

Explanatory Statement

Marine Order 35 (Additional safety measures for bulk carriers) 2014 (Order 2014/13)

Authority

1. Subsection 112(5) of the *Navigation Act 2012* (the Navigation Act) provides that regulations may be made for the loading, stowing or carriage of cargo in vessels, the unloading of cargo from vessels, and the giving of notices for the loading, or the unloading, stowage or carriage of cargo into vessels.
2. Subsection 339(2)(a) of the Navigation Act provides that regulations may be made for the design and construction of vessels.
3. Subsection 339(2)(e) of the Navigation Act provides that regulations may be made for the stability of vessels.
4. Subsection 340(1)(a) of the Navigation Act provides that regulations may be made to give effect to the International Convention for the Safety of Life at Sea (SOLAS).
5. Section 341 of the Navigation Act provides that regulations may impose penalties.
6. Subsection 339(1) of the Navigation Act provides that regulations may be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.
7. Subsection 342(1) of the Navigation Act provides that AMSA may make a Marine Order about any matter for which provision must or may be made by regulations.
8. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
9. This Order is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

10. This Order gives effect to Chapter XII of SOLAS, which provides for structural, stability and other requirements for bulk carriers supplementing those mentioned in other chapters of SOLAS.

Overview

11. The Navigation Act implements Australia's obligations under Chapter XII of SOLAS.
12. This Order replaces *Marine Order 35 (Additional safety measures for bulk carriers) 2006* following a review of that Order as part of AMSA's ongoing review of instruments. The structure of the Order has been changed and current legislative drafting style applied. When the Order commences, schedule 20 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies the Order that it replaces.

Consultation

13. A copy of the draft of this Order was placed on the AMSA website for public comment. Over 300 stakeholders, including industry organisations and interested government agencies, were invited to participate in the consultation process. One response was received and the issue raised by this body was taken into account in finalising the Order.
14. The Office of Best Practice Regulation (OBPR) was also consulted and considered that [the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 15350.

Documents incorporated by reference

15. This Order incorporates the following documents by reference:
- Chapter XII of SOLAS
 - *Marine Order 1 (Administration) 2013*
 - *Marine Order 34 (Solid bulk cargoes) 2007*
 - IMO Resolution MSC.277(85)
 - IACS Unified Requirements:
 - *UR S17 Longitudinal strength of hull girder in flooded condition for bulk carriers*
 - *UR S20 Evaluation of allowable hold loading for bulk carriers considering hold flooding*
 - *UR S18 Evaluation of scantlings of corrugated transverse watertight bulkheads in bulk carriers considering hold flooding*
 - IMO Circular MSC/Circ.646 *Recommendations for the fitting of hull stress monitoring systems*
16. Copies of IMO resolutions and circulars mentioned in the Order are available on AMSA's website at <http://www.amsa.gov.au>. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Commencement

17. This Order commenced on 1 August 2014.

Contents of this instrument

18. Section 1 sets out the name of the Order.
19. Section 1A sets out the commencement of the Order.
20. Section 1B repeals *Marine Order 35 (Additional safety measures for bulk carriers) 2006*.
21. Section 2 states the purpose of the Order, which is to give effect to Chapter XII of SOLAS, which provides structural, stability and other requirements for bulk carriers supplementing those mentioned in other chapters of SOLAS.
22. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
23. Section 4 sets out the definitions of terms used in the Order.
24. Section 5 sets out the interpretation of terms used in the Order.
25. Section 6 provides when a vessel is taken to have been constructed.
26. Section 7 describes the vessels to which the Order applies.
27. Section 8 provides a person may apply for an exemption of a vessel from a requirement of this Order in accordance with the application process mentioned in *Marine Order 1 (Administration) 2013*.
28. Section 9 provides a person may apply for approval to use an equivalent in accordance with the application process set out in *Marine Order 1 (Administration) 2013*.
29. Division 2 sets out the requirements for bulk carriers.

30. Section 10 provides that vessels that primarily carry dry cargoes in bulk must comply with Chapter XII of SOLAS. It also provides that a vessel is not required to comply in specified circumstances.
31. Section 11 provides that vessels that occasionally carrying dry cargoes in bulk and constructed after 30 June 2010 must meet the requirements in paragraph 1.6 or 1.7 of IMO Resolution MSC.277(85).
32. Section 12 provides that solid bulk cargoes with a certain density must comply notification requirements required by *Marine Order 34 (Solid bulk cargoes) 2007*.
33. Section 13 provides loading requirements for solid bulk cargoes.
34. Division 3 provides additional requirements for regulated Australian vessels.
35. Section 14 provides construction requirements for bulk carriers that are regulated Australian vessels.
36. Section 15 provides that hull stress monitoring systems, if fitted, must comply with certain specifications.
37. Section 16 provides that, for certain vessels, there must be a safe and practical means of accessing tanks, cargo holds and ballast spaces for maintenance purposes and to enable the hull structure of the vessel to be examined during survey.
38. Section 17 provides regulated Australian vessel to which regulation 11 of Chapter XII applies must ensure that the vessel is fitted with a loading instrument approved by an issuing body.
39. Division 4 contains 1 section only. Section 18 sets out matters for the statement for carrying dry cargos in bulk for regulated Australian vessels.

Compatibility with human rights

40. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.
41. This Order gives effect to Chapter XII of International Convention for the Safety of Life at Sea (SOLAS), which provides for structural, stability and other requirements for bulk carriers supplementing those mentioned in other chapters of SOLAS.
42. Section 13 of the Order creates a criminal offence to which strict liability applies. It also creates a civil penalty. The penalties are low (50 penalty units) and the penalty provisions are directed at masters and owners of vessels, rather than the community at large and are regulatory in nature. The objective of the penalty provisions is to prevent potentially catastrophic loss of vessels due to failings in structural strength and stability. The criminal penalty provision is authorised by paragraph 341(1)(a) of the Navigation Act. The civil penalty provision is authorised by paragraph 341(1)(b) of the Navigation Act.
43. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.
44. Strict liability is imposed to ensure that a vessel is not loaded with solid bulk cargo a density of at least 1780 kg/m³, if regulation 6 or 7 applies to the vessel and the vessel does not comply with that regulation.
45. Having regard to the objectives of the civil penalty provision (which is protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalty should not be considered to be criminal matters for

human rights law. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of a civil penalty is reasonable, necessary and proportionate.

46. This Order is made under the *Navigation Act 2012*.

47. 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.

Making the instrument

48. 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 Authority Act 1990*.