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GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

DEPARTMENT OF TRANSPORT
DEPARTEMENT VAN VERVOER

No. R. 719 **6 June 2003**

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

MERCHANT SHIPPING (INF CODE) REGULATIONS, 2003

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

Title and commencement

1. These regulations are called the Merchant Shipping (INF Code) Regulations, 2003, and come into operation upon publication in the *Gazette*.

Object of regulations

2. These regulations give effect to Part D of Chapter VII (Carriage of Dangerous Goods) 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—

"Certificate of Fitness" means the International Certificate of Fitness for the Carriage of INF Cargo referred to in paragraph 1.3.2 of the INF Code;

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

"IMO" means the International Maritime Organization;

"INF Code" means the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships adopted by IMO Maritime Safety Committee Resolution MSC.88(71), as may be amended from time to time;

"operator", in relation to a ship, includes any owner, charterer, manager or agent of the ship;

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

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

(2) Except in so far as the context indicates otherwise, a word or expression that is used in these regulations and in the INF Code (whether or not a particular meaning is given to it by the INF Code) has, in these regulations, the same meaning as in the INF Code.

(3) In interpreting the INF Code—

(a) the requirements of the Code having been made mandatory under regulation 5, the language thereof is to be construed accordingly, and in particular "should" is to be read as "shall";

(b) references to the Administration are, in relation to South African ships, to be read as references to the Authority.

Application

4. (1) Subject to subregulation (2), these regulations apply to every ship carrying INF cargo, and so apply to—

(a) South African ships wherever they may be; and

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

(2) These regulations do not apply to ships 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 regulation VII/15.2 of the Safety Convention, in relation to such ships.

Compliance with INF Code

5. Every ship must comply with the requirements of the INF Code as it applies to that ship and must be surveyed and certificated in accordance with those requirements.

Duty to hold Certificate of Fitness

6. (1) An operator or master must not accept INF cargo for carriage in a ship unless there is on board and in force in respect of that ship a valid Certificate of Fitness covering the INF cargo to be carried.

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

(a) in the case of a South African ship, it has ceased to be valid in terms of regulation 7(3) or has been cancelled under regulation 8(1); or

(b) in the case of any other ship, it has ceased to be valid in terms of paragraph 1.3.4 of the INF Code, or has been cancelled under the authority of the government of the State whose flag the ship is entitled to fly.

Survey and certification

7. (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 ship comply with the requirements of the INF Code it must issue to the ship's operator a Certificate of Fitness certifying compliance with the INF Code.

(2) A ship 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 INF Code.

(3) A Certificate of Fitness issued under subregulation (1) ceases to be valid—

(a) if any inspection of the ship required by section 190(2) of the Act has not been carried out or has shown that the ship does not comply with the requirements of the INF Code;

(b) upon the expiry, in accordance with section 197 of the Act, of a certificate of the ship; or

(c) upon the cancellation, under section 198 of the Act, of a certificate of the ship.

Cancellation of Certificate of Fitness, etc

8. (1) The Authority may, by written notice, cancel any Certificate of Fitness issued under these regulations where it believes on reasonable grounds that the certificate was issued on false or wrong information.

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

(3) No person may—

(a) intentionally alter a Certificate of Fitness;

(b) in connection with any inspection pursuant to these regulations, knowingly or recklessly furnish information that is false or misleading in a material particular;

(c) with intent to deceive, use, lend or allow to be used by another, a Certificate of Fitness;

(d) fail to surrender a Certificate of Fitness required to be surrendered under subregulation (2); or

(e) forge any Certificate of Fitness.

Duty to report certain incidents involving INF cargo

9. (1) In this regulation "incident" includes any damage to, or failure or breakdown of, a ship carrying INF cargo that—

(a) affects the safety of the ship, including but not limited to, collision, grounding, fire explosion, structural failure, flooding and cargo shifting; or

(b) results in the impairment of the safety of navigation, including the failure or breakdown of steering gear, propulsion system, electrical generating system, and essential shipborne navigational aids.

(2) If an incident occurs in relation to a ship, the ship's master must, without delay, notify, in accordance with subregulation (4)—

(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.

(3) If an incident occurs in relation to a ship and—

No. R. 719 **6 Junie 2003**

HANDELSKEEPVAARTWET, 1951 (WET No. 57 VAN 1951)

HANDELSKEEPVAARTREGULASIES (IKB-KODE), 2003

Die Minister van Vervoer het kragtens artikel 356 van die Handelskeepvaartwet, 1951 (Wet No. 57 van 1951), die regulasies in die Bylae uitgevaardig.

BYLAE

Titel en inwerkingtreding

1. Hierdie regulasies heet die Handelskeepvaartregulasies (IKB-kode), 2003, en tree in werking op publikasie in die *Staatskoerant*.

Doel van regulasies

2. Hierdie regulasies implementeer Deel D van Hoofstuk VII (Vervoer van Gevaarlike Goedere) van die Veiligheidskonvensie.

Uitleg

3. (1) In hierdie regulasies het enige woord of uitdrukking waaraan daar in die Wet 'n betekenis geheg is, daardie betekenis, en tensy dit uit die samehang anders blyk, beteken—

"die Wet" die Handelskeepvaartwet, 1951 (Wet No. 576 van 1951);

"Geskiktheidsertifikaat" die Internasionale Geskiktheidsertifikaat vir die Vervoer van IKB-vrag in paragraaf 1.3.2 van die IKB-kode bedoel;

"IMO" die Internasionale Maritieme Organisasie;

"IKB-kode" die Internasionale Kode vir die Veilige Vervoer van Verpakte Bestraalde Kernbrandstof, Plutonium en Hoëvlak Radioaktiewe Afval aan Boord van Skepe, aangeneem deur die IMO-maritiemeveiligheidskomitee se resolusie MSC.88(71), soos van tyd tot tyd gewysig;

"oortree", met betrekking tot 'n bepaling van hierdie regulasies, ook versuim of weier om aan daardie bepaling te voldoen;

"operateur", met betrekking tot 'n skip, ook enige eienaar, bevragter, bestuurder of agent van die skip;

"Suid-Afrikaanse skip" ook 'n ongeregistreerde skip met Suid-Afrikaanse nasionaliteit.

(2) Behalwe in soverre dit uit die samehang anders blyk, het 'n woord of uitdrukking wat in hierdie regulasies en in die IKB-kode (ongeag of 'n bepaalde betekenis deur die

IKB-kode daaraan geheg is al dan nie) gebruik word, in hierdie regulasies dieselfde betekenis as in die IKB-kode.

(3) By die uitleg van die IKB-kode—

(a) aangesien die vereistes van die IKB-kode kragtens regulasie 5 verpligtend gemaak is, moet die taal daarvan dienooreenkomstig uitgelê word, en in die besonder moet "behoort" as "moet" uitgelê word;

(b) moet verwysings na die Administrasie, met betrekking tot Suid-Afrikaanse skepe, as verwysings na die Owerheid gelees word.

Toepassing

4. (1) Behoudens subregulasie (2) is hierdie regulasies van toepassing op elke skip wat IKB-vrag dra, en is aldus van toepassing op—

(a) Suid-Afrikaanse skepe ongeag waar hulle is; en

(b) ander skepe in die Republiek of sy territoriale waters.

(2) Hierdie regulasies is nie van toepassing nie op skepe wat deur die regering van 'n ander Staat besit of bedryf word en wat voorlopig net op nie-kommersiële regeringsdiens gebruik word, indien gepaste maatreëls getref is in ooreenstemming met regulasie VII/15.2 van die Veiligheidskonvensie, met betrekking tot sodanige skepe.

Voldoening aan IKB-kode

5. Elke skip moet aan die vereistes van die IKB-kode voldoen soos dit op daardie skip van toepassing is en moet opgemeet en gesertifiseer word in ooreenstemming met daardie vereistes.

Plig om Geskiktheidsertifikaat te hou

6. (1) 'n Operateur of gesagvoerder mag nie IKB-vrag vir vervoer in 'n skip aanvaar nie tensy daar 'n geldige Geskiktheidsertifikaat aan boord en van krag is ten opsigte van daardie skip, wat die IKB-vrag dek wat vervoer moet word.

(2) Vir doeleindes van hierdie regulasie is 'n Geskiktheidsertifikaat nie geldig nie indien—

(a) in die geval van 'n Suid-Afrikaanse skip, dit ingevolge regulasie 7(3) opgehou het om geldig te wees of kragtens regulasie 8(1) gekanselleer is; of

(b) in die geval van enige ander skip, dit opgehou het om geldig te wees ingevolge paragraaf 1.3.4 van die IKB-kode of gekanselleer is op gesag van die regering van die Staat wie se vlag die skip geregtig is om te voer.

Opneming en sertifisering

7. (1) Indien die Owerheid na oorweging van die verslag van 'n opnemer oortuig is dat die struktuur, toerusting, toebehore, inrigtings en materiaal van 'n Suid-Afrikaanse skip

Misdrywe en strawwe

11. (1) Enige oortreding van regulasie 5 of 6(1) is 'n misdryf aan die kant van die skip se gesagvoerder en elke persoon wat 'n operateur van die skip is, en is by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(2) Enige oortreding van regulasie 8(3) is 'n misdryf wat by skuldigbevinding strafbaar is met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(3) Enige oortreding van regulasie 9(2) deur 'n skip se gesagvoerder is 'n misdryf wat by skuldigbevinding strafbaar is met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(4) Enige oortreding van regulasie 9(3) is 'n misdryf aan die kant van elke persoon wat 'n operateur of 'n agent van 'n operateur van die skip is, en is by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(5) Enige oortreding van regulasie 9(5) of (6) is 'n misdryf wat by skuldigbevinding strafbaar is met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

Verwere

12. (1) In verrigtinge vir 'n oortreding van regulasie 5 of 6(1) is dit 'n verweer om aan te toon dat die beskuldigde redelike voorsorg getref het en die nodige noulettendheid toegepas het om die begaan van die misdryf te vermy.

(2) In verrigtinge vir 'n oortreding van regulasie 9(2) of (5) met betrekking tot 'n voorval is dit 'n verweer om aan te toon dat die beskuldigde nie in staat was om aan regulasie 9(2) te voldoen nie met betrekking tot die voorval.

(3) In verrigtinge vir 'n oortreding van regulasie 9(3) met betrekking tot 'n voorval is dit 'n verweer om aan te toon—

(a) dat die beskuldigde nie van die voorval bewus was nie;

(b) in die geval van 'n voorval waarop regulasie 9(3)(a) van toepassing is, dat die beskuldigde nóg geweet het nóg vermoed het dat die skip se gesagvoerder nie met betrekking tot die voorval aan regulasie 9(2) voldoen het nie; of

(c) dat die beskuldigde andersins nie in staat was om met betrekking tot die voorval aan regulasie 9(2) te voldoen nie.

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