



## **International, Transport, Trade & Energy Division**

### **E-mail Flyer - 21 September 2007**

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#### **Articles:**

- **NPA Draft Port Rules / NPA Draft Regulations in respect of Licences, Registrations and Permits and Harbour Master's Written Instructions**



## **Introduction**

The National Ports Act, No 12 of 2005 ("the Act"), came into effect on 26 November 2006. In terms of the Act, the following draft legislation has been published for public comment by notice in the Government Gazette General Notice 1090 of 2007.

1. Draft Port Rules in terms of Section 80(2) of the Act;
2. Draft: Licences, Registrations and Permits issued in terms of the Port Rules in terms of Section 80(2) of the Act; and
3. Draft Harbour Master's Written Instructions in terms of Section 74(3)(b) of the Act, which relate to the handling of bulk flammable liquids and the handling of flammable liquid containers.

Interested and affected parties are invited to submit written comments to the Authority by 17h00 on **19 November 2007**.


## **Draft Port Rules**

Draft Port Rules ("the Rules"), to replace the outdated Harbour Regulations, together with Harbour Master's Written Instructions, have been prepared and comments have been received from relevant government institutions and public meetings will be held from the end of October 2007.

In terms of Section 80(2) of the Act and Rule 2, the Authority's purpose is to ensure proper control and management of the port, regulation and control of navigation within the approaches to the port and the maintenance of safety, security and good order in ports and the protection of the environment.

The Harbour Master in terms of Section 74(3)(b) of the Act Rule 5 is the final authority in terms of all matters relating to pilotage, navigation, navigational aids, dredging and movement of vessels within port limits. In addition, he may give verbal or written instructions where necessary for:

- promoting or securing conditions conducive to the ease, convenience or safety of navigation in the port;
- regulating the movement or mooring and unmooring of a vessel in the port;

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- controlling the manner in which cargo, fuel, water or ship's stores are taken on, discharged or handled;
  - regulating the removal or disposal of any residues and mixtures containing oil or noxious liquid substances, sewage and garbage from vessels in a port and requiring any such matter to be deposited in reception facilities in the port;
  - the detention of a vessel reasonably suspected of causing oil pollution and ensuring that the total cost of the pollution clean-up is recovered, or acceptable guarantees are provided, prior to the vessel being given permission to leave the port;
  - carrying into effect the provisions of the Act.


The following are specific provisions of interest in the Rules:

### **Pilots and Pilotage**

- Pilotage is compulsory for all vessels entering, departing or moving within a port.
- Where the Harbour Master is satisfied that the master is competent to navigate the vessel without the assistance of a pilot, he may grant to the master written permission for a specified occasion or standing permission in the form of a pilotage exemption certificate.
- The Master remains in control of a vessel under pilotage. Neither the master nor any person under his command may, while the vessel is under pilotage, in any way interfere with the navigation or movement of the vessel or prevent the pilot from carrying out his duties. The only exception is where there is an emergency, the master may intervene in the interests of safety of the vessel, cargo or crew.

### **Assignment of Berths**

- The terminal operator will determine the assignment of berths where only one terminal operator operates the berth.

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- The Authority will determine the assignment of berths where a single terminal operator does not operate a berth and it may impose conditions upon the assignment of such a berth. In this regard, the Authority will take into account the contractual and other requirements of any terminal operators operating at that berth and the good order and efficient working of the port.

### **Navigational incidents, damage to property and security**

- The master of a vessel within or about to enter the port limits is required to report to the Harbour Master as soon as he is aware of the following matters:
  - fires / explosions on board the vessel;
  - the involvement of the vessel in a collision, grounding or striking;
  - any defect in the vessel's hull, main propulsion systems or steering systems, radars, radio equipment, anchors or cables;
  - any discharge or threat of discharge of dangerous goods or other harmful substances from the vessel;
  - another vessel in difficulty;
  - any obstruction to navigation or adverse weather conditions;
  - navigational aids that are not functioning or missing;
- The owner or master of a vessel involved in a navigational incident or which damages property within a port, must immediately report the incident to the Harbour Master as well as any other applicable regulatory body or government department and submit to the Harbour Master a full written report setting out the circumstances of the incident within 24 hours or before the departure of the vessel, whichever is the soonest.
- The Harbour Master may board any vessel involved in an incident to inspect, take photographs and samples and make copies of any documents that are relevant to the incident, including logbook entries where property is damaged.
- The Authority may require the owner, master or agent to lodge financial security to the satisfaction of the authority if the vessel or its staff have caused pollution or damage to the environment or to property within a port.

### **Arrested vessels**



- The Harbour Master may direct that any vessel that has been arrested or attached by order of court, or detained by another authority, be moved to another place within port limits.
- The Harbour Master will give notice to the sheriff of the court, or any other official responsible for the upkeep of an arrested vessel, that the vessel must be moved.
- If the sheriff of the court or any other official of another authority is unable to move the vessel within the period stipulated in the notice, the Harbour Master may move the vessel at the expense of the sheriff or any other authority.
- In the event of the agent terminating his or her services, the sheriff of the court, or any other official responsible for the upkeep of an arrested vessel, is liable for any fees charged by the Authority in respect of the arrested, attached or detained vessel from the time of its arrest, attachment, or detention until it is freed from the arrest, attachment or detention.
- The sheriff of the court or any other official of another authority must pay these fees within 30 days of the presentation of an account.

### **Protection of the Environment**

- All persons within a port must take all reasonable steps to prevent, minimise and mitigate pollution or damage to the environment.
- Any person that pollutes or causes damage to the environment will bear the costs associated with the combating and cleaning up of that pollution and damage, and the associated impacts relating thereto.
- If the person or persons responsible for the pollution or damage to the environment fail to take the necessary measures to prevent, minimize, mitigate, combat and clean up the pollution or damage to the environment, including its associated impacts, the Authority may take the necessary measures. The person or persons that caused the pollution or damage to the environment will be liable for the costs associated with the pollution, damage to the environment and its associated impacts.



- No person may throw or deposit within port limits any harmful matter or substance of whatsoever nature, including effluent or polluted water or foreign organisms without the permission of the Authority, and, in the case where it is to be thrown or deposited from a vessel, without the permission of the Harbour Master.
- No person may cause or allow pollutants, including paint, or cause or allow substances that can cause pollution or negatively impact on the environment, whether or not the substance or pollutant is of a mineral, animal or vegetable origin, to be dumped on the property of a port or to be discharged or to escape into waters within port limits.
- No oil of any description or harmful matter or substances of whatever nature, including effluent, polluted water or foreign organisms, may be discharged or dumped from a Vessel or allowed to escape from a vessel into any part of the port; or (b) Terminal or any other source or allowed to escape into port waters from a terminal or any other source.
- The master of a vessel that is berthed alongside a quay or jetty must cause all the discharge outlets of the vessel facing the quay or jetty to be closed or to be provided with adequate covers to prevent any inadvertent discharge of water or effluent or substances onto the quay or jetty surface, bollards, moorings, telephone cables, fenders or hose connections or into the environment.
- The cleanup of pollutants, including oil must be dealt with in accordance with the applicable Port Contingency Plan and / or the National Contingency Plan.
- A person who drops or deposits any article within port limits that might cause a danger, obstruction, pollution, a negative impact upon the environment or a nuisance, or any person who witnesses a person doing this, must report the matter to the Authority immediately.
- The owner or master of a vessel, terminal operator or lessees that contravene this rule causing an obstruction in the port must immediately cause the obstruction to be removed at their expense, failing which the Authority may remove the obstruction at their expense. If any damage arises from the obstruction, the person responsible for it is liable for the costs relating to the damage.



- The owner or master of a vessel must ensure that the quayside is cleaned after the vessel has completed its working operations. The cleanliness of a quayside operated by a terminal operator will be regulated by the licence agreement with the terminal operator. If the owner or master of the vessel fails to affect the cleanup, the Authority will affect the cleanup at the cost of the owner or master of the vessel. These costs will include the costs associated with or incidental to the clean up and the removal of materials on the quayside.
- The master of a vessel must comply with the Port Ballast Water Management Plan as well as the Port Waste Management Plan and Vessel Waste Management Plan.
- The Harbour Master may order the removal of a vessel from a port if that vessel has cargo or other matter on board that may be a threat to the environment. At the expense of the owner or master, the Harbour Master may order that the cargo be disposed of.

#### **Ship's Agents, Financial Security, Port Dues and Charges, and Penalties**

- Every vessel intending to enter a port in the Republic must appoint an agent unless the Authority grants an exemption to a vessel.
- Before a vessel enters a port the owner, master or agent of that vessel must furnish security to the satisfaction of the Authority for the payment of any fees payable to the Authority. The Authority may, on written application by an agent, and subject to conditions that it may impose, open a credit account or credit facility against which will be levied any fees or charges that may become payable by the applicant under these rules or the Tariff Book.
- If the agent's mandate is terminated, the agent the Authority may require any person to furnish such security as it deems fit for the payment of any fee payable to the Authority.
- The agent must:
  - must give the Authority written notice of the termination; and
  - remain liable for all fees due and payable up to the expiry of the termination notice.
  - Upon the termination of an agent's mandate, the owner or master of a vessel must appoint forthwith another agent.



- Before a vessel departs from a port the Authority may require the owner, master or agent of that vessel to pay or provide sufficient security to the satisfaction of the Authority for all port dues, fees or any other monies owing to the Authority.
- Despite anything to the contrary in these rules, the vessel's agent is responsible for all the vessel's debts that remain due to the Authority after the vessel has departed from the port.

### **Security and Access**

- Valid access permits are required to enter a port or port facility.
- The Authority may impose conditions on granting an access permit.
- The Authority may require persons employed by port facility operators, contractors or port service providers to be in possession of a special longer term access permit.
- Vessel's agents must obtain identity cards for seamen bearing the seaman's photograph, nationality, passport number and occupation.
- No person may carry a firearm within port limits unless the Authority has authorized it. This rule is not applicable to police and defence force employees.
- A person may only enter a port in a motor vehicle after the Authority has granted permission to that person to enter the port in that vehicle.

### **Licences and Registration**

- The Authority may require persons who carry out activities in the ports and at off – shore cargo – handling facilities to register or apply for a licence. These activities include:
  - fire protection and fire equipment installation and maintenance;
  - bunkering;
  - pollution control;
  - diving;
  - pest control;

- ship's agents, and forwarding and clearing agents.

## **General**

- No person may take photographs or film within port limits without the Authority's permission.
- Neither the Authority nor an employee or a representative of the authority is liable for loss or damage caused by anything done or omitted by the Authority, the employee or the representative in good faith whilst performing any function in terms of these rules.

## **Draft Harbour Master's Written Instructions**

### **Handling of bulk flammable liquids**

These instructions apply at a port to tankers that are conveying, discharging or shipping flammable liquids in bulk or during bunkering operations. The instructions cover safety measures before and after berthing, cargo operations and bunkering tanker moorings, specifications in regard to the use of hoses, conditions necessitating that pumping or ballasting be stopped, discharge of vapours and gases and repairs.

### **Handling of flammable liquid containers**

These instructions apply at a port to vessels conveying, shipping or discharging containers that hold or held flammable liquids. The instructions cover notices of prohibited areas, loading and discharging of flammable liquid containers and stowing of flammable liquids.

## **Draft Regulations in respect of Licences, Registrations and Permits**

Section 11(1) of the Act provides that the main function of the Authority is to own, manage, control and administer ports to ensure their efficient and economic functioning, and in doing so the Authority must:

- ensure that adequate, affordable and efficient port services and facilities are provided;
- exercise licensing and controlling functions in respect of port services and port facilities;

- ensure that any person who is required to render any port services and port facilities is able to provide those services and facilities efficiently.

### **Access Permits under the Port Rules**

There are three types of access permits:

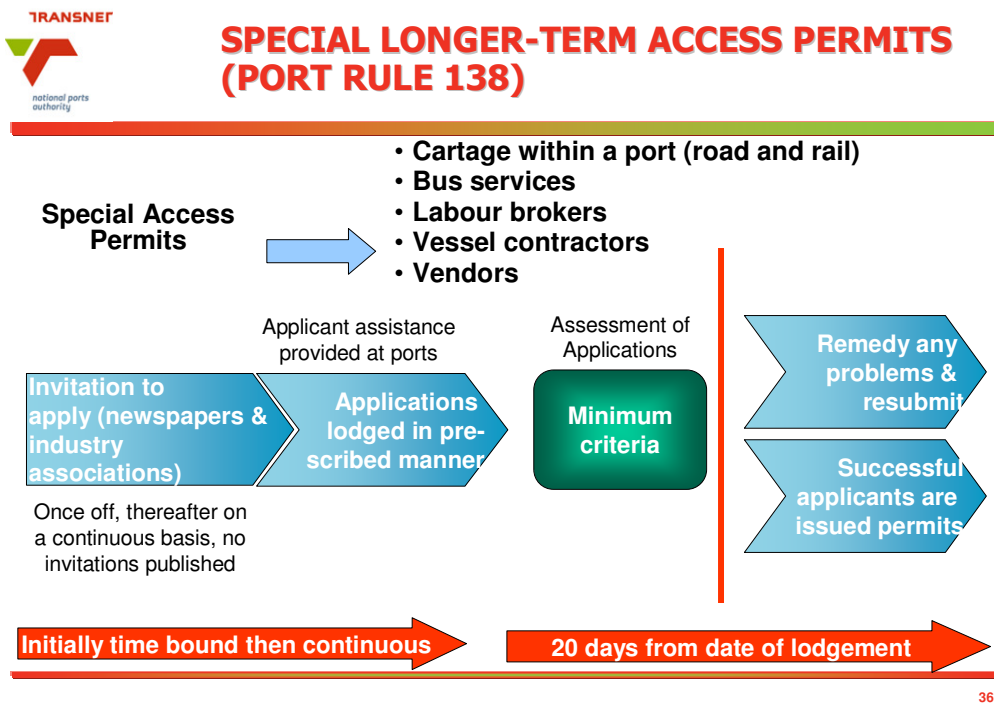
1. Occasional port users are allowed to apply for access permits on an ad – hoc basis;
2. Providers of port services and facilities will be required to apply for **annual access permits** for their employees who work in the ports or who regularly visit the ports for business purposes. These include employees or representatives of:
  - terminal operators, ship repair facilities and off – shore cargo handling facilities;
  - external security companies, external waste disposal or waste management companies, external berthing operators, external fire protection services;
  - stevedoring companies, "wet" vessel repairs companies and private floating crane services;
  - cargo storage companies and container depot operators;
  - fire protection and fire equipment installation and maintenance companies, diving services, bunkering services, pollution control services and pest control services;
  - ships agents and clearing and forwarding agents.
3. Other service providers active in the ports are required to apply for special longer term access permits for vehicles and employees who regularly visit the ports. These include:
  - cartage (road and rail) companies;
  - ship chandlers;
  - vendors;
  - vessel searchers;
  - baggage handling;
  - ship surveyors;
  - bus service within the port and bus tour operators;
  - labour brokers



In respect of the applications for access permits, the applicants must fulfill all of the acceptability criteria which are detailed in the draft in respect of each type of applicant but include inter alia:

- valid applicable driver's licences and public driving permit if applicable;
- vehicle registration documents and vehicle roadworthy certificates;
- public liability insurance;
- valid rail safety certificate in respect of rail cartage;
- qualifications;

The procedure for the application for access permits is illustrated in the Transnet diagram below:

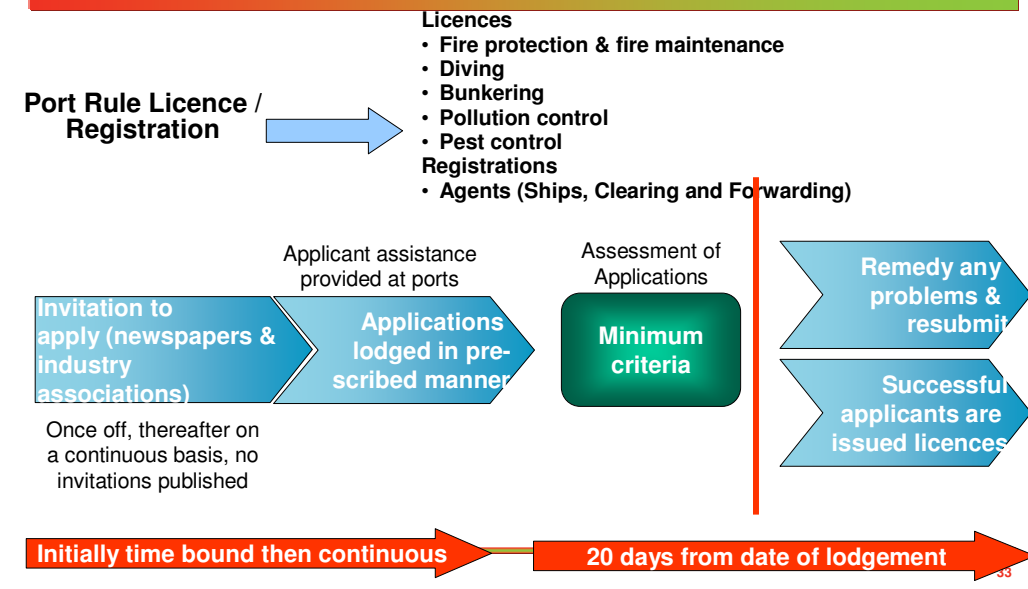


In respect of each type of service provider, the draft rules annex the format of the access permit as well as draft standard terms and conditions applicable to the granting of the access permit

### Port Rule Licences and Registration

The procedure for the port rule licences and registration is summarised in the diagram provided by Transnet below:

## PORT RULE LICENCES (PORT RULE 144)



The application forms will specify the lodgement criteria, prescribed fee and essential requirements. Any applicant, except for a micro – enterprise, will be required to submit a verification certificate issued by a South African National Accreditation System (SANAS) on regard to its broad based black economic empowerment.

In respect of the applications for licences, the applicants must fulfill all of the acceptability criteria which are detailed in the draft in respect of each type of applicant but include inter alia:

- minimum experience
- maintained equipment (list and test certificates)
- protective clothing
- qualifications and competencies of personnel
- public liability insurance
- risk assessment
- tax clearance certificate
- Broad based black economic empowerment verification certificate
- Proof of membership to associations and institutions
- registration certificates



### **Registration of ships agents and clearing and forwarding agents**

Existing agents will be registered for a period of three years and new entrants will be registered for a probationary period of 12 months. An annual registration fee will be payable to the Authority.

### **Ships agents must meet all of the following acceptability criteria:**

- current membership of the South African Association of Ship Operators and Agents;
- Valid SARS Tax Clearance Certificate
- Broad Based Black Economic Empowerment – submit a verification certificate from an accredited agency or else demonstrate that it is at least a level 4 contributor.

### **Clearing and Forwarding Agents must meet all of the following acceptability criteria:**

- current membership of the South African Association of Freight Forwarders;
- Licence from Customs and Excise to provide clearing agent services;
- Valid SARS Tax Clearance Certificate
- Broad Based Black Economic Empowerment – submit a verification certificate from an accredited agency or else demonstrate that it is at least a level 4 contributor.

In respect of each type of licence and registration, the draft rules annex the format of the licence as well as draft standard terms and conditions applicable to the granting of the licence.

### **Port property**

A Lease Management Manual has been developed to streamline internal procedures for the management of commercial leases (other than port terminals which will be managed through specific terminal operator agreements or licences). A booklet is being drafted by Transnet to explain to port users how commercial port property is being managed.

We trust that you will find the content of this email flyer to be of interest.

**Anisa Govender**



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