

Circular - Series R

Circular Series R (Regulations) supersedes previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

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- A: 16 specially authorised employment offices
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- P: Equipment manufacturers, any subgroups
- OFF: Offshore companies/OIM/operators
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Amendments to the Regulations on environmental safety and the Regulations on port State control as a result of the implementation of international regulations on CO₂ emissions measurements and fuel consumption, etc.

1. Introduction

The Norwegian Maritime Authority has laid down amendments to the Regulations on environmental safety¹ and the Regulations on port State control² as a result of the entry into force of the Regulation (EU) No 2015/757 on monitoring, reporting and verification of carbon dioxide emissions from maritime transport (MRV Regulation) in the EU. In addition to this, the Norwegian Maritime Authority has made amendments to the Regulations on port State control in order to implement a provision in Council Directive 97/70/EC on the establishment of a harmonised safety regime for fishing vessels of 24 meters in length and upwards.

Furthermore, the International Maritime Organization (IMO) has by resolution MEPC.278(70), on amendments to MARPOL, adopted new global rules for the collection of ship fuel consumption data. This legislation has a clear resemblance to the EU MRV legislation, and the Norwegian Maritime Authority chose to send the implementation of the IMO resolution for consultation at the same time for the purpose of demonstrating similarities and differences. However, in line with common practice, the Norwegian Maritime Authority will wait to lay down the regulatory amendments implementing this IMO resolution until expiry of the objection deadline pursuant to the MARPOL Convention. The objection deadline date is 1 September 2017.

2. Review

The proposed regulatory amendments were circulated for review from 17 February to 15 May this year and in this connection, the Norwegian Maritime Authority received a few comments.

The MRV Regulation

DNV GL refers to a difference between the MRV Regulation and the IMO resolution. Whereas the MRV Regulation applies to ships *above 5,000 gross tonnage*, the IMO Resolution MEPC.278(70) applies to ships *of 5,000 gross tonnage and upwards*. In the consultation letter we wrote that both sets of rules apply to

¹ Regulations of 30 May 2012 No. 488 on environmental safety for ships and mobile offshore units

² Regulations of 24 November 2014 No. 488 on port State control

ships of 5000 gross tonnage and upwards, but as DNV GL correctly points out, ships of 5000 gross tonnage do not fall under the scope of the MRV legislation.

The Governor of Svalbard comments that it does not emerge clearly from the proposed amendments that ship calls in Svalbard are not covered by the scope of application of the MRV legislation. In the opinion of the Norwegian Maritime Authority, this follows the scope of application, but this will be covered in more detail in the description of the legislation.

Ecoxy, which is accredited by Norwegian Accreditation in accordance with the MRV legislation, has questioned the scope of the MRV legislation for ships in the offshore industry. The Norwegian Maritime Authority has also received inquiries from companies about the scope of application, and we will cover this in more detail in the description of the legislation.

The Norwegian Armed Forces have indicated that they consider it unacceptable to install measuring equipment on board and seem to want to use a simplified method for measuring greenhouse gas emissions based on reported annual fuel consumption. The Norwegian Maritime Authority specifies that the compliance with the MRV legislation, including the issue of a document of compliance (DOC) after the verification of surveillance plans and an emission report approved by an accredited inspector, presupposes that the company uses one of the monitoring methods set out in Regulation 2015/757 Annex I. That said, the Norwegian Armed Forces' vessels are exempt from the scope of application of the MRV Regulation, and compliance with the rules will therefore be on a voluntary basis.

Implementation of Directive 97/70/EC

The Norwegian Coastal Administration refers to the inclusion of fishing vessels in the Regulations on port State control and points out that it may be questioned whether the amendments are to be understood in such a way that the reporting routines in chapter 3 now also include fishing vessels.

The Norwegian Maritime Authority specifies that with regard to fishing vessels, the purpose of the amendments is only to satisfy Article 7 of Directive 97/70/EC concerning the obligation to check that foreign fishing vessels are constructed and equipped in accordance with the Directive. It is an independent control obligation not part of the Paris MOU nor Directive 2009/18/EC on port State control, and it is not our intention to extend the reporting requirements in SafeSeaNet or to make the control of foreign fishing vessels part of the detailed, regulated control regime that applies to other ships engaged on international voyages. Accordingly, the Norwegian Maritime Authority has adjusted the scope of application in order to clarify this.

3. Details about the legislation

Regulation (EU) No 2015/757

The relation to the EEA Agreement

The MRV Regulation has entered into force in the EU. It has been decided to incorporate the Regulation into the EEA Agreement, but the decision is awaiting parliamentary treatment in one of the other EFTA states. Furthermore, the MRV Regulation is supplemented by four other EU regulations, which are currently cleared for incorporation into the agreement in Norway, but which are still, for various reasons, being considered by one of the other EFTA states:

- Regulation (EU) No 2016/2071 amending Regulation (EU) No 2015/757 as regards the methods for monitoring CO₂ emissions and the rules for monitoring other relevant information;
- Regulation (EU) No 2016/1927 on templates for monitoring plans, emissions reports and documents of compliance;
- Regulation (EU) No 2016/1928 on determination of cargo carried for categories of ship other than passenger, ro-ro and container ships;
- Regulation (EU) No 2016/2072 on the verification activities and accreditation of verifiers.

Until the EFTA processes have been completed, Norway is not obliged under the EEA Agreement to implement these rules into its national regulations. It is nevertheless expected that incorporation will take place in the relatively near future, and out of consideration for the industry, the Norwegian Maritime Authority chooses to adopt national legislation now, so that the industry has the opportunity to adjust.

Details about the rules

The rules apply to ships of more than 5,000 gross tonnage during their voyages to, from or between ports within the EEA, irrespective of flag. Article 2 of the Regulation states that the rules do not apply to warships, naval auxiliaries or other government ships used for non-commercial purposes. Nor do the rules apply to fishing or fish-processing vessels, wooden ships of primitive build, or ships not propelled by mechanical means.

The geographical scope of application is linked to ships engaged on voyages to, from or between "[...] ports under the jurisdiction of a Member State³ [...]". In principle, this wording includes Svalbard, but the territory of Svalbard is exempt from the application of the Agreement pursuant to Protocol 40 to the EEA Agreement. This is reflected in section 6 of the EEA Act⁴, which explicitly sets out that the Act does not apply to Svalbard. In this connection, a port of call in Svalbard shall therefore not be considered as a port of call in an EEA State.

Although the scope of the EU Regulation uses the term "all ships", it emerges clearly from the introduction to the Regulation that it is intended to include commercial transportation of cargo and passengers. From section 14 of the Regulation: "[...] However, since this Regulation focuses on maritime transport, it should not establish monitoring, reporting and verification requirements for ship movements and activities not serving the purpose of transporting cargo or passengers for commercial purposes, such as dredging, ice-breaking, pipe laying or offshore installation activities."

The limitation to transport assignments is made clear in the definitions of "port of call" and "voyage". Here, it appears that only "[...] movement of a ship that originates from or terminates in a port of call and that serves the purpose of transporting passengers or cargo for commercial purposes [...]" is to be considered as voyage. Furthermore, a port is not considered a "port of call" when the ship stops solely for the purpose of "[...] refuelling, obtaining supplies, relieving the crew, going into dry-dock or making repairs to the ship and/or its equipment [...]". Nor shall stays in port due to a vessel being in distress or taking shelter from adverse weather or ship-to-ship transfers carried out outside ports be included in the definition of "port of call". On the website of the European Commission, the EU has published guidelines regarding various issues raised by the MRV legislation, including a description of which activities are covered:

https://ec.europa.eu/clima/policies/transport/shipping_en#tab-0-3

The Norwegian Maritime Authority has received several inquiries from companies and other actors in the offshore industry wondering whether the MRV legislation applies to this industry at all. It is our understanding that the decisive factor is the nature of the activity rather than the industry classification stated by the company. As long as a ship is of more than 5,000 gross tonnage and carrying cargo or passengers within the geographical scope of application as described above, the rules will apply to the ship during that particular voyage.

For the company, the MRV Regulation means that the company has to annually report actual emissions from each ship covered by these rules, using one or more approved methods for monitoring CO₂ emissions. Reporting shall be done electronically in a closed system (THETIS MRV) administered by EMSA

³ Regulation (EU) No 2015/757

⁴ Act of 27 November 1992 No. 109 on implementation in Norwegian legislation of the main part of the Agreement on the European Economic area (EEA), etc. (the EEA Act)

on behalf of the European Commission. Prior to reporting, the collected data must be verified by an accredited inspector.

By 31 August 2017, companies owning ships falling under the scope of application of the EU Regulation must submit a plan for monitoring CO₂ emissions from their ships to an accredited verifier. The company is obliged to monitor CO₂ emissions from its ships from 1 January 2018, and by 30 April 2019, the first verified report must be delivered. Ecoxy AS is under accreditation by Norwegian Accreditation in order to be able to carry out verifications in accordance with the MRV legislation.

The MRV Regulation furthermore amends Directive 2009/16/EC on port State control. By 30 June 2019, ships falling under the scope of the MRV Regulation must be equipped with a valid document of compliance (DOC) issued by an accredited verifier, and the DOC will be included in the port State control regime.

Regulatory amendments as a result of the MRV legislation

New section 12a of the Regulations on environmental safety stipulates that Regulation (EU) 2015/757, as amended by Regulation (EU) 2016/2071, as well as Regulations (EU) 2016/1927, 2016/1928 and 2016/2072, shall apply as regulation. Furthermore, section 4 of the Regulations on port State control has been amended to include a reference to Regulation (EU) 2015/757.

The Norwegian Maritime Authority will include references to the EEA Agreement when the EFTA processes have been completed. This will be done by regulatory amendments without preceding consultation.

Economic and administrative consequences

The MRV Regulation does not impose any emission reductions, but implies specific obligations to monitor and provide verified data that will lead to costs and administrative burdens for companies operating ships falling under the scope of the Regulation. The requirements are not flag State-dependent and therefore have no competitive significance. It is assumed that better information about fuel consumption may lead to companies taking measures which reduce the consumption, and thus that the rules in the long term may have positive economic implications for companies.

It is the accredited verifier who issues documents of compliance (DOC). For the Norwegian Maritime Authority, the MRV Regulation nevertheless implies certain reporting requirements and enforcement obligations in the form of flag State inspections and port State control.

Directive 97/70/EC

Details about the rules

Directive 97/70/EC (as amended by Directives 1999/19/EC, 2002/35/EC and 2002/84/EC) regulates fishing vessels of 24 metres in overall length and upwards. Article 7 imposes obligations on the member States to control that foreign fishing vessels calling at a Norwegian port, landing catch in a Norwegian port or operating in Norwegian territorial waters comply with the provisions of the Directive. These control provisions have not been sufficiently taken into account in Norwegian legislation. Explicit legal basis to check that foreign fishing vessels comply with the requirements of the Directive is now incorporated as new section 4a of the Regulations on port State control, in line with Norway's commitments under the EEA Agreement.

Economic and administrative consequences

Control of foreign fishing vessels is not included in the relevant geographical port State control regime (Paris MOU), nor is there a corresponding harmonised control regime for foreign fishing vessels. In addition, the control obligations are not otherwise specified in number or divided into risk categories. Within the current budget framework, the Norwegian Maritime Authority will carry out controls on foreign fishing vessels with the intention of verifying that the ships comply with the requirements of

Directive 97/70/EC, in the form of unscheduled inspection or other randomised controls based on general principles for risk assessment of supervisory activity.

Yours faithfully,

Bjørn Egil Pedersen by authority
Acting Director General of Navigation and Shipping

Linda Bruås
Head of Section

This document has been electronically approved, and therefore does not contain handwritten signatures.