



**BERMUDA**

**MERCHANT SHIPPING (PREVENTION OF AIR POLLUTION FROM SHIPS)  
REGULATIONS 2023**

**BR 103 / 2023**

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SCHEDULE 1

Gross Tonnage

SCHEDULE 2

Rules for the Calculation of Tonnage

The Minister responsible for Maritime Administration, in exercise of the power conferred by section 122 of the Merchant Shipping Act 2002, makes the following Regulations:

**PART 1**

**PRELIMINARY**

**Citation**

1 These Regulations may be cited as the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2023.

**Interpretation**

2 (1) In these Regulations—

“additional survey” means a survey carried out under regulation 10(1)(e);

“Administration” means—

(a) in relation to Bermuda or a Bermuda ship, the BSMA; and

(b) in relation to—

(i) a State other than Bermuda; or

(ii) a ship other than a Bermuda ship,

the maritime administration of the ship’s flag State or, if none, the government of the flag State;

“Annex VI” means Annex VI to the Convention, which was added to the Convention by the Protocol of 1997, and includes—

(a) all amendments to that Annex adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made; and

(b) any subsequent amendment to that Annex which takes effect in accordance with regulation 3;

“anniversary date” means the day and month of each year which will correspond to the date of expiry of the latest IAPP Certificate or IEE Certificate, as the case may be, which has been issued and which is still valid in respect of the ship in question;

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“annual survey” means a survey carried out under regulation 10(1)(d);

“Bermuda controlled waters” means—

- (a) the inland waters of Bermuda; and
- (b) the territorial waters and Exclusive Economic Zone of Bermuda as prescribed by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2020 as areas within which the jurisdiction and rights of Bermuda are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea 1982;

“Bermuda ship” has the meaning given by section 2(1) of the Act;

“Bermuda waters” has the meaning given by section 2(1) of the Act;

“BSMA” means the Bermuda Shipping and Maritime Authority established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

“calendar year” means the period from 1 January until 31 December;

“Certifying Authority” means—

- (a) the BSMA; or
- (b) any organisation which is an authorised organisation for the purposes of IMO Assembly Resolution A739.(18), and IMO Assembly Resolution A789.(19) and which has a valid agreement with the BSMA;

“CEO” means the Chief Executive Officer appointed under section 25 of the Bermuda Shipping and Maritime Authority Act 2016;

“company” means—

- (a) the owner of the ship; or
- (b) any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the IMO by resolution A.741(18);

“Contracting Government” means the Government of a State which has consented to be bound by the Convention, and for which the Protocol of 1997 to the Convention is in force;

“Convention” means the International Convention for the Prevention of Pollution from Ships 1973, and includes—

- (a) all the amendments adopted by the Marine Environment Protection Committee of the IMO on or before the date on which these Regulations are made; and

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(b) any subsequent amendment which takes effect in Bermuda in accordance with regulation 3;

“date of expiry”, in relation to an IAPP Certificate or an IEE Certificate, means the last day of the period specified in that certificate as the period for which the certificate is valid;

“direct replacement” means the direct replacement of equipment and fittings with equipment and fittings that conform with Annex VI;

“emission” means any release of a substance subject to control by these Regulations from a ship into the atmosphere or sea;

“exclusive economic zone” in relation to a foreign State, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured;

“Fees Regulations” means the Merchant Shipping (Fees) Regulations 2023;

“flag State” in relation to a ship, means the State whose flag the ship is entitled to fly;

“foreign State” means a State other than Bermuda;

“fuel oil” means any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including gas, distillate and residual fuels;

“fuel oil supplier” means a person who—

- (a) delivers fuel oil to a ship; or
- (b) is responsible for the final blend of fuel oil to be used on a ship which is delivered to the ship;

“fuel oil supplier’s representative” means a person appointed by a fuel oil supplier to provide a declaration on the bunker delivery note that the fuel supplied complies with regulation 45(2) or Regulation VI/18.3, as the case may be;

“gas fuel” includes liquefied natural gas, compressed natural gas or liquified petroleum gas;

“gross tonnage” means gross tonnage of a ship determined for the purposes of these Regulations in accordance with Schedule 1;

“harbour authority” has the same meaning as in section 2(1) of the Act;

“harbour master” has the same meaning as in section 149(1) of the Act;

“IAPP Certificate” means an International Air Pollution Prevention Certificate issued in accordance with regulation 12, 13 or 14 or Regulation VI/6.1;

“IEE Certificate” means an International Energy Efficiency Certificate issued in accordance with regulation 15, 16 or 17 or Regulation VI/6.4;

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- “IMO” means the International Maritime Organization;
- “initial survey” means a survey carried out under regulation 10(1)(a);
- “intermediate survey” means a survey carried out under regulation 10(1)(c);
- “international voyage” means a voyage from the port or offshore installation of one State to the port or offshore terminal under the jurisdiction of another State;
- “major conversion”, in relation to a marine diesel engine has the meaning given in regulation 31(6);
- “marine diesel engine” has the meaning given in regulation 31(6);
- “Merchant Shipping Notice” means a Notice described as such and issued by the BSMA or an equivalent UK Merchant Shipping Notice which the BSMA specifies as being applicable;
- “nautical mile” means an international nautical mile of 1,852 metres;
- “new installation” means the installation of systems, equipment, including new portable fire extinguishing units, insulation, or other material on a ship, but excludes repair or recharge of previously installed systems, equipment, insulation, or other material, and excludes recharge of portable fire extinguishing units;
- “new ship” has the meaning given in Regulation VI/2.23;
- “non-Bermuda ship” means a ship which is not a Bermuda ship;
- “NOx Emission Control Area” means an area designated under Regulation VI/13;
- “NOx Technical Code” means the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines 2008 and includes any document amending or replacing it in accordance with regulation 3;
- “noxious liquid substance” has the meaning given in Regulation 1.10 of Annex II to the Convention;
- “offshore terminal” means an installation situated away from the shore, where bulk, fluid or gas cargo (or more than one of these) is—
- (a) transferred between ships;
  - (b) loaded onto a ship after having been transported from the shoreline; or
  - (c) unloaded from a ship for transporting to the shoreline;
- “ozone-depleting substance” means a controlled substance defined in paragraph 4 of article 1 of the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 listed in Annex A, B, C or E to that Protocol and includes the substances listed in Regulation VI/1.25;
- “platform” includes fixed and floating platforms and drilling rigs;

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“Polar Code” means the International Code for Ships Operating in Polar Waters, consisting of an Introduction, parts I-A and II-A and parts I-B and II-B, as adopted by resolutions MSC.385(94) and MEPC.264(68) of the IMO;

“port State Control Regulations” means the Merchant Shipping (Port State Control) Regulations 2020;

“Protocol of 1997” means the Protocol to amend the Convention, dated 26 September 1997;

“renewal survey” means a survey carried out under regulation 10(1)(b);

“sea” includes any estuary or arm of the sea;

“SEEMP” means a plan entitled “Ship Energy Efficiency Management Plan” which is required by, and prepared and maintained in accordance with, Regulation VI/26;

“ship” means a vessel of any type, including a hydrofoil boat, an air-cushion vehicle, a submersible, a floating craft and a platform, which is operating in the marine environment;

“shipboard incineration” means the incineration on board a ship, of wastes or other matter generated during the normal operation of the ship;

“shipboard incinerator” means a shipboard facility designed for the primary purpose of incineration;

“short voyage” means a voyage which—

(a) does not exceed 1,000 nautical miles between the last port of call in the State in which the voyage begins and the last port of call in the voyage before beginning any return voyage; and

(b) on any return voyage does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the State in which the voyage began,

and for the purposes of this definition, no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the company of the ship could have prevented or forestalled;

“sludge oil” means sludge from fuel or lubricating oil separators, waste lubricating oil from main or auxiliary machinery, or waste oil from bilge water separators, oil filtering equipment or drip trays;

“State” includes a territory;

“Statement of Compliance” means a Statement of Compliance relating to fuel oil consumption reporting issued in accordance with regulation 18 or Regulation VI/6.6 or VI/6.7, as the case may be;

“substantial modification” has the meaning given in the NOx Technical Code;



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“sulphur oxide emission control area” means an area designated under Regulation VI/14;

“surveyor” means—

- (a) a surveyor of ships; or
- (b) any other person appointed by a Certifying Authority (other than the BSMA) to be a surveyor for the purposes of the Regulations;

“tanker” means—

- (a) an oil tanker as defined in Regulation 1.5 of Annex I to the Convention; or
- (b) a chemical tanker as defined in Regulation 1.16.1 of Annex II to the Convention;

“terminal operator” means the person who controls the activities of any terminal, jetty, pier, floating structure or other work within a port at which ships can obtain shelter or ship and unship goods or passengers;

“UK Merchant Shipping Notice” means a notice described as such and issued by the Secretary of State, and any reference to a particular Notice includes a reference to a Notice amending or replacing that Notice;

“Unmanned non-self-propelled (UNSP) barge” means a barge that—

- (a) is not propelled by mechanical means;
- (b) has no system, equipment or machinery or both, fitted, that may generate emissions regulated by Annex VI; and
- (c) has neither persons nor living animals on board;

“warship” , means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer commissioned by the Government of the State and whose name appears in the appropriate service list or its equivalent, and the crew of which is under regular armed forces discipline.

(2) In these Regulations a reference to a numbered Regulation in the format “Regulation VI/[number]” is, a reference to the Regulation of that number in Annex VI.

(3) A word or expression used in these Regulations which is not expressly defined in these Regulations, but is defined in Annex VI, has the meaning given in Annex VI.

(4) Subject to paragraph (5), any reference in these Regulations to the date of construction of a ship, is a reference to the date on which the keel of the ship is laid or on which the ship is at a stage of construction at which—

- (a) construction identifiable with a specific ship has begun; and

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(b) assembly of that ship has incorporated at least 50 tonnes of structural material or one per cent of the estimated mass of all structural material, whichever is less.

(5) For the purposes of regulations 31 to 35, where a major conversion involving the replacement of a marine diesel engine with a non-identical marine diesel engine, or the installation of an additional marine diesel engine, has been undertaken, the date of replacement or installation as the case may be, shall be deemed to be the date of construction instead of the date on which the ship was constructed.

(6) Any reference in Part 2 to a survey, in so far as it concerns a survey of engines and equipment for compliance with Regulation VI/13, shall be a reference to a survey conducted in accordance with the NOx Technical Code.

(7) In these Regulations, an “electronic record book” means a device or system, approved—

- (a) in the case of a Bermuda ship, by the CEO of the BSMA; and
- (b) in the case of a non-Bermuda ship, by the administration of the ship’s flag State,

which is used to electronically record the required entries for discharges, transfer and other operators as required under Annex VI in lieu of a hard copy record book.

(8) In the application of these Regulations to—

- (a) an air-cushion vehicle, a reference to the master of a ship includes a reference to the captain of that air-cushion vehicle; and
- (b) a platform, a reference to the master of a ship includes a reference to the manager of that platform.

**Ambulatory reference**

3 (1) Any reference in these Regulations to an international instrument is to be construed—

- (a) as a reference to the international instrument as modified from time to time; and
- (b) if the international instrument is replaced, as a reference to the replacement.

(2) For the purposes of paragraph (1), an international instrument is modified or replaced if a modification or replacement takes effect in accordance with Article 16 (amendments) of the Convention.

(3) A modification or replacement of an international instrument has effect at the time such modification or replacement comes into force in accordance with Article 16 (amendments) of the Convention.

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(4) No modification or replacement of a reference to the Convention or Annex VI by virtue of paragraph (1) affects any right or liability arising before the date on which the modification or replacement has effect.

(5) In this regulation, “international instrument” includes—

- (a) the Convention;
- (b) the NOx Technical Code; and
- (c) the Polar Code.

### **Application**

4 Subject to regulation 5 and except as otherwise expressly provided, these Regulations apply to—

- (a) a Bermuda ship wherever it may be; and
- (b) a foreign ship while it is within Bermuda controlled waters.

### **Exceptions**

5 (1) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used for the time being on government, non-commercial service.

(2) These Regulations do not apply to fuel oil—

- (a) intended for the purpose of research and testing;
- (b) intended for processing prior to final combustion; or
- (c) to be processed in the refining industry.

(3) These Regulations do not apply to any emission—

- (a) necessary for the purpose of securing the safety of a ship or saving life at sea; and
- (b) resulting from damage to a ship or its equipment, except to the extent that the emission is due to—
  - (i) a failure to take all reasonable precautions after the occurrence of the damage or discovery of the emission for the purpose of preventing or minimising the emission; or
  - (ii) damage caused in consequence of the company or master either intending to cause damage, or recklessly and with knowledge that damage would probably result.

(4) These Regulations do not apply to emissions directly arising from any platform resulting from the incineration of substances that are solely and directly the result of exploration, exploitation and associated offshore processing of sea-bed mineral resources.

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- (5) For the purposes of paragraph (4), such emissions include—
- (a) flaring of hydrocarbons and the burning of cuttings, muds and stimulation fluids during well completion and testing operations;
  - (b) flaring arising from upset conditions;
  - (c) the release of gases and volatile compounds entrained in drilling fluids and cuttings;
  - (d) emissions associated solely and directly with the treatment, handling or storage of sea-bed mineral resources; and
  - (e) emissions from a diesel engine that is solely dedicated to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources.

**Exemptions to permit trials of emission abatement technologies**

6 (1) The CEO of BSMA may, in cooperation with the administrations of other Contracting Governments as appropriate, on application in writing by a company, issue an exemption from specific provisions of these Regulations and Annex VI, for a ship to conduct trials for the development of ship emission reduction and control technologies and engine design programmes.

(2) An exemption under paragraph (1) may only be issued if the application of specific provisions of Annex VI or the NO<sub>x</sub> Technical Code could impede research into the development of such technologies or programmes.

(3) An exemption issued under paragraph (1) shall not exempt a ship from—

- (a) the reporting requirement under regulations 51 and 52; and
- (b) the scope of data required to be reported under those regulations.

(4) An exemption issued under this regulation shall be—

- (a) in writing;
- (b) provided to the minimum number of ships necessary;
- (c) subject to Regulations VI/3.2.1 and VI/3.2.2; and
- (d) subject to the conditions set out in paragraph (5).

(5) The conditions are that—

- (a) tamper-proof equipment shall be installed on the ship to monitor continuously funnel gas emissions and such equipment shall be used throughout the trial;
- (b) emission reductions shall be achieved which are at least equivalent to those which would have been achieved by the use of any fuel oil which complied with the relevant requirements of Annex VI;

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- (c) proper waste management systems shall be in place during the trial in respect of any waste generated by the emission abatement technologies;
  - (d) throughout the trial, the company shall carry out an assessment of the impacts on the marine environment, particularly the ecosystems in enclosed ports, harbours and estuaries; and
  - (e) within five months of completion of the trial, the company shall—
    - (i) provide full results of the assessment referred to in subparagraph (d), to the CEO of BSMA; and
    - (ii) make those results publicly available.
- (6) An exemption issued under paragraph (1) may—
- (a) include such conditions as the CEO of BSMA believes appropriate to the trial in question; and
  - (b) be varied or revoked at any time by the CEO of BSMA giving written notice to the company.
- (7) The CEO of BSMA shall provide information on an exemption issued to a ship to undertake trials on emission abatement technologies to any port State with an interest.
- (8) For the purposes of paragraph (7), a port State with an interest is a State to or from which a ship intends to operate during the intended trial.
- (9) A ship in respect of which an exemption has been issued under this regulation shall comply with the terms of the exemption including the conditions listed in paragraph (5) and any conditions prescribed by the CEO of BSMA under paragraph (6)(a).

### **Unmanned non-self-propelled barges**

- 7 (1) The CEO of BSMA may exempt an unmanned non-self-propelled barge from the requirements of Regulations VI/5.1 and VI/6.1 by issuing an International Air Pollution Prevention Exemption Certificate for Unmanned Non-self-propelled Barges in respect of the barge.
- (2) An International Air Pollution Prevention Exemption Certificate for Unmanned Non-self-propelled Barges shall—
- (a) be issued for a period specified by the CEO of BSMA not exceeding five years; and
  - (b) be in English and in a form corresponding to the model given in appendix XI to Annex VI.

### **Equivalents**

- 8 (1) The CEO of BSMA may permit any fitting, material, appliance or apparatus to be fitted in a ship as an alternative to that required by these Regulations if that fitting, material, appliance or apparatus is at least as effective as that required by Annex VI.

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(2) In considering whether to grant a permission under paragraph (1), the CEO of BSMA shall—

- (a) take into account any relevant guidelines developed by the IMO for the purposes of Regulation VI/4; and
- (b) endeavor to ensure that the alternative to that required by these Regulations shall not impair or damage its environment, human health, property or resources or those of other States.

(3) Where the CEO of BSMA has granted a permission under paragraph (1), the CEO shall ensure that particulars of that permission are communicated to the IMO.

**PART 2**

**SURVEY AND CERTIFICATION**

*Application*

**Part 2: application**

9 (1) This Part, except where expressly provided otherwise, applies to a Bermuda ship of 400 gross tonnage and above.

(2) This Part applies to a fixed and floating drilling rig and other platform located in Bermuda controlled waters and references in this Part to a ship are to be read as including such a fixed and floating drilling rig or other platform.

*Surveys*

**Surveys: general**

10 (1) A ship shall, to ensure that it fully complies with the relevant requirements of these Regulations and Chapter 3 of Annex VI, be subject to the following surveys—

- (a) an initial survey at the times specified by, and in accordance with, Regulation VI/5.1.1;
- (b) a renewal survey at intervals not exceeding five years, except where Regulation VI/9.2, VI/9.5, VI/9.6 or VI/9.7 is applicable, in accordance with Regulation VI/5.1.2;
- (c) an intermediate survey at the times specified by, and in accordance with, Regulation VI/5.1.3 and which shall, once completed, be endorsed on the ship's IAPP Certificate;
- (d) an annual survey at the times specified by, and in accordance with, Regulation VI/5.1.4, and which shall, once completed, be endorsed on the ship's IAPP Certificate; and
- (e) an additional survey either general or partial, according to the circumstances, whenever any important repairs or renewals are made as

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described in Regulation VI/5.5, which shall be undertaken in accordance with the requirements of that Regulation.

(2) A survey under this regulation shall be carried out by a surveyor.

(3) The survey of marine diesel engines and equipment for compliance with Regulation VI/13 shall be conducted in accordance with the revised NOx Technical Code 2008.

### **Surveys: carbon intensity of international shipping**

11 (1) This regulation applies to a ship to which Part 4 of these Regulations applies.

(2) A ship shall, in addition to the surveys required by regulation 10, be subject to the following surveys, taking into account Guidelines adopted by the Organization—

(a) an initial survey, at the times specified by, and in accordance with, Regulation VI/5.4.1; and

(b) a general or partial survey, according to the circumstances, after a major conversion of a new ship, in accordance with, Regulation VI/5.1.2.

(3) Where the major conversion of a new or existing ship is so extensive that the ship is regarded by the CEO of BSMA as a newly constructed ship, the CEO shall determine whether an initial survey on attained EEDI shall be carried out in accordance with Regulation VI/5.4.3.

(4) In the case of an existing ship, verification of the requirement to have a SEEMP on board in accordance with regulation 49 shall take place at the first intermediate or renewal survey, whichever is the first, on or after 1 January 2023.

(5) A survey under this regulation shall be carried out by a surveyor.

(6) At a ship's first annual, intermediate, renewal or initial survey, whichever is the first, on or after 1 January 2023, the ship's attained EEXI shall be verified to ensure that it is in accordance with the requirements of Regulations VI/23 and VI/25.

(7) Notwithstanding paragraph (6), where there has been a major conversion of a ship to which Regulation VI/23 applies, a general or partial survey, according to the circumstances, carried out after the conversion shall ensure that the attained EEXI is recalculated as necessary and meets the requirements of Regulation VI/25.

### *IAPP Certificates*

#### **Issue of IAPP Certificates**

12 (1) This regulation applies to a ship to which this Part applies, engaged in an international voyage.

(2) Subject to the payment of any fee due under the Fees Regulations, on being notified by a surveyor that the surveyor—

(a) has carried out an initial survey or a renewal survey in respect of a ship to which this regulation applies; and

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- (b) is satisfied at the date of the survey that the equipment, systems, fittings, arrangements and materials fully comply with the requirements of the relevant provisions of these Regulations and Annex VI,

a Certifying Authority shall issue an IAPP Certificate in respect of that ship.

(3) Where a ship becomes a ship to which this regulation applies, on transfer from the flag of another Contracting Government, a Certifying Authority shall issue an IAPP Certificate in respect of that ship where—

- (a) an IAPP Certificate has been issued in respect of the ship and was still valid immediately before the date of transfer;
- (b) the Certifying Authority has caused a survey to be carried out in respect of the ship; and
- (c) the Certifying Authority is satisfied that—
  - (i) the condition of the ship and its equipment is maintained to conform with Annex VI, so as to ensure that the ship is fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment; and
  - (ii) no change, other than a change referred to in paragraph (4), has been made to the equipment, systems, fittings, arrangements or material covered by the last survey carried out under Regulation VI/5.1 without the approval of the Contracting Government in question.

(4) The changes referred to in paragraph (3)(c)(ii) are the direct replacement of equipment and fittings with equipment and fittings.

(5) An IAPP Certificate issued under this regulation shall be in English and in the form set out in appendix 1 to Annex VI.

### **Issue of IAPP Certificates by another Government in respect of Bermuda ships**

13 (1) The CEO of BSMA may request a Contracting Government to survey a Bermuda ship and—

- (a) issue, or authorise the issue of; or
- (b) endorse, or authorise the endorsement of,

an IAPP Certificate in accordance with the requirements of Annex VI, in respect of that ship if the Contracting Government is satisfied that the ship complies with the requirements of Annex VI.

(2) Where an IAPP Certificate is issued pursuant to paragraph (1)—

- (a) the BSMA is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority that issued the certificate is to be treated as a reference to the BSMA.



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### **Issue of IAPP Certificates in respect of non- Bermuda ships**

14 (1) When requested to do so by a Contracting Government, the CEO of BSMA may cause a survey to be carried out in respect of a non-Bermuda ship and, shall, subject to the payment of any fee due under the Fees Regulations, issue in respect of that ship an IAPP Certificate, or endorse the IAPP Certificate, in accordance with the requirements of Annex VI, if the CEO of BSMA is satisfied that the requirements of Annex VI are complied with.

(2) An IAPP Certificate issued pursuant to paragraph (1) shall—

- (a) be in English in the form set out in appendix 1 to Annex VI;
- (b) contain a statement that it has been so issued; and
- (c) have the same effect as if it had been issued by the Contracting Government which made the request referred to in paragraph (1) and not by the CEO of BSMA.

(3) The CEO of BSMA shall send as soon as possible to the Contracting Government which made the request referred to in paragraph (1), a copy of—

- (a) the IAPP Certificate issued pursuant to that paragraph; and
- (b) the survey report.

(4) The CEO of BSMA shall not issue an IAPP Certificate in respect of a ship which—

- (a) is registered in a country whose government is not a Contracting Government; or
- (b) is not registered but is entitled to fly the flag of a country whose government is not a Contracting Government.

### *IEE Certificates*

### **Issue of IEE certificates**

15 (1) This regulation applies to a Bermuda ship to which this Part applies, engaged in an international voyage.

(2) Subject to the payment of any fee due under the Fees Regulations, on being notified by a surveyor that the surveyor—

- (a) has carried out an initial survey, or a general or partial survey, in respect of a ship to which this regulation applies; and
- (b) is satisfied on the date of the survey that—
  - (i) the ship complies with Part 4 of these Regulations and Chapter 4 of Annex VI; and
  - (ii) the ship's SEEMP is on board,

a Certifying Authority shall issue an IEE Certificate in respect of that ship.

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(3) Where a ship becomes a ship to which this regulation applies on transfer from the flag of another Contracting Government, a Certifying Authority shall issue an IEE Certificate in respect of that ship, where—

- (a) an IEE Certificate has been issued in respect of the ship and was still valid immediately before the date of transfer;
- (b) the Certifying Authority has caused a survey to be carried out in respect of the ship; and
- (c) the Certifying Authority is satisfied that—
  - (i) where required under these Regulations, the ship complies with Part 4 of these Regulations and Chapter 4 of Annex VI;
  - (ii) the ship's SEEMP is on board; and
  - (iii) no change has been made to the equipment, systems, fittings, arrangements or material covered by the last survey carried out under Regulation VI/5.4 without the approval of the Contracting Government in question.

(4) An IEE Certificate issued under this regulation shall be in English and in the form set out in appendix VIII to Annex VI.

### **Issue of IEE Certificates by another government in respect of Bermuda ships**

16 (1) This regulation applies to a Bermuda ship to which this Part applies, engaged in an international voyage.

(2) The CEO of BSMA may request a Contracting Government—

- (a) to survey a ship; and
- (b) to—
  - (i) issue, or authorise the issue of; or
  - (ii) endorse, or authorise the endorsement of,

an IEE Certificate, in accordance with the requirements of Annex VI, in respect of that ship if the Contracting Government is satisfied that the ship complies with the relevant requirements of Annex VI.

(3) Where an IEE Certificate is issued pursuant to paragraph (2)—

- (a) the BSMA is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority that issued the certificate is to be treated as a reference to the BSMA.

### **Issue of IEE Certificates in respect of non-Bermuda ships**

17 (1) When requested to do so by a Contracting Government, the CEO of BSMA—

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- (a) may cause a survey to be carried out in respect of a non-Bermuda ship; and
  - (b) shall, subject to the payment of any fee due under the Fees Regulations, issue in respect of that ship an IEE Certificate, or endorse the IEE Certificate, in accordance with the requirements of Annex VI, if the CEO of BSMA is satisfied that the relevant requirements of Annex VI are complied with.
- (2) An IEE Certificate issued pursuant to paragraph (1) shall—
- (a) be in English in the form set out in appendix VIII to Annex VI;
  - (b) contain a statement that it has been so issued; and
  - (c) have the same effect as if it had been issued by the Contracting Government which made the request referred to in paragraph (1) and not by the BSMA.
- (3) The CEO of BSMA shall send, as soon as possible, to the Contracting Government which made the request referred to in paragraph (1), a copy of—
- (a) the IEE Certificate issued pursuant to that paragraph; and
  - (b) the survey report.
- (4) The CEO of BSMA shall not issue an IEE Certificate in respect of a ship which—
- (a) is registered in a country whose Government is not a Contracting Government; or
  - (b) is not so registered but is entitled to fly the flag of a country whose Government is not a Contracting Government.

*Statements of compliance*

**Statement of Compliance related to fuel oil consumption reporting and operational carbon intensity rating**

18 (1) Upon receipt of the reported data described in Regulations VI/6.6 and VI/6.7 in relation to a ship, if satisfied that the data complies with those Regulations and any other relevant provisions of these Regulations, a Certifying Authority shall, subject to Regulation VI/6.8, issue a Statement of Compliance in respect of the ship.

(2) A Statement of Compliance issued under paragraph (1) shall be drawn up in a form corresponding to the model given in appendix X to Annex VI and shall be in English.

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### *Duration and validity of certificates etc*

#### **Duration and validity of IAPP Certificates**

19 (1) An IAPP Certificate shall be issued for a period specified by the CEO of BSMA, which shall not exceed five years.

(2) Subject to paragraph (3), where a renewal survey is—

(a) completed within the final three-month period; or

(b) after the date of expiry of the latest IAPP Certificate,

the new IAPP Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the latest IAPP Certificate.

(3) Where a renewal survey is completed more than three months before the expiry date of an existing IAPP certificate, the new IAPP Certificate shall be valid from the date of completion of the renewal survey, to a date not exceeding five years from the date of completion of the renewal survey.

(4) Where an IAPP Certificate is issued for a period of less than five years, the Certifying Authority may extend the validity of the certificate beyond the expiry date to the maximum period specified in paragraph (1), provided that the surveys referred to in Regulations VI/5.1.3 and VI/5.1.4 applicable when a certificate is issued for a period of five years are carried out, as appropriate.

(5) If a renewal survey has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the Certifying Authority may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

(6) If a ship, at the time when an IAPP Certificate expires, is not in a port in which it is to be surveyed, the Certifying Authority may extend the period of validity of the IAPP Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so.

(7) No IAPP Certificate shall be extended under paragraph (6) for a period longer than three months, and a ship to which an extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension, to leave that port without having a new IAPP Certificate.

(8) When, in the circumstances to which paragraph (6) applies, the renewal survey is completed, the new IAPP Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing IAPP Certificate before the extension was granted.

(9) An IAPP Certificate issued to a ship engaged on short voyages, which has not been extended under this regulation, may be extended by the Certifying Authority, for a period of grace of up to one month from the date of expiry stated on it.

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(10) When, in the circumstances to which paragraph (9) applies, the renewal survey is completed, the new IAPP Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing IAPP Certificate before the extension was granted.

(11) Where the CEO of BSMA determines that special circumstances exist—

- (a) a new IAPP Certificate need not be dated from the date of expiry of the existing IAPP certificate as required by this regulation; and
- (b) the new IAPP Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

(12) If an annual or intermediate survey is completed before the period specified in Regulation VI/5—

- (a) the anniversary date shown on the IAPP Certificate shall be amended by endorsement to a date that shall not be more than three months later than the date on which the survey was completed;
- (b) the subsequent annual or intermediate survey required by Regulation VI/5 shall be completed at the intervals prescribed by that Regulation, using the new anniversary date; and
- (c) the expiry date may remain unchanged provided one or more annual or intermediate surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by Regulation VI/5 are not exceeded.

(13) An IAPP Certificate ceases to be valid—

- (a) if the relevant surveys are not completed in accordance with, or within the periods specified in these Regulations or Annex VI;
- (b) if the certificate is not endorsed in accordance with these Regulations or Annex VI; or
- (c) upon transfer of the ship to the flag of another State.

(14) Where a ship is transferred to the flag of another State—

- (a) a new IAPP Certificate shall only be issued when the Certifying Authority issuing the new certificate is fully satisfied that the ship is in compliance with the requirements of Regulation VI/5.4; and
- (b) if requested within three months after the transfer has taken place, the CEO of BSMA shall, as soon as possible, transmit to the new Administration, copies of the IAPP Certificate carried by the ship before the transfer and, if available, copies of the relevant survey reports.

(15) In this Regulation the “final three-month period” means the three-month period ending on the expiry date of the certificate in question.

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**Duration and validity of IEE Certificates**

- 20 (1) Subject to paragraph (2), an IEE Certificate is valid for the life of the ship.
- (2) An IEE Certificate issued in respect of a ship ceases to be valid—
- (a) if the ship is withdrawn from service;
  - (b) if a new certificate is issued following major conversion of the ship;
  - (c) if the ship's equipment, systems, fittings, arrangements or material covered by a survey have been changed without the express approval of the Certifying Authority, unless—
    - (i) an exception under regulation 5 applies; or
    - (ii) an exemption under regulation 6 has been granted; or
  - (d) upon transfer of the ship to the flag of another State.
- (3) Where a ship is transferred to the flag of another State—
- (a) a new IEE Certificate shall only be issued if the Certifying Authority is fully satisfied that the ship is in compliance with the requirements of Chapter 4 of Annex VI; and
  - (b) if requested within three months after the transfer has taken place, the CEO of BSMA shall, as soon as possible, transmit to the new Administration, copies of the IEE Certificate carried by the ship before the transfer and, if available, copies of the relevant survey reports.

**Duration and validity of Statements of Compliance**

- 21 (1) A Statement of Compliance issued pursuant to Regulation VI/6.6. shall be valid for the calendar year in which it is issued and for the first five months of the following calendar year.
- (2) A Statement of Compliance issued pursuant to Regulation VI/6.7 shall be valid for the calendar year in which it is issued, for the following calendar year, and for the first five months of the subsequent calendar year.
- (3) A Statement of Compliance shall be kept on board the ship to which it relates for at least the period of its validity.

*Deficiencies*

**Deficiencies**

- 22 (1) This regulation applies where a surveyor determines that—
- (a) the condition of a ship, or its equipment, does not correspond substantially with the particulars of an IAPP Certificate or IEE Certificate, as the case may be, issued in respect of the ship; or
  - (b) a ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

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- (2) Where the surveyor makes such a determination, the surveyor shall—
- (a) advise the company or master, of the corrective action which in the opinion of the surveyor, is required; and
  - (b) where an IAPP Certificate or IEE Certificate has been issued in respect of the ship and is still valid, notify the Certifying Authority that issued the certificate—
    - (i) that the surveyor has so advised the company and master; and
    - (ii) if that corrective action has not been taken.

(3) Where an IAPP Certificate or IEE Certificate has been issued in respect of the ship and is still valid, the Certifying Authority may suspend the validity of that certificate, until the corrective action has been taken.

(4) Where the Certifying Authority suspends the validity of an IAPP Certificate or IEE Certificate issued in respect of a ship, it shall immediately give notice of such suspension to the company; and where the ship is in a port outside of Bermuda, to the appropriate maritime authorities of the State in which the port is situated.

(5) Where the company responsible for the ship is given notice of suspension, that company shall notify the master of the ship in question, of the suspension.

**Arbitration**

23 (1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a ship under these Regulations, the applicant may serve a written notice on the responsible person within 21 days of receiving notification of that outcome—

- (a) stating that there is a dispute between them; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Subject to paragraph (3), an arbitrator referred to in paragraph (1), shall be appointed by agreement between the applicant and the responsible person.

(3) In default of agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the appointments committee of the Chartered Institute of Arbitrators, Bermuda Branch, following a request made by—

- (a) a party, after giving written notice to the other party; or
- (b) the parties jointly.

(4) A person shall not be an arbitrator under this regulation unless that person is—

- (a) a person who holds a certificate to act as—
  - (i) a master or chief mate on a seagoing ship of 3,000 GT or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to the STCW Convention; or

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- (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000 kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to the STCW Convention;
  - (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
  - (c) a person who holds a certificate to act as a naval architect;
  - (d) a qualified person;
  - (e) a person with special experience in shipping matters, or of the fishing industry, or of activities carried on in ports; or
  - (f) a member of the Chartered Institute of Arbitrators, Bermuda Branch.
- (5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 220 of the Act.
- (6) The rules for arbitration set out in UK Merchant Shipping Notice MSN 1613 or an equivalent replacement, apply, unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(7) In this regulation—

“applicant” means a person who makes an application for a survey required by these Regulations;

“qualified person” means a barrister and attorney of not less than 10 years call;

“responsible person” means—

- (a) the Certifying Authority responsible under regulation 12, 14, 15 or 17, as the case may be, for the issue of the IAPP Certificate or IEE Certificate in connection with which a survey required by these Regulations is carried out; or
- (b) in the case of a dispute relating to an additional survey required by regulation 10(1)(e), 22 or 24(5)(b), the Certifying Authority that issued the IAPP Certificate or IEE Certificate, as the case may be, in respect of the ship;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978.

*Post-survey responsibilities*

**Responsibilities of a company and master of a ship**

- 24 (1) A company and master shall ensure that the condition of the ship and its equipment are maintained to conform with these Regulations and Annex VI so as to



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ensure that the ship in all respects remains fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) A company and master shall ensure that after a survey of a ship required by this Part has been completed, no change, except by way of direct replacement, shall be made to the equipment, systems, fittings, arrangements, or material covered by the survey, without the express approval of—

- (a) the Certifying Authority who appointed the surveyor who carried out the survey; or
- (b) the CEO of BSMA, where the IAPP Certificate or IEE Certificate, as the case may be, was issued by a Contracting Government under regulation 13 or 16.

(3) Whenever—

- (a) an accident occurs to a ship; or
- (b) a defect is discovered in a ship, which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship required under Part 3,

the company and the master of the ship shall ensure that the requirements of paragraph (4) are complied with.

(4) The requirements are that—

- (a) the accident or defect, as the case may be, is reported at the earliest opportunity, to the Certifying Authority that issued the IAPP Certificate and IEE Certificate, as the case may be, in respect of the ship; and
- (b) in the case of a ship in a port outside of Bermuda, the accident or the defect is also immediately reported to the appropriate maritime authorities in the country in which the port is situated.

(5) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a), the Certifying Authority—

- (a) shall cause an investigation to be initiated to determine whether or not an additional survey is necessary; and
- (b) if it considers that an additional survey is necessary, shall cause that survey to be carried out.

(6) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a) and the ship in question is in a port outside of Bermuda, the Certifying Authority shall take all appropriate steps to ascertain that the requirement in paragraph (4)(b) has been complied with.

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### *Miscellaneous provisions relating to Certificates etc*

#### **Miscellaneous provisions relating to IAPP and IEE Certificates and Statements of Compliance**

25 (1) The CEO of BSMA may cancel an IAPP Certificate or IEE Certificate where the CEO has reason to believe that—

- (a) the certificate was issued on false or erroneous information; or
- (b) since the completion of any survey required by these Regulations, the equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) The CEO of BSMA may require that an IAPP Certificate, IEE Certificate or Statement of Compliance which has expired or which has been cancelled is to be surrendered within such time and in such manner as the CEO may in writing direct.

(3) In relation to a ship to which these Regulations apply, a person shall not—

- (a) intentionally alter an IAPP Certificate or IEE Certificate or a Statement of Compliance;
- (b) intentionally make a false IAPP Certificate or IEE Certificate or Statement of Compliance;
- (c) knowingly or recklessly provide false information in connection with a survey required under these Regulations;
- (d) knowingly or recklessly provide false information when reporting fuel oil consumption data in accordance with regulation 51 or 52;
- (e) with intent to deceive—
  - (i) use or lend an IAPP Certificate or IEE Certificate or Statement of Compliance; or
  - (ii) permit an IAPP Certificate or IEE Certificate or a Statement of Compliance, to be used by another person; or
- (f) fail to surrender an IAPP Certificate or IEE Certificate or Statement of Compliance, where required to do so pursuant to paragraph (2).

(4) The company and the master of a ship, in respect of which an IAPP Certificate or IEE Certificate has been issued, shall ensure that the certificate is readily available on board the ship for inspection at all times.

(5) The company and the master of a ship in respect of which a Statement of Compliance has been issued, shall ensure that the Statement is readily available on board the ship for inspection at all times.

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*Prohibitions*

**Prohibition on Bermuda ships proceeding to sea without certificates etc**

26 (1) No Bermuda ship to which this Part applies shall proceed to sea on an international voyage from a port or offshore installation unless it has been surveyed in accordance with these Regulations and issued with and carries on board a valid—

- (a) IAPP Certificate;
- (b) IEE Certificate; and
- (c) Statement of Compliance,

as required under these Regulations or Annex VI.

(2) Notwithstanding paragraph (1), the CEO of BSMA may permit a ship to proceed to sea if—

- (a) it is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment; or
- (b) a person having power to detain the ship has permitted the ship to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

**PART 3**

**CONTROL OF EMISSIONS FROM SHIPS**

*Ozone-depleting substances*

**Prohibition of emissions of ozone-depleting substances**

27 (1) Subject to paragraph (2) and regulation 30, the deliberate emission of an ozone-depleting substance from a ship is prohibited.

(2) Paragraph (1) does not apply in respect of a minimal emission of an ozone-depleting substance if the emission is associated with the recapture or recycling of such a substance.

(3) For the purposes of this regulation, “deliberate emission” includes an emission occurring in the course of maintaining, servicing, repairing or disposing of systems or equipment.

**Installation of equipment containing ozone-depleting substances**

28 (1) This regulation is subject to regulation 30.

(2) The installation of any system, equipment, insulation or other material which contains an ozone-depleting substance, other than hydrochlorofluorocarbons, is prohibited—

- (a) on a ship constructed on or after 19 May 2005; or

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- (b) on a ship constructed before 19 May 2005, where the contractual delivery date of the equipment to the ship is on or after 19 May 2005 or, in the absence of a contractual delivery date, the actual delivery of the equipment to the ship is on or after 19 May 2005.
- (3) The installation of any system, equipment, insulation or other material which contains hydrochlorofluorocarbons is prohibited—
  - (a) on a ship constructed on or after 1 January 2020; or
  - (b) on a ship constructed before 1 January 2020, where the contractual delivery date of the equipment to the ship is on or after 1 January 2020 or, in the absence of a contractual delivery date, the actual delivery of the equipment to the ship is on or after 1 January 2020.
- (4) Where an ozone-depleting substance, or any system, equipment, insulation or other material which contains an ozone-depleting substance, is removed from a ship, it shall be delivered to an appropriate reception facility.
- (5) For the purposes of this Regulation, “installation” does not include the repair or recharge of previously installed systems, equipment, insulation or other material or the recharge of portable fire extinguishing units.

**Records of ozone-depleting substances**

- 29 (1) This regulation applies to a ship of 400 GT or above engaged in an international voyage.
- (2) This regulation is subject to regulation 30.
  - (3) A list of systems and equipment on the ship which contain ozone-depleting substances shall be maintained.
  - (4) An Ozone-Depleting Substances Record Book complying with Regulations VI/12.6 and VI/12.7 shall be maintained in respect of a ship that has rechargeable systems that contain ozone depleting substances.
  - (5) An Ozone-Depleting Substances Record Book may form part of the ship’s logbook or an electronic record book approved by the CEO of BSMA.

**Exceptions for permanently sealed equipment**

- 30 Regulations 27(1), 28(2) and (3) and 29(3) and (4) do not apply to a ship which has permanently sealed equipment where there are no—
- (a) refrigerant charging connections; or
  - (b) potentially removable components containing ozone-depleting substances.

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*Nitrogen oxides*

**Nitrogen oxides: general**

31 (1) Subject to paragraph (2), this regulation and regulations 32 to 35 apply to marine diesel engines with a power output of more than 130 kW installed on a ship.

(2) This regulation and regulations 32 to 35 do not apply to—

- (a) equipment or other devices intended to be used solely in case of an emergency, including any emergency diesel engine and any diesel engine installed in a lifeboat;
- (b) marine diesel engines installed on a ship solely engaged in voyages within Bermuda waters, provided that the engine is subject to an alternative nitrogen oxide control measure that has been approved by the CEO of BSMA; or
- (c) marine diesel engines with a power output of more than 130 kW which are installed on or in a recreational craft or personal watercraft placed on the market in Bermuda.

(3) The certification, testing and measurement procedures required by regulations 32 to 35 shall be in accordance with the NOx Technical Code.

(4) Any emission of nitrogen oxide from a marine diesel engine that is installed on a ship that has undergone a major conversion shall be recorded in accordance with the NOx Technical Code and approved by the Certifying Authority.

(5) Where a marine diesel engine is installed on a Bermuda ship engaged solely in voyages to ports or offshore terminals within Bermuda controlled waters, and—

- (a) that ship was constructed; or
- (b) the engine underwent a major conversion before 19 May 2005,

the CEO of BSMA may on application by the company direct that this regulation does not apply to that engine.

(6) In this regulation and regulations 32 to 35—

“major conversion” means a modification on or after 1 January 2000 of an engine where—

- (a) the engine is replaced by a marine diesel engine or an additional marine diesel engine is installed;
- (b) any substantial modification, as defined in the NOx Technical Code, is made to the engine; or
- (c) the maximum continuous rating of the engine is increased by more than 10 per cent compared to the maximum continuous rating of the original certification of the engine;

“marine diesel engine” means—

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- (a) a reciprocating internal combustion engine operating on liquid or dual fuel, to which Regulation VI/13 applies, including booster and compound systems if applied;
- (b) a gas-fuelled engine installed on a ship constructed on or after 1 March 2016; or
- (c) a gas-fuelled additional or non-identical replacement engine installed on or after that date;

“maximum continuous rating of the engine” means the rated power in kW as given in the Engine International Air Pollution Prevention Certificate issued in accordance with the NO<sub>x</sub> Technical Code;

“personal watercraft” means a vessel less than 4 metres in length which uses an internal combustion engine having a jet water pump as its primary source of propulsion and designed to be operated by a person sitting, standing or kneeling on, rather than within the confines of the hull;

“rating increase” means the maximum continuous rating of the marine diesel engine is increased by more than 10% compared to the maximum continuous rating of the original certification of the engine;

“recreational craft” means any boat of any type intended for sports and leisure purposes of hull length from 2.5 metres to 24 metres measured according to the harmonised standard, fitted with a marine diesel engine of over 130 kW and whether used for charter or recreational boating.

### **Nitrogen oxides: Tier I**

32 (1) Subject to regulation 34, this regulation applies to a marine diesel engine installed on a ship constructed—

- (a) on or after 1 January 2000 and prior to 1 January 2011; and
- (b) prior to 1 January 2000 which has been subject to major conversion comprising a substantial modification or rating increase after that date but prior to 1 January 2011.

(2) The operation of a marine diesel engine to which this regulation applies is prohibited except where the emission of nitrogen oxide from the engine is within the limits prescribed in Regulation VI/13.3 (Tier I).

### **Nitrogen oxides: Tier II**

33 (1) Subject to regulation 34, this regulation applies to a marine diesel engine installed on a ship constructed—

- (a) on or after 1 January 2011; and
- (b) prior to 1 January 2011 which has been subject to major conversion after that date.

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(2) The operation of a marine diesel engine to which this regulation applies is prohibited, except where the emission of nitrogen oxide from the engine is within the limits prescribed in Regulation VI/13.4 (Tier II).

**Nitrogen oxides: Tier III**

34 (1) This regulation applies to the operation of a marine diesel engine installed on a ship in a NO<sub>x</sub> emission control area where—

- (a) the ship is constructed on or after 1 January 2016 and is operating in the North American Emission Control Area or the United States Caribbean Sea Emission Control Area; or
- (b) the ship is operating in a NO<sub>x</sub> emission control area, other than an emission control area described in sub-paragraph (a), and is constructed on or after the date of adoption of such an emission control area, or a later date as may be specified in the amendment designating the NO<sub>x</sub> emission control area, whichever is later.

(2) This regulation does not apply to a marine diesel engine in the circumstances set out in Regulations VI/13.5.2.1 to VI/13.5.2.3.

(3) The operation of a marine diesel engine to which this regulation applies is prohibited except where the emission of nitrogen oxide from the engine is within the limits prescribed in Regulations VI/13.5.1 and VI/13.5.2 (Tier III).

(4) Where, following a major conversion involving the replacement of a marine diesel engine with a non-identical marine diesel engine, it is not possible for such a replacement engine to meet the standards set out in paragraph (3), that replacement engine shall meet the standards set out in regulation 33(2), taking into account any relevant guidelines developed by the IMO.

(5) The tier and on and off status of marine diesel engines installed on board a ship to which this regulation applies, which are certified to both Tier II and Tier III or which are certified to Tier II only, shall be recorded in a log book or electronic record book as prescribed by the CEO of BSMA—

- (a) at entry into and exit from a NO<sub>x</sub> emission control area; and
- (b) when the on and off status changes within such area,

together with the date, time and position of the ship.

(6) Paragraph (7) applies to emissions of nitrogen oxides from a marine diesel engine—

- (a) to which Regulation VI/13.5.4 (emissions of nitrogen oxides following building or sea trials in particular circumstances) applies; and
- (b) which complies with the conditions in Regulations VI/13.5.4.1 and VI/13.5.4.2.

(7) Where this paragraph applies, the marine diesel engine may be exempted from the requirements of this regulation for the period specified in Regulation VI/13.5.5.

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### **Nitrogen Oxides: ships constructed before 1 January 2000**

35 (1) This regulation applies to a marine diesel engine installed on a ship constructed prior to 1 January 2000 which has not been subject to a substantial modification or rating increase.

(2) A ship to which this regulation applies shall comply with the requirements of Regulation VI/13.7.

### *Sulphur oxides*

#### **Sulphur oxides**

36 (1) Subject to paragraph (2), the sulphur content of any fuel oil used on board a ship shall not exceed the limits prescribed in Regulation VI/14.1.

(2) In the case of a ship operating within a sulphur oxide emission control area, the sulphur content of fuel oil used on board shall not exceed the limits prescribed in Regulation VI/14.4.

(3) The master of a ship operating within a sulphur oxide emission control area –

- (a) using separate fuel oils to comply with paragraph (2); and
- (b) entering or leaving a sulphur oxide emission control area,

shall comply with Regulation VI/14.6.

(4) The master of a Bermuda ship making a record to comply with paragraph (3) shall make it in a log book or electronic record book in the format prescribed in Appendix 6 to UK Merchant Shipping Notice 1819 (M+F).

(5) Where Regulation VI/13.3 is amended to designate an additional sea area as a sulphur oxide emission control area (“the new area”), paragraphs (2) and (3) do not apply in relation to that new area for the period of 12 months immediately following the entry into force of the amendment.

(6) The placing on the market of fuel oil is prohibited if the sulphur content exceeds 1.50 per cent by mass.

(7) Where the CEO of BSMA requires a sample of fuel oil to be analysed to determine whether the fuel oil being used or carried for use on board complies with this regulation or Regulation 1 VI/4.1, the CEO may direct that the master of a ship provide a sample.

(8) Any direction given under paragraph (7) and the procedure adopted for analysing the sample shall be in accordance with—

- (a) Regulations VI/14.8 to VI/14.9; and
- (b) the verification procedure in appendix VI of Annex VI.

(9) A Bermuda ship of 400 gross tonnage and above or a fixed and floating drilling rig and other platform located in Bermuda controlled waters shall be fitted or



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designated for the purpose of taking representative samples of fuel oil being used on board (“a sampling point”), taking into account relevant guidelines developed by the IMO.

(10) For a ship, rig or other platform constructed before 1 April 2022, a sampling point referred to in paragraph (9) shall be fitted or designated not later than the first renewal survey on or after 1 April 2023.

(11) Paragraphs (9) and (10) do not, in accordance with Regulation VI/14.12, apply to a fuel oil service system for a low-flashpoint fuel for combustion purposes for propulsion or operation on board.

(12) The CEO of BSMA shall, as appropriate use the sampling points which are fitted or designated for the purpose of taking representative samples of the fuel oil being used on board in order to verify that the fuel oil complies with Regulation VI/14.

(13) Where the CEO of BSMA takes a fuel oil sample, he shall do so as expeditiously as possible without causing the ship to be unduly delayed.

### *Volatile organic compounds*

#### **Volatile organic compounds**

37 (1) The operation by a harbour authority or terminal operator of a vapour emission control system for volatile organic compounds is prohibited unless the CEO of BSMA has given written approval for that system.

(2) A harbour authority or terminal operator operating a vapour emission control system for volatile organic compounds shall comply with—

- (a) Regulation VI/15.3; and
- (b) Schedule 4 to UK Merchant Shipping Notice 1819 (M+F).

(3) A Bermuda tanker subject to vapour emission control in a harbour or terminal notified to the IMO as a designated harbour or terminal pursuant to the Convention shall—

- (a) be fitted with a vapour emission collection system approved in accordance with—
  - (i) Regulation VI/15.5; and
  - (ii) Schedule 4 to UK Merchant Shipping Notice 1819 (M+F); and
- (b) use that system during the loading of relevant cargoes.

(4) A tanker, other than a Bermuda tanker, subject to vapour emission control in a harbour or terminal designated by the CEO of BSMA as a designated harbour or terminal pursuant to the Convention shall—

- (a) be fitted with an approved vapour emission collection system; and
- (b) use that system during the loading of relevant cargoes.

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(5) In paragraph (4), “approved vapour emission collection system” means a vapour emission collection system that has been approved by the flag State under Regulation VI/15.5.

(6) A master shall, on demand, produce to the harbour authority, terminal operator or a surveyor, evidence of an approval referred to in paragraph (4) or (5).

(7) A tanker carrying crude oil shall have on board and implement an approved VOC management plan specific to that tanker which complies with the requirements of Regulation VI/15.6.

(8) In paragraph (7) “approved VOC management plan” means a VOC management plan—

- (a) in the case of a Bermuda tanker, approved by the CEO of BSMA; and
- (b) in the case of a non-Bermuda tanker, approved by the flag State.

(9) This regulation only applies to a gas carrier if the type of loading and containment systems allow safe retention of non-methane volatile organic compounds on board or their safe return offshore.

(10) Where the CEO of BSMA gives approval under paragraph (1), the CEO shall notify the IMO and such notification shall include the particulars required by Regulation VI/15.2.

### *Shipboard incineration*

#### **Shipboard incineration**

38 (1) Subject to paragraphs (2) to (4), all shipboard incineration shall take place in a shipboard incinerator.

(2) Shipboard incineration of any of the following substances on board a ship is prohibited—

- (a) residues of oil cargoes, noxious liquid substance cargoes or harmful substances carried by sea in packaged form or related contaminated packing materials;
- (b) polychlorinated biphenyls (PCBs);
- (c) garbage containing more than traces of heavy metals;
- (d) refined petroleum products containing halogen compounds;
- (e) sewage sludge and sludge oil that are not generated on board the ship; and
- (f) exhaust gas cleaning system residues.

(3) Shipboard incineration of polyvinyl chlorides on a ship is prohibited unless the incineration is in a shipboard incinerator for which an IMO Type Approval Certificate has been issued in accordance with Regulation VI/16.3.

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(4) While a ship is in a port, harbour or estuary, shipboard incineration of sewage sludge and sludge oil generated during the normal operation of the ship is prohibited in the main or auxiliary power plant or boiler.

(5) In this regulation, “garbage” means all kinds of victual, domestic and operational wastes generated during the normal operation of a ship and liable to be disposed of continuously or periodically, but does not include fresh fish and parts thereof or sewage.

### **Requirements of shipboard incinerators**

- 39 (1) This regulation applies to a shipboard incinerator—
- (a) on a ship constructed on or after 1 January 2000; or
  - (b) which is installed on board a ship on or after 1 January 2000.
- (2) A shipboard incinerator shall—
- (a) comply with the requirements of appendix IV to Annex VI; and
  - (b) be approved by a Certifying Authority, taking into account the standard specification for shipboard incinerators developed by the IMO.
- (3) A Certifying Authority may issue an exemption from this regulation in respect of a shipboard incinerator—
- (a) which is installed on board a ship before 19 May 2005; and
  - (b) where the ship on which it is installed is solely engaged in voyages within Bermuda controlled waters.

### **Operation of shipboard incinerators**

- 40 (1) A ship with a shipboard incinerator installed on it shall at all times carry an operating manual of the manufacturer of that incinerator which specifies how to operate the incinerator within the limits described in paragraph 2 of appendix IV to Annex VI.
- (2) A person operating a shipboard incinerator shall be trained to implement the guidance provided in the manufacturer’s operating manual.
- (3) The combustion chamber gas outlet temperature of a shipboard incinerator shall be monitored at all times the incinerator is in operation.
- (4) The feeding of waste into a continuous-feed type shipboard incinerator when the combustion chamber gas outlet temperature is below 850°C is prohibited.
- (5) No batch-loaded type incinerator shall be used if the combustion chamber gas outlet temperature fails—
- (a) to reach 600°C within five minutes after start-up; and
  - (b) thereafter to stabilise at a temperature of not less than 850°C.
- (6) In this regulation, “continuous-feed” means the process by which waste is fed into a combustion chamber without human assistance while the incinerator is in normal

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operating conditions with the combustion chamber operative temperatures within the range of 850°C and 1200°C.

### **Reception facilities**

- 41 The Minister shall ensure the provision of facilities adequate to meet—
- (a) the needs of ships using a Bermuda repair port (if any) for the reception of ozone-depleting substances and equipment containing such substances when removed from ships;
  - (b) the needs of ships using a port in Bermuda or an offshore terminal in Bermuda controlled waters for the reception of exhaust gas cleaning residues from an exhaust gas cleaning system, without causing undue delay to ships; and
  - (c) the needs in ship-breaking facilities in Bermuda (if any) for the reception of ozone-depleting substances and equipment containing such substances when removed from ships.

### *Fuel oil availability and quality*

### **Register of fuel oil suppliers**

- 42 The Minister shall—
- (a) maintain a register of fuel oil suppliers in Bermuda;
  - (b) take all reasonable steps to promote the availability of fuel oils that comply with Annex VI;
  - (c) inform the IMO of the availability of compliant fuel oils in Bermuda ports and terminals in accordance with Regulation VI/18.1.

### **Fuel oil quality**

- 43 (1) This regulation and regulation 44 apply to fuel oil delivered to or used on—
- (a) a ship of 400 GT or above; and
  - (b) a platform.
- (2) This regulation and regulation 44 do not apply to fuel oil which comprises—
- (a) coal in its solid form;
  - (b) nuclear fuels; or
  - (c) any hydrocarbon which is produced on a platform and used on that platform as fuel, if that use has been approved by the Minister.
- (3) A fuel oil supplier shall ensure that fuel oil delivered to a ship for combustion purposes on board that ship complies with the requirements of Regulation VI/18.3.

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(4) A fuel oil supplier shall document the sulphur content of gas fuels delivered to a ship specifically for use for combustion purposes on board that ship in such manner as the Minister may from time to time require.

(5) The master of a ship shall ensure that fuel oil used on board the ship for combustion purposes complies with the requirements of Regulation VI/18.3.

(6) Where fuel oil used on board a ship for combustion purposes is found not to be compliant with requirements of these Regulations, the Minister may require the owner and master of the ship to—

- (a) present a record of the actions taken to attempt to achieve compliance;
- (b) provide evidence that it attempted to purchase compliant fuel oil in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such fuel oil and that despite best efforts to obtain compliant fuel oil, no such fuel oil was made available for purchase.

(7) For the purposes of paragraph (6)—

- (a) the Minister shall not require a ship to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance; and
- (b) if the owner or master provide the record required by paragraph (6)(b), the Minister shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

(8) The owner and master of a Bermuda ship that cannot purchase fuel oil that complies with this regulation shall notify—

- (a) the Minister; and
- (b) the appropriate authority for the relevant port of destination of the ship.

**Non-availability of fuel oil**

44 (1) A master of a ship to which this regulation applies shall notify—

- (a) the Minister; and
- (b) the competent authority for the port of destination,

if fuel oil that complies with the requirements of Regulation VI/18.3 cannot be purchased.

(2) Where the Minister receives notice under paragraph (1) that fuel oil which meets the requirements of Regulation VI/18.3 is not available, the Minister shall notify the IMO.

**Bunker delivery notes**

45 (1) This regulation does not apply to fuel oil which comprises—

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- (a) coal in its solid form;
  - (b) nuclear fuels;
  - (c) any hydrocarbon which is produced on an offshore installation and is subsequently used on that offshore installation as fuel, if that use has been approved by the Minister; or
  - (d) gas fuels.
- (2) A fuel oil supplier who delivers fuel oil to a ship which is to be used on that ship shall—
- (a) provide the master of the ship with—
    - (i) a bunker delivery note which complies with paragraph (3); and
    - (ii) a representative sample of the fuel oil delivered in accordance with the relevant IMO guidelines; and
  - (b) retain a copy of the bunker delivery note for a period of three years from the day on which the fuel oil is delivered on board.
- (3) A bunker delivery note shall contain—
- (a) the information specified in appendix V to Annex VI; and
  - (b) a certificate signed by the fuel oil supplier's representative that the fuel oil supplied complies with Regulations VI/14 and VI/18.
- (4) The master of a ship to which fuel oil has been delivered shall, subject to paragraphs (11) and (12)—
- (a) ensure that the bunker delivery note is kept on board the ship and is readily available for inspection at all times;
  - (b) when requested by an inspector to do so, certify that a copy of the bunker delivery note is a true copy; and
  - (c) ensure that the bunker delivery note is retained for a period of three years from the day on which the fuel oil is delivered on board.
- (5) A representative sample of fuel oil provided under paragraph (2)(a)(ii) shall be—
- (a) sealed and signed by the fuel oil supplier's representative and the master or officer in charge, on completion of bunkering operations; and
  - (b) retained by the master until whichever is the later of—
    - (i) the date the fuel oil is substantially consumed; or
    - (ii) 12 months from the day the fuel oil is delivered on board.
- (6) The Minister may analyse, or arrange for the analysis of, the representative sample of fuel oil.

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(7) Where the Minister determines that the representative sample is to be analysed, the analysis shall be undertaken in accordance with the verification procedure set out in appendix VI to Annex VI.

(8) If an appropriate authority becomes aware of any ship receiving fuel oil that is non-compliant with the requirements specified in Regulation VI/14 or VI/18, it shall—

- (a) notify the Minister; and
- (b) arrange for the IMO to be notified of any fuel oil supplier which has failed to meet the requirements of Regulation VI/14 or VI/18.

(9) For the purposes of paragraph (8), “appropriate authority” means—

- (a) the Department of Marine and Ports Services;
- (b) the Department of Environment and Natural Resources;
- (c) the Department of Works and Engineering; or
- (d) the Regulatory Authority of Bermuda.

(10) Where the Minister becomes aware of a case where a fuel oil supplier has failed to meet the requirements specified in Regulation VI/14 or VI/18, the Minister shall notify—

- (a) the IMO; and
- (b) in the case of a non-Bermuda ship, the appropriate authority of the flag State.

(11) Paragraph (12) applies to a ship of 400 gross tonnage and above on a scheduled service with frequent and regular port calls.

(12) In respect of a ship to which this paragraph applies, the Minister may, on the application of the company and after consultation with affected States, determine that compliance with paragraph (4)(a) and (c) may be documented in an alternative manner provided that it gives similar certainty of compliance with Regulations VI/14 and VI/18 of Annex VI.

### **PART 4**

#### **REGULATIONS ON THE CARBON INTENSITY OF INTERNATIONAL SHIPPING**

##### **Purpose of Part 4**

46 This Part gives effect to Chapter 4 of Annex VI (regulations on the carbon intensity of international shipping) the goal of which is to reduce the carbon intensity of international shipping, working towards the levels of ambition set out in the Initial IMO Strategy on Reduction of GHG Emissions from Ships.

##### **Part 4: Interpretation**

47 (1) In this Part—

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“attained annual operational CII” means the attained annual operational CII calculated in accordance with Regulation VI/28.4;

“attained EEDI” means the EEDI value achieved by a single ship in accordance with Regulation VI/22;

“conventional propulsion” means a method of propulsion where a main reciprocating internal combustion engine(s) is the prime mover and coupled to a propulsion shaft either directly or through a gear box;

“non-conventional propulsion” has the meaning given by Regulation VI/2.2.19;

“SEEMP” means a ship energy efficiency management plan required by Regulation VI/26.1.

(2) A word or expression used in this Part which is not expressly defined in this regulation, but is defined in Regulation VI/2.2, has the meaning given in Regulation VI/2.2.

**Part 4: Application**

48 (1) This Part applies to a ship of 400 gross tonnage and above.

(2) This Part does not apply to—

(a) ships solely engaged in voyages within Bermuda controlled waters; and

(b) ships not propelled by mechanical means, and platforms including FPSOs and FSUs and drilling rigs, regardless of their propulsion.

(3) Regulation 49(a) shall not apply to ships which have non-conventional propulsion, except in the circumstances set out in Regulation VI/19.3.

(4) Regulation 49(a) and (b)(iii) shall not apply to category A ships as defined in the Polar Code.

(5) Subject to paragraph (6), the CEO of BSMA may waive the requirement for a ship of 400 gross tonnage and above to comply with Regulation VI/22 and Regulation VI/24.

(6) A waiver under paragraph (5) of this regulation may not be granted in respect of a ship of 400 gross tonnage and above—

(a) for which the building contract is placed on or after 1 January 2017;

(b) in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after 1 July 2017;

(c) the delivery of which is on or after 1 July 2019; or

(d) in the case of a major conversion of a new or existing ship, to which Regulation VI/5.4.2 or Regulation VI/5.4.3 apply, on or after 1 January 2017.



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(7) If the CEO of BSMA grants a waiver under paragraph (5), or suspends, withdraws or declines such a waiver, in respect of a Bermuda ship, the CEO shall immediately communicate to the IMO, particulars thereof.

### **Functional requirements**

49 In order to achieve the goal set out in regulation 46, a ship to which this Part applies shall comply with the following functional requirements that apply to a ship of its nature, size and date of construction in order to reduce its carbon intensity—

- (a) the technical carbon intensity requirements contained in—
  - (i) Regulation VI/22 (Attained Energy Efficiency Design Index (attained EEDI));
  - (ii) Regulation VI/23 (Attained Energy Efficiency Existing Ship Index (attained EEXI));
  - (iii) Regulation VI/24 (Required EEDI); and
  - (iv) Regulation VI/25 (Required EEXI); and
- (b) the operational carbon intensity requirements contained in—
  - (i) Regulation VI/26 (Ship energy efficiency management plan (SEEMP));
  - (ii) Regulation VI/27 (Collection and reporting of ship fuel oil consumption data); and
  - (iii) Regulation VI/28 (Operational carbon intensity).

### **Verification by Certifying Authorities**

50 (1) The attained EEDI calculated in respect of a ship in accordance with regulation 49(a)(i) shall be verified, based on the EEDI technical file by a Certifying Authority, during the ship's initial survey.

(2) The attained EEXI shall be verified, based on—

- (a) the EEXI technical file; or
- (b) in a case to which Regulation VI/24.3 applies, the EEDI technical file,

by a Certifying Authority at the initial survey or at the first annual, intermediate or renewal survey, whichever is the first after 1 January 2023.

(3) A ship's SEEMP shall be verified by a Certifying Authority to ensure that it complies with this Part at the times specified by, and in accordance with—

- (a) Regulation VI/5.4.5;
- (b) Regulation VI/5.4.6; and
- (c) Regulation VI/26.3.3.

(4) Where a SEEMP is revised to take account of corrective action required in accordance with Regulation VI/28.8, the revised SEEMP shall be submitted to a

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Certifying Authority not later than one month after the attained annual operational CII has been reported in accordance with Regulation VI/28.2.

(5) The CEO of BSMA shall verify the ship fuel oil consumption data reported to it in respect of a ship in accordance with regulation 49(b)(ii) and Regulation VI/27.3 in accordance with the relevant guidelines published by the IMO.

### **Reporting the Required EEDI**

51 (1) This regulation applies to a ship to which Regulation VI/24 applies.

(2) In respect of a ship to which this regulation applies, a Certifying Authority shall report to the IMO, the required and attained EEDI values and relevant information, taking into account the guidelines developed by the IMO via electronic communication—

- (a) within seven months of completing the first of the surveys required under regulation 10 or Regulation VI/5.4, as the case may be; or
- (b) within seven months following 1 April 2022 for a ship delivered prior to 1 April 2022.

### **Reporting of ship fuel consumption to the IMO**

52 (1) This regulation applies to a Bermuda ship of 5,000 gross tonnage and above.

(2) The CEO of BSMA shall ensure that the reported data noted in appendix IX of Annex VI reported by a ship to which this regulation applies are transferred to the IMO Ship Fuel Oil Consumption Database via electronic communication and using a standardised format to be developed by the IMO not later than one month after issuing a Statement of Compliance in respect of the ship.

## **PART 5**

### **INSPECTIONS, DETENTIONS AND OFFENCES**

#### **Inspection of ships**

53 (1) Subject to paragraph (2), sections 219 and 220 of the Act and the Merchant Shipping (Port State Control) Regulations 2020 apply in relation to a ship to which these Regulations apply, or any ship delivering fuel oil for combustion purposes, for the purposes of checking compliance with these Regulations.

(2) The power in those sections to inspect a non-Bermuda ship and its equipment, any part of the ship, any articles on board and any documentation carried in the ship, is limited to—

- (a) verifying whether an IAPP Certificate, IEE Certificate or Statement of Compliance, as the case may be, has been issued in respect of the ship and is still valid;
- (b) verifying whether documentation referred to in paragraph (3) has been issued in respect of the ship and is still valid;

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- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures relating to the prevention of air pollution;
- (d) investigating whether a SEEMP is being implemented by the ship in accordance with Annex VI;
- (e) investigating whether a ship has emitted any substance covered by Annex VI in violation of that Annex, if a request has been received from a Contracting Government requesting that the CEO of BSMA investigate the ship and the CEO is satisfied that reasonable grounds for such an investigation have been provided;
- (f) verifying whether the ship has emitted any substances in violation of these Regulations;
- (g) inspecting the log book or electronic record book entries required under these Regulations;
- (h) inspecting bunker delivery notes that are to be made available for inspection under regulation 45,

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of an IAPP Certificate, IEE Certificate or other appropriate documentation referred to in sub-paragraphs (a) and (b).

(3) The documentation shall be documentation that has been issued in respect of the ship, which is still valid and shows that—

- (a) the ship has been subject to survey in accordance with Regulation VI/5;
- (b) a surveyor is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment;  
or
- (c) a person having power to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

(4) The power in sections 219 and 220 of the Act to go on board a ship may only be exercised if the ship in question is in a port or offshore terminal in Bermuda.

(5) Where the ship is inspected for the purposes of paragraph (2)(e) and is not a Bermuda ship, the person exercising the powers of inspection shall ensure that the report of the inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State; and
- (b) any other Contracting Government that requested the inspection.

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(6) Where log book or electronic record book entries are inspected under paragraph (2)(g), or bunker delivery notes are inspected under paragraph (2)(h), the person exercising the power of inspection may—

- (a) make a copy of an entry in that book or that note; or
- (b) require a printout copy of an electronic record book to be provided; and
- (c) require the master of the ship to certify that the copy or print out is a true copy of the original.

(7) Any copy certified in accordance with paragraph (6) is admissible in any judicial proceeding as evidence of the facts stated in it.

**Investigation of alleged violations by Bermuda ships**

54 Notwithstanding regulation 53, upon receiving evidence from a Contracting Government that a Bermuda ship has emitted a substance in violation of these Regulations, the CEO of BSMA shall—

- (a) cause the matter to be investigated;
- (b) inform the IMO of the action taken; and
- (c) inform that Contracting Government, of the action taken.

**General provisions on detention**

55 (1) Where a surveyor of ships has clear grounds for believing that—

- (a) an IAPP Certificate, IEE Certificate or Statement of Compliance is required to have been issued in respect of a ship but has not been issued, or has been issued and is not valid;
- (b) documentation referred to in regulation 53(3) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of a certificate, Statement of Compliance or other appropriate documentation;
- (d) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of air pollution;
- (e) an offence is being committed by the master or company responsible for the ship under regulation 60; or
- (f) a determination has been made under regulation 22,

the ship is liable to be detained until a surveyor is satisfied that it can proceed to sea without presenting any unreasonable threat of harm to the marine environment.

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(2) Notwithstanding paragraph (1), a person having powers to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) The power under this regulation to detain a ship may only be exercised if the ship in question is in a port or offshore terminal in Bermuda.

(4) Section 242 of the Act (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
- (b) subsection (7) were omitted.

(5) Where a ship is liable to be detained under this regulation, the person detaining the ship shall serve on the master of the ship a detention notice which—

- (a) states the grounds of the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 242(1) of the Act.

(6) Where a non-Bermuda ship is detained, the CEO of BSMA shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(7) Where a ship is detained under paragraph (1)(e), a person having power to detain the ship shall, at the request of the company or master, immediately release the ship—

- (a) if no proceedings for an offence are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for any such offence, having been instituted within that period, are concluded without the company or master being convicted;
- (c) if either—
  - (i) the sum of \$50,000 is paid to the BSMA by way of security; or
  - (ii) security which, in the opinion of the BSMA, is satisfactory and is for an amount not less than \$50,000 is given to the BSMA;
- (d) where the company or master is convicted of any such offence, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person have been paid; or
- (e) where the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.

(8) The CEO of BSMA shall repay any sum paid in pursuance of paragraph (7)(c) or release any security so given—

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- (a) if no proceedings for an offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for any such offence, having been instituted within that period, are concluded without the company or master being convicted.

(9) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (7)(c) and the company or master is convicted of an offence, the sum so paid or the amount made available under the security shall be applied as follows—

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the company, or master; and
- (b) next, in payment of any fine imposed by the court, and any balance shall be repaid to the first-mentioned person in sub-paragraph (a).

(10) Section 144 of the Act (interpretation of section 143) applies for the purposes of paragraphs (7) to (9), but as if—

- (a) references to the master or owner of the ship were references to the master or company; and
- (b) references to an offence under section 130 were references to an offence under these Regulations.

**Power for harbour master to detain**

56 (1) Where the harbour master of a harbour in Bermuda has clear grounds for believing that an offence under regulation 60 has been committed, the harbour master may detain the ship.

(2) Section 143(2) and (3) of the Act applies to a detention under paragraph (1) as it applies to a detention under section 143(1) of the Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship shall serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (2), the harbour master shall immediately release the ship—

- (a) if no proceedings for an offence are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for any such offence, having been instituted within that period; are concluded without the company or master being convicted;
- (c) if either—

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- (i) the sum of \$45,000 is paid to the harbour authority by way of security; or
  - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than \$45,000 is given to the harbour authority, by or on behalf of the company or master;
  - (d) where the company or master is convicted of any such offence if any costs or expenses ordered to be paid by that person and any fines imposed on that person, have been paid; or
  - (e) where the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (5) The harbour authority shall repay any sum paid in pursuance of paragraph (4) or release any security so given—
- (a) if no proceedings for an offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
  - (b) if proceedings for any such offence having been instituted within that period, are concluded without the company or master being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the company or master is convicted of an offence, the sum so paid or the amount made available under the security shall be applied as follows—
- (a) first, in payment of any costs or expenses ordered by the court to be paid by the company or master; and
  - (b) next, in payment of any fine imposed by the court.
- (7) Section 144 of the Act applies for the purposes of paragraphs (4) to (6) as if—
- (a) references to the master or owner of the ship were references to the master or company; and
  - (b) references to an offence under section 130 were references to an offence under these Regulations.

### **Duty of harbour master to report deficient ships**

57 If the harbour master of a harbour in Bermuda has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master shall immediately report the matter to the CEO of BSMA.

### **Right of appeal and compensation**

58 (1) Regulation 18 of the Merchant Shipping (Port State Control) Regulations 2020 applies in relation to the exercise of the powers of detention under these Regulations as it

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applies in relation to the exercise of powers under those Regulations, subject to the modifications referred to in paragraph (2).

- (2) The modifications are—
- (a) references to “inspector” are to be taken as references to the person detaining the ship or the harbour master, as the case may be;
  - (b) references to “refusal of access notice”, “service of the refusal of access notice” and “refusal of access” are to be omitted; and
  - (c) in regulation 12(2) after “Minister”, there is added “, except where the ship is detained by a harbour master, in which case any compensation awarded under this section shall be payable by the harbour authority”.

### **Non-compliant fuel oil for combustion purposes**

59 (1) Where any person exercising a power of inspection under section 219 or 220 of the Act finds on a ship fuel oil for combustion purposes that does not comply with these Regulations and which is intended for use on a ship to which these Regulations apply, that person may require the relevant fuel oil supplier—

- (a) to bring that fuel oil into compliance; or
- (b) not to deliver that fuel oil to the relevant ship.

(2) Where any person exercising a power of inspection under section 219 or 220 of the Act finds on a relevant ship, fuel oil for combustion purposes that does not comply with these Regulations, that person may require that it be brought into compliance or removed.

### **Offences**

- 60 (1) Any contravention of—
- (a) regulation 6(9), 10(1), 11(2), 24(1), (2) or (3), 25(2), (4) or (5), 26(1), 27(1), 28(2), (3) or (4), 29(3) or (4), 31(4), 32(2), 33(2), 34(3) or (5), 35(2), 36(1), (2) or (9), 37(3) or (4), 39(2), 40(1), (2), (3), (4) or (5), 43(6) or (8), 49(a) or (b), 50(1), (2) or (3) is an offence by each of the companies responsible for, and the master of, the ship in question;
  - (b) regulation 36(3) or (4), 37(6), 38(1), (2), (3) or (4), 43(5), 44(1) or 45(4) is an offence by the master of the ship in question;
  - (c) regulation 25(3) or 45(8) is an offence by the person in question;
  - (d) regulation 37(1) or (2) is an offence by the harbour authority or terminal operator in question; or
  - (e) regulation 43(3) or (4) or 45(2) is an offence by the fuel oil supplier in question.

(2) A fuel oil supplier’s representative who makes a false declaration in a bunker delivery note, commits an offence.



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- (3) Where a ship uses an emission abatement method which is not—
- (a) permitted in accordance with regulation 6; or
  - (b) authorised for the purposes of the Convention by a Government other than Bermuda,

the company and master each commit an offence.

(4) A person who fails to comply with a requirement made under regulation 58(2) to bring fuel oil into compliance commits an offence.

- (5) An offence under this regulation is punishable—
- (a) on summary conviction to a fine not exceeding \$10,000; or
  - (b) on conviction on indictment to a fine not exceeding \$50,000.

(6) Where an offence under these Regulations is committed, or would be committed save for the operation of regulation 61(1) by any person due to the act or default of some other person, that other person also commits the offence, and a person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first person.

**Defences**

61 (1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove, that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings for an offence comprising a contravention of regulation 32(2), 33(2), 34(3) or (5), 35(2) or 36(1) or (2), it is a defence for the person charged to prove that—

- (a) the ship was not a Bermuda ship;
- (b) the emission took place in waters that were not within Bermuda controlled waters or an exclusive economic zone; or
- (c) the ship was in a port in Bermuda at the time of the institution of proceedings by reason only of stress of weather or any other reason beyond the control of the master or company.

**Service of documents on foreign companies**

62 Section 142(3) of the Act applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 130 as if—

- (a) the reference to section 130 were to these Regulations;
- (b) in the case of an offence in respect of a ship other than a platform, the reference to the owner, were to the company; and
- (c) in the case of an offence in respect of a platform, the reference to—
  - (i) the owner of the ship, were to the owner of the platform; and

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(ii) the master of the ship, were to the manager of the platform.

**Enforcement and application of fines**

63 Section 145 of the Act applies to any fine for an offence under these Regulations committed by a company or master, as if—

- (a) in section 145(1) the reference to proceedings against the owner or master of a ship for an offence under Part VIII, Chapter III were a reference to proceedings against the company or master for an offence under these Regulations; and
- (b) in section 145(2), the reference to an offence under section 130 were a reference to an offence under these Regulations.

**Restriction on jurisdiction over offences outside Bermuda controlled waters**

64 (1) Where there has been a contravention of regulation 32(2), 33(2), 34(3) or (5), 35(2) or 36(1) or (2) in respect of a ship which is a non-Bermuda ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence shall not be instituted in Bermuda unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that proceedings be taken; or
- (b) the offence has caused or is likely to cause air pollution in Bermuda controlled waters.

(2) Where proceedings have been instituted but not concluded, they shall be suspended upon the request of the foreign State in question and the CEO of BSMA shall ensure that all of the evidence, court records and documents relating to the case, together with any sum paid or security given, are provided to the foreign State.

**Suspension of proceedings at flag State request**

65 (1) This Regulation applies to proceedings instituted but not concluded in Bermuda in respect of a contravention of regulation 32(2), 33(2), 34(3) or (5), 35(2) or 36(1) or (2) committed outside Bermuda territorial limits by a ship which is a non-Bermuda ship.

(2) Subject to paragraph (3), any proceedings shall be suspended if the court is satisfied that the flag State of the ship in question has instituted proceedings corresponding to the proceedings in Bermuda in respect of the contravention of that provision within six months of the institution of the proceedings by Bermuda.

(3) Paragraph (2) does not apply—

- (a) where the contravention resulted in serious pollution to Bermuda; or
- (b) where the CEO of BSMA certifies that the flag State in question has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention in respect of its ships.

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(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated.

**PART 6**

**MISCELLANEOUS PROVISIONS**

**Communication**

66 The CEO of BSMA shall be responsible for communicating any information relating to these Regulations that is required to be communicated under Article 11 of the Convention, to the IMO.

**Promotion of technical cooperation**

67 The CEO of BSMA shall be responsible for discharging the Government's obligations under Regulation VI/29 to—

- (a) promote and provide support, as appropriate, directly or through the IMO, to Contracting Governments that request technical assistance; and
- (b) cooperate actively with other Contracting Governments,

subject to any other enactment that may apply, to promote the development and transfer of technology and exchange of information to Contracting Governments which request technical assistance in respect of measures to fulfil the requirements of Chapter 4 of Annex VI and, in particular, Regulations VI/19.4. to VI/19.6.

**Verification**

68 The Minister shall be responsible for facilitating the conduct of periodic audits in accordance with Regulations VI/30 and VI/31 to verify compliance with and implementation of Annex VI.

**Revocation**

69 The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2019 are revoked.

**Transitional provisions**

70 (1) This regulation applies to—

- (a) an IAPP Certificate;
- (b) an IEE Certificate;
- (c) a Statement of Compliance; or
- (d) an exemption or equivalent issued under regulation 3 or 4 of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2019, issued before these Regulations come into force and which remains valid.

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(2) Notwithstanding the revocation of the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2019, a document mentioned in paragraph (1) is to be treated as equivalent to an IAPP Certificate, IEE Certificate, Statement of Compliance, exemption or equivalent, as the case may be, referred to in these Regulations, and accordingly remains valid, subject to regulations 19, 20 and 21, as appropriate.

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**SCHEDULE 1**

(regulation 2)

**GROSS TONNAGE**

**Interpretation**

1 In this Schedule—

“2008 Regulations” means the Merchant Shipping (Tonnage) Regulations 2008;

“length” has the same meaning as in the 2008 Regulations;

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969.

**Determination of Gross Tonnage**

2 (1) The “gross tonnage” of a Bermuda ship is to be determined in accordance with paragraphs 3 to 6.

(2) The “gross tonnage” of a ship other than a Bermuda ship is to be determined in accordance with paragraphs 7 to 9.

**Bermuda ships**

3 In the case of a ship of 24 metres in length or over, for which the Minister permits the continuing use of a gross tonnage pursuant to regulation 12(1) of the 2008 Regulations, the “gross tonnage” is the smaller of—

- (a) the largest gross tonnage permitted for that ship pursuant to regulation 12(1) of the 2008 Regulations; and
- (b) the gross tonnage of the ship determined in accordance with regulation 6 of the 2008 Regulations.

4 In the case of any other ship of 24 metres in length or over, the “gross tonnage” is the gross tonnage of the ship determined in accordance with regulation 6 of the 2008 Regulations.

5 In the case of a fishing vessel of less than 24 metres in length, the “gross tonnage” is the registered tonnage of the vessel determined in accordance with Schedule 2.

6 In the case of any other ship of less than 24 metres in length, the “gross tonnage” is the tonnage of the ship determined in accordance with regulation 14(2) of the 2008 Regulations.

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**Ships other than Bermuda ships**

7 Subject to paragraph 9, in the case of a ship which has a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is that gross tonnage.

8 Where a ship has a gross tonnage determined in accordance with the Tonnage Convention but the State whose flag the ship flies or is entitled to fly permits the use of some other gross tonnage, the “gross tonnage” of the ship is the smaller of—

- (a) the largest gross tonnage permitted by the flag State to be used for that ship; and
- (b) the gross tonnage determined in accordance with the Tonnage Convention.

9 In the case of a ship which does not have a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is the gross tonnage or equivalent measure determined in accordance with the law of the State whose flag the ship flies or is entitled to fly (and where the ship has more than one such gross tonnage or equivalent measure, the “gross tonnage” is to be taken to be the largest of them).

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**SCHEDULE 2**

(Schedule 1 paragraph 5)

**RULES FOR THE CALCULATION OF TONNAGE**

1 Multiply together the Registered Length, Registered Breadth and Registered Depth in metres and multiply the product by the factor 0.16; the result shall be the Registered Tonnage of the vessel, except for those vessels to which paragraph 2 also applies.

2 For vessels with a break or breaks above the line of deck, multiply together the mean length, mean breadth and mean depth in metres of the space or each of the spaces thereby formed, then multiply the product for each space so measured by the factor 0.35 and add the results to the figure obtained by the calculation set out in paragraph 1; for such vessels the final result shall be the Registered Tonnage of the vessel.

Made this 27th day of December 2023

Minister of Transport

[Operative Date: 28 December 2023]