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MERCHANT SHIPPING ACT, 2007**MERCHANT SHIPPING (ANTI-FOULING SYSTEMS)
REGULATIONS, 2012****ARRANGEMENT OF REGULATIONS*****Regulation :***

1. Application
2. Controls on Anti-Fouling Systems
3. Control of waste materials
4. Communication and exchange of information
5. Surveys and certification
6. Issue of endorsement of an international Anti-Fouling System Certificate
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S. I. 23 of 2012

MERCHANT SHIPPING ACT, 2007
MERCHANT SHIPPING (ANTI-FOULING SYSTEMS)
REGULATIONS, 2012

[1st of June, 2012] Commence-
ment.

In exercise of the powers conferred on me by section 335 (1) and (3) and section 434 of the Merchant Shipping Act, 2007 and all other powers enabling me in that behalf, I, SENATOR IDRIS UMAR, Honourable Minister of Transport, hereby make the following Regulations—

1. —(1) Subject to sub-regulation (2) of this regulation, these Regulations apply to any ship of 400 Gross Tonnage and above which— Application.

(a) is a Nigerian ship ;

(b) is not a Nigerian ship, but which operates under the authority of Nigeria ; or

(c) does not fall within paragraph (a) and (b) of this sub-regulation but which is in a port, shipyard, dockyard or jetty in Nigeria or at an offshore terminal in Nigerian waters.

(2) These Regulations do not apply to—

(a) a warship ;

(b) a naval auxiliary ; or

(c) a ship owned or operated by a State and used, for the time being, only on government non-commercial services.

2. The following are prohibited and restricted in accordance with the requirements specified in the First Schedule to these Regulations— Controls on Anti-Fouling Systems.

(a) the application, re-application, installation, or use of harmful anti-fouling systems ("AFS") on ships referred to in regulation 1(1)(a) or (b) of these Regulations ; or

(b) the application, re-application, installation or use of such systems on ships referred to in regulation 1(1)(c), whilst in any port, shipyard, dockyard, jetty or offshore terminal in Nigeria.

3. Persons in charge of shipyards or ship repair facilities are required to ensure that any waste from the application or removal of an anti-fouling system specified in the First Schedule to these Regulations is collected, handled, treated and disposed of in a safe and environmentally sound manner to protect human health and the environment. Control of Waste Materials.

4.—(1) A person authorised in that behalf by the Agency shall communicate to the Organization a list detailing the specific powers and responsibilities of the nominated surveyors or recognized organizations which are authorised to act in the administration of matters relating to the control of anti-fouling systems. Communication and exchange of information.

(2) Communication as contemplated in sub-regulation (1) of this regulation shall be in accordance with the Anti-Fouling System Convention and shall be circulated to the other parties for the information of their officers.

(3) In the case of any anti-fouling system approved, registered or licensed in Nigeria, the Agency may require the manufacturers of such anti-fouling system to provide, to any party which requests it, relevant information on which the decision to approve, register or license was based but no information shall be provided that is protected by law.

(4) Subject to any law protecting the disclosure of certain information, the Agency may, in the case of any Anti-Fouling system approved, registered or licensed in Nigeria, require the manufacturers of such anti-fouling system to provide to any party which request it, relevant information on which the decision to approve, register or licence was based.

Surveys
and
certification.

5.—(1) Ships of 400 gross tonnage and above referred to in regulation 1(1)(a) shall be subject to :

(a) an initial survey before the ship is put into service or before the International Anti-Fouling System Certificate required under these Regulations is issued for the first time ; and

(b) a survey when the anti-fouling systems are changed or replaced and such surveys shall be endorsed on the certificate issued under these regulations.

(2) The survey referred to in sub-regulation (1)(a) and (b) of this regulation shall reflect whether the ship's anti-fouling system fully complies with these Regulations.

(3) The Agency shall establish appropriate measures for ships that are not subject to the provisions of sub-regulation (1) of this regulation in order to ensure that these Regulations are complied with.

(4) The survey of ships shall be carried out by officers duly authorized or surveyors duly appointed by the Agency.

(5) Where a duly authorised officer or an appointed surveyor determines that the ship's anti-fouling system does not conform to the requirements of these Regulations, he shall notify the Agency of any such determination, and the Agency shall immediately ensure that —

(a) corrective measures are taken to bring the ship into compliance ; or

(b) the Certificate is not issued or is withdrawn as appropriate.

(6) Where the ship referred to in sub-regulation (5) of this regulation is registered in another Convention country, the Agency shall notify the appropriate authorities of that country as to any action taken thereon.

Issue or
endorsement
of an
International
Anti-fouling
System
Certificate.

6.—(1) The Agency or its duly authorised person shall, after successful completion of a survey in accordance with regulation 7 of these Regulations, issue an International Anti-Fouling System Certificate to a ship referred to in these Regulations.

(2) A Certificate under this regulation shall be in accordance with the Second Schedule to these Regulations and shall be written in English language.

7.—(1) At the request of the Agency, another Party may cause a ship to be surveyed and, if satisfied that the Convention has been complied with, it shall issue or authorize the issue of a Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that Certificate for the ship, in accordance with the Convention.

Issue or endorsement of an international Anti-fouling System Certificate by another party.

(2) A copy of the Certificate issued or endorsed under the provisions of this regulation and a copy of the survey report shall be transmitted as soon as possible to the Agency.

(3) A Certificate issued in accordance with the provisions of this regulation shall contain a statement that it has been issued at the request of the Agency and it shall have the same force and receive the same recognition as a Certificate issued by the Agency.

(4) A Certificate shall not be issued to a ship which is entitled to fly the flag of a State which is not a party to the Convention.

8.—(1) A Certificate issued under regulations 6 and 7 of these Regulations shall cease to be valid in either of the following cases—

Validity of an international Anti-Fouling System Certificate.

(a) if the anti-fouling system is changed or replaced and the Certificate is not endorsed in accordance with these Regulations ; and

(b) upon transfer of the ship to the flag of another State.

(2) The issue by the Agency of a new Certificate to a ship transferred from another party may be based on a new survey or on a valid Certificate issued by the previous party whose flag the ship was entitled to fly.

9.—(1) A ship of 24 meters or more in length, but less than 400 gross tonnage engaged in international voyages and to which regulation 1 of these regulations applies (excluding fixed or floating platforms, FSUs, and FPSOs) must carry a declaration ('the Declaration') signed by the owner or owner's authorized agent and such Declaration shall be accompanied by appropriate documentation (such as a paint receipt or a contractor invoice) or contain appropriate endorsement.

Declaration on Anti-Fouling System.

(2) The Declaration shall conform to the Fourth Schedule to these Regulations and shall be written in English language.

10.—(1) An Anti-Fouling Systems Certificate or other certificate referred to in regulations 6 and 7 of these Regulations must be readily available for examination at all times on board every ship to which these Regulations apply.

Availability of certificates and other documents.

(2) An Anti-Fouling Systems Declaration and the appropriate documentation or endorsement referred to in regulation 9 of these Regulations must be readily available for examination at all times on board every ship to which regulations 6 and 7 of these Regulations apply.

Inspection of
ships and
detection of
violations.

11.—(1) A ship to which these Regulations apply may, in any port, shipyard, or offshore terminal in Nigeria or Nigerian waters, be inspected by a qualified person for the purpose of determining whether the ship is in compliance with the provisions of these Regulations.

(2) Unless there are clear grounds for believing that a ship is in violation of any of the provisions of these Regulations, any inspection to be carried out pursuant to sub-regulation (1) of this regulation shall be limited to —

(a) verifying that, where required, there is onboard a valid AFS Certificate or a Declaration on anti-fouling system ; or

(b) a brief sampling of the ship's anti-fouling system that does not affect the integrity, structure, or operation of the anti-fouling system, taking into account the Organization's current guidelines or any amendment to the guidelines as notified by Marine Notice.

(3) The time required to process the result of any sampling as provided in sub-regulation (2)(b) of this regulation shall not be used as a basis for preventing the movement and departure of the ship.

(4) Where there are clear grounds for believing that a ship is in violation of these Regulations, a thorough inspection, in accordance with paragraph (b) of sub-regulation (2) of this regulation may be carried out.

(5) Subject to sub-regulation (7) of this regulation, where a surveyor of ships has clear grounds for believing that, in relation to a ship to which these Regulations apply—

(a) an AFS-Certificate, or other certificate referred to in Fourth Schedule to these Regulations is required to have been issued in respect of the ship but has not been issued, or has been issued but is not valid ;

(b) an AFS-Declaration is required to be carried on board the ship, but is not carried ; or

(c) where an AFS-Declaration is required to be carried, appropriate documentation referred to in the Fourth Schedule to these Regulations is not carried on board the ship, and the AFS-Declaration does not contain an appropriate endorsement ; or

(d) an offence under these Regulations is being committed in respect of the ship ;

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

(6) A person having powers to detain a ship may permit a ship which is liable to be detained under sub-regulation (5) of this regulation to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(7) Subject to the provisions of sub-regulation (3) of this regulation, where a surveyor of ships has clear grounds for believing that an offence under these Regulations has been committed in respect of a ship, the ship is liable to be detained.

(8) Where a ship is liable to be detained under this regulation, the person detaining the ship must serve on the owner or 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 for the ship to be released.

(9) Where a ship, other than a Nigerian ship is detained, the Agency 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.

(10) Where a ship is detained under sub-regulation (5) of this regulation, a person having power to detain the ship must, at the request of the owner or master, immediately release the ship—

(a) if no proceedings for any violation of these Regulations are instituted within the period of seven days beginning with the day on which the ship is detained ;

(b) if proceedings for any violation of the appropriate regulation, having been instituted within that period, are concluded without the owner or master being convicted ;

(c) if either—

(i) the sum of Ten Million Naira is paid to the Agency by way of security, or

(ii) security which, in the opinion of the Agency, is satisfactory and is for an amount of not less than Ten Million Naira, is given to the Agency by or on behalf of the owner or master ;

(d) where the owner or master is convicted of an offence under these Regulations and if any costs or expenses is ordered to be paid by that person, and any fine imposed on that person have been paid ; or

(e) the release is ordered by a court having jurisdiction and any bond or other financial security ordered by such court is posted.

(11) The Agency must repay any sum paid in pursuance of sub-regulation (9)(c) or release any security so given—

(a) if no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the sum is paid ; or

(b) if proceedings for that offence, having been instituted within that period, are concluded without the owner or master being convicted.

(12) Where a sum has been paid, or security has been given, by any person in pursuance of sub-regulation 10(c) of this regulation and the owner or master is convicted of an offence under these Regulations, the sum so paid or the amount made available under the security shall be applied in the following order—

(a) to the payment of any costs or expenses ordered by the court to be paid by the owner or master ; and

- (b) to the payment of any fine imposed by the court ; and
- (c) any balance must be repaid to the first-mentioned person.

Establishment and maintenance of marine Laboratory by the Agency.

12. The Agency shall set up and maintain a marine laboratory with up-to-date diagnostic and analytical equipment, for the purpose of analysing and identifying harmful anti-fouling systems and for other purposes.

Offences and penalties.

13.—(1) The provisions of sub-regulations (2) and (3) of this regulation apply in relation to a ship referred to in regulation 1(1) of these Regulations, except that sub-regulation (3) of this regulation does not apply in relation to—

- (a) a fixed or floating platform ;
- (b) a floating storage unit ; or
- (c) a floating production storage and off-loading unit,

which was constructed before 1st July 2003 and has not been in dry-dock on or after 1st day of July 2003.

(2) Where any contravention of regulation 2 of these Regulations occurs or continues after the date on which these Regulations come into force, the owner and master of the ship in question shall be severally liable to a penalty of Ten Million Naira.

(3) Where the owner or master contravenes the provisions of regulation 2 or 10 of these Regulations, he shall be liable to a penalty of Ten Million Naira.

Undue delay or detention of ships.

14. The Agency shall make all possible efforts to avoid a ship being unduly detained or delayed under regulation 10 of these Regulations.

Interpretation

15.—(1) In these Regulations—

“AFS” means Anti-Fouling Systems ;

“Agency” means the Nigerian Maritime Administration and Safety Agency ;

“Anti-fouling system” means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms ;

“Committee” means the Marine Environment Protection Committee of the Organization ;

“Convention” means the International Convention on the Control of Anti-Fouling Systems on ships ;

“FPSOs” means Floating Production Storage and Offloading Unit ;

“FSUs” means Floating Storage Units ;

“GT” or “Gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention ;

"Length" means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto, or any successor Convention ;

"Organization" means the International Maritime Organization ; and

"Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units (FSUs) and floating production storage and off-loading units (FPSOs).

16. These Regulations may be cited as the Merchant Shipping (Anti-Fouling Systems) Regulations, 2012.

Citation.

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FIRST SCHEDULE

Regulation 3

CONTROLS ON ANTI-FOULING SYSTEMS

<i>Anti-fouling system</i>	<i>Control measures</i>	<i>Application</i>	<i>Effective date</i>
Organotin compounds which act as biocides in anti-fouling systems	Ships shall not apply or re-apply such compounds	All ships	1st January 2003
Organotin compounds which act as biocides in anti-fouling systems	Ships either : (1) shall not bear such compounds on their hulls or external parts or surfaces ; or (2) shall bear a coating that forms a barrier to such compounds leaching from the underlying non-compliant anti-fouling systems	All ships (except fixed and floating platforms, FSUs, and FPSOs that have been constructed prior to 1st January 2003 and that have not been in dry-dock on or after 1st January 2003)	1st January 2008

SECOND SCHEDULE

Regulation 6(2)

MODEL FORM OF INTERNATIONAL ANTI-FOULING SYSTEM
CERTIFICATE

INTERNATIONAL ANTI-FOULING SYSTEM CERTIFICATE

(This certificate shall be supplemented by a Record of Anti-fouling Systems)

(Official seal)

(State)

Issued under the
INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING
SYSTEMS ON SHIPS

under the authority of

.....
(THE FEDERAL GOVERNMENT OF NIGERIA)

by

.....
(Director General,
Nigerian Maritime Administration and Safety Agency)

When a Certificate has been previously issued, this Certificate replaces the
certificate dated

Particulars of ship¹

Name of ship

Distinctive number or letters.....

Port of registry

Gross tonnage

IMO number²

An anti-fouling system controlled under Annex 1 has not been applied during or
after construction of this ship Y

An anti-fouling system controlled under Annex 1 has been applied on this ship
previously, but has been removed by (insert Name of the facility)
on (date)..... Y

An anti-fouling system controlled under Annex 1 has been applied on this ship
previously, but has been covered with a sealer coat applied by
(insert Name of the facility) on (date)..... Y

¹ Alternatively, the particulars of the ship may be placed horizontally in boxes.

² In accordance with the IMO Ship Identification Number Scheme adopted by the
Organization with Assembly resolution A.600(15).

An anti-fouling system controlled under Annex 1 was applied on this ship prior to (date)³ but must be removed or covered with a sealer coat prior to (date)⁴.....

THIS IS TO CERTIFY THAT :

1. The ship has been surveyed in accordance with regulation 1 of Annex 4 to the Convention ; and
2. The survey shows that the anti-fouling system on the ship complies with the applicable requirements of Annex 1 to the Convention.

ISSUED at
(Place of issue of Certificate)

.....
(Date of issue)

.....
(Signature of Director-General)

Date of completion of the survey on which this certificate is issued :

Date of entry into force of the control measure.

Date of expiration of any implementation period specified in article 4(2) or Annex 1.

THIRD SCHEDULE

MODEL FORM OF RECORD OF ANTI-FOULING SYSTEMS

RECORD OF ANTI-FOULING SYSTEM

This Record shall be permanently attached to the International Anti-Fouling System Certificate

PARTICULARS OF SHIP :

Name of ship

Distinctive number or letters :.....

IMO number :.....

Details of anti-fouling system(s) applied

Type(s) of anti-fouling system(s) used :.....

.....

Date(s) of application of anti-fouling system(s)

Name(s) of company(ies) and facility(ies)/location(s) where applied

.....

Name(s) of anti-fouling system manufacturer(s)

.....

Name(s) and colour(s) of anti-fouling system(s)

.....

Active ingredient(s) and their Chemical Abstract Services Registry Number(s)
(CAS number(s))

.....

Type(s) of sealer coat, if applicable :.....

.....

Name(s) and colour(s) of sealer coat applied, if applicable :.....

.....

Date of application of sealer coat :.....

THIS IS TO CERTIFY that this Record is correct in all respects.

ISSUED at

(Place of issue of Record)

.....

(Date of issue)

.....

*(Signature of authorized official
issuing the record)*

ENDORSEMENT OF THE RECORDS

THIS IS TO CERTIFY that a survey required in accordance with regulation 1(1)(b) of Annex 4 to the Convention found that the ship was in compliance with the Convention.

Details of anti-fouling system(s) applied

Type(s) of anti-fouling system(s) used

Date(s) of application of anti-fouling system(s)

Name(s) of company(ies) and facility(ies) location(s) where applied

Name(s) of anti-fouling system(s) manufacturer(s)

Name(s) and colour(s) of anti-fouling system(s)

Active ingredient(s) and their Chemical Abstract Services Registry Number(s) (CAS number(s))

Type(s) of sealer coat, if applicable

Name(s) and colour(s) of sealer coat applied, if applicable

Date of application of sealer coat

Signed :
(Signature of authorized official issuing the Record)

Place :

Date :
(Seal or stamp of the Agency)

FOURTH SCHEDULE

Regulation 11(4)(a)

MODEL FORM OF DECLARATION ON ANTI-FOULING SYSTEM

DECLARATION ON ANTI-FOULING SYSTEM

*Drawn up under the*INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL
ANTI-FOULING SYSTEMS ON SHIPS

Name of Ship

Distinctive number of letters

Port of registry

Length

Gross tonnage

IMO number (if applicable)

I declare that the anti-fouling system used on this ship complies with Annex
1 of the Convention.

.....
(Date) (Signature of owner or owner's authorized agent)

Endorsement of anti-fouling system(s) applied

Type(s) of anti-fouling system(s) used and date(s) of application

.....
(Date) (Signature of owner or owner's authorized agent)

Type(s) of anti-fouling system(s) used and date(s) of application

.....
(Date) (Signature of owner or owner's authorized agent)

Type(s) of anti-fouling system(s) used and date(s) of application

.....
(Date) (Signature of owner or owner's authorized agent)

Signature of master

MADE at Abuja this 1st day of June, 2012.

SENATOR IDRIS UMAR,
Honourable Minister of Transport

EXPLANATORY NOTE

These Regulations apply to any ship of 400GT and above which is a Nigerian ship, not a Nigerian ship but which operates under the authority of Nigeria or in a port, shipyard, dockyard or jetty in Nigeria or at an off-shore terminal in Nigeria waters and provides for a system of control on Anti-Fouling Systems, waste materials, surveys, inspection of ships and certification of Anti-Fouling systems.



