was originally transposed into Irish law under the Air Pollution Act 1987 (Sulphur Content of Heavy Fuel Oil and Gas Oil) Regulations 2001. The 2001 Regulations are revoked and the full provisions of the 1999 Directive, including the amendments introduced in the 2005 Directive, are transposed under these Regulations.

The purpose of the Regulations, as reflected in Article 1 of the 1999 Directive, is to reduce emissions of sulphur dioxide resulting from the combustion of certain types of liquid fuels and thereby to reduce the harmful effects of such emissions on human health and the environment.

The 1999 Directive required the introduction of limits on the sulphur content of certain petroleum-derived fuels as a condition of their use within the territory of each Member State of the European Community. It specified the maximum permitted sulphur content of heavy fuel oil, gas oil and marine gas oil, other than marine fuels which were largely exempted. The 2005 Directive broadens the purpose and scope of the 1999 Directive to include territorial seas and marine fuels. The limited exemptions are set out in the amendment to Article 1(2) of the 1999 Directive which is contained in Article 1(1) of the 2005 Directive.

Subject to relevant exceptions, including a specific exemption in Article 9 in relation to new technologies in shipping, these Regulations prohibit—

(a) the use of:

- heavy fuel oils with a sulphur content which exceeds 1% by mass;

- gas oil with a sulphur content which exceeds 0.1% by mass; and
- marine fuels with a sulphur content which exceeds 1.5% by mass in any passenger ship operating regular services within the EU;

(b) the marketing of marine fuels, including marine diesel oils, with a sulphur content exceeding 1.5% by mass; and

(c) from 1 January 2010—

- the marketing of marine gas oil with a sulphur content which exceeds 0.1% by mass, and
- the use in inland waterway vessels or ships at berth, of marine fuels with sulphur content which exceeds 0.1% by mass.

The Regulations include requirements in relation to the keeping of ships' logbooks and establishment of a register of marine fuel suppliers in the State. They also make appropriate provision for enforcement, including the sampling and analysis of fuels, prosecution of offences and penalties.

1 O.J. No. L 121/13 of 11 May 1999

2 O.J. No. L 74 of 27 March 1993, p.81

3 O.J. No. L 191/59 of 22 July 2005

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