



Australian Government
Australian Maritime Safety Authority

AMSA MO 2019/1

Marine Order 44 (Safe containers) 2019

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

24 May 2019

Michael Kinley
Chief Executive Officer

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Division 1 Preliminary

1 Name of Marine Order

This Marine Order is *Marine Order 44 (Safe containers) 2019*.

1A Commencement

This Marine Order commences on 1 July 2019.

1B Repeal of *Marine Order 44 (Safe containers) 2002*

Marine Order 44 (Safe containers) 2002 is repealed.

2 Purpose

This Marine Order:

- (a) gives effect to the Container Convention; and
- (b) makes provision for:
 - (i) the approval, maintenance, inspection and marking of offshore containers; and
 - (ii) the safe loading of offshore containers on, and the safe unloading of offshore containers from, regulated Australian vessels and foreign vessels.

3 Power

- (1) The following provisions of the Navigation Act provide for this Marine Order to be made:
 - (a) subsection 112(4) which provides that the regulations may provide for the carriage of cargo on a vessel;
 - (b) subsection 112(5) which provides that the regulations can provide for the loading, stowage and carriage of cargo in vessels and the unloading of cargo from vessels;
 - (c) paragraph 340(1)(f) which provides that the regulations may give effect to the Container Convention;
 - (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 Marine Order:

Administration means:

- (a) for a container approved by AMSA under section 10 — AMSA; or
- (b) in any other case — the government that approved the container in accordance with the Container Convention.

ACEP Guidelines means the *Guidelines for development of an approved continuous examination programme (ACEP)* mentioned in the Container Convention, as amended from time to time.

approval plate means an approval plate mentioned in paragraph 16 and the Appendix of the *Guidelines for the approval of offshore containers handled in open seas*.

approving competent authority means an organisation authorised under section 26.

g means the standard acceleration of gravity and g equals 9.8 m/s² as mentioned in the Container Convention.

Guidelines for the approval of offshore containers handled in open seas means the guidelines adopted by the International Maritime Organization MSC/Circ. 860, as amended from time to time.

MODU (mobile offshore drilling unit) means a vessel capable of engaging in drilling operations for the exploration for or the exploitation of resources beneath the seabed (eg liquid or gaseous hydrocarbons, sulphur or salt).

Note This definition is based on the 2009 MODU Code.

offshore container means a portable unit specially designed for repeated use in the transport of goods or equipment to, from or between fixed or floating offshore installations, resources industry fixed structures, ports, MODUs and vessels.

Note Such units include containers and portable tanks for dangerous goods. Individual or design type approval for such units is made under the *Guidelines for the approval of offshore containers handled in open seas*.

one door off operation means a container with one door removed as mentioned in the Container Convention.

owner means:

- (a) the person who owns a container or an offshore container; or
- (b) the lessee or bailee of a container or an offshore container who by agreement may exercise the owner's responsibility for the maintenance and examination of the container or offshore container.

resources industry fixed structure has the same meaning as in the *Sea Installations Act 1987*.

safety approval plate means a plate that meets the requirements mentioned in the Container Convention for a safety approval plate.

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

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

- AMSA
- cargo
- container
- Container Convention
- inspector
- port
- recognised organisation.

Note 3 For delegation of AMSA's powers under this Marine Order — see the AMSA website at <http://www.amsa.gov.au>.

5 Interpretation

- (1) A term that is used in this Marine Order but is not defined for this Marine Order, and is defined or used in the Container Convention, has the meaning given by the Container Convention.
- (2) For this Marine Order, the expression **authorised organisation** in the Container Convention is taken to mean a recognised organisation.

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

6 Application

- (1) This Marine Order applies to:
 - (a) a container used or intended to be used on a vessel whether or not that use relates to international sea transport; or
 - (b) an offshore container.

Note The effect of this provision is that a container carried on a domestic commercial vessel is also subject to this Marine Order.

- (2) This Marine Order does not apply to a container that remains for the entire voyage on a road or rail vehicle.
- (3) Subdivision 2.3 only applies to a container that is being loaded on, or unloaded from, a vessel at a port.
- (4) Subdivision 3.2 only applies to an offshore container that is being loaded on, or unloaded from, a vessel at any of the following:
 - (a) a port;
 - (b) a MODU;
 - (c) a fixed or floating offshore installation;
 - (d) a resources industry fixed structure.

7 Review of decisions

A decision under subsection 10(3), 14(1), 18(2), section 19, subsection 26(2) and 27(2) are taken to be reviewable decisions for sections 17 and 18 of *Marine Order 1 (Administration) 2013*.

8 Savings – approvals

An approval issued under section 8 of *Marine Order 44 (Safe containers) 2002* that is in force immediately before the commencement of this Marine Order is taken, on and after that commencement, to be an approval given by AMSA or a recognised organisation under this Marine Order.

9 Transitional – approvals

- (1) This section applies to an application for approval of a container made on, or before 30 June 2019, that is not decided before 1 July 2019.
- (2) The application is taken to be an application for this Marine Order.

- (3) However, AMSA may consider the application in accordance with the criteria set out in *Marine Order 44 (Safe containers) 2002* as if that Marine Order had not been repealed.

Division 2 Container Convention containers

Subdivision 2.1 Approval of containers

10 Approval of containers

- (1) The owner of a container may apply to AMSA or a recognised organisation for approval of the container.
- (2) If a container is approved and if a container is subsequently modified by making changes to its structure, the owner of the container must apply to AMSA or a recognised organisation for approval of the modification.
- (3) AMSA or a recognised organisation may give an approval for:
- (a) a container that complies with the Container Convention; or
 - (b) a modification of a container if the modified container complies with the Container Convention.

11 Safety approval plate

- (1) The owner of a container with an approval under section 10 must ensure that a safety approval plate is fixed to the container in the manner mentioned in the Container Convention.
- 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.

12 Maximum gross mass markings

- (1) The owner of a container with an approval under section 10 must ensure that a container is marked with a maximum operating gross mass marking that is consistent with the maximum operating gross mass indicated on the container's safety approval plate.
- Penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) The owner is liable to a civil penalty if the person contravenes subsection (1).
- Civil penalty: 50 penalty units.

13 Removal of safety approval plate

- (1) The owner of a container with an approval under section 10 must remove the container's safety approval plate if:
- (a) the container has been modified and the container no longer complies with the Container Convention; or
 - (b) the information on the safety approval plate is no longer correct; or
 - (c) the container is removed from service and is not being maintained in accordance with the Container Convention; or

- (d) approval of the container is withdrawn.
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.

14 Withdrawal of approval of container

- (1) If AMSA or a recognised organisation considers that a container with an approval under section 10 no longer complies with the Container Convention it may withdraw the approval.
- (2) If the approval is withdrawn, AMSA or a recognised organisation must give written notice of the withdrawal within 14 days to:
 - (a) the owner of the container; and
 - (b) if a recognised organisation is giving the notice — AMSA.

Subdivision 2.2 Maintenance and examination of containers

15 Maintenance

- (1) The owner of a container with an approval under section 10 must maintain the container in the manner mentioned in the Container Convention.
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.

16 Examination of containers under a periodic examination scheme

- (1) The owner of a container with an approval under section 10 must ensure the container is periodically examined by AMSA or a recognised organisation in the manner mentioned in the Container Convention.
Penalty: 50 penalty units.
 - (2) However, subsection (1) does not apply to a container for which a continuous examination program has been approved under section 18.
 - (3) If a container is repaired as a result of a defect, the owner must ensure that the container is examined before the container is loaded on a vessel.
Penalty: 50 penalty units.
 - (4) The owner of a container that has been examined under subsection (3) must ensure that the container is re-examined by AMSA or a recognised organisation the earlier of:
 - (a) the date the container would have been due for examination in accordance with the Container Convention; or
 - (b) 30 months after the date of the examination under subsection (3).Penalty: 50 penalty units.
- Note* Examination and re-examination dates are specified by month and year only.
- (5) An offence against subsection (1), (3) or (4) is a strict liability offence.

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (3) or (4).

Civil penalty: 50 penalty units.

17 Marking containers under a periodic examination scheme

- (1) The owner of a container under a periodic examination scheme in section 16 must ensure that an examination or re-examination date is marked permanently and legibly on the container by stamping, embossing, engraving or applying a decal in the manner mentioned in the Container Convention.

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.

18 Approval of continuous examination program

- (1) The owner of a container may apply to AMSA or a recognised organisation in accordance with *Marine Order 1 (Administration) 2011* for approval of a continuous examination program.

- (2) AMSA or a recognised organisation may approve a continuous examination program if it is satisfied that the program meets the requirements of the Container Convention.

Note AMSA may impose any conditions on the approval that it considers appropriate if paragraph 6 of Regulation 2 of Chapter I of Annex I to the Container Convention applies. If an owner is not domiciled in Australia, AMSA will not approve an examination program if the owner does not have either a registered office address in Australia or an ASIC registered local agent who agrees that they will accept service of notices and documents.

- (3) The owner of a container under a continuous examination program must ensure that the container is examined:

(a) after refurbishment and before the container is loaded on a vessel after the refurbishment; and

(b) for a container that is hired out by the owner of a container to another person —

(i) before the container is loaded on a vessel after the hire agreement commences; and

(ii) before the container is loaded on a vessel after the end of the hire arrangement.

Penalty: 50 penalty units.

- (4) The owner of a container must ensure that the container is re-examined on the earlier of:

(a) the day the container would have been due for examination in accordance with the Container Convention, by AMSA or a recognised organisation; or

(b) 30 months after the date of the examination under subsection (3).

Penalty: 50 penalty units.

Note Examination and re-examination dates are specified by month and year only.

- (5) An offence against subsection (3) or (4) is a strict liability offence.

- (6) A person is liable to a civil penalty if the person contravenes subsection (3) or (4).

Civil penalty: 50 penalty units.

19 Withdrawal of approval of continuous examination program

AMSA may withdraw approval for a continuous examination program given under section 18 if it considers that the program no longer meets the requirements in the Container Convention.

20 Marking of containers under a continuous examination program

- (1) The owner of a container that is under an approved continuous examination program under section 18 must ensure that the container is marked permanently and legibly by stamping, embossing or engraving the letters 'ACEP (AUS)' in the manner mentioned in the Container Convention.

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.

Subdivision 2.3 Control measures for containers

21 Certain containers not to be loaded or unloaded

- (1) A person must not load a container on, or unload a container from a vessel, if any of the following apply:
- (a) the container has a defect that could place any person in danger;
 - (b) the container does not have a safety approval plate;
 - (c) for a container under a periodic examination scheme — the next examination date marked is in the past;
 - (d) the letters 'ACEP' and identification of the Administration are not marked;
 - (e) the container exceeds the maximum operating gross mass as marked on the safety approval plate.

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 Examination and re-examination dates are specified by month and year only.

22 Maximum load to be placed on container

- (1) The master of a vessel must ensure that a container is not placed on another container if that container exceeds the allowable stacking load for 1.8g indicated on the safety approval plate.

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 For a one door off operation, the allowable stacking load indicated on the safety approval plate must be used.

23 Proper precautions

- (1) This section applies if AMSA believes, on reasonable grounds, that the doing of an activity or the failure to do an activity during the loading or unloading, stowage or carriage of a container on a vessel, may:

- (a) damage the vessel; or
- (b) pose a risk to the safety of persons; or
- (c) damage the environment.

- (2) AMSA may give a written notice to a person requiring:

- (a) that the doing of an activity is to cease; or
- (b) that precautions specified in the notice are to be undertaken.

- (3) A person who is given a notice must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.

Note 1 Section 114 of the Navigation Act provides that a person commits an offence if proper precautions are not taken for an activity involving packing, sending, stowing, loading, unloading, securing or carrying cargo on a vessel.

Note 2 Section 264 of the Navigation Act provides that an inspector may give directions to a person to take steps that are reasonable in the circumstances for compliance with a requirement in the Act or this Marine Order. Section 267 of the Navigation Act also provides that an inspector may give a prohibition notice about an activity involving a serious risk to the health or safety of a person.

Division 3 Offshore containers

Subdivision 3.1 Approval, maintenance and inspection of offshore containers

24 Savings — approval of offshore containers

An approval issued under the *Guidelines for the approval of offshore containers handled in open seas* that is in force immediately before the commencement of this Marine Order is taken, on and after that commencement, to be an approval given under this Marine Order.

25 Transitional – approvals

- (1) This section applies to an application for approval of an offshore container made on, or before 30 June 2019, that is not decided before 1 July 2019.
- (2) The application is taken to be an application for this Marine Order.

26 Authorisation of approving competent authorities

- (1) An organisation may apply to AMSA for authorisation as an approving competent authority in accordance with *Marine Order 1 (Administration) 2013*.

- (2) AMSA may authorise an organisation as an approving competent authority if satisfied that the organisation:
 - (a) maintains technical standards for offshore containers for either:
 - (i) design and testing; or
 - (ii) inspection; and
 - (b) has procedures to approve offshore containers and verify compliance with the organisation's technical standards; and
 - (c) has an ongoing audit process.
- (3) For paragraph (2)(a)(i), the organisation must apply the requirements in the *Guidelines for the approval of offshore containers handled in open seas*.
- (4) For paragraph (2)(a)(ii), the organisation must meet the requirements for type B inspection bodies in standard ISO/IEC 17020:2012 — *Conformity assessment – Requirements for the operation of various types of bodies performing inspection*, or equivalent standard.

Note 1 Information on obtaining a copy of the standard is available from the AMSA website Marine Orders link at <http://www.amsa.gov.au>.

Note 2 For details of approving competent authorities, or for information on the application process to become an approving competent authority — see the AMSA website at <http://www.amsa.gov.au>.

27 Approval of offshore containers

- (1) The owner of an offshore container may apply to an approving competent authority for approval of the offshore container.
- (2) An approving competent authority may, in relation to design, dynamic lifting and impact forces, approve an offshore container that meets:
 - (a) the standards for offshore containers mentioned in the *Guidelines for the approval of offshore containers handled in open seas*; or
 - (b) an equivalent international standard.
- (3) The approval of an offshore container may be for design type or individual approval.

28 Approval plate for offshore containers

- (1) The owner of an offshore container with an approval under section 27, must ensure that an approval plate is fixed to the offshore container in the manner mentioned in the *Guidelines for the approval of offshore containers handled in open seas*.

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.

29 Maintenance and inspection of offshore containers

- (1) The owner of an offshore container with an approval under section 27 must ensure that an offshore container is maintained in a manner to enable its continued use for the purpose for which it was designed.

- (2) The owner of an offshore container with an approval under section 27 must ensure that the offshore container is periodically inspected by an approving competent authority.
Penalty: 50 penalty units.
- (3) For subsection (2), the period between inspections must be the shorter of:
 - (a) 1 year; or
 - (b) the period specified by the approving competent authority that originally approved the container.
- (4) The owner of an offshore container with an approval under section 27 must ensure that the date of inspection of the offshore container and the mark of the person conducting the inspection is marked on the offshore container in the manner mentioned in the *Guidelines for the approval of offshore containers handled in open seas*.
- (5) An offence against subsection (2) is a strict liability offence.
- (6) A person is liable to a civil penalty if the person contravenes subsection (2).
Civil penalty: 50 penalty units.

Subdivision 3.2 Control measures for offshore containers

30 Certain offshore containers not to be loaded or unloaded

- (1) A person must not load an offshore container on, or unload an offshore container from, a vessel if any of the following apply:
 - (a) the offshore container has a defect that could place any person in danger;
 - (b) the offshore container does not have a valid approval plate;
 - (c) the offshore container exceeds the maximum gross mass as marked on the approval plate;
 - (d) the period since the last inspection date marked on the offshore container is more than 1 year.
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.

31 Proper precautions

- (1) This section applies if AMSA believes, on reasonable grounds, that the doing of an activity or the failure to do an activity during the loading or unloading, stowage or carriage of an offshore container on a vessel, may:
 - (a) damage the vessel; or
 - (b) pose a risk to the safety of persons; or
 - (c) damage the environment.
- (2) AMSA may give a written notice to a person requiring:
 - (a) that the doing of an activity is to cease; or
 - (b) that precautions specified in the notice are to be undertaken.

- (3) A person who is given a notice must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.

Note 1 Section 114 of the Navigation Act provides that a person commits an offence if proper precautions are not taken for an activity involving packing, sending, stowing, loading, unloading, securing or carrying cargo on a vessel.

Note 2 Section 264 of the Navigation Act provides that an inspector may give directions to a person to take steps that are reasonable in the circumstances for compliance with a requirement in the Act or this Marine Order. Section 267 of the Navigation Act also provides that an inspector may give a prohibition notice about an activity involving a serious risk to the health or safety of a person.

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>.