



Australian Government
Australian Maritime Safety Authority

AMSA MO 2015/4

Marine Order 58 (Safe management of vessels) 2015

I, Gary Prosser, Acting Chief Executive Officer of the Australian Maritime Safety Authority, make this Order under subsection 342(1) of the *Navigation Act 2012*.

8 October 2015

Gary Prosser
Acting Chief Executive Officer

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Division 1 Preliminary

1 Name of Order

This Order is *Marine Order 58 (Safe management of vessels) 2015*.

1A Commencement

This Order commences on the day after it is registered.

1B Repeal of *Marine Order 58 (International Safety Management Code) 2002*

Marine Order 58 (International Safety Management Code) 2002 is repealed.

2 Purpose

This Order provides for the safe management and operation of vessels and pollution prevention by giving effect to Chapter IX of SOLAS which requires compliance with the ISM Code.

3 Power

- (1) The following provisions of the Navigation Act provide for this Order to be made:
 - (a) section 98 which provides that regulations may be made about safety certificates;
 - (b) section 314 which provides that regulations may be made about particular matters relating to certificates;
 - (c) paragraph 340(1)(a) which provides that the regulations may be made to give effect to SOLAS;
 - (d) subsection 341(1) which provides for the imposition of penalties for a contravention of a provision of the regulations.
- (2) Subsection 339(1) of the Navigation Act provides for regulations to 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.
- (3) Subsection 342(1) of the Navigation Act provides that AMSA may make a Marine Order about matters that can be provided for by regulation.

4 Definitions

In this Order:

Chapter IX means Chapter IX of SOLAS.

ISM Guidelines means the *Revised Guidelines on the implementation of the International Safety Management (ISM) Code by Administrations* adopted by IMO Resolution A.1071(28), as in force from time to time.

interim document of compliance means a document issued in accordance with paragraph 14.1 of the ISM Code.

interim safety management certificate means a certificate issued in accordance with paragraph 14.2 of the ISM Code.

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ISM Code means the *International Safety Management (ISM) Code* as defined in Regulation 1 of Chapter IX, as in force from time to time.

Note 1 For information on obtaining copies of IMO documents mentioned in this Order — see AMSA’s website at <http://www.amsa.gov.au>. These documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

Note 2 Some terms used in this Order are defined in *Marine Order 1 (Administration) 2013*, including:

- IMO
- SOLAS.

Note 3 Some terms used in this Order are defined in the Navigation Act, including:

- foreign vessel
- Government vessel
- issuing body
- owner
- regulated Australian vessel.

Note 4 For delegation of AMSA’s powers under this Order — see the AMSA website Marine Orders link at <http://www.amsa.gov.au>.

5 Interpretation

- (1) A term that is used but is not defined for this Order, and is defined in Chapter IX or the ISM Code, has the meaning given by Chapter IX or the ISM Code.
- (2) In this Order, a reference in Chapter IX or the ISM Code to the **Administration** is taken to mean:
 - (a) for a regulated Australian vessel — AMSA; or
 - (b) for a foreign vessel — the government of the country whose flag the vessel is entitled to fly.

6 Application

- (1) This Order applies to a regulated Australian vessel to which Chapter IX applies.

Note For safety management system requirements for regulated Australian vessels to which Chapter IX does not apply — see Schedule 2 of *Marine Order 31 (Vessel surveys and certification) 2015*.
- (2) Subsection 9(3) and sections 10 and 11 of this Order apply to a foreign vessel to which Chapter IX applies.
- (3) However, this Order only applies to a Government vessel if it is used for a commercial purpose.

7 Exemptions

- (1) A person may apply to AMSA, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for an exemption of a vessel, or the owner of a vessel, from a requirement of:
 - (a) this Order; or
 - (b) the ISM Code.

- (2) AMSA may give an exemption only if satisfied that:
- (a) compliance with the requirement or provision would be unnecessary or unreasonable; and
 - (b) giving the exemption would not contravene SOLAS.

Note Marine Order 1 (Administration) 2013 deals with the following matters about exemptions and equivalents:

- making an application
- seeking further information about an application
- the time allowed for consideration of an application
- imposing conditions on approval of an application
- notification of a decision on an application
- review of decisions.

8 Review of decisions

A decision under this Order, other than a decision under section 7, is taken to be a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.

Note 1 A decision under section 7 is a reviewable decision because it is mentioned in section 15 of *Marine Order 1 (Administration) 2013*.

Note 2 Decisions on safety management certificates and interim safety management certificates made under the Navigation Act are reviewable by the Administrative Appeals Tribunal — see subsection 313(1) of the Navigation Act.

Division 2 Safety management requirements

9 Safety management certificates

- (1) For subsection 99(1) of the Navigation Act (which enables a person to apply to an issuing body for a safety certificate of a kind specified in a Marine Order), the following safety certificates are specified:
 - (a) a safety management certificate;
 - (b) an interim safety management certificate.
- (2) For sections 103 and 104 (which apply to regulated Australian vessels) of the Navigation Act, a regulated Australian vessel must have:
 - (a) a safety management certificate; or
 - (b) an interim safety management certificate.

Note It is an offence under sections 103 and 104 to take a regulated Australian vessel to sea without a certificate of a specified kind in force for the vessel.

- (3) For sections 106 and 107 (which apply to foreign vessels) of the Navigation Act, a foreign vessel must have:
 - (a) a safety management certificate; or
 - (b) an interim safety management certificate.

Note It is an offence under sections 106 and 107 to take a foreign vessel to sea without a certificate of a specified kind in force for the vessel.

10 Compliance with approved safety management system

The owner of a vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code (in the ISM Code called the *Company*) must ensure that the vessel's safety management system, approved

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by its Administration under the ISM Code, is applied on the vessel in accordance with the ISM Code and the ISM Guidelines.

11 Copy of document of compliance or interim document of compliance on board

- (1) The master of a regulated Australian vessel or a foreign vessel may take the vessel to sea only if there is on board a copy of a document of compliance or interim document of compliance in force for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 50 penalty units.

Division 3 Document of compliance

12 Applying for document of compliance

A person may apply to AMSA, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for:

- (a) a document of compliance; or
- (b) an interim document of compliance.

13 Issuing criteria

- (1) AMSA may issue a document of compliance to the owner of a vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code if AMSA is satisfied that the safety management system of the owner meets the requirements of the ISM Code and ISM Guidelines for the kind of vessel mentioned in the document of compliance.
- (2) AMSA may issue an interim document of compliance in accordance with paragraph 14.1 of the ISM Code and the ISM Guidelines.

14 Conditions

A document of compliance is subject to the following conditions:

- (a) it must be endorsed by AMSA after annual verifications of the kind mentioned in paragraph 13.4 of the ISM Code and paragraph 4.4 of the ISM Guidelines and within the time period mentioned in paragraph 13.4 of the ISM Code; and
- (b) the holder of the document of compliance must tell AMSA, in writing, if the information on the document of compliance is no longer accurate because of a changed circumstance.

Note The holder of the document of compliance should submit a request to AMSA in writing for a safety management audit at least 4 weeks before it is required for an annual verification.

15 Duration of document of compliance

- (1) A document of compliance:
 - (a) comes into force on the day it is issued; and

- (b) ceases to be in force on the earliest of the following:
 - (i) the day determined by AMSA;
 - (ii) the day 5 years after it is issued.
- (2) An interim document of compliance:
 - (a) comes into force on the day it is issued; and
 - (b) ceases to be in force on the earliest of the following:
 - (i) the day determined by AMSA;
 - (ii) the day 12 months after it is issued.

16 Renewal

- (1) A person may apply to AMSA, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, within 6 months before a document of compliance would expire, for the renewal of the document of compliance.
- (2) If AMSA is satisfied in accordance with the requirements for a renewal verification mentioned in paragraph 4.6 of the ISM Guidelines, AMSA may renew the document of compliance for the following periods:
 - (a) if the renewal verification is completed within 3 months before the expiry date of the document of compliance — the period for renewal mentioned in paragraph 13.10 of the ISM Code;
 - (b) if the renewal verification is completed more than 3 months before the expiry date of the document of compliance — the period mentioned for renewal in paragraph 13.11 of the ISM Code.

Note The holder of the document of compliance should submit a request to AMSA in writing for a safety management audit at least 4 weeks before it is required for a renewal verification.

17 Variation or revocation of document of compliance or interim document of compliance

- (1) AMSA may vary or revoke a document of compliance or interim document of compliance if:
 - (a) for a document of compliance — the conditions for the document of compliance mentioned in section 14 are not complied with; or
 - (b) AMSA is satisfied that there is evidence of a major non-conformity with the requirements for the document of compliance or interim document of compliance; or
 - (c) the holder of the document requests a variation or revocation; or
 - (d) if the information on the document of compliance or interim document of compliance is no longer accurate because of a changed circumstance.
- (2) AMSA may, by notice in writing to the holder of the document, require the holder to give a varied or revoked document of compliance or interim document of compliance to AMSA.
- (3) The holder of the document must comply with a notice issued under subsection (2).

Penalty: 50 penalty units.
- (4) An offence against subsection (3) is a strict liability offence.

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- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 50 penalty units.

Note A safety management certificate may be revoked if a related document of compliance or interim document of compliance has been revoked or varied — see section 23.

Division 4 Safety management certificate

18 Applying for safety management certificate

For subsection 99(2) of the Navigation Act, Division 3 of *Marine Order 1 (Administration) 2013* (other than section 17) applies to an application to AMSA for:

- (a) a safety management certificate; and
- (b) an interim safety management certificate.

19 Issuing criteria

- (1) For paragraph 100(1)(b) of the Navigation Act, the criteria for the issue of a safety management certificate are that:
- (a) a document of compliance valid for the kind of vessel has been issued to the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code; and
 - (b) the safety management system for the vessel is being applied on the vessel in accordance with the ISM Code and the ISM Guidelines.
- (2) For paragraph 100(1)(b) of the Navigation Act, the criteria for the issue of an interim safety management certificate are that AMSA is satisfied that:
- (a) the criteria for issue mentioned in paragraph 14.2 of the ISM Code are satisfied; and
 - (b) the requirements mentioned in paragraph 14.4 of the ISM Code are met.

20 Conditions

- (1) For paragraph 100(2)(a) of the Navigation Act, a safety management certificate is subject to the following conditions:
- (a) it must be endorsed by AMSA after an intermediate verification, carried out between the second and third anniversaries of the safety management certificate or more frequently if AMSA considers it necessary, of the kind mentioned in paragraph 4.5 of the ISM Guidelines;
 - (b) it must be endorsed by AMSA after any additional verification of the kind mentioned in paragraph 4.7 of the ISM Guidelines;
 - (c) the owner of the vessel must tell AMSA, in writing, if the information on the safety management certificate is no longer accurate because of a changed circumstance;
 - (d) the safety management system for the vessel must be applied on the vessel in accordance with the ISM Code and the ISM Guidelines.
- Note* The owner of the vessel should submit a request to AMSA in writing for a safety management audit at least 4 weeks before it is required for an intermediate verification.
- (2) For subsection 100(2) of the Navigation Act, an interim safety management certificate is subject to the condition that, if an additional verification of the kind

mentioned in paragraph 4.7 of the ISM Guidelines is carried out, it must be endorsed by AMSA after the additional verification.

21 Duration of safety management certificate

- (1) A safety management certificate:
 - (a) comes into force on the day it is issued; and
 - (b) ceases to be in force on the earliest of the following:
 - (i) the day determined by AMSA;
 - (ii) the day 5 years after it is issued;
 - (iii) the day the document of compliance for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code ceases to be in force.
- (2) AMSA may extend the term of a safety management certificate, for up to 3 months, in accordance with paragraph 13.14 of the ISM Code.
- (3) An interim safety management certificate:
 - (a) comes into force on the day it is issued; and
 - (b) ceases to be in force on the earlier of:
 - (i) the day determined by AMSA; or
 - (ii) the day 6 months after it is issued.
- (4) However, AMSA may extend the term of an interim safety management certificate for a further period of up to 6 months in accordance with paragraph 14.3 of the ISM Code.

22 Renewal

- (1) A person may apply to AMSA, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, within 6 months before a safety management certificate would expire, for the renewal of the safety management certificate.
- (2) If AMSA is satisfied in accordance with the requirements for a renewal verification mentioned in paragraph 4.6 of the ISM Guidelines, AMSA may renew the safety management certificate for the following periods:
 - (a) if the renewal verification is completed within 3 months before the expiry date of the safety management certificate — the period for renewal mentioned in paragraph 13.10 of the ISM Code;
 - (b) if the renewal verification is completed more than 3 months before the expiry date of the safety management certificate — the period mentioned for renewal in paragraph 13.11 of the ISM Code;
 - (c) if the renewal verification is completed after the expiry date of the safety management certificate — the period mentioned for renewal in paragraph 13.12 of the ISM Code.
- (3) If a renewed safety management certificate cannot be issued or placed on board a vessel before the expiry date of the existing certificate, AMSA may endorse the existing certificate to extend its term for up to 5 months in accordance with paragraph 13.13 of the ISM Code.

Note The owner of the vessel should submit a request to AMSA in writing for a safety management audit at least 4 weeks before it is required for a renewal verification.

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23 Variation or revocation of safety management certificate or interim safety management certificate

For sections 101 and 102 of the Navigation Act, the criteria for variation or revocation of a safety management certificate or an interim safety management certificate for a vessel are:

- (a) for a safety management certificate — the conditions mentioned in subsection 20(1) are not complied with; or
- (b) for an interim safety management certificate — the conditions mentioned in subsection 20(2) are not complied with; or
- (c) there is evidence of major non-conformity with the requirements for the certificate; or
- (d) the document of compliance for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code:
 - (i) has not been endorsed under section 14; or
 - (ii) has expired and not been renewed; or
 - (iii) has been revoked or varied; or
- (e) the interim document of compliance for the owner of the vessel who has agreed to take over all the duties and responsibilities imposed by the ISM Code:
 - (i) has expired; or
 - (ii) has been revoked or varied; or
- (f) the owner of the vessel has requested a variation or revocation; or
- (g) the owner changes; or
- (h) the country of registration or the name for the vessel changes.

Note Section 315 of the Navigation Act provides that AMSA may require a certificate that has been issued for a regulated Australian vessel, and then revoked, to be delivered to AMSA or another specified person. The vessel may be detained until this requirement is complied with.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.