

NOTICE 196 OF 2009

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: MERCHANT SHIPPING (LONG-RANGE IDENTIFICATION AND TRACKING OF SHIPS) REGULATIONS, 2009

The Minister of Transport is hereby publishing the abovementioned draft Regulations for public comments. Interested persons are requested to submit written comments on the draft Regulations by not later than 01 April 2009.

Comments should be posted to the Director-General, Department of Transport for the attention of Adv. Adam Masombuka at:

The Department of Transport
Private Bag x193
PRETORIA
0001

E-mail address: MasombuA@dot.gov.za
Tel : (012) 309-3888
Fax : (012) 309-3134

DEPARTMENT OF TRANSPORT

No. R. ...

... 2009

MERCHANT SHIPPING ACT, 1951 (ACT No. 57 OF 1951)

**MERCHANT SHIPPING (LONG-RANGE IDENTIFICATION AND TRACKING
OF SHIPS) REGULATIONS, 2008**

The Minister of Transport has, under section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), made the regulations in the Schedule.

SCHEDULE***Arrangement of regulations***

*Regulation
No.*

- | | |
|----|--|
| 1 | Title and commencement |
| 2 | Purpose of regulations |
| 3 | Definitions |
| 4 | Application |
| 5 | When must ship transmit LRIT reports |
| 6 | How must ship transmit LRIT reports |
| 7 | How often must ship transmit LRIT reports |
| 8 | When must ship be fitted with LRIT equipment |
| 9 | Which application service providers may ship use |
| 10 | When may LRIT equipment be switched off |
| 11 | What must master do if LRIT equipment switched off or fails to operate |
| 12 | Exemptions |
| 13 | Defects and detention |
| 14 | Authority may allow ship with defects to proceed to repair facility |
| 15 | Offences and penalties |

Annex—Regulation V/19-1 (Long-range identification and tracking of ships)

1 Title and commencement

- (1) These regulations are the Merchant Shipping (Long-Range Identification and Tracking of Ships) Regulations, 2008.
- (2) These regulations commence on publication in the *Gazette*.

2 Purpose of regulations

- (1) These regulations give effect to regulation V/19-1 (Long-range identification and tracking of ships) of the Safety Convention and require certain ships engaged on an international voyage to

transmit ship identification and position information electronically.

- (2) The English text of regulation V/19-1 is set out in the Annex for general information.

3 Definitions

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

"administration"—

- (a) for a South African ship, means—
- (i) except in regulation 9, the Authority; and
 - (ii) in regulation 9, the Director-General; and
- (b) for a foreign ship, means the government of the state whose flag the ship is entitled to fly;

"baseline" has the meaning it has in section 1 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"cargo ship" means any ship, including a high speed craft, that is not a passenger ship;

"Director-General" means the Director General of the Department of Transport;

"foreign ship" means a ship that is not a South African ship;

"gross tonnage", of a ship, means its gross tonnage calculated in accordance with the Tonnage Convention;

"high speed craft" means a craft capable of a maximum speed in metres per second equal to or exceeding $3.7 \times \text{displ}^{0.1667}$, where "displ" is the displacement corresponding to the design waterline in cubic metres;

"IMO" means the International Maritime Organisation;

"long-range identification and tracking (LRIT) report" means a report containing the following information:

- (a) the identity of the ship;
- (b) the position of the ship (latitude and longitude);

- (c) the date and time of the position provided;

"LRIT data centre" means a centre established by one or more contracting governments to the Safety Convention, or in the case of the International Data Centre, by IMO, to request, receive, process, and archive LRIT reports. An LRIT data centre may be national, regional, co-operative or international;

"mobile offshore drilling unit" means a self-propelled vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources;

"passenger ship" includes a high speed craft carrying more than 12 passengers;

"sea area A1", "sea area A2", "sea area A3" and "sea area A4" each has the meaning it has in regulation 2(1) of the Merchant Shipping (Radio Installations) Regulations, 2002;

"South African ship" includes an unregistered ship having South African nationality;

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

4 Application

- (1) These regulations apply to the following ships while engaged on an international voyage:
- (a) passenger ships;
 - (b) cargo ships of 300 gross tonnage or more;
 - (c) mobile offshore drilling units while underway and not engaged in drilling operations.
- (2) These regulations do not apply to—
- (a) ships used solely for sport or recreation;
 - (b) fishing, sealing or whaling boats;
 - (c) ships not propelled by mechanical means; or
 - (d) wooden ships of primitive build.

5 When must ship transmit LRIT reports

- (1) A South African ship must transmit LRIT reports wherever it is.
- (2) A foreign ship must transmit LRIT reports after the ship has announced its intention to enter a port in the Republic under requirements—
 - (a) in the Merchant Shipping (Maritime Security) Regulations, 2004; or
 - (b) in port rules under the National Ports Act, 2005 (Act No. 12 of 2005), if the ship is a cargo ship of less than 500 gross tonnage.
- (3) A foreign ship must otherwise transmit LRIT reports while the ship is within 1 000 nautical miles of the baseline of the Republic.
- (4) To avoid doubt, subregulations (1), (2) and (3) apply subject to any restrictions on the transmission or receipt of LRIT reports in accordance with regulations V/19-1.8.1 and V/19-1.9.1 of the Safety Convention.

6 How must ship transmit LRIT reports

- (1) A ship must transmit LRIT reports using long-range ship identification and tracking (LRIT) equipment that has been type-approved by the ship's administration.
- (2) For subregulation (1), the Authority may approve LRIT equipment if the equipment conforms to performance standards and functional requirements not inferior to those adopted by IMO and specified by the Authority in a marine notice as having been so adopted.¹
- (3) An approval by the Authority—
 - (a) must be in writing;
 - (b) must specify the period for which it is in force and any conditions on which it is given; and
 - (c) may be varied or cancelled after reasonable notice.

¹ IMO resolutions A.694(17) and MSC.263(84).

7 How often must ship transmit LRIT reports

A ship's LRIT equipment must transmit LRIT reports at 6-hour intervals unless a more frequent interval is requested remotely by an LRIT data centre.

8 When must ship be fitted with LRIT equipment

A ship must be fitted with LRIT equipment—

- (a) before the ship is put into operation, if the ship is constructed on or after 31 December 2008;
- (b) by the first survey of the radio installation after 31 December 2008, if the ship—
 - (i) is constructed before 31 December 2008; and
 - (ii) is certified to operate—
 - (aa) in sea areas A1 and A2; or
 - (bb) in sea areas A1, A2 and A3.
- (c) by the first survey of the radio installation after 1 July 2009, if the ship—
 - (i) is constructed before 31 December 2008; and
 - (ii) is certified to operate in sea areas A1, A2, A3 and A4;

however, the ship must be fitted with LRIT equipment in accordance with paragraph (b) when operating in sea areas A1, A2 and A3.

9 Which application service providers may ship use

- (1) A ship may use an application service provider (ASP) recognised by its administration.
- (2) For subregulation (1), the Director-General must recognise one or more ASPs for use by South African ships.

10 When may LRIT equipment be switched off

- (1) A ship may switch off its LRIT equipment only—
 - (a) when allowed by its administration, in circumstances set out in—

- (i) international agreements, rules or standards providing for the protection of navigational information; or
 - (ii) a resolution² adopted by IMO; or
 - (b) in exceptional circumstances and for the shortest duration possible where operation of the equipment is considered by the master to compromise the safety or security of the ship.
- (2) The Authority must consult the Director-General before allowing a ship to switch off its LRIT equipment under subregulation (1)(a).

11 What must master do if LRIT equipment switched off or fails to operate

- (1) If a ship's LRIT equipment is switched off or fails to operate, the ship's master must inform the ship's administration without undue delay.
- (2) The master must also make an entry in the ship's official logbook stating—
 - (a) the reason for switching off the LRIT equipment, or that the equipment has failed to operate; and
 - (b) the period during which the LRIT equipment was switched off or failed to operate.
- (3) If the Authority receives information referred to in subregulation (1), the Authority must inform the Director-General without undue delay.

12 Exemptions

- (1) The Authority may, in writing, exempt a ship or class of ships from the provisions of these regulations on the conditions (if any) that it specifies, and may, after reasonable notice, vary or cancel any such exemption.
- (2) However, the Authority must consult the Director-General before granting an exemption under subregulation (1).
- (3) In granting an exemption under subregulation (1), the Authority must act consistently with the Republic's obligations under the Safety Convention.

² Paragraph 4.4.1 of IMO resolution MSC.263(84).

13 Defects and detention

- (1) For the purposes of these regulations, section 223 (Surveyor may require that defects be made good) of the Act applies in relation to a ship to which these regulations apply as if the reference in subsection (1) of section 223, as shown in column 1 of an item in the following table, included the reference shown in column 2 of the item:

Item	Column 1	Column 2
1	that the provisions of section 73 or 221 or of the maritime occupational safety regulations are not being complied with	that the provisions of the Merchant Shipping (Long-Range Identification and Tracking of Ships) Regulations, 2008, are not being complied with
2	that the vessel is not equipped as required by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other applicable regulations	that the vessel is not equipped with LRIT equipment as required by the Merchant Shipping (Long-Range Identification and Tracking of Ships) Regulations, 2008

- (2) When considering whether a foreign ship complies with the requirements of these regulations, a proper officer or a surveyor (as the case may be) need not satisfy himself or herself in relation to regulation 6(1) or 9(1), if the ship's administration is a contracting government to the Safety Convention.

14 Authority may allow ship with defects to proceed to repair facility

- (1) If—
- (a) a ship's LRIT equipment is malfunctioning; and
 - (b) the ship is at a port in the Republic at which repair facilities are not readily available; and
 - (c) the Authority is satisfied that the ship can proceed safely and without threat to the security of the Republic to another specified port (within or outside the Republic) where repairs can be made,

the Authority may allow the ship to proceed directly to the specified port.

- (2) However, the Authority must consult the Director-General before allowing a ship to proceed under subregulation (1).

15 Offences and penalties

By master

- (1) The master of a ship commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months if—
- (a) the ship's LRIT equipment is switched off otherwise than in accordance with regulation 10;
 - (b) the master fails to comply with regulation 11;
 - (c) the ship is subject to an exemption under regulation 12 and fails to comply the any conditions of the exemption; or
 - (d) the ship is allowed, under regulation 14, to proceed to a specified port and the ship does not proceed directly to that port.
- (2) Subregulation (1) does not apply if the master has a reasonable excuse.

By others

- (3) If a master commits an offence in terms of subregulation (1) because of an act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence whether or not the master is prosecuted.
- (4) Subregulation (3) applies in relation to an offence in terms of subregulation (1) whether or not subregulation (2) applies in relation to that offence, but does not apply if the other person has a reasonable excuse.

ANNEX*(Regulation 2)***REGULATION V/19-1 (LONG-RANGE IDENTIFICATION AND TRACKING OF SHIPS)*****Regulation 19-1*****Long-range identification and tracking of ships***

1 Nothing in this regulation or the provisions of performance standards and functional requirements adopted by the Organization in relation to the long-range identification and tracking of ships shall prejudice the rights, jurisdiction or obligations of States under international law, in particular, the legal regimes of the high seas, the exclusive economic zone, the contiguous zone, the territorial seas or the straits used for international navigation and archipelagic sea lanes.

2.1 Subject to the provisions of paragraphs 4.1 and 4.2, this regulation shall apply to the following types of ships engaged on international voyages:

- .1 passenger ships, including high-speed passenger craft;
- .2 cargo ships, including high-speed craft, of 300 gross tonnage[†] and upwards; and
- .3 mobile offshore drilling units.

2.2 The term "ship", when used in paragraphs 3 to 11.2, includes the passenger and cargo ships, the high-speed craft and the mobile offshore drilling units which are subject to the provisions of this regulation.

3 This regulation establishes provisions to enable Contracting Governments to undertake the long-range identification and tracking of ships.

4.1 Ships shall be fitted with a system to automatically transmit the information specified in paragraph 5 as follows:

- .1 ships constructed on or after 31 December 2008;

* Adopted by IMO resolution MSC.202(81).

[†] The gross tonnage to be used for determining whether a cargo ship or high-speed craft is required to comply with the provisions of this regulation shall be that determined under the provisions of the International Convention on Tonnage Measurement of Ships, 1969 irrespective of the date on which the ship or high-speed craft has been or is being constructed.

- .2 ships constructed before 31 December 2008 and certified for operations:
 - .1 in sea areas A1 and A2, as defined in regulations IV/2.1.12 and IV/2.1.13; or
 - .2 in sea areas A1, A2 and A3, as defined in regulations IV/2.1.12, IV/2.1.13 and IV/2.1.14;not later than the first survey of the radio installation after 31 December 2008;
- .3 ships constructed before 31 December 2008 and certified for operations in sea areas A1, A2, A3 and A4, as defined in regulations IV/2.1.12, IV/2.1.13, IV/2.1.14 and IV/2.1.15, not later than the first survey of the radio installation after 1 July 2009. However, these ships shall comply with the provisions of subparagraph .2 above whilst they operate within sea areas A1, A2 and A3.

4.2 Ships, irrespective of the date of construction, fitted with an automatic identification system (AIS), as defined in regulation 19.2.4, and operated exclusively within sea area A1, as defined in regulation IV/2.1.12, shall not be required to comply with the provisions of this regulation.

5 Subject to the provisions of paragraph 4.1, ships shall automatically transmit the following long-range identification and tracking information:

- .1 the identity of the ship;
- .2 the position of the ship (latitude and longitude); and
- .3 the date and time of the position provided.

6 Systems and equipment used to meet the requirements of this regulation shall conform to performance standards and functional requirements not inferior to those adopted by the Organization. Any shipboard equipment shall be of a type approved by the Administration.

7 Systems and equipment used to meet the requirements of this regulation shall be capable of being switched off on board or be capable of ceasing the distribution of long-range identification and tracking information:

- .1 where international agreements, rules or standards provide for the protection of navigational information; or
- .2 in exceptional circumstances and for the shortest duration possible where the operation is considered by the master to compromise the safety or security of the ship. In such a case, the master shall inform the Administration without undue delay

and make an entry in the record of navigational activities and incidents maintained in accordance with regulation 28 setting out the reasons for the decision and indicating the period during which the system or equipment was switched off.

8.1 Subject to the provisions of paragraphs 8.2 to 11.2, Contracting Governments shall be able to receive long-range identification and tracking information about ships, for security and other purposes as agreed by the Organization, as follows:

- .1 the Administration shall be entitled to receive such information about ships entitled to fly its flag irrespective of where such ships may be located;
- .2 a Contracting Government shall be entitled to receive such information about ships which have indicated their intention to enter a port facility, as defined in regulation XI-2/1.1.9, or a place under the jurisdiction of that Contracting Government, irrespective of where such ships may be located provided they are not located within the waters landward of the baselines, established in accordance with international law, of another Contracting Government; and
- .3 a Contracting Government shall be entitled to receive such information about ships entitled to fly the flag of other Contracting Governments, not intending to enter a port facility or a place under the jurisdiction of that Contracting Government, navigating within a distance not exceeding 1,000 nautical miles of its coast provided such ships are not located within the waters landward of the baselines, established in accordance with international law, of another Contracting Government; and
- .4 a Contracting Government shall not be entitled to receive, pursuant to subparagraph .3, such information about a ship located within the territorial sea of the Contracting Government whose flag the ship is entitled to fly.

8.2 Contracting Governments shall specify and communicate to the Organization relevant details, taking into account the performance standards and functional requirements adopted by the Organization, to enable long-range identification and tracking information to be made available pursuant to the provisions of paragraph 8.1. The Contracting Government concerned may, at any time thereafter, amend or withdraw such communication. The Organization shall inform all Contracting Governments upon receipt of such communication together with the particulars thereof.

9.1 Notwithstanding the provisions of paragraph 8.1.3, the Administration shall be entitled, in order to meet security or other concerns, at any time, to decide that long-range identification and tracking information about ships entitled to fly its flag shall not be provided pursuant to the provisions of

paragraph 8.1.3 to Contracting Governments. The Administration concerned may, at any time thereafter, amend, suspend or annul such decisions.

9.2 The Administration concerned shall communicate, pursuant to paragraph 9.1, such decisions to the Organization. The Organization shall inform all Contracting Governments upon receipt of such communication together with the particulars thereof.

9.3 The rights, duties and obligations, under international law, of the ships whose Administration invoked the provisions of paragraph 9.1 shall not be prejudiced as a result of such decisions.

10 Contracting Governments shall, at all times:

- .1 recognize the importance of long-range identification and tracking information;
- .2 recognize and respect the commercial confidentiality and sensitivity of any long-range identification and tracking information they may receive;
- .3 protect the information they may receive from unauthorized access or disclosure; and
- .4 use the information they may receive in a manner consistent with international law.

11 .1 Contracting Governments shall bear all costs associated with any long-range identification and tracking information they request and receive. Notwithstanding the provisions of paragraph 11.2, Contracting Governments shall not impose any charges on ships in relation to the long-range identification and tracking information they may seek to receive.

11 .2 Unless the national legislation of the Administration provides otherwise, ships entitled to fly its flag shall not incur any charges for transmitting long-range identification and tracking information in compliance with the provisions of this regulation.

12 Notwithstanding the provisions of paragraph 8.1, the search and rescue services of Contracting Governments shall be entitled to receive, free of any charges, long-range identification and tracking information in relation to the search and rescue of persons in distress at sea.

13 Contracting Governments may report to the Organization any case where they consider that provisions of this regulation or of any other related requirements established by the Organization have not been or are not being observed or adhered to.

14 The Maritime Safety Committee shall determine the criteria, procedures and arrangements for the establishment, review and audit of the

provision of long-range identification and tracking information to Contracting Governments pursuant to the provisions of this regulation.