

Explanatory Statement

Marine Order 44 Amendment 2011 (No. 1) (Safe containers)

Authority

1. Subsection 240(1) of the *Navigation Act 1912* (the ***Navigation Act***) provides that the regulations may provide for giving effect to the Container Convention.
2. Paragraph 425(1)(c) provides for the regulations to make provision for and in relation to the protection of the health and the security from injury of persons loading or unloading of ships.
3. Subsection 425 (1AA) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in that Act for or in relation to which provision may be made by regulations.

Purpose

4. This instrument amends Marine Order Part 44, issue 5. It gives effect to amendments to the Container Convention 1972, by resolution MSC.310(88), in Australia.

Overview

5. Items 1, 2, 4, 6, 8, 9, 12, 13, 15, 16, 18, 19, 22, 23, 24, 28, 29 and 31 are amendments of a minor or technical nature.
6. Item 3 amends the definition of ***approved*** to mean approved by the Manager, Ship Inspection and Registration or an authorised organisation.
7. Item 5 omits the definition of ***Chief Marine Surveyor***. The definition is not required. Other amendments made to the Order remove Chief Marine Surveyor as the decision maker and insert Manager, Ship Inspection and Registration as the decision maker.
8. Item 7 omits the definition of ***General Manager***. The definition is not required. Other amendments made to the Order remove General Manager as the decision maker and insert AMSA as the decision maker.
9. Item 10 removes the definition of ***penal provision*** as it is defined in *Marine Order 1, issue 2 (Administration)*.
10. Item 11 inserts a note explaining that some expressions used in the Order are defined in *Marine Order 1, issue 2 (Administration)*.
11. Item 14 substitutes sections 5, 6 and 7 by:
 - (a) removing section 5 (exemptions and equivalents) as no exemptions or equivalents will be issued under the Order; and
 - (b) substituting section 6 (review of decisions) to be consistent with *Marine Order 1, issue 2 (Administration)*; and
 - (c) substituting section 7 clarifying that a container or type of container approved under a previous issue of Marine Order 44, and in service on 31 December 2011, is taken to be approved under Marine Order 44, issue 5.
12. Item 17 inserts a new section 9.4, introducing a requirement for an owner having an approved continuous examination program to have the program reviewed and audited.
13. Items 20 and 25 insert a new line 5A in Appendix 1, subclause 2.4 and figure 1, introducing a requirement for a Safety Approval Plate for a container approved for one door off operation, to state that the allowable stacking load is 1.8g.

14. Items 21 and 26 insert a new line 6A in Appendix 1, subclause 2.4 and figure 1, introducing a requirement for a Safety Approval Plate for a container approved for one door off operation, to state the allowable transverse racking test force expressed in Newtons.

15. Item 27 inserts clause 2A into Appendix 2, requiring an examination of a container to take into account the examination criteria mentioned in Annex III to the Container Convention.

16. Item 30 omits each mention of 'Chief Marine Surveyor' and inserts 'Manager, Ship Inspection and Registration' in section 2, subsections 3.1, 8.6.1, 8.6.2 and Appendix 1, subclause 2.3 to change and reflect changes to the decision maker.

Consultation

17. A copy of the draft of this instrument was circulated to stakeholders.

18. A copy of the draft was also placed on the AMSA website for public comment.

Document incorporated by reference

19. the International Convention for Safe Containers 1972 as it is defined as the *Container Convention* by section 6 of the Navigation Act, available through the IMO website at <http://www.imo.org>.

Compatibility with human rights

20. AMSA considers that this instrument is compatible with human rights. It does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Commencement

21. This instrument commences on 15 January 2012.

Legislative instrument

22. This instrument is a legislative instrument for the *Legislative Instruments Act 2003*.

Making the instrument

23. This instrument has been made by the Acting Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Safety Act 1990*.