

DEPARTMENT OF TRANSPORT

MARINE TRAFFIC ACT, 1981 (ACT 2 OF 1981)

THE DRAFT MARINE TRAFFIC AMENDMENT REGULATIONS, 2021

(The English Text is the official text of the Regulations)

I, Fikile April Mbalula, Minister of Transport hereby, in terms of section section 14 of the Marine Traffic Act, 1981 (Act 2 of 1981), make the Regulations set out in the Schedule hereunder.

Mr FA Mbalula, MP
Minister of Transport

Date:

SCHEDULE

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing regulations.

_____ Words underlined with a solid line indicate insertions in existing regulations.

Definition

1. In this Schedule “the Regulations” means the Marine Traffic Regulations, 1985 published in Government Gazette No. 9575 by Government Notice No. R. 194 dated 01 February 1985.

Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by—
 - (a) the insertion, after before the definition of “authorized agency” of the following definition:

“**Authority**” means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);”;

(b) the insertion after the definition of “authorized agency” of the following definition:

“**detention officer**” for the purposes of Chapter VII, means a person authorised by the Authority in terms of regulations 19, 20 and 22;”;

(c) the insertion after the definition of “Merchant Shipping Act” of the following definition:

“**Notice**” for the purposes of Chapter VII, means a Notice of Detention issued in terms of regulations 18;”;

(d) the insertion after the definition of “authorized agency” of the following definition:

“**return of service**” for the purposes of Chapter VII, means a declaration form issued in terms of regulations 20;”; and

(e) the substitution for the definition of “South African national” of the following definition:

“South African national”, when used to describe any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle which—

- (a) is registered or required to be registered in terms of the Merchant Shipping Act;
- (b) is licenced or required to be licenced in terms of the Merchant Shipping Act; or
- (c) is exempted from licensing in terms of the Merchant Shipping Act, but—
 - (i) the whole of which is owned by persons all of whom are qualified in terms of the Merchant Shipping Act to own a South African ship; **[and]or**
 - (ii) the majority of the owners of which, either in number or extent of ownership, are persons resident in the Republic; and”.

Amendment of regulation 3 of the Regulations

3. Regulation 3 of the Regulations is hereby amended by—

(a) the substitution for regulation 3 of the following regulation:

“3. For purposes these regulations navigation in such a manner as is necessitated by [their]a ship’s normal activities shall be deemed to constitute “passage” as defined in section 1 of the Act in the case of the following ships:”.

Amendment of regulation 5 of the Regulations

4. Regulation 5 of the Regulations is hereby amended by—

(a) the substitution for subregulation (1) of the following subregulation:

“5. (1) The master of any ship, other than a ship contemplated in regulation 16(1) or exempted in terms of the Act or regulation 4, shall, prior to the time of such ship’s intended entry into internal waters other than a harbour or a fishing harbour, appoint a ship’s agent and apply during office hours to the principal officer at the nearest harbour for permission for such entry, stating the reasons for such entry, the ship's destination, route and the period for which it is intended to remain in such internal waters.”;

(b) the substitution in subregulation (2) for paragraph (e) of the following paragraph:

“(e) require such a ship to enter or leave internal waters by such routes as may be determined by [him]the principal officer; or”; and

(c) the addition after subregulation (2) of the following subregulations:

“(3) The ship referred to in subregulation (1) shall be liable for the payment of a levy imposed by the Authority.

“(4) Any person who contravenes the provisions of subregulation (1) shall be guilty of an offence and shall on conviction be liable to a minimum fine of R80 000.00 or imprisonment of two years.”.

Substitution of regulation 7 of the Regulations

5. The following regulation is hereby substituted for regulation 7 of the Regulations:

“Application for lay-up

7. (1) Any person requiring permission by the **[Minister]Authority** in terms of section 5(1) of the Act to lay-up a ship shall direct a written application for such permission to the principal officer at the harbour nearest to the proposed lay-up area, not less than 30 days prior to the estimated time of arrival in such area of such ship or, if more than one ship is to be laid up, not less than 30 days prior to the estimated time of arrival of the first ship.
- (2) An application referred to in subregulation (1) shall contain the following information in regard to the ship or ships in question:
- (a) **[The]the** name, official number, port of registry and gross tonnage of the ship, the name and address of the owner of the ship and of the owner's agent in the Republic[.];
 - (b) **[The]the** type of ship and the nature of the cargo aboard, if any, including fuel and lubricating oil[.];
 - (c) **[The]the** proposed location of lay-up and anchoring and mooring arrangements[.];
 - (d) **[The]the** maximum intended draught of the ship in question during the period of lay-up[.];
 - (e) **[The]the** number of officers and crew to remain on board the ship during the period of lay-up[.]; and
 - (f) **[The]the** anticipated duration of the lay-up.”.

Substitution of regulation 8 of the Regulations

6. The following regulation is hereby substituted for regulation 8 of the Regulations:

“Guarantee for possible loss or damage caused by a laid-up ship

8. (1)[The]A person desiring to lay up a ship, shall together with **[his]the** application referred to in regulation 7, satisfy the **[Minister]Authority** that **[he]the person** has the financial means to meet any claims for damage or loss suffered either by the Government of the Republic or by third parties as a result of the vessel being laid up.

(2) Evidence of **[such]the** financial means referred to in subregulation (1) shall be either in the form of a bank guarantee or other security acceptable to the **[Minister; such guarantee or other security]Authority**, having due regard to any insurance arrangements which the owner of the said ship has made to cover such claims.”.

Amendment of regulation 10 of the Regulations

7. Regulation 10 of the Regulations is hereby amended by—

(a) the substitution for subregulation (1) of the following subregulation:

“(1) A period of lay-up shall not exceed six calendar months unless the **[Minister]Authority** extends such period upon written application made *mutatis mutandis* in the manner prescribed in regulation 7(1) prior to the termination of the said period of six months.”; and

(b) the substitution for subregulation (3) of the following subregulation:

“(3) A period of lay-up terminates—

(a) when the ship departs from the area of lay-up; **[or]**

(b) one month after the serving of a notice by the **[Minister]Authority**, withdrawing **[his]the** permission for the lay-up; or

(c) immediately upon the serving of a notification by the **[Minister]Authority**, withdrawing **[his]the** permission for a lay-up under the circumstances whereby the lay-up is prejudicial to the peace, good order or security of the Republic.”.

Substitution of regulation 11 of the Regulations

8. The following regulation is hereby substituted for regulation 11 of the Regulations:

“Inspection of laid-up ship

11. An **[authorized]authorised** person shall at any time have access to and may inspect a laid-up ship, its cargo, stores, machinery in use and such certificates as are required in terms of the laws of the Republic to be carried on board the ship.”.

Substitution of regulation 12 of the Regulations

9. The following regulation is hereby substituted for regulation 12 of the Regulations:

“Conditions of lay-up

12. The **[Minister]Authority** may require any person who is permitted to lay-up a ship, to comply with one or more of the following conditions in respect of the ship while so laid-up:
- (1) (a) Any ship to be laid up shall be retained in Class **[. The]** and the person desiring to lay-up a ship **[or ships]** shall submit to the principal officer at the harbour nearest to the proposed lay-up area the following documents not less than 14 days prior to the arrival of the ship or the first of the ships:
 - (i) **[A]** a copy of the certificate of classification; or
 - (ii) a copy of the lay-up report or of the conditions of lay-up as provided for by the classification society or by a society recognised by the **[Minister]Authority** as being competent to issue such a certificate.
 - (b) The certificates referred to in subparagraphs (i) and (ii) of paragraph (a) shall be kept on board the ship.
- (2) **[Unladen tankers]** An unladen tanker shall be ballasted to not less than 35 percent of deadweight while **[ships]** a ship other than **[tankers]** a tanker shall be fully ballasted.
- (3) (a) Cargo oil tanks, pipelines and bilges shall be empty, cleaned of sludge and of other deposits and shall be gas-freed.
 - (b) The **[said]** tanks referred to in paragraph (a) may be inerted in **[ships]** a ship in which an inert gas system is fitted.
- (4) (a) In the case of a ship in which the tanks are gas-freed, a certificate, issued by an **[authorized]** authorised agency, shall be produced at the commencement of the lay-up and thereafter at intervals not exceeding two months.
- (b) Gas-free tests shall be conducted weekly.
- (5) (a) Anchoring or mooring arrangements shall be carried out to the satisfaction of the principal officer concerned.
- (b) A spare or second anchor shall be held ready for immediate use.
- (6) The position of the ship shall be checked daily and anchors and chain cable shall be inspected **[regularly]** at least twice during a watch and more frequently during inclement weather.

- (7) Fire fighting equipment shall be maintained in good order and shall be tested at intervals not exceeding one week.
- (8) Anchor and radio telephone watches shall be kept at all times.
- (9) The ship shall display the correct navigation lights and shapes and make the required sound signals in accordance with international practice.
- (10) The permission of the principal officer concerned shall be obtained at all times when any repair work, requiring the use of hot welding or cutting equipment, is to be undertaken.
- (11) **[No]**Any article or matter of any kind, other than effluent from water closets, latrines and washplaces that has passed through the approved treatment plant, shall not be discharged into the sea.”.

Substitution of regulation 13 of the Regulations

10. The following regulation is hereby substituted for regulation 13 of the Regulations:

“Application to stop or anchor a ship for repairs

- 13.** (1) A person desiring a ship to be stopped or anchored for repairs in the territorial or internal waters outside a harbour or fishing harbour shall without delay apply for the **[Minister’s]**Authority’s permission for such stopping or anchoring and shall direct such an application to the principal officer at the harbour nearest to the proposed location of stopping or anchoring.
- (2) When applying in terms of subregulation (1) the applicant shall furnish the following information in regard to the ship in question:
 - (a) **[The]**the name, official number, port of registry, type and gross tonnage of the ship[.];
 - (b) **[The]**the name and address of the owner of the ship and of the owner's agent in the Republic[.];
 - (c) **[The]**the nature of the cargo aboard the ship, including fuel and lubricating oil[.];
 - (d) **[The]**the reason for the proposed stopping or anchoring of the ship[.];
 - (e) **[The]**the proposed location of such stopping or anchoring[.];
 - (f) **[The]**the anticipated duration of such stopping or anchoring[.]; and

(g) **[Prevailing]**prevailing weather conditions.”.

Substitution of regulation 14 of the Regulations

11. The following regulation is hereby substituted for regulation 14 of the Regulations:

“Conditions for stopping or anchoring of a ship

14. (1) **[The]**A person who has been granted permission in terms of regulation 13, shall comply with such measures specified by the principal officer concerned as **[he]**the principal officer may reasonably deem necessary for minimising the risk of stranding, for the safety of the ship, its crew, passengers or cargo, for preventing pollution of the sea or for maintaining the peace good order or security of the Republic.

(2) The **[said]** measures referred to in subregulation (1) shall be carried out at the expense of the owner of the ship.”.

Substitution of regulation 15 of the Regulations

12. The following regulation is hereby substituted for regulation 15 of the Regulations:

“Notification of departure of ship

15. **[The]**A person who has been granted permission in terms of regulation 13, shall cause the ship to proceed on its normal course immediately after the reason for the stopping or anchoring has ceased to exist and **[he]** shall forthwith notify the principal officer concerned of the departure of the ship.”.

Substitution of regulation 17 of the Regulations

13. The following regulation is hereby substituted for regulation 17 of the Regulations:

“CHAPTER VI

PLACES OF DEPARTURE AND ARRIVAL ALONG THE SHORE

17. (1) **[No]**A ship shall not be launched or otherwise proceed to sea from, or **[shall]** be landed, beached, moored, or berthed at, any place along the shore other than a harbour, fishing harbour or launching site.
- (2) Any person who contravenes the provisions of subregulation (1) shall be guilty of an offence and shall on conviction be liable to a minimum fine **[not exceeding R200]**of R40 000.00 or imprisonment of one year.”.

Substitution of regulation 18 of the Regulations

14. The following regulation is hereby substituted for regulation 18 of the Regulations:

“CHAPTER VII DETENTION OF SHIPS, CARGOES OR PART THEREOF

Notice of detention of ship or cargo

18. When a ship and its cargo or **[part]**part thereof or a ship or its cargo or part thereof is to be detained under section 9(3) of the Act a principal officer shall sign and issue a Notice of Detention in the form of Annexure A **[(hereinafter in this Chapter referred to as a "Notice")]**, setting forth the grounds and conditions of detention.”.

Substitution of regulation 19 of the Regulations

15. The following regulation is hereby substituted for regulation 19 of the Regulations:

“Service of Notice

19. (1) Subject to the provisions of subregulation (2) a Notice shall be served upon the master of the ship in question by **[an authorized person (hereinafter in this Chapter referred to as a "detention officer")]**a duly authorised detention officer who shall exhibit the original Notice to such master and deliver a copy thereof to **[him]**the master, and return the original Notice to the principal officer.
- (2) If the master of the ship in question refuses or fails to accept service of the Notice, or if for any other reason service of the Notice cannot be effected, the detention officer shall leave a copy of the Notice in a conspicuous place on such ship, which action shall then be deemed to be proper service.”.

Substitution of regulation 20 of the Regulations

16. The following regulation is hereby substituted for regulation 20 of the Regulations:

“Return of service

- 20.** (1) **[The]**A detention officer who has served a Notice in terms of regulation 19, shall forthwith complete and sign a declaration in the form of Annexure B **[(hereinafter in this Chapter referred to as a "return of service")]**.
- (2) The detention officer in subregulation (1) shall thereupon forthwith deliver the original of the Notice served by him, together with the return of service, to the principal officer who issued the Notice and a copy thereof to each of the following persons:
- (a) **[The]**the consular representative in the Republic, if any, of the state in which the ship is registered;
 - (b) the ship's agent in the Republic, if any;
 - (c) the Commissioner for Customs and Excise or other proper officer of customs at the harbour where the ship is anchored, moored or berthed; and
 - (d) the harbour authority or other authority, if any, who has jurisdiction or control over the sea where the ship is anchored, moored or berthed.”.

Substitution of regulation 21 of the Regulations

17. The following regulation is hereby substituted for regulation 21 of the Regulations:

“Clearance outward may be refused

- 21.** (1) The officer referred to in regulation 20(2)(c) shall refuse to give the master of a ship to which the Notice and the return of service relate or which was seized in terms of section 9(4)(b) of the Act, clearance outward until **[he]**the officer has received the Notice of Release contemplated in regulation 22(1).
- (2) If the detained or seized ship is not in a harbour or a fishing harbour the **[Minister]**Authority may take such steps or make such arrangements as he may deem necessary to prevent such ship from leaving the internal waters or the territorial waters.”.

Amendment of regulation 22 of the Regulations

18. Regulation 22 of the Regulations is hereby amended by—

(a) the substitution for subregulation (3) of the following subregulation:

“(3) The detention officer shall in writing advise the principal officer of the date and time on which **[he]**the detention officer has delivered the notice of release from detention to every person referred to in regulation 20(2)(a) to (d).”.

Short title and commencement

19. These regulations are called The Draft Marine Traffic Amendment Regulations, 2021 and shall come into operation on the date of publication thereof in the *Government Gazette*.