



Australian Government
Australian Maritime Safety Authority

AMSA MO 2016/4

Marine Order 33 (Cargo and cargo handling — grain) 2016

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

19 April 2016

Michael Kinley
Chief Executive Officer

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Division 1 Preliminary

1 Name of Order

This Order is *Marine Order 33 (Cargo and cargo handling — grain) 2016*.

1A Commencement

This Order commences on 1 May 2016.

1B Repeal of *Marine Order 33 (Cargo and cargo handling — grain) 2005*

Marine Order 33 (Cargo and cargo handling — grain) 2005 is repealed.

2 Purpose

This Order:

- (a) gives effect to:
 - (i) SOLAS, Chapter VI, Part C that deals with the carriage of grain in vessels; and
 - (ii) the International Grain Code; and
 - (iii) the BLU Code; and
- (b) provides for the loading, unloading, stowage and carriage of grain in vessels.

3 Power

- (1) The following provisions of the Navigation Act provide for this Order to be made:
 - (a) subsection 112(4) which provides that the regulations may provide for the carriage on a vessel of cargo;
 - (b) subsection 112(5) which provides that regulations may provide 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 unloading, stowage or carriage, of cargo in vessels;
 - (c) paragraph 340(1)(a) which provides that the regulations may provide for giving effect to SOLAS;
 - (d) paragraph 341(1) which provides that the regulations may provide for the imposition of penalties for contravention of provisions of the regulations including the imposition of civil penalties;
 - (e) paragraph 342(4)(b) which provides that a Marine Order may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document as in force or existing from time to time.

Note for paragraph (c) SOLAS, Chapter VI, Part C deals with the carriage of grain.
- (2) Subsection 339(1) of the Navigation Act provides for regulations to be made prescribing matters required or permitted to be prescribed by the Navigation Act, 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 orders about matters that can be provided for by regulations.

4 Definitions

In this Order:

approved grain stability data, for a vessel, means the information in booklet form that:

- (a) is mentioned in A 6.1 of the International Grain Code; and
- (b) is approved by the Administration of the country of registry of the vessel.

APVMA means the Australian Pesticides and Veterinary Medicines Authority.

BLU Code means the *Code of Practice for the Safe Loading and Unloading of Bulk Carriers* adopted by IMO Resolution A.862 (20) as in force from time to time.

Note As at 1 May 2016 the latest consolidated edition of the International Maritime Solid Bulk Cargoes Code and supplement was the *IMSBC Code International Maritime Solid Bulk Cargoes Code and supplement*, 2013 edition. The BLU Code, BLU Manual and other material relating to loading and unloading are included in the supplement.

BLU Manual means the *Manual on loading and unloading solid bulk cargoes for terminal representatives* set out in the annex to IMO Circular MSC/Circ.1160.

Note See note under definition of *BLU Code*.

document of authorisation means a document issued under A 3 of the International Grain Code by:

- (a) for a regulated Australian vessel — an issuing body; or
- (b) for a vessel to which SOLAS applies other than a regulated Australian vessel:
 - (i) the Administration of the government of the country whose flag the vessel is entitled to fly; or
 - (ii) the Administration of a country that is a contracting party to SOLAS, on behalf of the country whose flag the vessel is entitled to fly; or
 - (iii) an organisation recognised by the Administration for the vessel.

grain — see A 2.1 of the International Grain Code.

Gulf St Vincent ports means the ports of Adelaide, Ardrossan and Port Giles.

IMO Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds means the recommendations set out in the Annex to IMO MSC.1/Circ.1264 as amended from time to time.

Note IMO MSC.1/Circ.1264 including the recommendations is reproduced in the supplement to the latest version of the consolidation of the *International Maritime Solid Bulk Cargoes Code* published by the IMO. As at commencement of this Order the recommendations have been amended only by MSC.1/Circ.1396. IMO Circulars are available on the IMO website at <http://www.imo.org>.

International Grain Code means the *International Code for the Safe Carriage of Grain in Bulk* adopted by IMO Resolution MSC.23 (59), as in force from time to time.

Note A copy of each IMO resolution that adopts or amends this Code is available on AMSA's website at <http://www.amsa.gov.au>.

port limits means the limits, of a port, fixed by Gazette notice by the Chief Executive Officer of Customs under section 15 of the *Customs Act 1901*.

sheltered water exemption means an exemption of a vessel, fully or partly loaded with grain, from the requirement under paragraph 9(1)(b) to comply with the stability requirements in sections A 6 to A 9 of the International Grain Code while on passage:

- (a) between port limits of Spencer Gulf ports; or
- (b) between port limits of Gulf St Vincent ports; or
- (c) within the geographic limits of Port Phillip.

Spencer Gulf ports means the ports of Wallaroo, Port Pirie and Port Lincoln.

terminal representative means a person appointed by a terminal or other facility in Australia, where a vessel is loading or unloading, who has responsibility for operations conducted by the terminal or facility for the vessel.

trimmed, for grain — see A 10.2 of the International Grain Code and **trimming (loading cargo)** in 1.12 of the BLU Code.

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

- IMO
- Navigation Act
- SOLAS.

Note 2 Other terms used in this Order are defined in the Navigation Act, including:

- AMSA
- inspector
- issuing body
- master
- recognised organisation (for organisations that have been prescribed for the definition — see *Marine Order 1 (Administration) 2013*)
- regulated Australian vessel.

Note 3 Information on obtaining copies of any IMO Resolution, IMO document or other document that is mentioned in this Order is available from the AMSA website Marine Orders link at <http://www.amsa.gov.au>.

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

For this Order, a reference in the International Grain Code to:

- (a) **the Administration** is taken to mean:
 - (i) for a regulated Australian vessel — AMSA; and
 - (ii) for a foreign vessel — the government of the country whose flag the vessel is entitled to fly; and
- (b) **an organisation recognised by the Administration** is taken to mean:
 - (i) for a regulated Australian vessel — a recognised organisation; and
 - (ii) for a foreign vessel — an organisation recognised by the Administration of the country whose flag the vessel is entitled to fly.

6 Application

- (1) This Order applies to the loading, unloading, stowage and carriage of grain in bulk on the following vessels:
 - (a) a regulated Australian vessel;
 - (b) a foreign vessel that is:
 - (i) in an Australian port; or
 - (ii) entering or leaving an Australian port; or
 - (iii) in the internal waters of Australia; or
 - (iv) in the territorial sea of Australia, other than in the course of innocent passage.
- (2) However, this Order does not apply to a vessel taking on board or carrying grain wholly in bags, or in bulk wholly in freight containers.

Division 2 Exemptions and equivalents

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, including a sheltered water exemption, of a vessel from a requirement of this Order.
- (2) AMSA must consider an application for a sheltered water exemption within 14 days after receiving the application, and this period is to be taken as the period mentioned in section 14 for section 15 of *Marine Order 1 (Administration) 2013*.
- (3) AMSA may give an exemption only if satisfied that:
 - (a) compliance with the requirement would be unnecessary or unreasonable having regard to the vessel, its equipment and its intended voyage; and
 - (b) giving the exemption would not contravene SOLAS or the International Grain Code; and
 - (c) for an exemption permitted by the International Grain Code — the vessel is a regulated Australian vessel.

Note A 5 of the International Grain Code provides that if the Administration considers that the sheltered nature and conditions of a vessel's voyage means that the application of any requirements of the Code are unreasonable or unnecessary, the vessel may be exempt from those requirements for the voyage. A sheltered water exemption is 1 kind of exemption permitted under A 5.

8 Equivalents

- (1) A person may apply to AMSA, in accordance with the application process set out in *Marine Order 1 (Administration) 2013*, for approval to use an equivalent.
- (2) AMSA may approve use of an equivalent only if satisfied that:
 - (a) use of the equivalent would be at least as effective as compliance with the requirement to which the equivalent is an alternative; and
 - (b) approving use of the equivalent would not contravene SOLAS or the International Grain Code.

Note 1 *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 (other than an application for a sheltered water exemption)
- imposing conditions on approval of an application
- notification of a decision on an application
- review of decisions.

Note 2 For transitional arrangements for approvals to use an equivalent that were given under a previous issue of this Order — see Division 6.

Division 3 Loading and unloading etc of grain in bulk

9 Loading, trimming, carriage and unloading of grain in bulk

- (1) Grain in bulk must be loaded, trimmed and carried on a vessel and unloaded from a vessel, in a way that is in accordance with the following:
- (a) SOLAS, Chapter VI, Part C;
 - (b) the International Grain Code;
 - (c) the BLU Code;
 - (d) this Order.

Note If there is a conflict between the BLU Code and the International Grain Code the International Grain Code prevails — see BLU Code, Introduction, paragraph 8.

- (2) The master of a vessel to be loaded with grain in bulk must ensure that documents necessary to demonstrate compliance with subsection (1) are:
- (a) carried on the vessel; and
 - (b) made available to an inspector on request.

Penalty: 50 penalty units.

Note Documents known as grain loading documents are generally used to demonstrate compliance. These documents are usually:

- the document of authorisation
- approved grain stability data
- a proposed loading plan
- grain stability calculations
- shear force and bending moment calculations.

- (3) A terminal operator, terminal representative or master may allow grain in bulk to be loaded, trimmed and carried on a vessel, or unloaded from a vessel, only in accordance with the following:
- (a) SOLAS, Chapter VI, Part C;
 - (b) the International Grain Code;
 - (c) the BLU Code;
 - (d) this Order.

Penalty: 50 penalty units.

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

Civil penalty: 50 penalty units.

10 Demonstration of compliance with stability requirements

- (1) Before a vessel is loaded with grain in bulk, AMSA may require the master to demonstrate that the vessel can comply, at all times when the vessel carries the grain during any voyage, with the stability requirements mentioned in A 6 to A 9 of the International Grain Code that apply to the vessel.

Note See A7.2 of the Code.

- (2) The master of the vessel must ensure that the calculations used to demonstrate that the vessel can comply, at all times when the vessel carries the grain during any voyage, with the stability requirements mentioned in subsection (1) are:
- (a) completed before loading or partial discharge; and
 - (b) included in the approved form; and
 - (c) made available to an inspector on request.

Penalty: 50 penalty units.

Note The approved form is available on the AMSA website at <http://www.amsa.gov.au>. See *Marine Order 1 (Administration) 2013* for information about approved forms.

- (3) If a sheltered water exemption applies to the vessel the master of the vessel may demonstrate that the vessel can comply with the stability requirements of the exemption instead of the stability requirements mentioned in subsection (1).
- (4) An offence against subsection (2) is a strict liability offence.
- (5) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 50 penalty units.

11 Loading or unloading plan

- (1) The master of a vessel must ensure that grain in bulk is loaded onto the vessel only if the master and the terminal representative have agreed on a plan for loading that complies with the BLU Code.

Penalty: 50 penalty units.

- (2) The master of a vessel must ensure that grain in bulk is unloaded from a vessel only if the master and the terminal representative have agreed on a plan for unloading that complies with the BLU Code.

Penalty: 50 penalty units.

- (3) A plan for loading or unloading and any amendments of it must be lodged with the terminal representative at the port of loading or unloading and a copy kept on board the vessel throughout the voyage.

- (4) The terminal representative must:

- (a) keep the plan and any amendments of it for at least 6 months; and
- (b) make the plan available to the inspector at the AMSA office at or nearest to the port of loading or unloading on request by the inspector.

Penalty: 50 penalty units.

Note The BLU Code refers to any plan mentioned in this section as a 'loading or unloading plan'.

- (5) An offence against subsection (1), (2) or (4) is a strict liability offence.
- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2) or (4).

Civil penalty: 50 penalty units.

12 Loading and unloading to be in accordance with plan

- (1) The master of a vessel must ensure that, within his or her area of responsibility, vessel loading and unloading operations are conducted in accordance with the plan mentioned in subsection 11(1) or (2).
Penalty: 50 penalty units.
- (2) The terminal representative must ensure that, within his or her area of responsibility, vessel loading and unloading operations are conducted in accordance with the plan mentioned in subsection 11(1) or (2).
Penalty: 50 penalty units.
- (3) If, during loading or unloading, a limit mentioned in the plan is exceeded, or is likely to be exceeded if the loading or unloading continues:
 - (a) the master may suspend the loading or unloading; and
 - (b) if the master suspends the loading or unloading — the master must tell the person mentioned in subsection (7) about the suspension.
- (4) If the master suspends loading or unloading at a terminal under subsection (3), the master and the terminal representative at the terminal must ensure that corrective action is taken before the loading or unloading resumes.
- (5) The master must ensure that, within his or her area of responsibility, subsection (4) is complied with.
Penalty: 50 penalty units.
- (6) The terminal representative must ensure that, within his or her area of responsibility, subsection (4) is complied with.
Penalty: 50 penalty units.
- (7) For subsection (3), the person is:
 - (a) if the port State is Australia — the inspector at the AMSA office at or nearest to the port of loading or unloading; or
 - (b) in any other case — a person authorised by the competent authority for the port of loading or unloading.
- (8) An offence against subsection (1), (2), (5) or (6) is a strict liability offence.
- (9) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (5) or (6).
Civil penalty: 50 penalty units.

Division 4 Notices of intention to load or discharge grain

13 Notice of intention to load grain

- (1) At least 72 hours before any intended loading of grain in bulk on a vessel, the master of the vessel must ensure that notice of intention to load grain is given to AMSA, in the approved form, for each port where grain is to be loaded.
Note The approved form is available on the AMSA website at <http://www.amsa.gov.au>. See *Marine Order 1 (Administration) 2013* for information about approved forms.
- (2) If there is a significant change to the information given in the notice, the master of the vessel must ensure that revised information is given to AMSA, in the approved form, as soon as practicable.

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- (3) If requested by the master of the vessel, an inspector may approve a shorter notification period than is mentioned in subsection (1) for giving the notice mentioned in that subsection.
- (4) If an inspector requests further information about the stability calculation for the intended loading of grain in bulk on the vessel, the master must provide the information requested in the approved form.

Note See *Marine Order 1 (Administration) 2013* for information about approved forms. The form is available on the AMSA website at <http://www.amsa.gov.au>.

14 Loading of grain — responsibilities of master

- (1) The master of a vessel must not permit grain to be loaded on the vessel if:
 - (a) the notice required under subsection 13(1) has not been given; or
 - (b) stability calculation information requested under subsection 13(4) has not been given; or
 - (c) an inspector has told the master that an inspection of the vessel is required and this has not yet occurred; or
 - (d) an inspector has conducted an inspection and has not given approval after the inspection for the grain to be loaded.

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.

15 Notice of partial discharge of grain

- (1) If a cargo of grain in bulk is to be partially discharged at an Australian port from a vessel, the master of the vessel must ensure that notice of the intention to partially discharge grain is given to AMSA, in the approved form, for each port where grain is to be discharged, at least 24 hours before the anticipated time of arrival at the port.
- (2) If there is a significant change to the information given in the approved form used to give the notice, the master of the vessel must ensure that revised information is given to AMSA, in the approved form, as soon as practicable.
- (3) If requested by the master of the vessel, an inspector may approve a shorter notification period than is mentioned in subsection (1) for giving the notice mentioned in that subsection.
- (4) If an inspector requests further information about the stability calculation for the proposed partial discharge of grain in bulk from the vessel, the master must provide the information requested in the approved form.

Note The approved forms are available on the AMSA website at <http://www.amsa.gov.au>. See *Marine Order 1 (Administration) 2013* for information about approved forms.

16 Partial discharge of grain — responsibilities of master

- (1) The master of a vessel must not take the vessel to sea following partial discharge of grain from the vessel if:
 - (a) the notice required under subsection 15(1) or (2) has not been given; or
 - (b) stability calculation information requested under subsection 15(4) has not been given; or

- (c) an inspector has told the master that an inspection of the vessel is required and this has not yet occurred; or
 - (d) an inspector has conducted an inspection of the vessel and has not given approval after the inspection for the vessel to go to sea.
- 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 5 Fumigation requirements

17 Notice of intended fumigation of cargo holds in port

If the master of a vessel that carries or is to carry grain in bulk intends to arrange for fumigation of a cargo space of the vessel when the vessel is in port, the master must, within 72 hours before arriving in the port, give to AMSA the following information in writing:

- (a) the vessel's name;
- (b) the vessel's IMO number;
- (c) the year the vessel's keel was laid;
- (d) the country whose flag the vessel is entitled to fly;
- (e) the name of the vessel's agent;
- (f) the name and contact details of the fumigator;
- (g) when the vessel is expected to berth in, and depart from, the port;
- (h) whether in transit fumigation is intended.

Note This section applies to the masters of regulated Australian vessels and foreign vessels with a cargo space to be fumigated in an Australian port and to the masters of regulated Australian vessels with a cargo space to be fumigated when the vessel is in a port outside Australia.

18 Requirements for fumigation before grain loading

- (1) If a cargo space of a vessel, whether or not the space contains grain, must be fumigated before grain is loaded, the master of the vessel must ensure the fumigation is carried out in accordance with the *IMO Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds* other than provision 3.3.2.
- 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.

Note Provision 3.3.2 of the *IMO Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds* deals with in transit fumigation.

19 Notice of intended in transit fumigation

- (1) The agent of a vessel that carries, or is to carry, grain in bulk must notify AMSA, using the approved form, of the intention to conduct in transit fumigation on the vessel at least 72 hours before any intended fumigation.

Note See *Marine Order 1 (Administration) 2013* for information about approved forms. The form is available on the AMSA website at <http://www.amsa.gov.au>.

- (2) Also, the master of the vessel must give the notification mentioned in subsection (1) if:
- (a) AMSA makes a written request for notification under subsection (1); and
 - (b) the vessel does not have an agent.

Note Permission from the APVMA is required for in transit fumigation. A permit must be obtained before fumigation occurs — see the APVMA website at <http://www.apvma.gov.au> for further information. Other authorities, eg port authorities, may have additional requirements.

20 Notice of in transit fumigation on a voyage

The master of a vessel that is on a voyage on which in transit fumigation of a cargo space is being conducted must notify AMSA, using the approved form, of the in transit fumigation at least 72 hours before the vessel arrives at an Australian port.

21 Requirements for in transit fumigation

- (1) The master of a vessel carrying grain in bulk must ensure that only an approved fumigant is used for any in transit fumigation of grain in bulk conducted on the vessel.

Penalty: 50 penalty units.

- (2) For subsection (1), an **approved fumigant** is a fumigant approved in writing by APVMA for the fumigation of grain in bulk on a vessel.

Note There is information about approved fumigants on AMSA's website at <http://www.amsa.gov.au>.

- (3) If in transit fumigation is to be carried out on a vessel carrying grain in bulk, a person must comply with any requirement imposed on the person by provision 3.3.2 of the *Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds*.

Penalty: 50 penalty units.

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

Civil penalty: 50 penalty units.

Note Provision 3.3.2 of the *IMO Recommendations on the safe use of pesticides in ships applicable to the fumigation of cargo holds* imposes requirements on the master of the vessel, trained representatives of the master and the fumigator-in-charge.

Division 6 Transitional arrangements**22 Approvals**

An approval for use of an equivalent is taken to be approved under this Order if:

- (a) it was given or continued in force under *Marine Order 33 (Cargo and cargo handling — grain) 2005*; and
- (b) it was for an equivalent that is in use on a vessel on 30 April 2016.

Note

1. All legislative instruments and compilations of legislative instruments are registered on the Federal Register of Legislation under the *Legislation Act 2003*. See <https://www.legislation.gov.au>.