

THE MERCHANT SHIPPING ACT, 2009

(Cap 389)

IN EXERCISE of the powers conferred by section 8, 410, 412A, 450 and 451 of the Merchant Shipping Act, 2009, the Cabinet Secretary for Transport makes the following Regulations—

THE MERCHANT SHIPPING (CONTROL OF POLLUTION BY NOXIOUS LIQUID SUBSTANCES IN BULK) REGULATIONS, 2023

PART I — PRELIMINARY

Citation.

1. These Regulations may be cited as the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations, 2023

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires—

“**Anniversary date**” means the day and the month of each year which will correspond to the date of expiry of the International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;

“**Annex II**” means Annex II to the Convention. ;

“**Category X**” means Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a major hazard to either marine resources or human health and, therefore, justify the prohibition of the discharge into the marine environment;

“**Category Y**” means Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a hazard to either marine resources or human health or cause harm to amenities or other legitimate uses of the sea and therefore justify a limitation on the quality and quantity of the discharge into the marine environment;

“Category Z” means Noxious Liquid Substances which, if discharged into the sea from tank cleaning or deballasting operations, are deemed to present a minor hazard to either marine resources or human health and therefore justify less stringent restrictions on the quality and quantity of the discharge into the marine environment;

“Other Substances” substances indicated as OS (Other Substances) in the pollution category column of chapter 18 of the IBC Code which have been evaluated and found to fall outside Category X, Y or Z as defined in regulation 2 because they are, at present, considered to present no harm to marine resources, human health, amenities or other legitimate uses of the sea when discharged into the sea from tank cleaning of deballasting operations.

“Clean ballast” means ballast water carried in a tank which, since it was last used to carry a cargo containing a substance in Category X, Y or Z, has been thoroughly cleaned and the residues resulting there from have been discharged and the tank emptied in accordance with the appropriate requirements of these Regulations.

“Convention” means International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto as amended;

“Segregated ballast” means ballast water introduced into a tank permanently allocated to the carriage of ballast or cargoes other than oil or Noxious Liquid Substances as variously defined in the Convention, and which is completely separated from the cargo and oil fuel system.

“Bulk Chemical Code (BCH Code)” means the Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk adopted by the Protection Committee of the

Organization by resolution MEPC.20(22), as amended by the Organization and brought into force in accordance with the provisions of Article 16 of the Convention.

“International Bulk Code (IBC)” means the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk adopted by the Marine Environment Protection Committee of the Organization by resolution MEPC.19(22), as amended by the Organization and brought into force in accordance with the provisions of article 16 of the MARPOL Convention;

“International Gas Code (IGC)” has the same meaning as that given to “International Gas Carrier Code” in regulation 11.1 of Chapter VII in the Annex to the International Convention for the Safety of Life at Sea, 1974;

“Depth of water” means the charted depth;

“En route” means that the ship is under way at sea on a course or courses, including deviation from the shortest direct route, which as far as practicable for navigational purposes, will cause any discharge to be spread over as great an area of the sea as is reasonable and practicable;

“Liquid substances” are those having a vapour pressure not exceeding 0.28 MPa absolute at a temperature of 37.8°C;

“Manual” means Manual means Procedures and Arrangements Manual in accordance with the model given in appendix 4 of Annex II;

“from the nearest land” means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, in relation to the north eastern coast of Australia which shall be as prescribed in Annex II;

“**Noxious Liquid Substances**” indicated in the Pollution Category column of chapter 17 or 18 of the IBC Code or provisionally assessed under the provisions of regulation 7.2 of Annex II as falling into Category X, Y or Z;

“**Oil Pollution Regulation**” means Merchant Shipping (Prevention of Pollution from Oil) Regulation 20221;

“**ppm**” means ml/m³;

“**Polar Code**” means the International Code for Ships Operating in Polar Waters, consisting of an introduction, parts I-A and II-A and parts I-B and II-B as adopted by IMO Resolutions MSC.385(94) and MEPC.264(68);

“**Residue**” means any noxious liquid substance which remains for disposal;

“**Residue/water mixture**” means residue to which water has been added for any purpose (e.g., tank cleaning, ballasting, bilge slops)

“**Ship constructed**” means a ship the keel of which is laid or which is at a similar stage of construction. A ship converted to a chemical tanker, irrespective of the date of construction, shall be treated as a chemical tanker constructed on the date on which such conversion commenced. This conversion provision shall not apply to the modification of a ship, which complies with all of the following conditions:

(a) the ship is constructed before 1 July 1986

(b) the ship is certified under the BCH Code to carry only those products identified by the Code as substances with pollution hazards only.

“**Similar stage of construction**” means the stage at which:

- (i) Construction identifiable with specific ship begins; and
- (ii) Assembly of that ship has commenced comprising at least 50 tons or one per cent of the estimated mass of all structural material, whichever is less.

“Solidifying substances” means a noxious liquid substance which:

- (a) In the case of a substance with a melting point of less than 15°C which is at a temperature of less than 5°C above its melting point at the time of unloading; or
- (b) In the case of a substance with a melting point of equal to or greater than 15°C which is at a temperature of less than 10°C above its melting point at the time of unloading.

“Non-solidifying Substance” means a noxious liquid substance, which is not a Solidifying Substance;

“Chemical tanker” means a ship constructed or adapted for the carriage in bulk of any liquid product listed in chapter 17 of the International Bulk Chemical Code;

“NLS tanker” means a ship constructed or adapted to carry a cargo of Noxious Liquid Substances in bulk and includes an "oil tanker" as defined in Oil Pollution Regulations when certified to carry a cargo or part cargo of Noxious Liquid Substances in bulk;

“NLS Certificate” means International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;

“High-Viscosity Substances” means a noxious liquid substance in Category X or Y with a viscosity equal to or greater than 50 mPa·s at the unloading temperature;

“Low-Viscosity Substance” means a noxious substance, which is not a High Viscosity Substance;

“Unassessed substances” means substances which have not been categorized, provisionally assessed or evaluated as referred to in regulation 7.2 or of ballast water, tank washings or other mixtures containing such residues

(2) In these Regulations, any reference to Annex II of the Convention is to be construed—

(a) as a reference to Annex II as modified from time to time; and

(b) as, if Annex II is replaced, a reference to the replacement.

Application.

3. (1) Unless expressly provided otherwise, these Regulations shall apply to —

(a) Kenyan ship certified to carry noxious liquid substances in bulk wherever they may be; and

(b) other ships certified to carry noxious liquid substances in bulk while in waters under Kenyan jurisdiction.

(2) Where a cargo subject to the Oil Pollution Regulation is carried in a cargo space of an NLS tanker, the appropriate requirements of Merchant Shipping (Prevention of Pollution by Oil from Ships) Regulations shall also apply.

Exceptions

4. The discharge requirements of these Regulations and chapter 2 of part II-A of the Polar Code shall not apply to the discharge into the sea of Noxious Liquid Substances or mixtures containing such substances when such a discharge:

(a) is necessary for the purpose of securing the safety of a ship or saving life at sea; or

(b) results from damage to a ship or its equipment:

(i) provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge; and

(ii) except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or

- (c) is approved by the Director General when being used for the purpose of combating specific pollution incidents in order to minimize the damage from pollution. Any such discharge shall be subject to the approval of any Government in whose jurisdiction it is contemplated the discharge will occur.

Exemptions

5. (1) The Director General may grant exemptions to Kenyan ships to which these Regulations apply to the extent specified for in Regulation 4 of Annex II.

(2) An exemption by the Director-General is valid only if given in writing and may be—

- (a) given subject to such conditions and limitations as the Director-General may specify; and;
- (b) may be altered or cancelled by a notice given in writing.

(3) To be exempted from the any of the provisions of these regulations-

- (a) A shipowner shall apply in writing to the Director General for an Exemption Certificate;
- (b) Upon receiving the request, the Director General shall cause the ship to be surveyed for compliance with the requirements in these Regulations;
- (c) If the ship is compliant, the Director General shall issue the Exemption Certificate.

Equivalents

6. (1) The Director General may upon receipt of a written application by a shipowner, approve any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by Annex II, if such fitting, material, appliance or apparatus is at least as effective as that required by Annex II.

(2) The approval referred to in sub-regulation (1), shall not extend to the substitution of operational methods to effect

the control of discharge of Noxious Liquid Substances as equivalent to those design and construction features which are prescribed by regulations in Annex II.

(3) Notwithstanding the requirements of sub-regulation (1) and (2), the construction and equipment of liquefied gas carriers certified to carry Noxious Liquid Substances listed in the applicable IGC Code, shall be deemed to be equivalent to the construction and equipment requirements contained in these Regulations, provided that the gas carrier meets the following conditions:

(a) hold a Certificate of Fitness in accordance with the appropriate IGC Code for ships certified to carry liquefied gases in bulk;

(b) hold an NLS Certificate, in which it is certified that the gas carrier may carry only those Noxious Liquid Substances identified and listed in the appropriate Gas Carrier Code;

(c) be provided with segregated ballast arrangements

(d) be provided with an approved pumping and piping arrangements, which, ensures that the quantity of cargo residue remaining in the tank and its associated piping after unloading does not exceed the applicable quantity of residue as required by regulation 12.1, 12.2 or 12.3 of Annex II; and

(e) be provided with a Manual, approved by the Director General, ensuring that no operational mixing of cargo residues and water will occur and that no cargo residues will remain in the tank after applying the ventilation procedures prescribed in the Manual.

(4) The owner or master shall ensure that the fitting, material, appliance or apparatus fitted to the ship are in accordance with any conditions or limitations set out in the

approval and is used and operated in accordance with any such conditions or limitations.

(5) An equivalent approved by the Director-General may be altered or cancelled by a notice given in writing.

Categorization and listing of noxious liquid substances in bulk and other substances

7. (1) For purpose of these Regulations, Noxious Liquid Substances shall be divided into four categories as follows:

(a) Category X

(b) Category Y

(c) Category Z

(d) Other Substances

(2) Subject to the provisions of regulations 6.3 and 13.1.3 of Annex II, the Director-General may approve the carriage of unassessed substances based on the guidelines referred to in sub-regulation (3).

(3) Guidelines for use in the categorization of Noxious Liquid Substances are given in Appendix I of Annex II.

(4) The carriage of unassessed substances referred to in sub-regulation (2) shall be prohibited along with any consequential discharge of such substances into the sea.

Survey and certification of chemical tankers

8. Notwithstanding the provisions of Regulations 9, 10 and 11, chemical tankers which have been surveyed and certified by State Parties to the Convention in accordance with the provisions of IBC Code or the BC Code, as applicable, shall be deemed to have complied with the provisions of the said regulations; and the certificate issued under that Code shall have the same force and receive the same recognition as the certificate issued under Regulation 10.

Surveys

9. (1) Every Kenyan ship to which these regulations apply shall be subjected to an initial, annual, intermediate and renewal survey as prescribed in regulation 8 of Annex II.

(2) An additional survey either general or partial, according to the circumstances, shall be made after a repair resulting from investigations prescribed in 3.1.5 of Annex II, or whenever any important repairs or renewals are made.

(3) The owner or master of a ship shall ensure that the ship and its equipment shall be maintained to conform with the provisions of Annex II to ensure that the ship in all respects remain fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(4) The owner or master of a ship shall ensure that after any survey of the ship required under sub- regulation (1) has been completed, no change shall be made in the structure, equipment, systems, fittings, arrangements or material covered by the survey, without the approval of the Director General, except the direct replacement of such equipment and fittings.

(5) Whenever—

(a) an accident occurs to a ship; or

(b) a defect is discovered in a ship,

which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship as required under Annex II, the owner or master of the ship shall report at the earliest opportunity to the Director-General and in the case of a ship in a port outside Kenya, the accident or the defect is immediately reported to the Director-General and appropriate maritime authorities in the country in which the port is situated.

Issue or
endorsement of
Certificate

10. (1) An NLS Certificate shall be issued by the Authority or Recognized Organization after satisfactory initial or renewal survey.

(2) The Director-General may authorize a Party to the Convention to cause a Kenyan ship to be surveyed in line with Annex II and issue or authorize the issue of an NLS Certificate to the ship and where appropriate, endorse or authorize the endorsement of that certificate.

(3) The Director-General, upon request from a Party to the Convention, may cause a ship to be surveyed under the Convention and if satisfied that the requirements of Annex II are complied with, issue an NLS Certificate and a survey report as requested by the other Party State.

(4) The Form of the NLS Certificate shall be as specified in the First schedule.

(5) The Certificate issued under these regulations shall be readily available onboard for examination at all times.

Duration and
validity of
Certificate

11. (1) An International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk shall be valid for a period of five years.

(2) The International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk shall be valid as per requirements of annual and intermediate surveys and endorsements in Regulation 10 of Annex II.

(3) A Certificate issued under regulation 10 shall cease to be valid in any of the following cases:

(a) if the relevant surveys are not completed within the periods specified under regulation 8.1 of Annex II;

(b) if the Certificate is not endorsed is not endorsed following an intermediate or annual survey;

(c) three months after transfer of a Kenyan ship to the flag of another State or upon issuance of a new certificate by the new flag state, whichever is earlier;

(d) where alterations have taken place in the equipment, fittings, arrangement or material required without the

approval of the Director-General, except the direct replacement of such equipment or fittings; or

where a certificate is cancelled by the Director-General or Recognised Organization.

Design,
construction,
arrangement and
equipment

12. (1) Ships certified to carry Noxious Liquid Substances in bulk shall comply with the applicable requirements set out in Regulation 11 and 12 of Annex II.

(2) The Director General may upon receipt of a written application by a shipowner, approve ships other than chemical tankers or liquefied gas carriers certified to carry Noxious Liquid Substances in bulk to carry Noxious Liquid Substances in bulk in line with the Regulation 11.2 of Annex II.

Control of
discharges of
residues of
noxious liquid
substances

13. (1) Subject to the provisions of regulation 4, the control of discharges of residues of Noxious Liquid Substances or ballast water, tank washings or other mixtures containing such substances shall be in compliance with the requirements of regulation 13 of Annex II.

(2) The owner or master shall ensure that discharge of residues of Noxious Liquid Substances or ballast water, tank washings or other mixtures containing such substances shall be as specified in sub-regulation (1).

Procedures and
Arrangements
Manual

14. (1) A Every ship certified to carry substances of Category X, Y or Z shall have on board a Procedures and Arrangements Manual approved by the Director General.

(2) The Manual shall have a standard format in compliance with appendix 4 of Annex II.

(3) The Procedures and Arrangements Manual shall—

(a) in the case of a Kenyan ship certified to carry Noxious Liquid Substances, be written in English; and

(b) in the case of any other ship certified to carry Noxious Liquid Substances be written in, or translated into, English, French or Spanish.

Unloading
arrangements

15. Where noxious liquid substances are unloaded from a ship certified to carry Noxious Liquid Substances to a cargo unloading terminal, the master shall ensure that any noxious liquid substance in cargo hoses and piping systems of that terminal is not drained back to the ship.

Cargo Record
Book

16. (1) Every ship to which these Regulations apply shall be provided with a Cargo Record Book, whether as part of the ship's official logbook, as an electronic record book which shall be approved by the Director General taking into account the Guidelines developed by the Organization, or otherwise, in the form specified in appendix 2 of Annex II.

(2) Entries shall be made in Cargo Record Book;

(a) After completion of any operation specified in appendix 2 of Annex II; and

(b) In the event of an accidental discharge of a noxious liquid substance or a mixture containing such a substance or a discharge under the requirements of Regulation 4, stating the circumstances of, and the reason for the discharge.

(3) The Cargo Record Book shall be maintained as per Regulation 15 paragraph 4 and 5 of Annex II.

(4) The Director General, or an authorized person may-

(a) inspect the Cargo Record Book on board a ship which is in a port;

(b) make a copy of any entry in the Cargo Record Book; and

(c) require the master of the ship to certify that the copy is a true copy of any such entry.

(5) A copy of an entry described in sub-regulation (4)(c) is admissible in any judicial proceedings as evidence of the facts stated in that entry.

Shipboard marine
pollution
emergency plan

17. (1) Every ship of 150 gross tonnage and above certified to carry Noxious Liquid Substances in bulk shall carry on board a shipboard marine pollution emergency plan for Noxious Liquid Substances approved by the Director General.

(2) The plan referred to in sub- regulation (1) shall be prepared in accordance with the Guidelines developed by the Organization. The plan must include;

- (a) the procedure to be followed by the master or other persons having charge of the ship to report a Noxious Liquid Substances pollution incident, as required in article 8 and Protocol I of the Convention, based on the Guidelines developed by the Organization;
- (b) the list of authorities or persons to be contacted in the event of a Noxious Liquid Substances pollution incident;
- (c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of Noxious Liquid Substances following the incident; and
- (d) the procedures and point of contact on the ship for coordinating shipboard action with national and local authorities in combating the pollution.

In the case of ships to which regulation 37 of Annex I of the Convention also applies, such a plan may be combined with the shipboard oil pollution emergency plan required under regulation 37 of Annex I of the Convention. In this case, the title of such a plan shall be "Shipboard marine pollution emergency plan"

Ships operating in
Polar waters

18. (1) This regulation applies to all ships operating in polar waters.

(2) The owner or master of a ship to which this regulation applies shall ensure the ship complies with—

(a) the environment-related provisions of the Introduction; and

(b) Chapter 2 of part II-A, of the Polar Code.

(3) In ensuring compliance with sub-regulation (2)(b) consideration must be given to the guidance in part II-B of the Polar Code.

(4) For the purposes of this regulation “polar waters” means the Antarctic area or Arctic waters.

Offences and
Penalty

19. (1) Any contravention of—

(a) regulations 6 (4) and 9 is an offence by the owner and by the master of the ship in question;

(b) regulations 10 (5), 13 (2), 14, 16, 17 and 18 is an offence by the owner, manager, demise charterer and master of the ship in question;

(c) regulation 15 is an offence by the master of the ship in question.

(2) A person, owner or master who—

(a) intentionally alters a Noxious Liquid Substances certificate;

(b) intentionally forges a Noxious Liquid Substances certificate;

(c) knowingly or recklessly provides false information in connection with a survey required under these Regulations;

(d) who fails to comply with any requirements of these Regulations;

(e) with intent to deceive, use, lend, or allow to be used by another, a Noxious Liquid Substances certificate;

commits an offence.

(2) Upon conviction, of any of these offences specified in sub-regulation (1) and (2), a person, owner or master shall be liable to a fine stipulated in Section 412A of the Act.

Savings

20. Any license or approval in force at the date of entry into force of these Regulations shall remain valid unless revoked, replaced, rescinded by legislation, licenses, certificates or any other administrative orders, directions or instructions made or issued under the Merchant Shipping Act or subsidiary legislations.