

**DEPARTMENT OF TRANSPORT**

**NOTICE 2037 OF 2023**

**MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951)**

**DRAFT MERCHANT SHIPPING (DANGEROUS GOODS) AMENDMENT REGULATIONS, 2023**

The Minister of Transport hereby in terms of section 356(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), publishes for comments the draft Merchant Shipping (Dangerous Goods) Amendment Regulations, 2023 as indicated in the Schedule.

Interested persons are invited to submit written comments on this draft Merchant Shipping (Dangerous Goods) Amendment Regulations, 2023, within 30 days from the date of publication of this notice in the Government Gazette.

All comments should be posted or emailed to the Director-General Department of Transport for attention of Mr TM Matlala at:

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## SCHEDULE

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### MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951)

### DRAFT MERCHANT SHIPPING (DANGEROUS GOODS) AMENDMENT REGULATIONS, 2023

#### 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 Merchant Shipping (Dangerous Goods) Regulations, 1997 published in Government Gazette No. 17921 by Government Notice No. R. 574 dated 18 April 1997.

#### Amendment of Arrangement of Regulations (Table of Contents) of the Regulations

2. The Arrangement of Regulations (Table of Contents) is hereby substituted for the following Arrangement of Regulations (Table of Contents):

#### “SCHEDULE

#### *Arrangement of regulations*

#### PART 1 GENERAL

*Regulation No.*

1. Definitions
2. Application
3. Exemptions
4. Document of compliance, inspection and certification
- 4A. Survey and Certification**
- 4B. Cancellation of Certificate of Fitness**
- 4C. Inspection and packing of containers**
5. Duty to report certain incidents involving **[packaged]** dangerous goods or marine pollutants
6. General duties of shipowner, master or employer **[and master]**
7. General duties of employee aboard **[ship]** vessel
8. Conduct endangering the **[ship]** vessel or persons aboard **[ship]**vessel
- 8A. Training**

**PART 2**

**CARRIAGE OF PACKAGED DANGEROUS GOODS**

9. Documentation required aboard a vessel
- [10. Packing certificates**
- 11. List, manifest or stowage plan]**
12. Packaging of goods, stowage, loading and carriage of a container
- [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 OR MARINE POLLUTANTS IN BULK**

17. Carriage in bulk
- [18. Documentation**
- 19. List, manifest or stowage plan]**

**PART 3A**  
**CARRIAGE OF PACKAGED IRRADIATED NUCLEAR FUEL, PLUTONIUM AND HIGH-  
LEVEL RADIOACTIVE WASTES ON BOARD**

- 19A.** Application  
**19B.** Compliance with the INF Code  
**19C.** Duty to hold a certificate of Fitness

**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

**Amendment of regulation 1 of the Regulations**

**PART 1**  
**GENERAL**

**Definitions**

3. Regulation 1 of the Regulations is hereby amended—
- (a) by the deletion of the definition of “**1974 SOLAS Convention**”;
- (b) by the substitution for the definition of “Authority” of the following definition:

““**Authority**” means the [Director-General or as respects his or her functions being discharged by another authority or person, that authority or person]South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998)”;

- (c) by the deletion of the definition of “**Bulk Cargoes Code**”;
- (d) by the insertion after the definition of “BCH Code” of the following definitions:

“**cargo transport unit**” means a road transport tank or freight vehicle, a railway transport tank or freight wagon, a multimodal freight container or portable tank, or an MEGC;”;

“**certificate of fitness**” means the International Certificate of Fitness referred to in regulation 4 for the Carriage of INF Cargo referred to in paragraph 1.3.2 of the INF Code;”;

“**certificate of inspection**” means the certificate issued in terms of regulation 4(2)(b);”;

“**classify**” means to determine whether goods are dangerous goods or marine pollutants for the purposes of sea transport and is a determination, by an appropriate method, of whether the goods possess the hazardous characteristics of classes from 1 to 9 of the IMDG Code in accordance with the most hazardous property of the goods and further extends to goods—

- (a) listed in the IMDG Code;
- (b) not specifically listed but falling within the defining criteria for the classes from 1 to 9 of the IMDG Code; and
- (c) where there is any cause to suspect that the substance is a marine pollutant as defined by the IMDG Code;”;

“**company**” means the owner of the vessel or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the vessel from the owner of the vessel and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;”;

“**competent authority**” means any statutory body or authority designated or otherwise recognised as such for any purpose in connection with these Regulations;”;

“**consignee**” means any person, organisation or Government which is entitled to take delivery of a consignment;”;

“**consignment**” means any package or packages, or load of dangerous goods, presented by a consignor for transport;”;

“**consignor**” means any person, organisation or Government which prepares a consignment for transport;”;

“**container**” means a container as defined in the International Convention for Safe Containers;”; and

“**contravene**”, in relation to a provision of these Regulations, includes failing or refusing to comply with that provision;”;

- (e) by the deletion of the definition of “correct technical name”;
- (f) by the substitution for the definition of “dangerous goods” of the following definition:

“**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; and
  - (c) harmful substances, as defined in Article II of the International Convention for the Prevention of Pollution from Ships, 1978;”;
- (g) by the insertion after the definition of “dangerous goods declaration” of the following definition:

“document of compliance to carry dangerous goods” means:

- (a) for a South African vessel - a document of compliance referred to in regulation 4 to carry dangerous goods; or
  - (b) for a foreign vessel - a document of compliance referred to in regulation 19.4 of Chapter II-2 of the Safety Convention to carry dangerous goods and “certificate of compliance” has a corresponding meaning;”;
- (h) by the insertion after the definition of “durably marked” of the following definition:

“EGC Code” means the code for existing ships carrying liquified gassed in bulk;”;

- (i) by the substitution for the definition of “flammable liquid” of the following definition:

“flammable liquid” means a liquid [the flash point of which is] ~~1~~, or mixtures of liquids, or liquids containing solids in solution or suspension which give off a flammable vapour at or below [61 °C (closed cup) in respect of packaged dangerous goods]60°C closed-cup test, corresponding to 65.6°C open-cup test, normally referred to as the “flashpoint” and includes:

- (a) liquids offered for transport at temperatures at or above their flashpoint; and
  - (b) substances transported or offered for transport at elevated temperatures in a liquid state, which give off a flammable vapour at temperatures equal to or below the maximum transport temperature;”;
- (j) by the substitution for the definition of “forwarder” of the following definition:

“forwarder” means the person by whom the dangerous goods [are delivered] declaration or marine pollutants declaration and packing certificate are received, and any person responsible for packing the goods into a cargo transport unit, for eventual delivery to a [ship]vessel or its agent;”;

- (k) by the insertion after the definition of “handling” of the following definitions:

“high-level radioactive waste” means “liquid waste” as defined in the INF Code;”; and

“**IBC Code**” means the International Code for the construction and equipment of ships carrying dangerous chemicals in bulk, as defined in Chapter VII regulation 8.1 of the Safety Convention;”;

- (l) by the insertion after the definition of “IMO” of the following definitions:

“**IMSBC Code**” means the International Maritime Solid Bulk Cargoes Code;”;

“**incident**” means —

- (a) any damage to, failure or breakdown of, a vessel carrying dangerous goods or that—
  - (i) affects the safety of the vessel, including a collision, grounding, fire explosion, structural failure, flooding or cargo shifting; or
  - (ii) results in the impairment of the safety of navigation, including the failure or breakdown of steering gear, propulsion system, electrical generating system or essential shipborne navigational aids; or
- (b) any occurrence or probable occurrence that results or may result in the dangerous goods being introduced into the sea;”;

“**INF cargo**” means packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes cargo carried as cargo in accordance with Class 7 of the IMDG Code;”; and

“**INF Code**” means the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships;”;

- (m) by the insertion after the definition of “in bulk” of the following definitions:

“**irradiated nuclear fuel**” means the material as defined in the INF Code;”;

“**marine pollutant**” means a substance classified as such in the IMDG Code, or as a noxious liquid substance in the IBC Code, or in any other applicable code;”;

“**MEGC**” means a multiple element gas container;”; and



“**operator**”, in relation to a vessel, includes any owner, charterer, manager or agent of the vessel;”;

- (n) by the substitution for the definition of “package” of the following definition:

“**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] the complete product of the packing operation, consisting of the packaging and its contents prepared for transport, and “packaged” has a corresponding meaning;”;

- (o) by the insertion after the definition of “package” of the following definitions:

“**packaging**” means one or more approved receptacles and any other components or materials necessary for the receptacles to perform their containment and other safety functions;”;

“**plutonium**” means the material as defined in the INF Code;”; and

“**Safety Convention**” means the International Convention for the Safety of Life at Sea done at London on 1 November 1974, the English text of which is set forth in the Second Schedule as modified by any amendment made under Article VIII of that Convention that has entered into force for the Republic and, after the date on which the Protocol of 1978 relating to the Safety Convention enters into force for the Republic, as also modified by that Protocol;”;

- (p) by the substitution for the definition of “shipper” of the following definition:

“**shipper**” [means a person who, whether as principal or agent for another, consigns dangerous goods for carriage by sea] for the purpose of these Regulations, has the same meaning as consignor;”; and

- (q) by the insertion after the definition of “shipper” of the following definition:

“**South African vessel**” means a vessel having South African nationality in terms of section

3 of the Ship Registration Act, 1998;”.

### **Substitution of regulation 2 of the Regulations**

4. The following regulation is hereby substituted for regulation 2 of the Regulations:

#### **“Application**

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

(2) These Regulations do not apply to dangerous goods forming part of the equipment or stores required for the navigation, safety or maintenance of a vessel or required for the intended operations of the vessel.

(3) The Merchant Shipping (Carriage of Cargoes) Regulations, 2004 apply to vessels and dangerous goods to which these Regulations apply.

(4) Subject to subregulation (5), these Regulations apply to every vessel carrying INF cargo, and so apply to—

(a) every South African vessel wherever the vessel may be; and

(b) any other vessel when in the Republic or its territorial waters.

(5) These Regulations do not apply to a vessel 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 Chapter VII regulation 15.2 of the Safety Convention, in relation to such a vessel.”.

### **Substitution of regulation 3 of the Regulations**

5. The following regulation is hereby substituted for regulation 3 of the Regulations:

#### **“Exemptions**

3.(1) 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]** written notice, amend or cancel any such exemption: Provided the exemption is in accordance with the IMDG Code, IMSBC Code or INF Code.

(2) An exemption is subject to the following:

- (a) The owner of a vessel must carry on board the vessel a copy of the exemption for inspection; and
- (b) Compliance with any other condition imposed by the Authority under these Regulations.".

#### **Amendment of regulation 4 of the Regulations**

6. Regulation 4 of the Regulations is hereby amended—

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

##### **"Document of compliance, inspection and certification**

4.(1) **[ No dangerous]**Dangerous goods may not be taken on board a **[ship built after 31 August 1984]**vessel unless the **[ship]**vessel has on board a valid document of compliance, a certificate of compliance or a certificate of fitness, issued by the Authority or the competent authority of the country in which the **[ship]**vessel 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]** regarding the special requirements for vessels carrying dangerous goods in Chapter II-2 regulation 19 of the Safety Convention and paragraph 7.17 of the High Speed Craft Code, 2000, as applicable, [of the 1974 SOLAS Convention] and appropriate to the classification of those goods intended for stowage in or on those spaces.";

- (b) by the substitution for subregulation (2) of the following subregulation:

"(2)(a) Whenever dangerous goods are to be loaded at a port in the Republic, the shipowner or master must advise the **[proper officer]** Authority 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]**vessel of any dangerous goods already on board, and to be loaded.

- (b) The Authority, 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]** a vessel to be inspected by a surveyor—

(i) before loading to determine whether—

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

(bb) the proposed stowage complies with these **[regulations]** 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]** Regulations and whether all reasonable and necessary precautions are being and have been taken to ensure the safety of the **[ship]** vessel, its crew and other personnel during the voyage, and, in both cases, the surveyor must, in the case of explosives, if **[he or she is]** satisfied with the arrangements, issue the master with a certificate of inspection.

(c) The Authority may, before stuffing cause a container to be inspected by a surveyor to determine whether the container is compliant with the IMDG Code and if satisfied, issue a container inspection report.

(d) The Authority may—

(i) before stuffing, cause documentation required in terms of the IMDG Code to be reviewed by a surveyor, to determine whether the segregation of the contents of a container are safe for stowage in the container in accordance with the IMDG Code, and if satisfied, issue a container inspection report; and

(ii) after stuffing, cause the contents of a container to be inspected by a surveyor, to determine whether the stowage, segregation, securing of the contents of a container are in in accordance with the requirements of subparagraph (i) and if satisfied, issue a container inspection report.”;  
and

(c) by the substitution for subregulation (3) of the following subregulation:

“(3) If **[the shipowner or master]** a shipowner, master or representative of the shipowner or master fails to comply with this regulation **[he or she]** the shipowner, master or representative of the shipowner or master is guilty of an offence.”.

## Insertion of regulations 4A, 4B and 4C of the Regulations

7. The following regulations are inserted in Part 1 of the Regulations after regulation 4:

### **“Survey and certification**

**4A.** (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 vessel comply with the requirements of the IMDG Code, IMSBC Code or INF Code the Authority may issue a Certificate of Fitness, Document of Compliance or a Certificate of Compliance certifying compliance with the IMDG Code, IMSBC Code or INF Code.

(2) A vessel 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 codes in subregulation (1).

(3) A certificate or document issued under subregulation (1) ceases to be valid—

- (a) if any inspection of the vessel required by section 190(2) of the Act has not been carried out or has shown that the vessel does not comply with the requirements of the applicable code;
- (b) upon the expiry, in accordance with section 197 of the Act of a certificate of the vessel; or
- (c) upon the cancellation, under section 198 of the Act of a certificate of the vessel.

### **Cancellation of Certificate of Fitness, Document of Compliance or Certificate of Compliance**

**4B.** (1) The Authority may, by written notice, cancel any Certificate of Fitness, Document of Compliance or Certificate of Compliance issued under these regulations where the Authority believes on that the certificate was issued on false or wrong information.

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

(3) It is prohibited for any person to—

- (a) intentionally alter a Certificate of Fitness, Document of Compliance or Certificate of Compliance;
- (b) in connection with any inspection pursuant to these regulations, knowingly or recklessly furnish information that is false or misleading;
- (c) with intent to deceive, use, lend or allow to be used by another, a Certificate of Fitness, Document of Compliance or Certificate of Compliance;
- (d) fail to surrender a Certificate of Fitness, Document of Compliance or Certificate of Compliance required to be surrendered under subregulation (2); or
- (e) forge any Certificate of Fitness, Document of Compliance or Certificate of Compliance.

#### **Inspection and packing of containers**

**4C.(1)** A surveyor may, prior to packing, inspect a container to ensure that the condition of the container, the packing and securing of the dangerous goods is in accordance with the IMDG Code.”.

#### **Amendment of regulation 5 of the Regulations**

8. Regulation 5 of the Regulations is hereby amended—

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

#### **“Duty to report certain incidents involving [packaged] dangerous goods or marine pollutants**

5.(1)(a) Where an incident occurs in relation to a **[ship]vessel** involving the loss or likely loss overboard of **[packaged]** dangerous goods, marine pollutants or INF cargo into the sea, the master of the **[ship]vessel** 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]vessels** 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; and

- (ii) in relation to any other **[ship]**vessel, the nearest proper officer.
  - (c) If the appropriate authority is not so notified as required in this subregulation, the master is guilty of an offence.”;
- (b) by the insertion after subregulation (1) of the following subregulations:
  - “(1A) The reporting requirements of Chapter VII regulation 7-1 of the Safety Convention shall apply both to the loss or likely loss of INF cargo overboard and to any incident involving release or probable release of INF cargo, whatever the reason for such loss or release, including for the purpose of securing the safety of the vessel or saving life at sea.
  - (1B) If an incident occurs in relation to a vessel, the vessel’s master must, without delay, notify, in accordance with subregulation (1C)—
    - (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.
  - (1C) (a) Notification of an incident pursuant to subregulation (1B) 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 in this regulation must contain the following information:
      - (i) the vessel’s name and call sign, if any, and its flag of registry;
      - (ii) the day and time of the incident;
      - (iii) the vessel’s position when the incident happened and at the time of reporting;
      - (iv) the vessel’s course and speed;
      - (v) whether the vessel 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 vessel’s size and type.

(1D) A person who, pursuant to subregulation (1B), 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.

(1E) It is prohibited for any person to, in a notice given to the Authority or a government pursuant to subregulation (1B), or in a report given to the Authority or a government pursuant to subregulation (1D), knowingly or recklessly make a statement that is false or misleading in a material particular.”;

(c) by the substitution for subregulation (2) of the following subregulation:

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

(d) by the substitution for subregulation (3) of the following subregulation:

“(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]**vessel is abandoned,

the **[owner, charterer, manager or operator of the ship]**company or an agent of the **[owner, charterer, manager, or operator of the ship]**company 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.]**

(c) If this subregulation is not so complied with, each of those persons required by this regulation to so comply is guilty of an offence.”;

(e) by the substitution for subregulation (4) of the following subregulation:



- “(4) It is a good defence to a charge under subregulation (3) for a person to show—
- (a) that **[he or she]**the person 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]**the person neither knew nor suspected that the master was unable to comply with subregulation (1) in relation to the incident.”; and

(f) by the substitution for subregulation (5) of the following subregulation:

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

### **Substitution for regulation 6 of the Regulations**

9. The following regulation is hereby substituted for regulation 6 of the Regulations —

**“General duties of shipowner, master or employer [and master]”;**

**“6.(1) [Every]A shipowner [and], master or employer of persons aboard a [ship and every master of a ship] vessel must ensure, as far as is reasonably practicable, that [when] dangerous goods or marine pollutants are [being] handled, stowed or carried in the [ship nothing]vessel in [the]a manner in which [those]the handling, stowage and carriage of the goods [are handled, stowed or carried is such as might] or marine pollutants shall not pose a risk to the health or safety of any person or the environment.”;**

**“(2) [Without limiting the generality of the]The shipowner's, [or] employer's or master's duty under subregulation (1)include—**

**[(a) the matters to which the duty of the shipowner [and], master or the employer extends include, in particular—]**

**[(i)](a) the provision and maintenance of the [ship's]vessel's structure, fittings and equipment for handling, stowage and carriage of dangerous goods or marine pollutants that is, as far as is reasonably practicable, safe and without risk to health and safety of persons and the environment; and**

**[(ii)](b) 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]vessel** 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]vessel includes the matters specified in paragraph (a)(i) and (ii)] or marine pollutants on board the vessel.**";

"(3) If a shipowner **[or]**, employer or master fails to comply with this regulation **[he or she]**the shipowner, employer or master is guilty of an offence."; and

"(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]** the appropriate provisions of a mandatory IMO adopted Code or legislation of the Republic."

### **Substitution for regulation 7 of the Regulations**

10. The following regulation is hereby substituted for regulation 7 of the Regulations —

**"General duties of employee aboard [ship]vessel";**

**"7.(1) [Every]An employee aboard [ship must]a vessel shall —**

- (a) take reasonable care regarding **[the]**the employee's own health and safety **[of himself or herself]** and of any other **[persons]**person who may be affected by **[his or her]**the employee's acts or omissions in connection with the handling, stowage and carriage of dangerous goods in the **[ship]vessel**; 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]**as

regards to any duty or requirement imposed on the employee's employer or any other person by the Act or regulations with regard to the health and safety of persons aboard a ship or the environment, to which these regulations apply, co-operate with such employer or person to enable that duty or requirement to be performed or complied with."; and

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

### **Substitution for regulation 8 of the Regulations**

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

**"Conduct endangering the **[ship]**vessel or persons aboard **[ship]**vessel";**

**"8.(1) [ No person may,]**It is prohibited for any person to, in connection with the handling, stowage and carriage of dangerous goods in a **[ship]**vessel, knowingly or recklessly interfere with or misuse anything provided on or disobey instructions displayed on a **[ship of South African nationality]**vessel in the interests of health or safety of persons or the environment in pursuance of the Act."; and

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

### **Insertion of regulation 8A of the Regulations**

12. The following regulation is inserted in Part 1 of the Regulations after regulation 8:

#### **Training**

**8A.(1)** A consignee, consignor, employer of shore-based personnel and their representative handling dangerous goods shall designate a person who is properly trained, commensurate to the person's responsibilities relating to the transportation of dangerous goods or marine pollutants in accordance with the applicable code.

(2) A consignee, consignor, employer of shore-based personnel and their representative handling dangerous goods shall ensure that all shore-based personnel engaged in the handling and transportation of dangerous goods or marine pollutants intended to be transported by sea shall be trained in the contents of provisions relating to dangerous goods or marine pollutants, commensurate with their responsibilities.

(3) The shore-based personnel referred to in this regulation shall be trained in accordance with the provisions of Chapter 1.3 of the IMDG Code before assuming responsibilities.

(4) The training requirements in this regulation specific to security of dangerous goods in Chapter 1.4 of the IMDG Code shall, in addition, be provided to shore-based personnel.

(5) The training required in this regulation shall be supplemented with refresher training every four years to take account of changes in regulations and practice.”

### **Amendment of regulation 9 of the Regulations**

13. Regulation 9 of the Regulations is hereby amended—

(a) by the substitution for the heading of regulation 9 of the following heading:

#### **“PART 2 CARRIAGE OF PACKAGED DANGEROUS GOODS**

**Documentation required aboard a vessel”;**

(b) by the substitution for subregulation (1) of the following subregulation:

**“9.(1) [ No packaged]Packaged dangerous goods or marine pollutants may not be offered for carriage or taken on board a [ship]vessel unless [a]the dangerous goods [declaration has been furnished to the shipowner or master], the vessel and the carriage of the dangerous goods or marine pollutants on the vessel complies with the requirements of Chapter VII regulation 4 of the Safety Convention.”;**

(c) by the insertion after subregulation (1) of the following subregulation:

“(1A) If a shipowner, master, consignor, consignee or the representative of the shipowner, master, consignor, consignee fails to comply with subregulation (1), the shipowner, master or consignor, consignee or their representative is guilty of an offence.”;

(d) by the deletion of subregulations (2) ,(3), (4), (5) and (6) ;

(e) by the substitution for subregulation (7) of the following subregulation:

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

(f) by the substitution for subregulation (8) of the following subregulation:

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

### **Repeal of regulations 10 and 11 of the Regulations**

14. Regulations 10 and 11 of the Regulations are hereby repealed.

### **Substitution of regulation 12 of the Regulations**

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

**“Packaging of goods, stowage, loading and carriage of a container”;**

**“12. (1)(a) The packaging **[of]**, marking and labelling, stowage, handling of dangerous**

goods or marine pollutants and the carriage of a cargo transport unit carrying dangerous goods or marine pollutants must comply with the IMDG Code and the Merchant Shipping (Safe Containers Convention) Act, 2011 (Act No. 10 of 2011).

(b) **[Such]** The packaging in paragraph (a) must, if required by the IMDG Code, be performance tested, as specified in the Code, certified and marked in accordance with Part 6 of the IMDG Code by an approved testing authority.”;

“(2) Packaged dangerous goods or marine pollutants may not be taken on board a **[ship]**vessel for carriage in that **[ship]**vessel if the shipowner or master knows or ought to know that the goods or marine pollutants are not packaged in such a manner as to withstand the ordinary risk of carriage by sea.”; and

“(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]**If a shipowner, master, consignor, consignee or the representative of the shipowner, master, consignor, consignee fails to comply with subregulation (1), the shipowner, master or consignor, consignee or their representative is guilty of an offence.”.

### **Repeal of regulations 13, 14, 15 and 16 of the Regulations**

16. Regulations 13, 14, 15 and 16 of the Regulations are hereby repealed.

### **Substitution of regulation 17 of the Regulations**

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

#### **“PART 3**

#### **CARRIAGE OF DANGEROUS GOODS OR MARINE POLLUTANTS IN BULK**

##### **Carriage in bulk**

17. (1) Dangerous goods or marine pollutants may not be handled or carried in bulk in any **[ship]**vessel if the **[shipowner]** shipowner, master, consignor, consignee or the representative of the shipowner, master, consignor, consignee has reason to believe that such goods or marine pollutants may not be so handled or carried in bulk safely in that **[ship]**vessel.”;

“(2) **[Without limiting the generality]** Subject to the provisions of subregulation (1)—

- (a) where the dangerous goods or marine pollutants in question are **[goods]** listed in—
  - (i) Chapter VI of the BCH Code[, **or in** ];
  - (ii) Chapter 17 of the IBC Code[, **or in** ];
  - (iii) Chapter XIX of the **[Gas Carrier Code for Existing Ships, or in ]EGC Code**;
  - (iv) Chapter XIX of the Gas Carrier Code[, **or in** ];
  - (v) Chapter 19 of the IGC Code[, **or are classified**]; or
  - (vi) the classification of dangerous goods listed in **[Appendix B] Appendix 1** of the **[Bulk Cargoes Code they, ]MSBC Code**, **[must be handled and carried]** the documentation relating to, the handling and the carriage of the dangerous goods or marine pollutants shall be in accordance with the requirements of whichever of the codes is appropriate; or
- (b) where the dangerous goods or marine pollutants in question consist of a solid, a liquid chemical or a liquefied gas that is not listed in the codes specified in paragraph (a), **[they]** the dangerous goods or marine pollutants must be handled and carried in accordance with an approval given by the Authority.
- (c) **[Any such]** The approval in paragraph (b) must be given in writing and must specify the effective date **[on which it takes effect]** and the **[conditions (if any)]** conditions, if any, on which **[it]** the approval is given.”; and

“(3) If **[there is any breach of]** a shipowner, master, consignor, consignee or the representative of the shipowner, master, consignor, consignee required to comply with this regulation fails to comply with this regulation the **[shipowner and the master are]** shipowner, master, consignor, consignee or the representative of the shipowner, master, consignor, consignee is guilty of an offence.”.

### Repeal of regulations 18 and 19 of the Regulations

- 18. Regulations 18 and 19 of the Regulations are hereby repealed.

## Insertion of Part 3A of the Regulations

19. The following Part is inserted after Part 3 of the Regulations:

### **"PART 3A**

#### **CARRIAGE OF PACKAGED IRRADIATED NUCLEAR FUEL, PLUTONIUM AND HIGH-LEVEL RADIOACTIVE WASTES ON BOARD**

##### **Application**

**19A.** (1) This Part applies to every vessel carrying INF cargo, and so applies to—

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

##### **Compliance with INF Code**

**19B.** (1) Every vessel must comply with the requirements of the INF Code as it applies to that vessel and shall be surveyed and issued with a Certificate of Fitness in accordance with those requirements.

(2) INF cargo required to be carried on Class INF 3 vessels, shall not be allowed on passenger vessels.

##### **Duty to hold Certificate of Fitness**

**19C.** (1) An operator or master shall not accept INF cargo for carriage in a vessel unless there is on board in respect of that vessel a valid Certificate of Fitness covering the INF cargo to be carried.

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

- (a) in the case of a South African vessel, the certificate has ceased to be valid in terms of regulation 4A(3) or has been cancelled under regulation 4B(1); or
- (b) in the case of any other vessel the certificate -
  - (i) has ceased to be valid in terms of paragraph 1.3.4 of the INF Code; or
  - (ii) has been cancelled under the authority of the government of the State whose flag the vessel is entitled to fly.”.

## Substitution of regulation 20 of the Regulations



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

**“PART 4**

**ENFORCEMENT, REPEAL OF REGULATIONS, AND SHORT TITLE AND COMMENCEMENT**

**Power to detain**

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

**Substitution of regulation 21 of the Regulations**

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

**“Penalties and defences**

21. (1) A person guilty of an offence under these **[regulations]**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 of these Regulations for a person to show—

- (a) that **[he or she]**the person took all reasonable steps to ensure compliance with the regulations;
- (b) that **[he or she]**the person 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 code;
- [(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]vessel the person responsible for packing the goods into the freight container or vehicle had furnished the shipowner or master of the [ship]vessel 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 IMSBC;

- (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]EGC and the IGC Code;] or
- (g) that the goods were handled and carried in accordance with the conditions imposed under regulation 3 or 17(2)(b).”; and

“(3) In proceedings for an offence against regulation 19B or 19C(1) it is a defence to prove that the accused took reasonable precautions and exercised due diligence to avoid the commission of the offence.

(4) In proceedings for an offence against regulation 5(1B) or 5(1E) in relation to an incident it is a defence to prove that the accused was unable to comply with regulation 5(1B) in relation to the incident.

(5) In proceedings for an offence against regulation 5(1C) 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 an incident to which regulation 5(1C)(a) applies, that the accused neither knew nor suspected that the vessel's master had not complied with regulation 5(1B) in relation to the incident; or
- (c) that the accused was otherwise unable to comply with the regulation 5(1B) in relation to the incident.”.

(6) Any contravention of regulation 19B or 19C(1) is an offence on the part of the vessel's master and each person who is an operator of the vessel, and is punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(7) Any contravention of regulation 4B(3) is an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(8) Any contravention of regulation 5(1B) by a vessel's master is an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(9) Any contravention of regulation 5(1C) is an offence on the part of each person who is an operator, or an agent of an operator, of the vessel, and is punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.

(10) Any contravention of regulation 5(1E) or 5(1F) is an offence punishable on conviction by a fine or by imprisonment for a period not exceeding 12 months.”.

#### **Substitution of regulation 22 of the Regulations**

22. The following regulation is hereby substituted for regulation 22 of the Regulations:

##### **“Offences due to fault of another person**

22. Where the commission by any person of an offence under **[Part 1, 2 or 3]** Part 1, 2, 3 or 3A 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.”.

#### **Substitution of regulation 23 of the Regulations**

23. The following regulation is hereby substituted for regulation 23 of the Regulations —

##### **“Repeal of regulations**

23. (1) 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.”; and

“(2) The Merchant Shipping (INF Code) Regulations, 2003, published by Government Notice No. R. 719 in Government Gazette No. 24922 (RG7675) of 6 June 2003 in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), are repealed.”.

#### **Short title and commencement**

24. These Regulations are called the Draft Merchant Shipping (Dangerous Goods) Amendment Regulations, 2023, and are published for public comments.