

---

**NOTICE 440 OF 2006**

*Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment*

---

South African Maritime Safety Authority

**Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment**

The South African Maritime Safety Authority (SAMSA) publishes for public comment the proposed measures set out in the accompanying Schedule. Written submissions should reach SAMSA on or before **12 May 2006 (Note: late submission may be disregarded)**. These should be addressed to the Chief Executive Officer (for the attention of Mr C Briesch) and may be either:

- hand-delivered to SAMSA, 161 Lynnwood Road, Brooklyn 0181, Pretoria; or
- mailed to SAMSA, PO Box 13186 Hatfield 0028; or
- faxed to (012) 366 2601; or
- emailed to [cbriesch@samsa.org.za](mailto:cbriesch@samsa.org.za).

Telephonic enquiries should be directed to Mr C Briesch at (012) 366 2624. Attention is invited to the explanatory memorandum accompanying the Bill in Part 1 of the Schedule.

---

**Schedule**

---

*Contents*

<b>Part 1</b>	<b>Draft Merchant Shipping (Safe Containers Convention) Bill, 2006</b>
<b>Part 2</b>	<b>Draft Merchant Shipping (Safe Containers Convention) Regulations, 2006</b>

---

*Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment*

---

3.11 The 1991 amendments were adopted on 17 May 1991 and entered into force on 1 January 1993. These amendments include the addition of a new Chapter V to Annex I concerning regulations for the approval of modified containers.

3.12 The 1993 amendments were adopted on 4 November 1993 and have yet to enter into force. These amendments concern the information contained on the safety approval plate. They also amend certain test loads and testing procedures required by the Convention.

#### **4 Overview of Bill**

4.1 The Bill proposes to re-assign functions related to the implementation and administration of the Convention, from the Minister and Department of Trade and Industry to the Minister of Transport and the South African Maritime Safety Authority. This will ensure that the functions are assigned to the appropriate authorities having responsibility for transport and related safety matters.

4.2 The Bill declares certain provisions of the Convention to have the force of law (clause 5) and empowers the Minister of Transport (clause 6) to make regulations for carrying out and giving effect to those provisions. The regulations will, for example, establish requirements for the approval, maintenance, repair, inspection, detention and disposal of containers.

4.3 The text of the Convention is set out in Part 1 of the Schedule to the Bill and incorporates several amendments to the Convention, adopted in 1981, 1983 and 1991, that were not incorporated in the 1985 Act.

4.4 Part 2 of the Schedule sets out the text of the amendments adopted in 1993, which have yet to enter into force. It is proposed that Part 2 enter into force only after the 1993 amendments have entered into force internationally, and after their acceptance by South Africa in accordance with Article IX of the Convention.

4.5 The administration and enforcement of the proposed measures are entrusted to the South African Maritime Safety Authority, which, in addition to powers conferred by regulation, is empowered to designate inspectors (clause 7), and to direct inquiries (clause 10) into certain accidents and incidents.

## Part 2                      **Draft Merchant Shipping (Safe Containers Convention) Regulations, 2006**

### **1                      Title and commencement**

- (1) These regulations are called the *Merchant Shipping (Safe Containers Convention) Regulations, 2006*.
- (2) These regulations commence on <<date>>.

### **2                      Definitions**

- (1) In these regulations, unless the context indicates otherwise, an expression given a meaning by the Act has the given meaning, and—

**"Annex I" or "Annex II"** means Annex I or Annex II to the Convention;

**"authorised organisation"** means an organisation authorised under regulation 7(1);

**"the Act"** means the *Merchant Shipping (Safe Containers Convention) Act, 2006* (Act No. <<> of 2006).

- (2) Unless the context indicates otherwise, an expression used in these regulations and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in these regulations, the meaning it has in the Convention.

### **3                      Application**

These regulations apply to new and existing containers used in international transport, except containers specially designed for air transport.

### **4                      Approval**

- (1) The owner of a container must ensure that it is approved and examined in accordance with Annex I and Annex II and has affixed to it, at a readily visible place, adjacent to any other approval plate given for official purposes, and where it will not easily be damaged, a Safety Approval Plate that conforms to the specifications set out in Annex I and contains the information, in at least the English language, specified in that Annex.

---

*Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment*

---

- (2) For subregulation(t), a container **may** be approved by—
  - (a) the government of a Contracting State;
  - (b) **an** organisation authorised by the government of a Contracting State;
  - (c) the Authority; or
  - (d) **an** authorised organisation.
- (3) The owner of **a** container must ensure that the Safety Approval Plate on the container is removed if—
  - (a) the container **has** been modified in a manner that would void the original approval and the information shown on the Safety Approval Plate;
  - (b) the container is removed from service and is not being maintained in accordance with regulation **5**; or
  - (c) the approval of the container has been revoked.

## **5 Maintenance**

- (1) The owner of a container must ensure that it is maintained in a safe condition.
- (2) The owner of an approved container must ensure that it is examined in accordance with Annex **1**.
- (3) The owner of a container who, in the case of a corporation, has its head office in the Republic or, in the case of an individual, his or her domicile in the Republic must submit in writing to the Authority for approval the procedure the owner proposes to use in respect of periodic examination of containers and must set out in the submission the following information:
  - (a) the number and type of containers owned;
  - (b) the date of manufacture of the containers that are to be examined;
  - (c) the trade in which the containers that are **to** be examined are engaged;
  - (d) the name of the person who will be carrying out the examinations and that person's relevant experience;
  - (e) the examination procedure to be used;
  - (f) the maximum proposed period between two consecutive examinations, which period may not exceed 30 months;
  - (g) the method to be used to mark the date by which the next examination will be carried out;
  - (h) **any** other information that the Authority may request to enable it to decide whether to give its approval to the proposed procedure.
- (4) If the Authority—

---

*Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: I comment*

---

- (a) approves the proposed procedure, it must give its approval in writing to the owner of the container; or
  - (b) refuses to approve the proposed procedure, it must give the reasons for its refusal in writing to the owner of the container.
- (5) Despite subregulation(3), the owner of a container who has its head office or domicile in any state that is not a party to the Convention but who has a place of business in the Republic may, in accordance with that paragraph, submit for approval the procedure it proposes to use in respect of the periodic examination of the container.
- (6) The owner of a container must keep for a period of at least two years a record of the last examination made in respect of the container in accordance with the procedure approved by the Authority under subregulation (3) or (5).

## **6 Repairs**

- (1) If there is significant evidence that the condition of a container creates an obvious risk to safety, the owner of the container or the owner's representative in the Republic must—
- (a) withdraw it immediately from service and ensure that it is restored to a safe condition before it continues in service; or
  - (b) arrange for its further transportation after appropriate measures have been taken to protect the structural integrity of the container.
- (2) If the container is to be repaired in the Republic for the purposes of restoring it to a safe condition, the owner of the container or the owner's representative in the Republic must submit it to a repair facility along with written specifications for its repair.
- (3) On completion of the repair, the owner of the repair facility or any person authorised by the owner for that purpose must give the owner of the container or the owner's representative in the Republic a written statement stating that the repair has been carried out at the repair facility in accordance with the written specifications for its repair.
- (4) The owner of a container or the owner's representative in the Republic who has submitted a container to a repair facility for repair pursuant to subregulation (2) must keep for a period of at least two years a record of the repair specifications and of the statement given in terms of subregulation (3).

## **7 Authorised organisations**

- (1) The Authority may, on application by an organisation, other than an organisation that is engaged in container ownership, leasing, repair, maintenance or manufacture, authorise the organisation to carry out

---

*Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment*

---

the testing, inspection and approval of containers for the purposes of the Convention.

- (2) The application must contain the following information:
  - (a) in the case of the testing, inspection and approval of containers —
    - (i) the name and description of the organisation;
    - (ii) a description of the geographical area covered by it;
    - (iii) a description of the capability it has to perform the functions described in subregulation (1);
    - (iv) a description of the technical personnel directly responsible for performing the functions described in subregulation (1), including the names and qualifications of the personnel, and a statement whether the employment is on a full time or part time basis;
    - (v) the number of containers to be tested in a series;
    - (vi) the number and frequency of inspections to be carried out;
    - (vii) the methods to be used to evaluate the capability of the work force of a manufacturer;
    - (viii) the methods to be used to ensure production control;
    - (ix) the type of testing equipment to be employed;
    - (x) a list of data that an owner may be required to submit;
    - (xi) the guidelines to be used in the evaluation of the applications for approval;
  - (b) any other information that is related to the approval of containers.
- (3) The organisation must advise the Authority if, at any time, there is **any** change in the information previously given in accordance with subregulation (2)(a).
- (4) The Authority may not authorise an organisation under subregulation (1) unless the organisation carries on business in the Republic.
- (5) However, for containers manufactured outside the Republic, the Authority may authorise an organisation that is not carrying on business in the Republic to perform, with respect to those containers, the functions referred to in subregulation (1), but those functions are to extend only to the cases specified by the Authority in the authorisation.
- (6) **An** authorised organisation must, if requested by the Authority, publish a schedule of fees for services provided by it in the performance of any of the functions referred to in subregulation (1). The schedule must be based on the actual costs incurred by the organisation.

---

*Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment*

---

- (7) At the end of each year, **an** authorised organisation must give the Authority a record of all container approvals made by it during that **year**.

## **8 Revocation of authorisation**

- (1) If **an** authorised organisation does not comply with a requirement set out in regulation **7(2), (3), (6) or (7)**, the Authority may revoke the authorisation granted under regulation 7(1).
- (2) When the Authority intends to revoke **an** authorisation, it must—
- (a) give notice to the authorised organisation concerned of its intention and the reasons for the revocation; **and**
  - (b) allow the authorised organisation a reasonable opportunity of being heard.

## **9 Detention**

- (1) **An** inspector may detain a container that does not carry a valid Safety Approval Plate as required by the Convention.
- (2) If there is significant evidence that the condition of a container creates an obvious risk to safety, **an** inspector may detain the container until it is restored to a safe condition.
- (3) **An** inspector may authorise a container that has been detained to be transported after appropriate measures have been taken to protect the structural integrity of the container.
- (4) **An** inspector who detains a container must, without delay, affix to it a notice to that effect and must send a written notice of the detention, together ~~with~~ the reasons for detention, to the person who, according to the information at the inspector's disposal, ~~is~~ the owner of the container.
- (5) No person may move or permit the moving of a container to which a notice of detention is affixed except in accordance with **an** authorisation given under subregulation (3).
- (6) **An** inspector must, without delay, release a container that has been detained under subregulation (1) if a valid Safety Approval Plate **as** required by the Convention has been affixed to the container.
- (7) **An** inspector must release a container that has been detained under subregulation (2) and that is to continue in service, **as** soon as ~~the~~ container has been restored to a safe condition.

## **10 Inquiries**

If an accident or incident referred to in section 10(1) of the Act involves—

*Draft Merchant Shipping (Safe Containers Convention) Bill and Regulations: For comment*

---

- (a) national defence, national security, the South African National Defence Force, a visiting force **as** defined in section 1(1) of the *Defence Act, 2002* (Act No. 42 of 2002), or employees of the Department of Defence; or
- (b) **property—**
  - (i) under the control of the Minister of Defence; or
  - (ii) that is owned, occupied, possessed or controlled by a visiting force **as** defined in section 1(1) of the *Defence Act, 2002*,

the Authority must obtain the concurrence of the Minister of Defence in the choice of the person or persons to be authorised to conduct an **inquiry** under that section.

## **11 Disposal of containers**

- (1) If a container is detained under these regulations **and** is not repossessed by the person entitled thereto within **60** days from the date of detention, the Authority may sell the container by public auction.
- (2) If the Authority sells a container, the proceeds of the sale must be used to defray the reasonable costs and expenditure incurred by the Authority in connection with the detention and sale of the container, and any balance remaining that is not claimed by a person entitled thereto within **30** days after the date of the sale is to be forfeited to the Maritime Fund established by section **38** of the *South African Maritime Safety Authority Act, 1998* (Act No. 5 of 1998).