

DEPARTMENT OF TRANSPORT

No. R. 719

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

MERCHANT SHIPPING (INF CODE) REGULATIONS, 2003

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

Title and commencement

1. These regulations are called the Merchant Shipping (INF Code) Regulations, 2003, and come into operation upon publication in the *Gazette*.

Object of regulations

2. These regulations give effect to Part D of Chapter VII (Carriage of Dangerous Goods) of the Safety Convention.

Interpretation

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

"**Certificate of Fitness**" means the International Certificate of Fitness for the Carriage of INF Cargo referred to in paragraph 1.3.2 of the INF Code;

"**contravene**", in relation to a provision of these regulations, includes failing or refusing to comply with that provision;

"**IMO**" means the International Maritime Organization;

"**INF Code**" means the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships adopted by IMO Maritime Safety Committee Resolution MSC.88(71), as may be amended from time to time;

"**operator**", in relation to a ship, includes any owner, charterer, manager or agent of the ship;

"**South African ship**" includes an unregistered ship having South African nationality;

"**the Act**" means the Merchant Shipping Act, 1951 (Act No. 57 of 1951).

(2) Except in so far as the context indicates otherwise, a word or expression that is used in these regulations and in the INF Code (whether or not a particular meaning is given to it by the INF Code) has, in these regulations, the same meaning as in the INF Code.

(3) In interpreting the INF Code—

- (a) the requirements of the Code having been made mandatory under regulation 5, the language thereof is to be construed accordingly, and in particular "should" is to be read as "shall";
- (b) references to the Administration are, in relation to South African ships, to be read as references to the Authority.

Application

4. (1) Subject to subregulation (2), these regulations apply to every ship carrying INF cargo, and so apply to—

- (a) South African ships wherever they may be; and
- (b) other ships when in the Republic or its territorial waters.

(2) These regulations do not apply to ships owned or operated by the government of another State and used, for the time being, only on government non-commercial service if appropriate measures have been adopted, in accordance with regulation VII/15.2 of the Safety Convention, in relation to such ships.

Compliance with INF Code

5. Every ship must comply with the requirements of the INF Code as it applies to that ship and must be surveyed and certificated in accordance with those requirements.

Duty to hold Certificate of Fitness

6. (1) An operator or master must not accept INF cargo for carriage in a ship unless there is on board and in force in respect of that ship a valid Certificate of Fitness covering the INF cargo to be carried.

(2) For the purposes of this regulation, a Certificate of Fitness is not valid if—

- (a) in the case of a South African ship, it has ceased to be valid in terms of regulation 7(3) or has been cancelled under regulation 8(1); or
- (b) in the case of any other ship, it has ceased to be valid in terms of paragraph 1.3.4 of the INF Code, or has been cancelled under the authority of the government of the State whose flag the ship is entitled to fly.

Survey and certification

7. (1) If, after considering the report of a surveyor, the Authority is satisfied that the structure, equipment, fittings, arrangements and material of a South African ship comply with the requirements of the INF Code it must issue to the ship's operator a Certificate of Fitness certifying compliance with the INF Code.

(2) A ship that has been certificated pursuant to subregulation (1) is subject to inspection in accordance with the applicable provisions of sections 190(2), 192, 193 and 194 of the Act for the purpose of ensuring that the structure, equipment, fittings, arrangements and material comply with the requirements of the INF Code.

- (3) A Certificate of Fitness issued under subregulation (1) ceases to be valid—
- (a) if any inspection of the ship required by section 190(2) of the Act has not been carried out or has shown that the ship does not comply with the requirements of the INF Code;
 - (b) upon the expiry, in accordance with section 197 of the Act, of a certificate of the ship; or
 - (c) upon the cancellation, under section 198 of the Act, of a certificate of the ship.

Cancellation of Certificate of Fitness, etc

8. (1) The Authority may, by written notice, cancel any Certificate of Fitness issued under these regulations where it believes on reasonable grounds that the certificate was issued on false or wrong information.

(2) The Authority may require that any Certificate of Fitness issued under these regulations, that has expired or has been cancelled, be surrendered as directed.

- (3) No person may—
- (a) intentionally alter a Certificate of Fitness;
 - (b) in connection with any inspection pursuant to these regulations, knowingly or recklessly furnish information that is false or misleading in a material particular;
 - (c) with intent to deceive, use, lend or allow to be used by another, a Certificate of Fitness;
 - (d) fail to surrender a Certificate of Fitness required to be surrendered under subregulation (2); or
 - (e) forge any Certificate of Fitness.

Duty to report certain incidents involving INF cargo

9. (1) In this regulation "incident" includes any damage to, or failure or breakdown of, a ship carrying INF cargo that—

- (a) affects the safety of the ship, including but not limited to, collision, grounding, fire explosion, structural failure, flooding and cargo shifting; or
- (b) results in the impairment of the safety of navigation, including the failure or breakdown of steering gear, propulsion system, electrical generating system, and essential shipborne navigational aids.

(2) If an incident occurs in relation to a ship, the ship's master must, without delay, notify, in accordance with subregulation (4)—

- (a) where the Republic is the nearest coastal State to the place where the incident occurred, the Authority; or
- (b) where another country is the nearest coastal State to that place, the government of that State.

(3) If an incident occurs in relation to a ship and—

- (a) the ship's master fails to comply with subregulation (2) (whether or not the master is able to comply with that subregulation) in relation to the incident; or
- (b) the incident occurs in circumstances in which the ship is abandoned,

the ship's operator or an agent of the ship's operator must comply with subregulation (2) in relation to the incident.

(4) (a) Notification of an incident pursuant to subregulation (2) must be given using the fastest available means of communication.

(b) Notification to the Authority may be given by communicating the incident to the principal officer or duty surveyor at any of the Authority's marine survey offices in the Republic.

(c) The notification message must contain the following information:

- (i) the ship's name and call sign (if any) and its flag of registry;
- (ii) the day and time of the incident;
- (iii) the ship's position when the incident happened and at the time of reporting;
- (iv) the ship's course and speed;
- (v) whether the ship has been damaged and, if so, the extent of the damage;
- (vi) the type and extent of the release;
- (vii) prevailing weather conditions; and
- (viii) the ship's size and type.

(5) A person who, pursuant to subregulation (2) or (3), has notified the Authority or a government of an incident must, if so requested by the Authority or that government, as the case may be, give a report to the Authority or that government, as the case requires, about the incident; the report must be given in the form approved by the Authority and within 24 hours of being requested.

(6) A person must not, in a notice given to the Authority or a government pursuant to subregulation (2) or (3), or in a report given to the Authority or a government pursuant to subregulation (5), knowingly or recklessly make a statement that is false or misleading in a material particular.

Exemptions

10. The Authority may grant exemption, on such terms (if any) as it may specify, from any of the provisions of these regulations (as may be specified in the exemption) for classes of cases or individual cases and may, after reasonable notice, alter or cancel any such exemption.

Offences and penalties

11. (1) Any contravention of regulation 5 or 6(1) is an offence on the part of the ship's master and each person who is an operator of the ship, and is punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(2) Any contravention of regulation 8(3) is an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(3) Any contravention of regulation 9(2) by a ship's master is an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(4) Any contravention of regulation 9(3) is an offence on the part of each person who is an operator, or an agent of an operator, of the ship, and is punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(5) Any contravention of regulation 9(5) or (6) is an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

Defences

12. (1) In proceedings for an offence against regulation 5 or 6(1) it is a defence to prove that the accused took reasonable precautions and exercised due diligence to avoid the commission of the offence.

(2) In proceedings for an offence against regulation 9(2) or 9(5) in relation to an incident it is a defence to prove that the accused was unable to comply with regulation 9(2) in relation to the incident.

(3) In proceedings for an offence against regulation 9(3) in relation to an incident it is a defence to prove—

- (a) that the accused was not aware of the incident;
- (b) in the case of a incident to which regulation 9(3)(a) applies, that the accused neither knew nor suspected that the ship's master had not complied with regulation 9(2) in relation to the incident; or
- (c) that the accused was otherwise unable to comply with the regulation 9(2) in relation to the incident.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations implement amendments to Chapter VII (Carriage of dangerous goods) of the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended, adopted by the Maritime Safety Committee of the International Maritime Organization on 27 May 1999 by resolution MSC.87(71). The purpose of these amendments is to give effect to the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships ("the INF Code"), which was adopted by Maritime Safety Committee by resolution MSC.88(71). The text of the Code is annexed to that resolution.

The regulations apply to all ships, regardless of size, carrying packaged irradiated nuclear fuel, plutonium or high-level radioactive wastes. Ships are required to hold a valid International Certificate of Fitness, which will be issued in respect of South African ships by the South African Maritime Safety Authority (SAMSA), certifying that they have been constructed to certain standards including such matters as strength and stability, fire protection, cargo securement and temperature control, and integrity of power supplies.

Draft regulations were published for public comment by General Notice 483 (Government Gazette No. 22120) of 9 March 2001. This process elicited no adverse comment, and SAMSA is therefore satisfied that the regulations are non-contentious.