

Guidelines on reporting of HNS contributing cargo

As adopted during the HNS Workshop held at IMO Headquarters, London, on 12 and 13 November 2012 and endorsed by the IMO Legal Committee at its 100th session on 19 April 2013

1 Introduction

These guidelines are solely intended to assist States interested in acceding to or ratifying the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (2010 HNS Protocol). They are, however, in no way binding on those States.

Intended as general guidelines, this document primarily aims at facilitating States' submission of contributing cargo data to the Secretary-General of the International Maritime Organization (IMO) for the purposes of article 20, paragraphs 4 and 6 of the 2010 HNS Protocol prior to its entry into force.

In many States, an international treaty that has been ratified or acceded to by the Government automatically becomes part of their national law. In this case, the only concern is the extent to which the treaty provisions can be regarded as "self-executing" to enable authorities and national courts to apply them directly.

As for those States where this is not the case, the provisions of a treaty should be given effect through revision of national statutes, unless they are already in conformity with the treaty's provisions.

The 2010 HNS Protocol requires, under article 20, paragraph 4, that an expression of consent to be bound by this Protocol must be accompanied by the submission of data on the total quantity of contributing cargo received during the preceding calendar year.

This poses a challenge, since the procedure for reporting contributing cargo data requires a number of decisions from the first HNS Fund Assembly to ensure uniform application. Since the Assembly cannot be convened until the treaty enters into force, there is a need to put reporting regulations in place prior to ratification.

The present guidelines have been developed to facilitate ratifying States' adoption of similar legislation on reporting prior to the 2010 HNS Convention's entry into force. It has taken into account the work done by the HNS Correspondence Group since 2001, as well as the information provided by Governments and industry stakeholders since the adoption of the 2010 HNS Protocol.

It is important to emphasize that the present guidelines are primarily meant to provide assistance for the period leading up to the Convention's entry into force. Therefore, the proposals laid out below may be subject to modifications thereafter.

The main features of the guidelines are set out at Annexes 2 and 3.

2 Convention requirements

2.1 General provisions on contributions

After the Convention's entry into force, compensation payments will be financed by contributions levied on persons who have received, in a calendar year, contributing cargoes, after sea transport in a State Party, in quantities above the thresholds laid down in the 2010 HNS Convention. For each contributor the levies will be in proportion to the quantities of HNS received each year.

The HNS Fund, when fully operational, will have four accounts:

- oil (persistent oil as defined in the 1992 Fund Convention and non-persistent oil)
- liquefied natural gas (LNG);
- liquefied petroleum gas (LPG);
- a general account with two sectors:
 - bulk solids; and
 - other HNS.

Each account will meet the cost of compensation payments arising from damage caused by substances contributing to that account. In other words, there will be no cross-subsidization between the individual accounts.

2.2 Reporting contributing cargo

Contributions are paid by persons who receive contributing cargo in States Parties of the HNS Convention in a given calendar year. In order for the HNS Fund to issue invoices to these contributors, receivers of contributing cargo shall submit a report to the designated authority in the State Party if:

- (a) the total amount of substances covered under the General Account received exceeds 20,000 tonnes;
- (b) the total amount of persistent oil received exceeds 150,000 tonnes;
- (c) the total amount of non-persistent oil received exceeds 20,000 tonnes;
- (d) the total amount of LPG received exceeds 20,000 tonnes; or
- (e) any amount of LNG is received.

2.3 Definition of contributing cargo

Article 1.10 of the 2010 HNS Convention defines contributing cargo as “any **bulk** HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State”.

Articles 18 and 19 of the Convention establish the thresholds for the different types of bulk HNS to be reported.

The HNS Convention website (www.hnsconvention.org) provides a tool (the HNS Finder) for verifying the list of HNS that are classified as contributing cargo.

3 Submission procedure

3.1 Reporting process

3.1.1 *Before the Convention enters into force*

At this stage, Contracting States are only required to report the total quantity of contributing cargo for each account and not the individual receivers or the quantities received by each receiver in respect of each account (article 20.4 of the 2010 HNS Protocol). However, Contracting States must have this information available in order to calculate the total quantity of contributing cargo for each account.

The rationale for such reporting requirements prior to entry into force is that the 2010 HNS Protocol has to be ratified or acceded to by at least twelve States in which potential contributors have received in the preceding year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

There has been a general agreement since the Special Consultative meeting of the HNS Correspondence Group in Ottawa in 2003 (document LEG 87/11 refers) that, prior to ratification of the Convention, consideration should be given to the establishment of a reporting scheme in order to facilitate the process of reporting receipts of HNS by contributors and the relevant authority in the future Contracting State.

Specifically, the introduction of a reporting regime in a State prior to ratification of the Convention and its international entry into force should:

- help States to prepare the first submission of data on contributing cargo at the time of ratification;
- help States to identify potential contributors to the HNS Fund;
- help the identification of both the physical receivers of HNS and, where applicable, the principal receivers of such cargo;
- help industry to identify, prior to the operation of the HNS Fund, those substances that will and will not be classified as contributing cargo as well as the potential contributors to the HNS Fund; and
- assist both industry and Governments to ensure that the reporting arrangements operate efficiently and equitably in the State prior to the introduction of the financial requirements on HNS receivers, i.e. the invoicing and levying of receivers when the Convention is in force in order to finance the HNS Fund.

3.1.2 *After the Convention has entered into force*

When the HNS Convention enters into force, States Parties will be required to submit more detailed reports, including information on individual contributors and the quantity of contributing cargo each contributor receives for each account and sector, as set out in articles 21.1 and 21.2 of the Convention:

Article 21

- 1 Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.*
- 2 For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year. [...]*

The first calendar year for which States Parties must submit such a detailed report is the year before the Convention enters into force in that State.

3.2 Reporting definitions

3.2.1 *Definition of receiver*

The Convention defines the receiver as follows:

Article 1.4

- (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or*

- (b) *the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).*

Issue

The definition of receiver in the Convention allows for two options, one offering a common definition for all States Parties and the other leaving States Parties to define receiver under their own national law. Although it is indicated that the result in terms of contributing cargo received should be substantially the same regardless of the options, there is a general consensus that the latter approach could be confusing.

Proposed solution

Although the Convention provides two options for the definition of receiver in article 1.4 above, there is a general consensus that the definition under article 1.4 (a) should be the one to be used by Contracting States, mainly for reasons of practicality and fairness.

This has been agreed at the Special Consultative meeting of the HNS Correspondence Group in Ottawa in 2003 (document LEG 87/11 refers) and re-emphasized on several occasions since the adoption of the 2010 HNS Protocol, including at the 99th session of the IMO Legal Committee (document LEG 99/3 refers).

3.2.2 General Principle

The general principle under the Convention is that the person who physically receives contributing cargo discharged in the ports and terminals of a State Party is the receiver.

If at the time of receipt, the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund.

Paragraphs 3.2.3 and 3.2.4 contain qualifications to the general principle.

3.2.3 Relationship between the receiver and the principal

Article 1.4 of the Convention, in defining the receiver, indicates that:

- (a) *[...] provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund [...]*

Issue

This part of the definition qualifies the rule that the physical receiver pays. It requires clarification of the term “agent”, a concept which is not defined in the Convention. Therefore, the question of whether there is an “agent” in a given case should probably be answered according to the national law of the implementing State, but this contradicts the preference for a unique definition of the receiver as in article 1.4(a).

Proposed solution

Considering the successful system put in place under the 1992 Fund Convention that requires the physical receivers of oil to report their receipts to the designated authority in a State Party, it is suggested that the same approach be applied to HNS reporting, whereby the obligation to report contributing cargo lies only with the physical receivers during the period prior to the entry into force.

As is the case with oil reporting, physical receivers may subsequently put in place cost recovery arrangements with principal receivers where relevant. Since there will be no contributions to be paid during the interim period, it is not relevant at this stage.

The rationale for this recommendation is based on the fact that in the pre-entry into force period, only a small number of States will be Contracting States to the Protocol (12 is a relatively low number of Contracting States for

the entry into force). Therefore, the likelihood of principal receivers being based in States that are not Parties to the Convention is high, and subsequently physical receivers will be required to report HNS receipt data, even though the identities of principal receivers are known.

Moreover, leaving the reporting obligation with the physical receiver, while requesting information on principal receivers (to be disclosed to the designated authority), will increase compliance from States Parties when the submission of reports carries no financial obligation.*

3.2.4 *Relationship between the receiver of LNG and the titleholder*

Article 19.1*bis* of the Convention relates to contributions to the LNG account and states that:

- (a) *In the case of the LNG account, subject to article 16, paragraph 5, annual contributions to the LNG account shall be made in respect of each State Party by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of any quantity of LNG.*
- (b) *However, any contributions shall be made by the person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State (the titleholder) where:*
 - (i) *the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; and*
 - (ii) *the receiver has informed the State Party that such an agreement exists. [...]*

Issue

This article qualifies the rule that the physical receiver pays. As for the term “agent”, the concept requires clarification as to the way physical receivers and titleholders will enter into agreements for the payment of contributions. It also requires procedures at State level for the designated authority to receive notifications of such agreements.

Proposed solution

Following the same logic as for the other accounts, the provisional definition of “receiver” as described in paragraph 3.2.2 above should be applied to the receipt of LNG cargo as well, while also requesting information on titleholders to be disclosed to the designated authority, if applicable.

3.2.5 *Transshipment*

The issue of transshipment is covered under the definition of “contributing cargo” in article 1.10 of the Convention which states:

[...] Cargo in transit which is transferred directly or through a port or terminal, from one ship to another, either wholly or in part in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination. [...]

In this case, even though a cargo is received after sea transport, the physical receiver has no reporting obligation since the contributing cargo has simply been transferred onto another ship in the course of carriage from its original loading port to its final destination.

Issue

Since there is no clear reference in the text of the Convention to facilitate the interpretation of the concept of transshipment, i.e. there are no criteria under which conditions of transshipment are considered to have taken place, it is understood that the HNS Assembly will have to clarify the definition of transshipment to ensure uniform application.

* Since these guidelines are not mandatory, States may wish to request from the physical receivers information regarding their principal receivers.

Proposed solution

Until the Convention enters into force, it is suggested that the existing guidelines applied by the 1992 Fund in respect of transshipment and ship-to-ship operations for contributing oil be used by States and their contributors for the reporting of HNS contributing cargo where relevant.

The 1992 Fund guidelines on that matter are reproduced below.

“Received” does not include ship-to-ship transfer, irrespective of whether such a transfer

- *takes place within a port area or outside the port but within territorial waters, or*
- *is done solely by using the ships’ equipment or by means of a pipeline passing over land, or*
- *is between two sea-going vessels or from a sea-going vessel to an internal waterway vessel.*

When the oil, after having been transferred in this way from a sea-going vessel to another vessel, has been carried by the latter to an onshore installation situated in the same State Party or in another State Party, the receipt in that installation shall be considered as receipt of oil carried by sea. However, in the case where the oil passes through a storage tank before being loaded to the other ship, it has to be reported as oil received at that tank in that State.

“Carriage by sea” does not include movement within the same port area.

Once the Convention enters into force, it is expected that the HNS Assembly will provide criteria for the definition of transshipment.

3.2.6 Threshold limits for reporting

Articles 18 and 19 of the Convention establish the thresholds for the different types of bulk HNS to be reported under the general account and the separate accounts (see paragraph 2.2 above).

Issue

The HNS Convention creates a new regime for the payment of compensation following an HNS incident. This involves contributions from entities which are different (although a number of physical receivers will be the same) from those already participating in the oil pollution compensation regime. As such, States may need time to identify current and future contributors and considering that there is a general consensus for implementing a self-reporting system by the industry with provisions for verification by a national authority (see paragraph 4 below), the identification process may take some time if high thresholds are in place.

Proposed solution

It is proposed that States should give consideration to setting the threshold limits for contributing cargo, on a national basis, lower than those laid down in the HNS Convention. This will aid States in identifying those receivers whose annual receipts do not currently exceed the thresholds, but may fluctuate enough in the future to exceed the thresholds established in the Convention.

It is proposed that the thresholds for the interim period be:*

- (a) more than 15,000 tonnes of substances covered under the General Account;
- (b) more than 150,000 tonnes of persistent oil **(no change)**;
- (c) more than 15,000 tonnes of non-persistent oil;
- (d) more than 15,000 tonnes of LPG; or
- (e) any amount of LNG **(no change)**.

* Individual States may wish to consider in their national reporting requirements maintaining lower reporting thresholds after the HNS Convention’s entry into force.

Table 1 *The table below shows the comparison between the thresholds under the Convention and those suggested for the interim period*

	Proposed thresholds before entry into force	Thresholds established by the 2010 HNS Convention
General Account	15,000 tonnes	20,000 tonnes
Oil Account		
• Persistent oil	150,000 tonnes	150,000 tonnes
• Non-persistent oil	15,000 tonnes	20,000 tonnes
LPG Account	15,000 tonnes	20,000 tonnes
LNG Account	Any amount	Any amount

Note: Regarding the account for persistent oil, given that the contributors in ratifying States will be essentially the same contributors who already have an established reporting practice with respect to the 1992 Fund, it is considered not necessary to apply lower thresholds in that case.

3.2.7 *List of contributors and criteria for identification*

All persons who receive HNS under the conditions stated under paragraph 2.2 above in a given calendar year in a State Party are considered contributors.

Issue

However, as indicated above in paragraphs 3.2.1-3.2.3, the identification of contributors other than the physical receivers is difficult under the terms of the Convention alone.

Proposed solution

While it is suggested that physical receivers be liable to provide reports on contributing cargo during the pre-entry into force period, it is also proposed that this period be used to establish a detailed list of potential contributors, taking into account:

- the concept of agent (article 1.4 of the Convention);
- the concept of principal (article 1.4 of the Convention);
- the concept of titleholder for LNG cargo (article 19.1*bis* of the Convention);
- the concept of transshipment (article 1.10 of the Convention); and
- the concept of “associated person” (article 16.6 of the Convention).

States may wish to consider requesting physical receivers to provide designated authorities with a list of persons with whom their commercial transactions could fall under the categories mentioned above. States may also wish to consider appropriate rules for protecting commercially sensitive information from disclosure.

In doing so, the designated authority will be in a position to establish a list of potential contributors that may become liable for reporting and contribution when the Convention enters into force.

Since the pre-entry into force period is likely to last a few years, it will allow States and their designated authorities to monitor the situation and build an effective mechanism for the administration of HNS reporting.

3.2.8 Contributing cargo reporting forms

To facilitate the reporting process, the Secretariat of the IOPC Funds has prepared a set of forms for contributors and States to be used during the interim period prior to entry into force.

- contributing cargo reporting form (for receivers and States);
- nil declaration form (for States); and
- an explanatory model letter for States to send to receivers.

These forms and the model letter are available online at the HNS Convention website (www.hnsconvention.org) and are also reproduced as appendices 1-4 to these Guidelines. The forms can be filled out electronically, printed and then signed by the relevant authority. The nil declaration should only be submitted if no persons in the State are liable to contribute to the HNS Fund.

3.3 Submission of reports to IMO

Under the HNS Convention, designated authorities in a State Party are responsible annually for the submission of data on the total quantities of contributing cargo liable for contributions received in the State during the preceding calendar year.

Once the Convention enters into force, that data, together with the list of persons liable to pay contributions, is to be submitted to the Director of the HNS Fund.

Prior to the entry into force of the Convention, a State that deposits an instrument of ratification or accession to the 2010 HNS Protocol shall accompany its expression of consent with the submission to the Secretary-General of IMO (as the depositary of the Protocol) of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account. Reporting requirements will continue after the Convention's entry into force.

In addition, each State which has expressed its consent to be bound by the Protocol shall, annually thereafter on or before 31 May until this Protocol enters into force, submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

In return, the Secretary-General of IMO will inform all States which have signed this Protocol or acceded thereto and all Members of the Organization, of:

- each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 20, paragraph 4 of the Protocol;
- data on contributing cargo submitted annually thereafter, in accordance with article 20, paragraph 6 of the Protocol, until the date of entry into force of this Protocol; and
- the date of entry into force of this Protocol.

The Protocol is deemed to enter into force eighteen months after the date on which the following conditions are fulfilled:

- (a) at least 12 States, including four States each with no less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and
- (b) the Secretary-General has received information in accordance with article 20, paragraphs 4 and 6 of the Protocol, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) of the Convention, as amended by the Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

4 Compliance and verification

The purpose of this section is to provide an example for States to consider for the monitoring and compliance verification of reporting requirements established in the HNS Convention. An example is provided in Annex 1. There may be other methods that States may wish to use.

The provisions in articles 18, 19, 20, and 21 of the Convention require States to adopt compliance and verification procedures to fulfil their duty to monitor and manage the reporting system for contributing cargo as reported, first to the Secretary-General of IMO and subsequently to the HNS Fund after the entry into force of the Convention.

In support of these obligations (annual contributions to the general account, general contributions to separate accounts, initial contributions, reports), regulations or guidelines will need to be adopted by States Parties to establish:

- (a) the manner in which they would fulfil their responsibilities in respect of the reporting system for contributing cargo; and
- (b) the measures they would have at their disposal to ensure a uniform compliance on the part of the receivers of HNS under their jurisdiction.

Article 21 is the principal source of the responsibility of the States Parties under the HNS Convention and states:

- 1 *Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.*
- 2 *For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.[...]*

The obligation under article 21.1 is to ensure that the name of any person liable to pay contributions appears on a list to be established by the Director of the HNS Fund. Article 21.2 sets out the type of information that the State must communicate to the Director.

Before the Convention enters into force, a Contracting State to the Protocol only has the obligation to submit a report on total quantities of contributing cargo received during the previous calendar year (article 20.4 of the 2010 HNS Protocol).

This requirement sets out the “compliance” aspect of the responsibility of Contracting States.

There are two options for States to consider:

- (a) a reporting system administered and closely monitored by a national authority; and
- (b) a self-reporting system by the industry with provisions for verification by a national authority.

During earlier discussions, it was unanimously agreed that option (b) be recommended to States when implementing the Convention.

In addition, States may wish to consider appropriate sanctions in the event of noncompliance by receivers of national reporting requirements.

The proposed regulations in Annex 1 have been drafted with the view to being applicable both before and after the entry into force of the HNS Convention.

Annex 1

Suggested text of regulations on compliance and verification

Introduction

General obligations under the Convention

Each State Party undertakes to give effect to the provisions of the Convention and to these regulations.

Unless expressly stated otherwise, a reference to the HNS Convention constitutes at the same time a reference to these regulations

Regulation 1

Reporting of contributing cargo

Each person who **physically** receives contributing cargo in the preceding calendar year shall submit a report by [31 May] to the designated authority in the State Party if:

- (a) the total amount of substances covered under the General Account received exceeds 15,000 tonnes;
- (b) the total amount of persistent oil received exceeds 150,000 tonnes;
- (c) the total amount of non-persistent oil received exceeds 15,000 tonnes;
- (d) the total amount of LPG received exceeds 15,000 tonnes; or
- (e) any amount of LNG is received.

After the entry into force of the 2010 HNS Convention, the persons liable to report receipts of contributing cargo will be those defined by the internal regulations of the HNS Fund.

Regulation 2

Designated authority

Each State Party shall designate an authority, e.g. maritime directorate or another public or private body, to receive reports pursuant to regulation 1 and to communicate to the Secretary-General of IMO, before entry into force and subsequently to the Director of the HNS Fund, relevant information pursuant to articles 45 and 21 of the Convention.

Regulation 3

Records and books

Every person referred to in the Convention from whom amounts payable pursuant to articles 18, 19, 20 and 21.5 may be recovered shall keep records and books of account at their place of business in the State Party, or at any other place in the State Party that may be designated by the State Party, that sets out:

- (a) the amounts that are payable by that person;
- (b) the type and quantity of the substance in respect of which the amounts referred to in paragraph (a) are payable;
- (c) the time when and the place where the amounts referred to in paragraph (a) were paid or security for their payment was given; and
- (d) any other information that the State Party may require to determine the amounts referred to in paragraph (a) and the time when they become payable.

Regulation 4

Disposal of records

Every person or body who is required by these regulations to keep records and books of account shall, unless otherwise authorized by the State Party, retain every such record and book of account and every account or voucher necessary to verify the information contained in the record or book until the expiry of [XX] years from the end of the year to which the record or book of account relates.

Regulation 5

Make available for inspection

Every person who is required by these regulations to keep records and books of account shall, at all reasonable times, make the records and books of account and every account or voucher necessary to verify the information contained in them available to any person designated in writing by the State Party and give that person every facility necessary to inspect the records, books, accounts and vouchers.

Regulation 6

Inspection

Any person designated in writing by the State Party for the purpose may, at any reasonable time, enter any premises where the person believes on reasonable grounds that there are any records, books, accounts, vouchers or other documents relating to payments under the Convention and

- (a) examine anything on the premises and copy or take away for further examination or copying any record, book, account, voucher or other document that they believe, on reasonable grounds, contains any information relevant to the enforcement of articles 18,19, 20 and 21.5; and
- (b) require the owner, occupier or person in charge of the premises to give the person all reasonable assistance in connection with the examination under paragraph (a) and to answer all proper questions relating to the examination and, for that purpose, require the owner, occupier or person in charge of the premises to attend those premises with the person.

Regulation 7

Certificate of designation

Persons designated by the State Party under regulation 6 shall be furnished with a certificate of their designation and, on entering any premises referred to in that regulation, shall, if so requested, produce the certificate to the owner, occupier or person in charge of the premises.

Regulation 8

Report to State Party

On the conclusion of an examination under regulations 3-7, the person conducting the examination shall transmit a full report of their findings to the designated authority in the State Party.

Regulation 9

Return of original documents or copies of documents

The original or copy of any record, book, account, voucher or other document taken away under regulation 6 shall be returned to the person from whose custody it was taken within [XX] days after it was taken or within any longer period that is directed by a judge of a superior court in a State Party for cause or agreed to by a person who is entitled to its return.

Regulation 10

Notice of application for extension of time

An application to a judge mentioned in regulation 9 for a direction under that regulation may only be made on notice to the person from whose custody the record, book, account, voucher or other document was taken.

Regulation 11

Copies of documents

A document purporting to be certified by the State Party to be a copy of a record, book, account, voucher or other document made under regulation 6 is admissible evidence in any prosecution for an offence under these regulations and is, in the absence of evidence to the contrary, proof of its contents.

Regulation 12

Obstruction, false statements

No person shall obstruct or hinder anyone engaged in carrying out their duties and functions under regulations 3-11, or knowingly make a false or misleading statement, either orally or in writing, to any person so engaged.

Annex 2

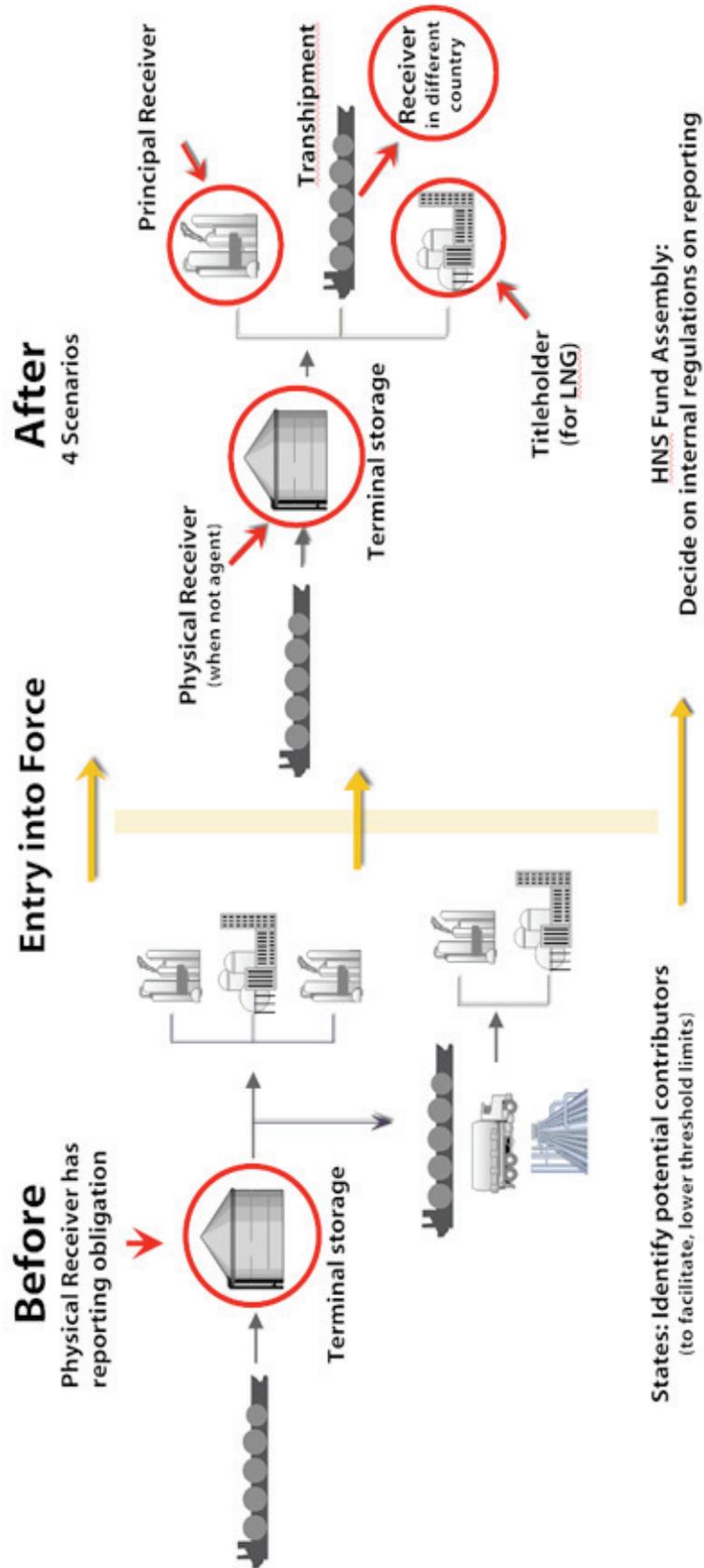
Main features of the guidelines on reporting of HNS contributing cargo

Issues to consider	Before the Protocol enters into force	After the Protocol enters into force
Definition of contributing cargo	Contributing cargo is defined in article 1.10 as “ <i>any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State</i> ”.	Adopt an agreed interpretation of the concept of transshipment to give full effect to the definition in article 1.10.
Definition of receiver	Article 1.4 (a) only as it refers to a unique definition of the physical receiver: “ <i>the person who physically receives contributing cargo discharged in the ports and terminals of a State Party...</i> ”	Article 1.4 (a) <i>in extenso</i> . The HNS Fund Assembly to decide on the interpretation of agent and disclosure of principal to the HNS Fund.
Relationship between the receiver and the principal	Physical receivers only to submit reports on contributing cargo. Request that physical receivers provide information on principal receivers for monitoring purposes.	The HNS Fund Assembly to clarify the interpretation of agent and procedures for disclosing principals to the HNS Fund.
Relationship between the receiver of LNG and the titleholder	Physical receivers only to submit reports on contributing cargo. Request that physical receivers provide information on titleholders for monitoring purposes.	The HNS Fund Assembly to clarify the procedure for transferring contributions responsibility between the titleholder and the receiver to the HNS Fund.
Definition of transshipment	Covered under the definition of “contributing cargo” (article 1.10). Due to the lack of clear interpretation criteria, it is recommended that the 1992 Fund Guidelines on the reporting of contributing oil, for the part currently applicable to ship-to-ship transfer operations, be used as the reference for the reporting of HNS contributing cargo.	The HNS Fund Assembly will need to clarify the definition of transshipment for uniform application among States Parties.
Threshold limits for reporting	Lower thresholds to facilitate the identification of potential receivers: a. More than 15,000 tonnes of substances covered under the General Account; b. More than 150,000 tonnes of persistent oil (no change); c. More than 15,000 tonnes of non-persistent oil; d. More than 15,000 tonnes of LPG; e. Any amount of LNG (no change).	Thresholds as per the 2010 HNS Convention: a. More than 20,000 tonnes of substances covered under the General Account; b. More than 150,000 tonnes of persistent oil; c. More than 20,000 tonnes of non-persistent oil; d. More than 20,000 tonnes of LPG; e. Any amount of LNG.
List of contributors and criteria for identification	Physical receivers are liable to provide reports on contributing cargo in a State Party. Considering that a limited number of Contracting States is necessary for the Protocol to enter into force, many principals are likely to be in non-States Parties. Limiting the reporting obligations to the physical receivers allows for better monitoring in the first years and the development of clear Guidelines from the HNS Assembly. Obligation for physical receivers to provide the designated authority with a list of entities potentially liable once the Convention enters into force: • Principals (article 1.4) including in cases of transshipment; and • Titleholders of LNG cargo.	The HNS Fund Assembly to clarify the relevant definitions in its Internal Regulations.

Issues to consider	Before the Protocol enters into force	After the Protocol enters into force
Contributing cargo reporting forms	<p>Electronic reporting form to be filled in by physical receivers and sent to Government authority.</p> <p>Electronic reporting form to be filled in by Government authority showing total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.</p> <p>Electronic form for the Government authority to declare nil quantities.</p>	Reporting system (including forms) to be decided by the first HNS Fund Assembly.
Submission of reports	Reports to be submitted to the Secretary-General of IMO at the time of deposit of a ratification instrument and before 31 May each year thereafter.	Reports to be submitted to the Director of the HNS Fund on an annual basis at a time and in a manner to be decided by the HNS Fund Assembly.
Compliance and verification	Proposed text to be adopted prior to ratification of or accession to the 2010 HNS Protocol to facilitate reporting.	Text to remain valid in its main principles and to be completed by the HNS Fund Internal Regulations.

Annex 3

HNS contributing cargo reporting at a glance



Appendix 1

Model letter to accompany the model form for receivers

Request for submission of HNS contributing cargo reports for the calendar year <<year>>

Dear <<name>>,

<<State>> is in the process of <<acceding to/ratifying>> the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the 2010 HNS Convention).

This Convention aims at ensuring adequate, prompt and effective compensation for damage to persons and property, costs of clean up and reinstatement measures and economic losses resulting from the maritime transport of hazardous and noxious substances.

States Parties' expression of consent to be bound by this Convention must be accompanied by the submission of information on the total quantity of contributing cargo received in bulk after sea transport during the preceding calendar year. To facilitate the fulfilment of this obligation, the <<regulation/law/decre>> has been adopted (<<reference>>) with effect from <<date>>.

Upon the Convention's entry into force, contributions will be levied on persons in States Parties who have received contributing cargo after sea transport in quantities above thresholds laid down in the Convention. The levies will be in proportion to the quantities of HNS received in a calendar year and the amount to pay to victims.

As a receiver of hazardous and noxious substances in <<State>>, you are requested to report the total quantities of bulk HNS received directly after transport by sea for the calendar year <<year>>, if:

- (a) the total amount of substances covered under the General Account received exceeds <<20,000>>* tonnes;
- (b) the total amount of persistent oil received exceeds 150,000 tonnes;
- (c) the total amount of non-persistent oil received exceeds <<20,000>>* tonnes;
- (d) the total amount of LPG received exceeds <<20,000>>* tonnes; or
- (e) any amount of LNG is received.

A Contributing Cargo Reporting Form is available online at the HNS Convention website (www.hnsconvention.org) to report your bulk HNS imports. The form should be filled out electronically, printed and then signed by a company representative before it is sent to the <<designated authority>>. More specific instructions are available on the form, including the definition of HNS liable for contributions.[†]

The deadline for submission is <<insert date>>.

[Also enclosed is an information note prepared by the <<designated authority>>, which provides more information about the reporting process.]

[Failure to comply with the reporting requirements could lead to <<describe sanctions>>, as per <<regulation/decre>>.]

I trust that all the information above will help to ensure that your report is completed in a timely and accurate manner. Should you require any additional details, please contact us.

Respectfully,

* States may apply lower thresholds.

† Contributions are levied only in case of an incident.

Appendix 2

Report by States on Receipts of HNS Contributing Cargo *made in accordance with*

**Article 20 of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996
(2010 HNS Protocol)**

The 2010 HNS Protocol requires that an expression of consent to be bound by the Protocol shall be accompanied by the submission to the Secretary-General of the International Maritime Organization of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

An expression of consent which is not accompanied by the data referred to above shall not be accepted by the Secretary-General.

Each State which has expressed its consent to be bound by the Protocol shall annually thereafter, on or before 31 May until the Protocol enters into force for that State, submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

States should use the form on page 3 of this document to report the aggregate amount of HNS contributing cargo reported by receivers. A separate reporting form for receivers is available for States to forward to their receivers.

The form on page 3 should be signed by a competent Government authority to indicate that the information given is complete and that the figures are correct. The report must be correctly signed before it is submitted, together with a formal expression of consent to be bound by the Protocol, to:

The Secretary-General
International Maritime Organization
4 Albert Embankment
London SE1 7SR
United Kingdom

The form on page 3 is designed to assist in the ratification/accession process only. Once the Protocol has entered into force, each State Party is required to communicate the information to the Director of the HNS Fund, in accordance with the Internal Regulation the Assembly develops.

State Model Reporting Form

To be submitted to the Secretary-General of IMO on receipts of contributing cargo pursuant to Article 20 of the 2010 HNS Protocol

STATE _____ **YEAR** _____

RECEIPTS OF CONTRIBUTING CARGO

As defined on pages 5 and 6, or use the HNS Finder at hnsconvention.org/Pages/FinderOverview.aspx

Account	Quantity (metric tonnes)
General	
Bulk solids	<input type="text"/>
Other HNS*	<input type="text"/>
Total	<input type="text"/>
Oil	
Persistent oil	<input type="text"/>
Non-Persistent oil	<input type="text"/>
Total	<input type="text"/>
LNG**	
Total	<input type="text"/>
LPG***	
Total	<input type="text"/>

- * Referred to under Article 3 of the 2010 HNS Protocol (see page 5)
- ** Liquefied natural gases of light hydrocarbons with methane as the main constituent
- *** Liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents

NOTES

- While there is no reporting requirement for HNS transported in packaged form, compensation for incidents involving them will be covered under the Convention.
- Contribution is levied only in case of an incident.

SIGNATURE OF GOVERNMENT OFFICIAL

Signature _____ Date _____

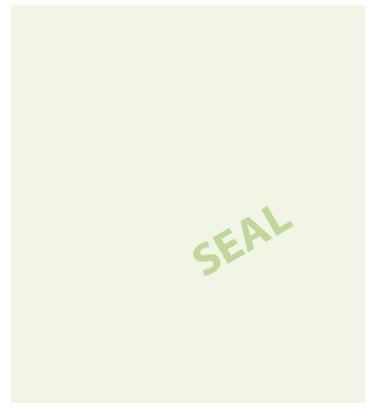
Name _____

Title _____

Address _____

Phone _____ Fax _____

E-Mail _____



ACCOUNTS AND SECTORS

1. GENERAL ACCOUNT

The HNS Fund will have a general account, which will be divided into at least two sectors:

- a) solid bulk materials referred to in Article 3, section 5 (a) (vii) ("Bulk solids"); and
- b) other substances ("Other HNS")

2. SEPARATE ACCOUNTS

The HNS Fund will also have three separate accounts for:

- (a) oil as defined in Article 3, section 5(a) (i) (oil account)*;
- (b) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account), as referred to in article 3, section 5 (a) (v)*; and
- (c) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account), as referred to in article 3, section 5 (a) (v)*.

3. CONTRIBUTIONS TO THE GENERAL ACCOUNT

Subject to the provisions on associated persons in article 16.5 of the 2010 HNS Convention, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver, in that State, of aggregate quantities exceeding 20,000 tonnes of contributing cargo falling within the "Bulk solids" and "Other HNS" sectors.

4. CONTRIBUTIONS TO THE SEPARATE ACCOUNTS

Subject to the provisions on associated persons in article 16.5 of the 2010 HNS Convention, annual contributions to separate accounts shall be made in respect of each State Party:

- a) **oil account:**
 - i. by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and
 - ii. by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended.
- b) in the case of the **LPG account**, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG; and
- c) in the case of the **LNG account**, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, was the receiver of an LNG cargo discharged in a port or terminal of that State, except in the case where article 1bis (b) and (c) are applicable.

* See next page.

5. CONTRIBUTING CARGO

Alternatively, use the HNS Finder to confirm if a substance qualifies as a contributing cargo at hnsconvention.org/Pages/FinderOverview.aspx.

Article 3 of the 2010 HNS Protocol states that article 1, paragraph 5, of the Convention is replaced by the following text:

- (a) "any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
- i. oils, carried in bulk, as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - ii. noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;
 - iii. dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - iv. dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
 - v. liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - vi. liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);
 - vii. solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and
- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above."

Article 3, paragraph 2 of the 2010 HNS Protocol states that the following text is added to the definition under article 5(a) and (b):

5bis "Bulk HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

5ter "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

Article 3, paragraph 3 of the 2010 HNS Protocol defines "contributing cargo" as:

- 10 "Contributing cargo" means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Appendix 3

Receiver Model Reporting Form

To be submitted to the designated national authority

COMPANY _____ **YEAR** _____
STATE _____

RECEIPTS OF CONTRIBUTING CARGO

As defined on pages 3 and 4, or use the HNS Finder at hnsconvention.org/Pages/FinderOverview.aspx

Account	Quantity (metric tonnes)
General	
Bulk solids	<input type="text"/>
Other HNS*	<input type="text"/>
Total	<input type="text"/>
Oil	
Persistent oil	<input type="text"/>
Non-Persistent oil	<input type="text"/>
Total	<input type="text"/>
LNG**	
Total	<input type="text"/>
LPG***	
Total	<input type="text"/>

- * Referred to under Article 3 of the 2010 HNS Protocol (see page 4)
- ** Liquefied natural gases of light hydrocarbons with methane as the main constituent
- *** Liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents

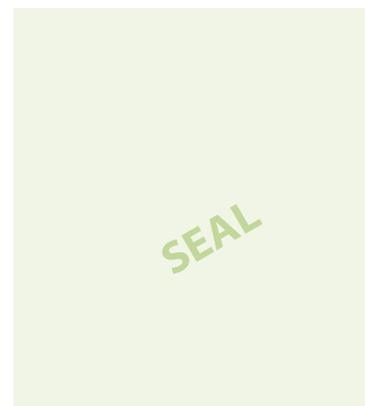
NOTES

- While there is no reporting requirement for HNS transported in packaged form, compensation for incidents involving them will be covered under the Convention.
- Contribution is levied only in case of an incident.

SIGNATURE OF COMPANY OFFICIAL

Signature _____ Date _____
 Name _____
 Title _____
 Address _____

 Phone _____ Fax _____
 E-Mail _____



ACCOUNTS AND SECTORS

1. GENERAL ACCOUNT

The HNS Fund will have a general account, which will be divided into at least two sectors:

- a) solid bulk materials referred to in Article 3, section 5 (a) (vii) ("Bulk solids"); and
- b) other substances ("Other HNS")

2. SEPARATE ACCOUNTS

The HNS Fund will also have three separate accounts for:

- (a) oil as defined in Article 3, section 5(a) (i) (oil account)*;
- (b) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account), as referred to in article 3, section 5 (a) (v)*; and
- (c) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account), as referred to in article 3, section 5 (a) (v)*.

3. CONTRIBUTIONS TO THE GENERAL ACCOUNT

Subject to the provisions on associated persons in article 16.5 of the 2010 HNS Convention, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver, in that State, of aggregate quantities exceeding 20,000 tonnes of contributing cargo falling within the "Bulk solids" and "Other HNS" sectors.

4. CONTRIBUTIONS TO THE SEPARATE ACCOUNTS

Subject to the provisions on associated persons in article 16.5 of the 2010 HNS Convention, annual contributions to separate accounts shall be made in respect of each State Party:

- a) **oil account:**
 - i. by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and
 - ii. by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended.
- b) in the case of the **LPG account**, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG; and
- c) in the case of the **LNG account**, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, was the receiver of an LNG cargo discharged in a port or terminal of that State, except in the case where article 1bis (b) and (c) are applicable.

* See next page.

5. CONTRIBUTING CARGO

Alternatively, use the HNS Finder to confirm if a substance qualifies as a contributing cargo at hnsconvention.org/Pages/FinderOverview.aspx.

Article 3 of the 2010 HNS Protocol states that article 1, paragraph 5, of the Convention is replaced by the following text:

- (a) "any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
- i. oils, carried in bulk, as defined in regulation 1 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
 - ii. noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;
 - iii. dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - iv. dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;
 - v. liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;
 - vi. liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);
 - vii. solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and
- (b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above."

Article 3, paragraph 2 of the 2010 HNS Protocol states that the following text is added to the definition under article 5(a) and (b):

- 5bis* "Bulk HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).
- 5ter* "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

Article 3, paragraph 3 of the 2010 HNS Protocol defines "contributing cargo" as:

- 10 "Contributing cargo" means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Appendix 4

HNS Contributing Cargo Nil Declaration Form

To be submitted to the Secretary-General of IMO

STATE _____

YEAR _____

**No person or group of associated persons in the State named above
received HNS contributing cargo during the year indicated above.**

Name of Ministry or Government Agency

Street

City

Postal Code

Phone

Fax

SIGNATURE OF GOVERNMENT OFFICIAL

Signature Date

Name

Title

Phone Fax

Email

SEAL