

Government Notice No. 298 of 2020

THE MERCHANT SHIPPING ACT

Regulations made by the Minister under section 228 of the Merchant Shipping Act

1. Short title

These regulations may be cited as the Merchant Shipping (Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form) Regulations 2020.

2. Interpretation

In these regulations –

“Act” means the Merchant Shipping Act;

“Annex III” means Annex III to MARPOL;

“discharge”, in relation to harmful substances or effluents containing such substances –

- (a) means any release from a ship however caused; and
- (b) includes any escape, disposal, spilling, leaking, pumping, emitting or emptying; but
- (c) does not include –
 - (i) dumping within the meaning of the London Convention; or
 - (ii) a release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of sea-bed mineral resources; or

- (iii) a release of harmful substances for purposes of legitimate scientific research into pollution abatement or control;

“harmful substance” means substances –

- (a) which are identified as marine pollutants in the IMDG Code and includes empty packaging which have been used previously for the carriage of harmful substances unless adequate precautions have been taken to ensure that they contain no residue that is harmful to the marine environment; or
- (b) which meet the criteria specified in the Schedule;

“IMDG Code” means the International Maritime Dangerous Goods Code adopted by the Maritime Safety Committee of IMO under Resolution MSC.122(75), as may be amended from time to time;

“incident” means an event involving the actual or probable discharge into the sea of a harmful substance, or effluents containing such a substance;

“London Convention” means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London 13 November 1972;

“marine pollutant” means a substance which is identified as a marine pollutant in the IMDG Code;

“MARPOL” means the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978, and its Protocols and Annex III, as may be amended from time to time;

“MARPOL State” means a State which is a party to MARPOL;

“port” has the same meaning as in the Ports Act;

“maritime zones” has the meaning as in the Maritime Zones Act;

“Noxious Liquid Substances Regulations” means the Merchant Shipping (Prevention of Pollution by Oil and Noxious Liquid Substances in Bulk) Regulations 2019;

“packaged form” means the forms of containment specified for harmful substances in the IMDG Code;

“ship” –

(a) has the same meaning as in the Act; and

(b) includes floating craft and fixed or floating platforms.

3. Application of regulations

(1) Subject to this regulation, these regulations shall apply to –

(a) a Mauritius ship, wherever it may be; and

(b) another ship, while it is within the maritime zones,

which carries harmful substances in packaged form.

(2) These regulations shall not apply to –

(a) a warship, a naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service; but

(b) a ship referred to in paragraph (a) shall, as far as is reasonable and practicable, comply with these regulations when this does not impair the operations or operational capabilities of the ship.

(3) These regulations shall not apply to ships’ stores and equipment.

(4) Regulation 6(1)(b) shall not apply where jettisoning of harmful substances in packaged form is necessary for the purpose of securing the safety of the ship or saving life at sea.

4. MARPOL to have force of law

MARPOL and Annex III shall have force of law in Mauritius.

5. Compliance with prescribed requirements

Every ship shall comply with the requirements of the Merchant Shipping Notice issued by the Director to supplement the provisions of these regulations.

6. Prohibition on carriage, shipment and jettisoning of harmful substances

(1) No person shall –

- (a) on board a ship, carry harmful substances in packaged form except in accordance with these regulations;
- (b) from a ship, jettison harmful substances in packaged form, except as provided for in regulation 3(4).

(2) No person shall ship or offer for shipment from Mauritius any harmful substances in packaged form except in accordance with these regulations.

7. Packing

Every package shall, having regard to its specific contents, be adequate to minimize the hazard to the marine environment.

8. Marking and labelling

(1) Every package which contains a harmful substance shall be –

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- (a) durably marked with the correct technical name; and
 - (b) durably marked or labelled to indicate that the substance is a marine pollutant.
- (2) For the purposes of paragraph (1) –
- (a) trade names alone shall not be used to identify a harmful substance; and
 - (b) the identification of a harmful substance shall be supplemented where possible by any other means, such as by the use of the relevant United Nations number.
- (3) The method of marking the correct technical name and of affixing labels on packages containing a harmful substance shall be such that the information therein shall still be identifiable on those packages surviving at least 3 months' immersion in the sea.
- (4) In considering suitable marking and labelling, account shall be taken of the durability of the materials used and of the surface of the package.
- (5) A package which contains small quantities of harmful substances may be exempted from the marking requirements in accordance with the specific exemptions provided for in the IMDG Code.

9. Documentation

- (1) Where substances are named in a document relating to the carriage of harmful substances by sea, the correct technical name of those substances shall be used in accordance with the relevant provisions of the IMDG Code.

(2) For the purposes of paragraph (1), trade names alone shall not be used to identify a harmful substance.

(3) Every shipping document supplied by a shipper shall include, or be accompanied by, a signed certificate or declaration that the shipment offered for carriage is properly packaged and marked or labelled and in proper conditions for carriage to minimize the hazard to the marine environment.

(4) Every ship which carries harmful substances shall have –

- (a) a special list or manifest setting forth the harmful substances on board and their location; or
- (b) a detailed stowage plan which sets out the location of the harmful substances on board.

(5) Copies of the documents referred to in paragraph (4) shall also be retained on shore by the owner of the ship or the owner's representative until the harmful substances are unloaded, and a copy of one of these documents shall be made available before departure upon request to the Director.

(6) Where a ship carries a special list or manifest, or a detailed stowage plan, required for the carriage of dangerous goods by the Safety Convention, the documents required by this regulation may be combined with those for dangerous goods, and where such documents are combined a clear distinction shall be made between dangerous goods and harmful substances referred under these regulations.

10. Stowage

Harmful substances shall be properly stowed and secured so as to minimize the hazard to the marine environment without impairing the safety of the ship and persons on board.

11. Quantity limitations

(1) The Director may, for sound scientific and technical reasons, prohibit the carriage of certain harmful substances or limit the quantity of such substances which may be carried on board any one ship.

(2) In limiting the quantity of the substances pursuant to paragraph (1), due consideration shall be given to the size, construction and equipment of the ship, as well as the packaging and the inherent nature of the substances.

12. Exceptions

Subject to the provisions of the Noxious Liquid Substances Regulations 2019, appropriate measures based on the physical, chemical and biological properties of harmful substances shall be taken to regulate the washing of leakages overboard, provided that compliance with such measures would not impair the safety of the ship and persons on board.

13. Inspection of ships

(1) A surveyor may board any ship while it is in a port or place in Mauritius, for the purposes of determining whether there is on board valid documentation as required under regulation 9.

(2) A surveyor may undertake a further physical inspection of the ship where –

(a) he has reasonable grounds to believe that –

(i) the condition of the ship or its equipment does not correspond substantially with the particulars of any document inspected under paragraph (1); or

- (ii) the ship is not carrying valid documentation as required under regulation 9; or
 - (iii) the master or crew is not familiar with essential shipboard procedures relating to the prevention of pollution by harmful substances; or
- (b) he suspects that the ship has discharged harmful substances in breach of these regulations, and the contents of the documents inspected are not sufficient to confirm whether or not such a violation has occurred.

(3) The results of any investigation carried pursuant to this regulation shall be reported to the Director.

14. Action following inspection

(1) Where a surveyor reports to the Director that the condition of a ship or its equipment does not correspond substantially with the particulars of the documents inspected under regulation 13, or that the ship does not carry valid documents as required under regulation 9, the Director shall take the necessary steps to ensure that the ship does not proceed to sea until it can do so without presenting an unreasonable threat of harm to the marine environment.

(2) Notwithstanding paragraph (1), the Director may permit a ship referred to in that paragraph to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard.

(3) Where the surveyor reports to the Director that the master or crew is not familiar with essential shipboard procedures relating to the prevention of pollution by harmful substances, the Director shall take the necessary steps to ensure that the ship does not sail until the situation has been rectified in accordance with these regulations.

15. Investigation of suspected discharge violations

Where the Director has reasonable grounds to believe that a ship has discharged harmful substances in breach of these regulations in the maritime zones, or that a ship in any port or place in Mauritius has discharged harmful substances outside the maritime zones in violation of Annex III, the Director shall cause the matter to be investigated and he may request any person to furnish further evidence of the alleged contravention.

16. Discharge violations outside the maritime zones

(1) Where the Director is satisfied that there is sufficient evidence that a ship in any port or place in Mauritius has discharged harmful substances outside the maritime zones in violation of Annex III, the Director may cause proceedings to be instituted against the owner or master of the ship.

(2) No proceedings pursuant to paragraph (1) shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the maritime zones.

(3) (a) Any proceedings instituted by Mauritius under paragraph (1) may be suspended at the request of that State when the violation has occurred within its internal waters, territorial sea or exclusive economic zone.

(b) In that event the evidence and records of the case, together, with any bond or other financial security posted with the Mauritius authorities shall be transmitted to that State.

17. Violations within the maritime zones

(1) When a ship in any port or place in Mauritius has contravened these regulations while within the maritime zones, the Director may cause proceedings to be instituted against the owner or master of the ship.

(2) Where the Director has reasonable grounds to believe that a ship navigating in the territorial sea of Mauritius has contravened these regulations during its passage therein, the Director may cause a physical inspection of the ship relating to the violation to be undertaken and, where the Director is satisfied that the evidence so warrants, he may cause proceedings to be instituted against the owner or master of the ship and may detain the ship.

(3) Where the Director has reasonable grounds to believe that a ship navigating in the maritime zones has contravened these regulations in the exclusive economic zone of Mauritius, the Director may require the ship to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

(4) Where the Director has reasonable grounds to believe that a ship navigating in the maritime zones has contravened these regulations in the exclusive economic zone of Mauritius, resulting in a substantial discharge causing or threatening significant pollution of the marine environment, the Director may cause a physical inspection of the ship to be undertaken to gather evidence relating to be suspected violation, where –

- (a) the ship has refused to give information; or
- (b) the information supplied by the ship is manifestly at variance with the evident factual situation; and
- (c) the circumstances of the case justify such inspection.

(5) Where the Director has reasonable grounds to believe that a ship navigating in the maritime zones has contravened these regulations in the exclusive economic zone of Mauritius, resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of Mauritius, or to any resources of its maritime zone, the Director may cause proceedings to be instituted against the owner or master of the ship and may detain the ship.

18. Violations by Mauritius ships

(1) Where the Director has reasonable grounds to believe that a Mauritius ship has contravened these regulations, the Director shall cause the matter to be investigated immediately and shall, where appropriate, cause proceedings to be instituted in respect of the alleged violation irrespective of where it occurred.

(2) The master of a Mauritius ship, while the ship is navigating in the territorial sea or exclusive economic zone of another MARPOL State, shall comply with any reasonable requests for information made by that State for the purposes of establishing whether a violation of Annex III has occurred in the waters of that State.

19. Maritime casualties

(1) Nothing in these regulations shall prejudice the right of Mauritius to take and enforce measures within and beyond Mauritius waters in accordance with its laws to protect its coastline or related interests from pollution or the threat of pollution following a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences.

(2) In this regulation –

“maritime casualty” means a collision of vessels, stranding or other incident of navigation, or other occurrence on

board a vessel or external to a resulting in material damage or imminent threat of material damage to a vessel or cargo.

20. Power to detain ships

(1) In any case where the Director has reasonable grounds to believe that a ship in any port or place in Mauritius has contravened these regulations, or where the Director considers that the ship is unable to proceed to sea without presenting an unreasonable threat of harm to the marine environment, the Director may cause the ship to be detained.

(2) A ship which is detained on the grounds that it has contravened of these regulations shall be released upon the posting of a reasonable bond or other financial security to the satisfaction of the Director, provided it is able to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

21. Offences

Where the master or owner of a ship fails to comply with these regulations, the owner or master of the ship shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.

22. Commencement

These regulations shall come into operation on 15 December 2020.

Made by the Minister on 8 December 2020.

SCHEDULE
[Regulation 2]



**CRITERIA FOR THE IDENTIFICATION OF HARMFUL
SUBSTANCES IN PACKAGES FORM**

For the purpose of this Form, substances, other than radioactive materials, * identified by the following criteria are harmful substances –

Acute (short-term) aquatic hazard

Category: Acute 1	
96 hr LC ₅₀ (for fish)	≤ 1 mg/L and/or
48 hr EC ₅₀ (for crustacean)	≤ 1 mg/L and/or
72 or 96 hr ErC ₅₀ (for algae or other aquatic plants)	≤ 1 mg/L

Long-term aquatic hazard

Non-rapidly degradable substances for which there are adequate chronic toxicity data available

Category: Chronic 1	
Chronic NOEC or EC _x (for fish)	≤ 0.1 mg/L and/or
Chronic NOEC or EC _x (for crustacean)	≤ 0.1 mg/L and/or
Chronic NOEC or EC _x (for algae or other aquatic plants)	≤ 0.1 mg/L
Category: Chronic 2	
Chronic NOEC or EC _x (for fish)	≤ 1 mg/L and/or
Chronic NOEC or EC _x (for crustacean)	≤ 1 mg/L and/or
Chronic NOEC or EC _x (for algae or other aquatic plants)	≤ 1 mg/L

Rapidly degradable substances for which there are adequate chronic toxicity data available

Category: Chronic 1

Chronic NOEC or EC_x (for fish) ≤ 0.01 mg/L and/or

Chronic NOEC or EC_x (for crustacean) ≤ 0.01 mg/L and/or

Chronic NOEC or EC_x (for algae or other aquatic plants) ≤ 0.01 mg/L

Category: Chronic 2

Chronic NOEC or EC_x (for fish) ≤ 0.1 mg/L and/or

Chronic NOEC or EC_x (for crustacean) ≤ 0.1 mg/L and/or

Chronic NOEC or EC_x (for algae or other aquatic plants) ≤ 0.1 mg/L

*Refer to class 7, as defined in chapter 2.7 of the IMDG Code.

†The criteria are based on those developed by the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS), as amended. For definitions of acronyms or terms used in this appendix, refer to the relevant paragraphs of the IMDG Code.

Substances for which adequate chronic toxicity data are not available

Category: Chronic 1

96 hr LC₅₀ (for fish) ≤ 1 mg/L and/or

48 hr EC₅₀ (for crustacean) ≤ 1 mg/L and/or

72 or 96 hr ErC₅₀ (for algae or other aquatic plants) ≤ 1 mg/L

and the substance is not degradable and/or
the experimentally determined BCF is ≥ 500
(or, if absent, the log K_{ow} ≥ 4)

Category: Chronic 2

96 hr LC ₅₀ (for fish)	> 1 mg/L but ≤ 10mg/L and/or
48 hr EC ₅₀ (for crustacean)	> 1 mg/L but ≤ 10mg/L and/or
72 or 96 hr ErC ₅₀ (for algae or other aquatic plants) and the substance is not rapidly degradable and/or the experimentally determined BCF is ≥ 500 (or, if absent, the log K _{ow} ≥ 4)	> 1 mg/L but ≤ 10mg/L

Additional guidance on the classification process for substances and mixtures is included in the IMDG Code.
