

DEPARTMENT OF TRANSPORT

No. R. 574

GG 17921 (RG 5905)

18 April 1997

MERCHANT SHIPPING ACT, 1951 (ACT No. 57 OF 1951)

MERCHANT SHIPPING (DANGEROUS GOODS) REGULATIONS, 1997

The Minister of Transport has, under section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), made the regulations in the Schedule.

SCHEDULE

Arrangement of regulations

*Regulation
No.*

PART 1 GENERAL

1. Definitions
2. Application
3. Exemptions
4. Document of compliance, inspection and certification
5. Duty to report certain incidents involving packaged dangerous goods
6. General duties of shipowner, employer and master
7. General duties of employee aboard ship
8. Conduct endangering the ship or persons aboard ship

PART 2 CARRIAGE OF PACKAGED DANGEROUS GOODS

9. Documentation
10. Packing certificates
11. List, manifest or stowage plan
12. Packaging
13. Marking and labelling
14. Stowage
15. Carriage of explosives
16. Carriage of packaged dangerous goods in passenger ships

PART 3 CARRIAGE OF DANGEROUS GOODS IN BULK

17. Carriage in bulk
18. Documentation
19. List, manifest or stowage plan

PART 4
ENFORCEMENT, REPEAL OF REGULATIONS, AND SHORT TITLE AND COMMENCEMENT

- 20. Power to detain
- 21. Penalties and defences
- 22. Offences due to fault of another person
- 23. Repeal of regulations
- 24. Short title and commencement

PART 1
GENERAL

Definitions

1. In these regulations any word or expression given a meaning in the Act has that meaning and, unless the context indicates otherwise—

“**1974 SOLAS Convention**” means the International Convention for the Safety of Life at Sea done at London on 1 November 1974, as amended;

“**approved**” means approved by the Authority;

“**Authority**” means the Director-General or as respects his or her functions being discharged by another authority or person, that authority or person;

“**BCH Code**” means *IMO Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*;

“**Bulk Cargoes Code**” means *IMO Code of Safe Practice for Solid Bulk Cargoes*;

“**correct technical name**” means a description of goods sufficient to identify their dangerous properties, including any proper shipping name described in the IMDG Code;

“**dangerous goods**” includes—

- (a) goods classified in the IMDG Code or in any other IMO publication referred to in these regulations as dangerous for carriage by sea, and any other substance or goods the properties of which might be dangerous if that substance or those goods were carried by sea;
- (b) empty receptacles and residues in empty tanks or cargo holds that have been used previously for the carriage of dangerous goods, unless such receptacles, empty tanks or cargo holds have been cleaned and dried, purged, gasfreed or ventilated, as appropriate or, in the case of radioactive materials, both cleaned and adequately closed,

but does not include goods forming part of the equipment or stores of the ship in which they are carried;

“dangerous goods declaration” means a certificate or declaration in writing, signed by the person making it that the shipment offered for carriage is properly classified, packaged, marked, labelled or placarded, as appropriate, in accordance with the IMDG Code and is in a proper condition for carriage by sea;

“durably marked” means marked so that the label or other marking in accordance with these regulations is such as to remain identifiable on packages surviving at least three months’ immersion in the sea; and **“durable”** has a corresponding meaning;

“employee” means any person, including a master but excluding dock workers or shore-based repair or other workers temporarily employed on board the ship, employed—

- (a) in the deck, engine, radio, medical or catering department of a ship; or
- (b) in the provision of goods, services or entertainment on board;

“explosives” includes the articles and substances specified in Class 1 of the IMDG Code;

“flammable liquid” means a liquid the flash point of which is at or below 60 °C (closed cup) in respect of bulk cargoes and at or below 61 °C (closed cup) in respect of packaged dangerous goods;

“forwarder” means the person by whom dangerous goods are delivered to a ship or its agent;

“Gas Carrier Code” means *IMO Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*;

“Gas Carrier Code for Existing Ships” means *IMO Code for Existing Ships Carrying Liquefied Gases in Bulk*;

“handling” includes the operations of loading, unloading and transferring dangerous goods and cleaning, purging, gasfreeing, ullaging, sounding, sampling and similar operations required for the carriage of such goods in a ship;

“IBC Code” means *IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk*;

“IGC Code” means *IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk*;

“IMDG Code” means *IMO International Maritime Dangerous Goods Code*;

“IMO” means the International Maritime Organization;

“in bulk” means directly and without intermediate form of containment in a hold, tank or cargo space that is a structural part of or permanently attached to a ship;

“package” means a package or receptacle described in the IMDG Code and includes a freight container or a portable tank or tank container or tank vehicle or other vehicle or other cargo transport unit containing dangerous goods for shipment, and **“packaged”** has a corresponding meaning;

“shipowner” includes—

- (a) where the ship is chartered by demise, the demise charterer;

(b) where the ship is managed by a ship management company, the manager;

“**shipper**” means a person who, whether as principal or agent for another, consigns dangerous goods for carriage by sea;

“**the Act**” means the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

“**UN number**” means the number allocated to the dangerous substance or article by the United Nations Committee of Experts on the Transport of Dangerous Goods specified in the latest edition of the publication entitled *Recommendations on the Transport of Dangerous Goods* published by the United Nations Organization.

Application

2. Subject to section 235(4) of the Act, these regulations apply to every ship carrying dangerous goods in bulk or packaged form.

Exemptions

3. The Authority may, with or without conditions, grant exemption from any provision of these regulations for classes of cases or individual cases and may, subject to giving reasonable notice, amend or cancel any such exemption.

Document of compliance, inspection and certification

4. (1) No dangerous goods may be taken on board a ship built after 31 August 1984 unless the ship has on board a document of compliance, issued by the Authority or the competent authority of the country in which the ship is registered or, in the absence of registration, whose flag it is entitled to fly, to the effect that the spaces in which the goods are to be carried comply with the provisions of regulation II-2/41 or 54, as applicable, of the 1974 SOLAS Convention appropriate to the classification of those goods intended for stowage in or on those spaces.

(2) (a) Whenever dangerous goods are to be loaded at a port in the Republic, the shipowner or master must advise the proper officer at the port of loading of the intention to load dangerous goods and must furnish copies of all dangerous goods declarations relating to the goods to be loaded and a copy of the proposed special list, manifest or stowage plan detailing the location in the ship of any dangerous goods already on board, and to be loaded.

(b) The proper officer, after taking into account the type, quantity and proposed stowage of the dangerous goods, may, but in the case of explosives must, cause the ship to be inspected by a surveyor—

(i) before loading to determine whether—

(aa) the ship is equipped and in all other respects suitable to carry such goods;

(bb) the proposed stowage complies with these regulations; and

(ii) during loading and upon completion of loading to determine whether the goods are being and have been handled and stowed in accordance with these regulations and

whether all reasonable and necessary precautions are being and have been taken to ensure the safety of the ship, its crew and other personnel during the voyage,

and, in both cases, the surveyor must, if he or she is satisfied with the arrangements, issue the master with a certificate of inspection.

(3) If the shipowner or master fails to comply with this regulation he or she is guilty of an offence.

Duty to report certain incidents involving packaged dangerous goods

5. (1) (a) Where an incident occurs in relation to a ship involving the loss or likely loss overboard of packaged dangerous goods into the sea, the master of the ship must, without delay, notify the appropriate authority giving such particulars in relation to the incident as that authority requires. If the appropriate authority is not so notified the master is guilty of an offence.

(b) The appropriate authority is—

- (i) in relation to ships of South African nationality, the nearest proper officer and, where a foreign country is the nearest coastal state to the place where the incident occurred, the government of that foreign country;
- (ii) in relation to any other ship, the nearest proper officer.

(2) It is a good defence to a charge under subregulation (1) for a person to show that he or she was unable to comply with the subregulation in relation to the incident concerned.

(3) Where—

- (a) the master is unable to comply with subregulation (1) in relation to an incident; or
- (b) an incident occurs in circumstances in which the ship is abandoned,

the owner, charterer, manager or operator of the ship or an agent of the owner, charterer, manager, or operator of the ship must comply with subregulation (1) in relation to the incident. If this subregulation is not so complied with each of those persons is guilty of an offence.

(4) It is a good defence to a charge under subregulation (3) for a person to show—

- (a) that he or she was not aware of the incident concerned; or
- (b) in the case of an incident to which subregulation (3)(a) applies, that he or she neither knew nor suspected that the master was unable to comply with subregulation (1) in relation to the incident.

(5) If in pursuance of this regulation a person furnishes information that he or she knows or ought to know to be false or misleading in a material particular he or she is guilty of an offence.

General duties of shipowner, employer and master

6. (1) Every shipowner and employer of persons aboard a ship and every master of a ship must ensure, as far as is reasonably practicable, that when dangerous goods are being handled, stowed or carried in the ship nothing in the manner in which those goods are handled, stowed or carried is such as might pose a risk to the health or safety of any person.

(2) Without limiting the generality of the shipowner's or employer's or master's duty under subregulation (1)—

- (a) the matters to which the duty of the shipowner and the employer extends include, in particular—
 - (i) the provision and maintenance of the ship's structure, fittings and equipment for handling, stowage and carriage of dangerous goods that is, as far as is reasonably practicable, safe and without risk to health;
 - (ii) the provision of such information, instruction, training and supervision as is necessary to ensure, as far as is reasonably practicable, the health and safety aboard ship of all employees in connection with the handling, stowage and carriage of dangerous goods in the ship; and
- (b) the duty of a master of a foreign ship includes the matters specified in paragraph (a)(i) and (ii).

(3) If a shipowner or employer or master fails to comply with this regulation he or she is guilty of an offence.

(4) It is a good defence to a charge under this regulation in relation to the handling of dangerous goods for a person to show that such handling was carried out in accordance with the latest edition of the *South African Ports Cargo Handling Code of Practice* referred to in Government Notice No. 753 of 26 May 1995.

General duties of employee aboard ship

7. (1) Every employee aboard ship must—

- (a) take reasonable care regarding the health and safety of himself or herself and of other persons who may be affected by his or her acts or omissions in connection with the handling, stowage and carriage of dangerous goods in the ship; and
- (b) as regards any duty or requirement imposed on his or her shipowner or employer by the Act with regard to the health and safety of persons aboard a ship to which these regulations apply, co-operate with the shipowner or employer as far as is necessary to enable that duty or requirement to be performed or complied with in connection with the handling, stowage and carriage of dangerous goods in the ship.

(2) If an employee aboard a ship carrying dangerous goods fails to comply with this regulation he or she is guilty of an offence.

Conduct endangering the ship or persons aboard ship

8. (1) No person may, in connection with the handling, stowage and carriage of dangerous goods in a ship, knowingly or recklessly interfere with or misuse anything provided on or disobey instructions displayed on a ship of South African nationality in the interests of health or safety in pursuance of the Act.

(2) If a person in a ship carrying dangerous goods fails to comply with this regulation he or she is guilty of an offence.

PART 2

CARRIAGE OF PACKAGED DANGEROUS GOODS

Documentation

9. (1) No packaged dangerous goods may be offered for carriage or taken on board a ship unless a dangerous goods declaration has been furnished to the shipowner or master.

(2) Such declaration must indicate the correct technical name of the goods followed by the words "MARINE POLLUTANT", where appropriate, their UN number (if any) and must indicate to which of the following classes the goods belong:

- Class 1 — Explosives
- Class 2 — Gases compressed, liquefied or dissolved under pressure, subdivided into three categories:
 - 2.1 Flammable gases
 - 2.2 Non-flammable gases, being compressed, liquefied or dissolved, but neither flammable nor poisonous
 - 2.3 Poisonous gases
- Class 3 — Flammable liquids, subdivided into three categories:
 - 3.1 Low flashpoint group of liquids having a flashpoint below -18°C , closed cup test
 - 3.2 Intermediate flashpoint group of liquids having a flashpoint of -18°C up to but not including 23°C , closed cup test
 - 3.3 High flashpoint group of liquids having a flashpoint of 23°C up to and including 61°C , closed cup test
- Class 4.1 — Flammable solids
- Class 4.2 — Substances liable to spontaneous combustion
- Class 4.3 — Substances that, in contact with water, emit flammable gases
- Class 5.1 — Oxidising substances (agents)
- Class 5.2 — Organic peroxides

- Class 6.1 — Poisonous (toxic) substances
- Class 6.2 — Infectious substances
- Class 7 — Radioactive materials
- Class 8 — Corrosives
- Class 9 — Miscellaneous dangerous substances and articles that pose a danger not covered by other classes

Where there is doubt as to the appropriate classification of dangerous goods such goods must be classified by an approved classification authority.

(3) Such declaration must include the following information, where appropriate:

- (a) The number and type of packages;
- (b) the total quantity of packaged dangerous goods covered by the declaration (gross mass or volume);
- (c) any other information required by the IMDG Code.

(4) Such declaration must include a statement to the effect that the goods are packaged in accordance with these regulations.

(5) The shipper must furnish the shipowner or master with a declaration required by this regulation, unless he or she does not deliver the goods to the ship or its agent, in which case the shipper must furnish the forwarder with such a declaration.

(6) Where the shipper does not deliver the goods to the ship or its agent, the forwarder must furnish the shipowner or master with the declaration.

(7) If a shipper or a forwarder fails to furnish a declaration required by this regulation, or furnishes a declaration that he or she knows or ought to know to be false or misleading in a material particular, he or she is guilty of an offence.

(8) If a shipowner or master accepts for carriage, or takes or receives on board any packaged dangerous goods for which a declaration required by this regulation has not been furnished, he or she is guilty of an offence.

Packing certificates

10. (1) Where packaged dangerous goods have been packed into a freight container or into or onto a vehicle, the person responsible for packing such goods therein must furnish the shipowner or master of the ship with a signed packing certificate in accordance with the IMDG Code.

(2) If the person responsible for packing such goods fails to furnish the owner or the master of a ship with a signed packing certificate he or she is guilty of an offence.

(3) A shipowner or his or her agent or the master may not take on board a ship any freight container or vehicle containing dangerous goods without a signed packing certificate unless he or she is otherwise satisfied that the freight container or vehicle has been packed in accordance with the IMDG Code. If a shipowner or his or her agent or the master fails to comply with this subregulation he or she is guilty of an offence.

List, manifest or stowage plan

11. (1) The master of a ship carrying packaged dangerous goods must cause a special list, manifest or stowage plan to be carried in the ship—

- (a) setting out details, obtained from the shipping documents submitted by the shipper, of the packaged dangerous goods on board, including the correct technical name of the goods, their classification in accordance with the regulation 9(2) and their mass or volume; and
- (b) showing details of the location in the ship where the goods are stowed.

(2) The master must also carry in the ship any additional special documents required by the IMDG Code for the carriage of packaged dangerous goods.

(3) Any such list, manifest or stowage plan and any additional special documents required for the acceptance of such goods for carriage in a ship must be kept available for reference or inspection on board the ship until the goods have been discharged from the ship.

(4) If the master of a ship carrying packaged dangerous goods fails to cause a list, manifest or stowage plan or additional special documents required by subregulation (2) to be carried in the ship or kept available as required by subregulation (3), he or she is guilty of an offence.

Packaging

12. (1) The packaging of dangerous goods must comply with the IMDG Code. Such packaging must, if required by the IMDG Code, be performance tested, as specified in the Code, by an approved testing authority.

(2) Packaged dangerous goods may not be taken on board a ship for carriage in that ship if the shipowner or master knows or ought to know that the goods are not packaged in such a manner as to withstand the ordinary risk of carriage by sea.

(3) If the shipowner or master or the shipper of such goods fails to comply with this regulation he or she is guilty of an offence.

Marking and labelling

13. (1) Packaged dangerous goods may not be taken on board a ship for carriage in that ship unless the following conditions are satisfied:

- (a) Packages containing dangerous goods must be durably marked in accordance with the IMDG Code and provided with labels or stencils of labels or placards where specified in the Code.
- (b) The method of marking the correct technical name and of affixing labels or applying stencils of labels or placards or marine pollutant marks, as appropriate, on packages containing dangerous goods must be such that the information marked, affixed or applied will remain legible after the package has been immersed in the sea for three months or, if the package itself disintegrates before the end of that period, for as long as the package will last. Where the outer material of the package is such that it will not

survive at least three months' immersion in the sea, any inner receptacles that will survive such immersion must be durably marked by any suitable means, including an IMDG Code Class symbol or marine pollutant mark or both, of an appropriate size, to indicate the nature of the danger to which the goods give rise.

- (c) Without prejudice to the above conditions, where the goods are contained in a freight container, vehicle, portable tank or tank container, the cargo transport unit in which the goods are contained must bear conspicuously on its exterior distinctive placards or other appropriate marking in accordance with the IMDG Code.

(2) Any breach of this regulation relating to the marking, labelling or placarding of packaged dangerous goods is an offence on the part of the shipper of those goods.

(3) If a shipowner or master accepts dangerous goods to be taken on board a ship in any package that has not been marked and labelled or placarded in accordance with this regulation, he or she is guilty of an offence.

Stowage

14. (1) Packaged dangerous goods must be stowed, segregated and secured in accordance with the IMDG Code.

(2) Where packaged dangerous goods are shipped in or on a vehicle or freight container that was loaded after those goods left the premises or control of the shipper, it is the duty of the person responsible for loading that vehicle or freight container to ensure that the stowage, segregation and securing of those goods in the vehicle or freight container is adequate and complies with the IMDG Code.

(3) If a shipowner or master or the person responsible for packing goods in a freight container or vehicle or for stowing the goods in a ship fails to comply with this regulation, he or she is guilty of an offence.

Carriage of explosives

15. (1) No explosives that a shipowner or master knows or ought to know pose a serious risk when carried in a ship may be taken on board a ship unless—

- (a) such explosives are stowed in a compartment in which any electrical apparatus and cables are so designed and used as to minimise the risk of fire or explosion;
- (b) detonators are effectively segregated from all other explosives;
- (c) the stowage and segregation of explosives complies with the IMDG Code; and
- (d) where such explosives are required to be stowed in a magazine—
 - (i) such magazine has been approved; and
 - (ii) such magazine is kept securely closed while the ship is at sea.

(2) If a shipowner or master fails to comply with this regulation he or she is guilty of an offence.

Carriage of packaged dangerous goods in passenger ships

16. (1) Stowage and segregation of all packaged dangerous goods carried aboard a passenger ship must comply with the IMDG Code.

(2) Explosives in Class 1, division 1.4, compatibility group S, may be carried in any amount in passenger ships. No other explosives may be carried in a passenger ship with more than 12 passengers, except any one of the following:

- (a) Explosive articles for life-saving purposes, if the total net explosives mass of such articles does not exceed 50 kg per ship;
- (b) explosives in compatibility groups C, D and E, if the total net explosives mass does not exceed 10 kg per ship;
- (c) explosive articles in compatibility group G, other than those requiring special stowage, if the total net explosives mass does not exceed 10 kg per ship; or
- (d) explosive articles in compatibility group B, if the total net explosives mass does not exceed 5 kg per ship.

(3) In this regulation, references to “compatibility groups” and “division” are references to compatibility groups and divisions for explosives specified in the IMDG Code.

(4) If a shipowner or master fails to comply with this regulation he or she is guilty of an offence.

PART 3

CARRIAGE OF DANGEROUS GOODS IN BULK

Carriage in bulk

17. (1) Dangerous goods may not be handled or carried in bulk in any ship if the shipowner has reason to believe that such goods may not be so handled or carried in bulk safely in that ship.

(2) Without limiting the generality of subregulation (1)—

- (a) where the dangerous goods in question are goods listed in Chapter VI of the BCH Code, or in Chapter 17 of the IBC Code, or in Chapter XIX of the Gas Carrier Code for Existing Ships, or in Chapter XIX of the Gas Carrier Code, or in Chapter 19 of the IGC Code, or are classified dangerous goods listed in Appendix B of the Bulk Cargoes Code, they must be handled and carried in accordance with the requirements of whichever of the codes is appropriate; or
- (b) where the dangerous goods in question consist of a liquid chemical or a liquefied gas that is not listed in the codes specified in paragraph (a), they must be handled and carried in accordance with an approval given by the Authority. Any such approval must be given in writing and must specify the date on which it takes effect and the conditions (if any) on which it is given.

(3) If there is any breach of this regulation the shipowner and the master are guilty of an offence.

Documentation

18. (1) The shipper of dangerous goods to be carried in bulk must furnish the shipowner or the master with notification in writing stating the nature of the goods and, in the case of liquid goods with a flashpoint at or below 60 °C (closed cup), specifying the flashpoint of those goods. Such notification must specify the correct technical name of the goods, their UN number (if any) and, for dangerous goods carried in solid form in bulk, their classification in accordance with regulation 9(2).

(2) If a shipper of dangerous goods in bulk fails to furnish the shipowner or master with such notification in writing, or furnishes notification that he or she knows or ought to know to be false or misleading in a material particular, he or she is guilty of an offence.

List, manifest or stowage plan

19. (1) The master of a ship carrying dangerous goods in bulk must cause a special list, manifest or stowage plan to be carried in the ship—

- (a) setting out details, obtained from the shipping documents submitted by the shipper, of the dangerous goods carried aboard the ship for the voyage on which it is currently engaged, including the correct technical name of the goods, their mass or volume and, where the dangerous goods appear in Appendix B of the Bulk Cargoes Code, their classification in accordance with regulation 9(2); and
- (b) showing details of the location in the ship where the goods are stowed.

(2) The master must also carry in the ship any additional special documents required by the Bulk Cargoes Code, the BCH or IBC Codes, or the IGC or Gas Carrier Codes for the carriage of dangerous goods.

(3) Any such list, manifest or stowage plan and any additional special documents required for the acceptance of such goods for carriage in a ship must be kept available for reference or inspection on board the ship until the goods have been discharged from the ship.

(4) If the master of a ship carrying dangerous goods in bulk fails to cause a list, manifest or stowage plan or additional special documents required for the acceptance of such goods for carriage to be carried in the ship or kept available as required by subregulation (3), he or she is guilty of an offence.

PART 4

ENFORCEMENT, REPEAL OF REGULATIONS, AND SHORT TITLE AND COMMENCEMENT

Power to detain

20. A ship that fails to comply with these regulations, including any condition imposed thereunder, may be detained in pursuance of section 243 of the Act.

Penalties and defences

21. (1) A person guilty of an offence under these regulations is punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(2) It is a good defence to a charge under Part 2 or 3 for a person to show—

- (a) that he or she took all reasonable steps to ensure compliance with the regulations;
- (b) that he or she did not know nor ought to have known nor had reasonable grounds for suspecting the goods to be dangerous goods;
- (c) that the goods were handled and carried in accordance with the provisions of the IMDG Code, where applicable;
- (d) if the person charged is the shipowner or master, in the case of goods packed in a freight container or vehicle, that before the freight container or vehicle was taken on board the ship the person responsible for packing the goods into the freight container or vehicle had furnished the shipowner or master of the ship with a signed packing certificate certifying that the goods had been properly packed in the freight container or vehicle;
- (e) that the goods, being solid dangerous goods in bulk, were handled and carried in accordance with the Bulk Cargoes Code;
- (f) that the goods, being liquid chemical or gaseous dangerous goods in bulk, were handled and carried in accordance with the relevant requirements of the BCH Code, the IBC Code, the Gas Carrier Code, the Gas Carrier Code for Existing Ships and the IGC Code;
- (g) that the goods were handled and carried in accordance with the conditions imposed under regulation 3 or 17(2)(b).

Offences due to fault of another person

22. Where the commission by any person of an offence under Part 1, 2 or 3 is due to an act or omission of some other person, that other person is also guilty of the offence and may be charged with and convicted of the offence in terms of this regulation, whether or not the first-mentioned person is prosecuted.

Repeal of regulations

23. Regulations 25 to 37 and Annex 2 of the Safety of Navigation Regulations, 1968, published by Government Notice No. R. 651 of 19 April 1968, as amended by Government Notice No. R. 2483 of 15 December 1978, are repealed.

Short title and commencement

24. These regulations are called the Merchant Shipping (Dangerous Goods) Regulations, 1997, and come into operation on 1 May 1997.