

GOVERNMENT NOTICE

No. 10**DEPARTMENT OF TRANSPORT****8 January 2009****MERCHANT SHIPPING ACT, 1951****AMENDMENT OF SECOND SCHEDULE**

I, Jeff Thamsanqa Radebe, Minister of Transport, hereby, in terms of section 356*bis* (2) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), amend the Second Schedule to the said Act as set out in the Schedule hereto.



J T Radebe

SCHEDULE**Definitions**

1. In this Schedule any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context indicates otherwise—

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

Amendment of Chapter V of Second Schedule to Act

2. Chapter V of the Second Schedule to the Act is hereby amended by—

(a) the insertion of the following text after the existing paragraph 5:

“6 *High-speed craft* means a craft as defined in regulation X/1.3.

7 *Mobile offshore drilling unit* means a mobile offshore drilling unit as defined in regulation XI-2/1.1.5.”

(b) the insertion of the following new regulation after regulation 19-2:

“Regulation 19-3**Long-range identification and tracking of ships**

(a) Nothing in this Regulation or the provisions of the performance standards and functional requirements¹ adopted by the Organization in relation to the long-range identification and tracking of ships shall prejudice the rights, jurisdiction or obligations of States under international law, in particular, the legal regimes of the high seas, the exclusive economic zone, the contiguous zone, the territorial seas or the straits used for international navigation and archipelagic sea lanes.

(b) Subject to the provisions of paragraphs (e) and (f), this Regulation shall apply to the following types of ships engaged in international voyages:

- (i) Passenger ships, including high-speed passenger craft;
- (ii) cargo ships, including high-speed craft, of 300 gross tonnage, and upwards, as determined under the provision of the Tonnage Convention; and

¹ Refer to the performance standards and functional requirements for the long-range identification and tracking of ships, adopted by the Maritime Safety Committee of the Organization by resolution MSC.210 (81).

(iii) mobile offshore drilling units.

(c) The term “ship”, when used in paragraphs (d) to (q), includes passenger and cargo ships, high-speed craft and mobile offshore drilling units which are subject to the provisions of this Regulation.

(d) This Regulation establishes provisions to enable Contracting Governments to undertake the long-range identification and tracking of ships.

(e) Ships shall be fitted with a system to automatically transmit the information specified in paragraph (g) as follows:

- (i) Ships constructed on or after 31 December 2008;
- (ii) Ships constructed before 31 December 2008 and certified for operations—
 - (aa) in sea areas A1 and A2, as defined in Regulations IV/2.1.12 and IV/2.1.13; or
 - (bb) in sea areas A1, A2 and A3, as defined in Regulations IV/2.1.12, IV/2.1.13 and IV/2.1.14;

not later than the first survey of the radio installation after 31 December 2008;

- (iii) ships constructed before 31 December 2008 and certified for operations in sea areas A1, A2, A3 and A4, as defined in Regulations IV/2.1.12, IV/2.1.13, IV/2.1.14 and IV/2.1.15, not later than the first survey of the radio installation after 1 July 2009. However, these ships shall comply with the provisions of subparagraphs (bb) whilst they operate within sea areas A1, A2 and A3.

(f) Ships, irrespective of the date of construction, fitted with an automatic identification system (AIS), as defined in regulation 19.2.4, and operated exclusively within sea area A1, as defined in regulation IV/2.1.12, shall not be required to comply with the provisions of this Regulation.

(g) Subject to the provisions of paragraph *(e)*, ships shall automatically transmit the following long-range identification and tracking information:

- (i) the identity of the ship;
- (ii) the latitude and longitude positions of the ship; and

(iii) the date and time of the positions provided.

(h) Systems and equipment used to meet the requirements of this Regulation shall conform to performance standards and functional requirements not inferior to those adopted by the Organization. Any shipboard equipment shall be of a type approved by the Administration.

(i) Systems and equipment used to meet the requirements of this Regulation shall be capable of being switched off on board or be capable of ceasing the distribution of long-range identification and tracking information—

(i) where international agreements, rules or standards provide for the protection of navigational information; or

(ii) in exceptional circumstances and for the shortest duration possible, where the operation is considered by the master to compromise the safety or security of the ship concerned. In such a case, the master shall inform the Administration thereof without undue delay and make an entry in the record of navigational activities and incidents maintained in accordance with regulation 28 setting out the reasons

for the decision and indicating the period during which the system or equipment was switched off.

(j) Subject to the provisions of paragraphs (k) to (q), Contracting Governments shall be able to receive long-range identification and tracking information about ships, for security and other purposes as agreed upon by the Organization, as follows:

- (i) The Administration shall be entitled to receive such information about ships entitled to fly its flag irrespective of where such ships may be located;
- (ii) a Contracting Government shall be entitled to receive such information about ships which have indicated their intention to enter a port facility, as defined in regulation XI-2/1.1.9, or a place under the jurisdiction of that Contracting Government, irrespective of where such ships may be located provided they are not located within the waters landward of the baselines, established in accordance with international law, of another Contracting Government;

- (iii) a Contracting Government shall be entitled to receive such information about ships entitled to fly the flag of other Contracting Governments, not intending to enter a port facility or a place under the jurisdiction of that Contracting Government, navigating within a distance not exceeding 1,000 nautical miles of its coast provided such ships are not located within the waters landward of the baselines, established in accordance with international law, of another Contracting Government; and
- (iv) a Contracting Government shall not be entitled to receive, pursuant to subparagraph (iii), such information about a ship located within the territorial sea of the Contracting Government whose flag the ship is entitled to fly.

(k) Contracting Governments shall specify and communicate to the Organization relevant details, taking into account the performance standards and functional requirements adopted by the Organization, to enable long-range identification and tracking information to be made available pursuant to the provisions of paragraph (j). Upon receipt thereof, the Organization shall inform all Contracting Governments of such communication, as well as the particulars thereof. The Contracting Government concerned may, at any time thereafter, amend or withdraw such communication.

(l) Notwithstanding the provisions of paragraph (j) (iii), the Administration shall be entitled, in order to meet security or other concerns, at any time, to decide that long-range identification and tracking information about ships entitled to fly its flag shall not be provided pursuant to the provisions of paragraph (j) (iii) to Contracting Governments. The Administration concerned may, at any time thereafter, amend, suspend or annul such decisions.

(m) The Administration concerned shall communicate, pursuant to paragraph (l), such decisions to the Organization. Upon receipt thereof, the Organization shall inform all Contracting Governments of such communication, as well as the particulars thereof.

(n) The rights, duties and obligations under international law of the ships whose Administration invoked the provisions of paragraph (l) shall not be prejudiced as a result of such decisions.

(o) Contracting Governments shall, at all times—

- (i) recognize the importance of long-range identification and tracking information;

- (ii) recognize and respect the commercial confidentiality and sensitivity of any long-range identification and tracking information they may receive;
- (iii) protect the information they may receive against unauthorized access or disclosure; and
- (iv) use the information they may receive in a manner consistent with international law.

(p) Contracting Governments shall bear all costs associated with any long-range identification and tracking information they request and receive. Notwithstanding the provisions of paragraph *(q)*, Contracting Governments shall not impose any charges on ships in relation to the long-range identification and tracking information they may seek to receive.

(q) Unless the national legislation of the Administration provides otherwise, ships entitled to fly its flag shall not incur any charges for transmitting long-range identification and tracking information in compliance with the provisions of this Regulation.

(r) Notwithstanding the provisions of paragraph (j), the search and rescue services of Contracting Governments shall be entitled to receive, free of any charges, long-range identification and tracking information in relation to the search and rescue of persons in distress at sea.

(s) Contracting Governments may report to the Organization any case where they consider that provisions of this Regulation or of any other related requirements established by the Organization have not been or are not being observed or adhered to.

(t) The Maritime Safety Committee of the Organization shall determine the criteria, procedures and arrangements for the establishment, review and audit of the provision of long-range identification and tracking information to Contracting Governments pursuant to the provisions of this Regulation.”
