

NOTICE 579 OF 2002**SOUTH AFRICAN MARITIME SAFETY AUTHORITY****DRAFT MERCHANT SHIPPING (SAFETY MANAGEMENT) REGULATIONS:
PUBLICATION FOR COMMENT**

The South African Maritime Safety Authority, acting on the authority of the Minister of Transport, hereby publishes for public comment the proposed regulations set out in the accompanying Schedule. Interested persons are invited to submit their written comment **on or before 24 May 2002** to the Chief Executive Officer, SAMSA, PO Box 13186 Hatfield 0028, for the attention of Mr C Briesch. Comments may also be transmitted by email to cbriesch@samsa.org.za or by fax to (012) 342 3160. Telephonic enquiries can be directed to Mr Briesch at (012) 342 3049. Attention is invited to the explanatory note at the end of the regulations.

SCHEDULE**DRAFT MERCHANT SHIPPING (SAFETY MANAGEMENT)
REGULATIONS, 2002****Title and commencement**

1. These regulations are called the Merchant Shipping (Safety Management) Regulations, 2002, and come into operation on <<date>>.

Object of regulations

2. The object of these regulations is to implement Chapter IX (Management for the safe operation of ships) of the Safety Convention.

Interpretation

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

"audit" means a systematic and independent examination, carried out in accordance with the Guidelines, to determine whether the relevant safety management system is suitable to meet the objectives set out in paragraph 1.2 of the ISM Code, and, so far as the system has been operated, that the system has been effectively implemented;

"bulk carrier" has the same meaning as in regulation IX/1 of the Safety Convention;

"cargo ship" means a mechanically propelled ship that is not a passenger ship, troop ship, pleasure vessel or fishing vessel;

"chemical tanker" has the same meaning as in regulation IX/1 of the Safety Convention;

"company" has the same meaning as in regulation IX/1 of the Safety Convention;

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

"Document of Compliance" means the Document of Compliance referred to in regulation IX/4 of the Safety Convention;

"gas carrier" has the same meaning as in regulation IX/1 of the Safety Convention;

"high-speed craft" has the same meaning as in regulation IX/1 of the Safety Convention;

"IMO" means the International Maritime Organization;

"ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention annexed to IMO resolution A.741(18), as amended from time to time;

"mobile offshore drilling unit" has the same meaning as in regulation IX/1 of the Safety Convention;

"oil tanker" has the same meaning as in regulation IX/1 of the Safety Convention;

"pleasure vessel" means a ship that is used solely for sport or recreation;

"Safety Management Certificate" means the Safety Management Certificate referred to in regulation IX/4 of the Safety Convention;

"safety management system" means a structured and documented system enabling company personnel to implement effectively the company safety and environmental protection policy;

"South African waters" means the internal and territorial waters of the Republic;

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

"the Guidelines" means the Guidelines on the Implementation of the International Safety Management (ISM) Code by Administrations annexed to IMO resolution A.788(19), as amended from time to time;

"tons", in relation to a ship, means its gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the Tonnage Convention.

(2) For the purpose of interpreting the ISM Code—

- (a) "should" is to be read as "shall"; and
- (b) references to the Administration are, in relation to ships of South African nationality, to be read as references to the Authority.

Application

4. (1) Subject to subregulations (2) and (4), these regulations apply to ships of South African nationality in all waters and to all ships in South African waters.

(2) These regulations apply to—

- (a) foreign-going passenger ships, including passenger high-speed craft;

- (b) foreign-going oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 tons or more;
- (c) from 1 July 2002, other foreign-going cargo ships of 500 tons or more; and
- (d) from 1 July 2002, mechanically propelled mobile offshore drilling units of 500 tons or more.

(3) These regulations apply to every company operating a ship to which these regulations apply.

(4) These regulations do not apply to—

- (a) a ship flying the flag of a state that is not a party to the Safety Convention by reason of its being in South African waters if it would not have been there but for stress of weather or any circumstances that could not have been prevented by the owner, the master or the charterer (if any); or
- (b) a government-operated ship used solely for non-commercial purposes.

Compliance with ISM Code

5. Every company must comply with, and ensure that its ships comply with, the requirements of the ISM Code.

Duty to hold certificates

6. (1) No company may operate a ship unless—

- (a) the company holds a valid Document of Compliance covering that type of ship; and
- (b) there is in force in respect of the ship a valid Safety Management Certificate.

(2) No ship of South African nationality may be operated unless—

- (a) the company holds a valid Document of Compliance covering that type of ship, issued or accepted by the Authority; and
- (b) there is in force in respect of the ship a valid Safety Management Certificate issued or accepted by the Authority.

(3) For the purposes of this regulation, a Document of Compliance or Safety Management Certificate is not valid if it has not been endorsed, in accordance with the ISM Code, to show—

- (a) in the case of a Document of Compliance, satisfactory annual audits; and
- (b) in the case of a Safety Management Certificate, a satisfactory intermediate audit.

Duty to carry certificates

7. A company must ensure that a valid Safety Management Certificate and a copy of the Document of Compliance is carried on board each ship.

Duty of master

8. The master of a ship must operate the ship in accordance with the safety management system on the basis of which the Safety Management Certificate was issued.

Duty of designated person

9. A person designated by a company for the purposes of paragraph 4 of the ISM Code must—

- (a) take such steps as are necessary to ensure compliance with the company safety management system on the basis of which the Document of Compliance was issued; and
- (b) ensure that proper provision is made for each ship to be so manned, equipped and maintained that it is fit to operate in accordance with the safety management system and with statutory requirements.

Issue of Document of Compliance and Safety Management Certificate

10. (1) If the Authority is satisfied that a company operating one or more ships of South African nationality complies with the requirements of the ISM Code it may issue the company with a Document of Compliance valid for a period not exceeding five years.

(2) If the Authority is satisfied that a ship is operated by a company to which it has issued a Document of Compliance and that the company and its shipboard management operate in accordance with the safety management system it has approved, the Authority must issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

(3) Where a company operating ships that are registered in more than one country, but at least one of which is a ship of South African nationality, complies with the requirements of the ISM Code, the Authority may accept a Document of Compliance issued by the government of one of those countries (other than the Republic) to which the Safety Convention applies if, prior to the issue of that document, it has agreed to accept it. Conditions for acceptance may include completion of a satisfactory audit of the company by a surveyor designated for the purpose by the Authority.

(4) Where, for the first time, a company is to operate a ship under the South African flag, the Authority may accept a Document of Compliance issued by the government of a country (other than the Republic) to which the Safety Convention applies under whose flag ships are operated by the company. Conditions for acceptance may include completion of a satisfactory audit by a surveyor designated for the purpose by the Authority.

(5) If the Authority is satisfied that a ship of South African nationality is operated by a company holding a Document of Compliance accepted by the Authority under subregulation (3) or (4) and that its shipboard management operates in accordance with a safety management system complying with the requirements of the ISM Code, the Authority must issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

(6) A certificate issued under this regulation must correspond to the appropriate form set out in Appendix 2 to the Guidelines.

Interim certificates

11. (1) (a) Where a company is newly established, or a company assumes, for the first time, the responsibility for operating a ship of a type not covered by a Document of Compliance already held by the company, the Authority may issue an interim Document of Compliance, valid for a period not exceeding 12 months, so as to facilitate implementation of the ISM Code.

(b) The Authority must not issue an interim Document of Compliance unless it is satisfied that the company—

- (i) has a safety management system that meets the objectives of paragraph 1.2.3 of the ISM Code; and
- (ii) plans to implement a safety management system meeting all the requirements of the ISM Code within the period of validity of the interim Document of Compliance.

(2) (a) Where a company assumes responsibility for operating a ship that is new to the company or when a ship is transferred between flag states, the Authority may issue an interim Safety Management Certificate, valid for a period not exceeding six months, in respect of the ship upon its delivery. The Authority may, as it considers appropriate, extend the validity of an interim Safety Management Certificate for a further six months.

(b) The Authority must not issue an interim Safety Management Certificate unless it is satisfied that—

- (i) a Document of Compliance, or an interim Document of Compliance, that is relevant to the type of ship is held by the company;
- (ii) the safety management system provided by the company for the ship includes all key elements of the ISM Code and has been assessed during the audit for the issue of the Document of Compliance or interim Document of Compliance;
- (iii) the master and relevant senior officers are familiar with the safety management system and the planned arrangements for its implementation;
- (iv) instructions that have been identified as essential to be provided prior to sailing have been given;
- (v) plans for audit, by the company, of the ship within three months exist; and
- (vi) the relevant information about the safety management system is given in a working language or languages understood by the ship's personnel.

(3) A certificate issued under this regulation must correspond to the appropriate form set out in Appendix 2 to the Guidelines.

Issue and endorsement of Safety Management Certificate by another government

12. (1) The Authority may request the government of a country (other than the Republic) to which the Safety Convention applies—

- (a) to conduct an audit of the safety management system operated on board a ship of South African nationality, and
- (b) if satisfied that the requirements of the ISM Code are complied with, to issue to the ship a Safety Management Certificate or authorize such issue or, where appropriate, endorse such certificate after intermediate audit.

(2) A certificate issued pursuant to subregulation (1) must contain a statement that it has been so issued and has the same effect as if it were issued by the Authority.

Issue of certificates on behalf of other governments

13. (1) The Authority may, at the request of the government of a country (other than the Republic) to which the Safety Convention applies—

- (a) audit the safety management systems of companies and ships of that country; and
- (b) if satisfied that the requirements of the ISM Code are complied with and that the audit has been satisfactorily completed in accordance with these regulations,

issue to the company a Document of Compliance or, in respect of the ship, a Safety Management Certificate, or, where appropriate, endorse such certificates after annual or intermediate audits, as the case requires.

(2) A certificate issued under subregulation (1) must—

- (a) contain a statement that it has been so issued; and
- (b) correspond to the appropriate form set out in Appendix 2 to the Guidelines.

(3) A certificate issued under this regulation has the same effect as if it were issued by the relevant government and not by the Authority.

Annual audit of Document of Compliance

14. The Authority must carry out an annual audit of the safety management system of every company to which it has issued a Document of Compliance, within three months before or after the anniversary date of the Document of Compliance.

Intermediate audit of Safety Management Certificate

15. The Authority must carry out an intermediate audit of each ship, to ensure that the conditions for the continued validity of the Safety Management Certificate are being met, between the second and third anniversaries of the Safety Management Certificate issued by it, and at such other times as it thinks fit.

Renewal of certificates

16. Before the renewal of any certificate the Authority must carry out a renewal audit of the company or ship during the six month period preceding the expiry date of the

Document of Compliance or Safety Management Certificate, as the case may be, to ensure that compliance with the requirements of the ISM Code is maintained.

Powers of audit, inspection, suspension of service and detention

17. (1) (a) For the purpose of ensuring compliance with these regulations, a surveyor designated for the purpose by the Authority may audit the safety management system of any company.

(b) If, after considering the report of a surveyor, the Authority is satisfied that a company, despite holding a Document of Compliance, is unable to operate ships without creating a risk of—

- (i) significant danger to safety of life; or
- (ii) significant damage to property; or
- (iii) significant damage to the marine environment,

or that a company does not hold a Document of Compliance, the Authority may suspend the operation of ships by that company until such time as any such risk is removed or a valid Document of Compliance is held.

(c) Where a service is to be suspended under paragraph (b), the Authority must serve upon the company a notice stating that the operation of the service specified in the notice must be suspended and giving reasons for the suspension.

(2) (a) For the purpose of ensuring compliance with these regulations, a surveyor designated for the purpose by the Authority may inspect any ship, which inspection may include an audit of the ship's safety management system.

(b) If, after considering the report of a surveyor, the Authority is satisfied that there is a failure to comply in relation to a ship with the requirements of regulation 5 or 6, the Authority may cause the ship to be detained.

Suspension or cancellation of Documents of Compliance and Safety Management Certificates

18. (1) (a) The Authority may, by notice in writing, suspend or cancel any Document of Compliance or Safety Management Certificate issued by it or at its request under these regulations where any audit of a company or ship has revealed a failure to comply with regulation 5 or where it believes on reasonable grounds that—

- (i) the certificate was issued on false or erroneous information; or
- (ii) since any audit required by these regulations, the management structure of either the company or the ship has changed substantively.

(b) A notice must set out the grounds for suspending or cancelling the certificate.

(c) A notice must not be given unless the holder has been given the opportunity to make representations, except where the Authority considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

(2) The Authority may require that any Document of Compliance or Safety Management Certificate issued by it or at its request under these regulations, that has expired or has been suspended or cancelled, be surrendered as directed.

(3) No person may—

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

Exemptions

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

Offences and penalties

20. (1) A company that contravenes regulation 5, 6 or 7 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(2) A master who contravenes regulation 8 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(3) A designated person who contravenes regulation 9 commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(4) A company that operates a ship on a service when the service has been suspended under regulation 17(1)(b) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(5) A person who contravenes regulation 18(3) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Defence

21. It is a defence for a person charged under regulation 20 to show that he or she took reasonable precautions and exercised due diligence to avoid the commission of the offence.

Repeal of regulations

22. The Merchant Shipping (ISM Code) Regulations, 1998, published by Government Notice No. R. 1012 of 7 August 1998, as corrected by Government Notice No. R. 1183 of 18 September 1998, are repealed.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations repeal and replace, with modifications, the Merchant Shipping (ISM Code) Regulations, 1998. The principal change provides for the full implementation, ahead of the 1 July 2002 deadline, of Chapter IX (Management for the safe operation of ships) of the International Convention for the Safety of Life at Sea, 1974 ("the Safety Convention").

The regulations apply to passenger ships and to oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 tons or more, and from 1 July 2002 they apply to other cargo ships (including mobile offshore drilling units) of that size. The regulations require companies to comply with the International Safety Management (ISM) Code. Provision is made for annual and intermediate audits of the operation of the safety management systems of companies and ships in respect of their ISM Code certification. The regulations allow services to be suspended in certain cases of non-compliance, and contain various ancillary provisions as to offences concerning certification issued pursuant to the regulations.