



Australian Government
Australian Maritime Safety Authority

AMSA MO 2019/[number]

Marine Order 44 (Safe containers) 2019

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

2019

[DRAFT ONLY — NOT FOR SIGNATURE]
Chief Executive Officer

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Division 1 Preliminary

1 Name of Order

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

1A Commencement

This Order commences on 1 May 2019.

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

Marine Order 44 (Safe containers) 2002 is repealed.

2 Purpose

- (1) This Order:
 - (a) gives effect to the Container Convention; and
 - (b) gives effect to the International Maritime Organization's *Guidelines for the approval of offshore containers handled in open seas*.

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 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 Order:

Administration means:

- (a) for a container or offshore container that is approved in Australia — AMSA; or
- (b) for a container or offshore container that is approved outside of Australia — the government of the approving country.

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 a plate that meets the requirements for an approval plate mentioned in the *Guidelines for the approval of offshore containers handled in open seas*.

approved means:

- (a) for a container— approved, in accordance with the Container Convention; or
- (b) for an offshore container— approved, in accordance with the *Guidelines for the approval of offshore containers handled in open seas*.

approving competent authority means an organisation duly authorised by the Administration to give an approval for an offshore container.

Note 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>.

Australian installation means an installation that is deemed to be part of Australia.

authorised organisation means a corporation or organisation that is mentioned in Schedule 1 of *Marine Order 1 (Administration) 2013*, or an organisation authorised in writing by AMSA to give an approval mentioned in this Order.

Note For details of authorised organisations, or for information on the application process to become an authorised organisation — see the AMSA website at <http://www.amsa.gov.au>.

continuous examination program means a program for continuous examination of containers developed in accordance with the ACEP Guidelines.

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 in force from time to time.

inspection plate means a plate that meets the requirements for an inspection plate mentioned in the *Guidelines for the approval of offshore containers handled in open seas*.

international sea transport means the transportation of a container or an offshore container by vessel between a port in Australia and a port in a country other than Australia.

inter-State sea transport means the transportation of a container or an offshore container by vessel between:

- (a) a port in a State and a port in another State;
- (b) a port in a State and a port in a Territory; or
- (c) a port in a Territory and a port in another Territory.

intra-State sea transport means the transportation of a container or an offshore container between ports in the same State or Territory.

loaded onto a vessel includes any handling incidental to the operation of loading onto a vessel.

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.

new container means a container that was made after 22 February 1981.

offshore container means a portable unit specially designed for repeated use in the transport of goods or equipment to, from or between fixed and/or floating offshore installations, ports, MODUs and vessels. 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 the person who owns a container or an offshore container or the lessee or bailee of a container or an offshore container, where, by agreement between the parties, the exercise of the owner's responsibility for the maintenance and examination of the container or offshore container has been transferred to a lessee or bailee.

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

unloaded from a vessel includes any handling incidental to the operation of unloading from a vessel.

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

- IMO

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

- AMSA
- cargo
- container
- Container Convention
- Inspector
- port.

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

5 Interpretation

A term that is used in this Order but is not defined for this Order, and is defined in the Container Convention, has the meaning given by the Container Convention.

Note 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>.

6 Application

- (1) This Order applies to and in relation to containers and offshore containers used in international, inter-State sea transport or intra-State sea transport, but does not apply to a container that remains for the entire voyage on a road or rail vehicle.
- (2) Subdivision 2.1 applies to a container for which Australian approval is requested.
- (3) Subdivision 2.2 applies to containers in the following circumstances:
 - (a) the owner is a natural person living in Australia or a corporation that has its head office in Australia; or
 - (b) the owner is a natural person living in, or a corporation that has its head office in, a country the government of which has not made arrangements for prescribing or approving an examination scheme, and the owner has requested that the provisions apply in respect of the container.
- (4) Subdivision 2.3 applies to a container that:
 - (a) is on board a vessel; or
 - (a) is to be, or is being, loaded on to a vessel at a port in Australia.
- (5) Subdivision 3.1 applies to an offshore container for which Australian approval is requested and applies to containers in the following circumstances:
 - (a) the owner is a natural person living in Australia or a corporation that has its head office in Australia; or
 - (b) the owner is a natural person living in, or a corporation that has its head office in, a country the government of which has not made arrangements for prescribing or approving an examination scheme, and the owner has requested that the provisions apply in respect of the container.
- (6) Subdivision 3.2 applies to an offshore container that:
 - (a) is to be, or is being, loaded or unloaded from a regulated Australian vessel anywhere;
 - (b) is to be, or is being, loaded or unloaded from a foreign vessel at a port in Australia, at an Australian installation, or in the territorial sea of Australia.
- (7) This Order is not intended to exclude or limit the concurrent operation of any law of a State or Territory that imposes additional obligations or liabilities on a person.

7 Review of decisions

A decision under subsection 10(3) or 18(2) or section 14, 19 or 26 is taken to be a reviewable decision for section 17 of *Marine Order 1 (Administration) 2013*.

8 Savings – approvals

An approval issued by an authorised organisation 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 issued by AMSA or an authorised 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 April 2019, that is not decided before 1 May 2019.
- (2) The application is taken to be an application for this 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 Order had not been repealed.

Division 2 Container Convention containers

Subdivision 2.1 Approval of containers

10 Approval of containers

- (1) For Annex I of the Container Convention, the owner of a container may apply to AMSA or an authorised organisation for approval of a container.
- (2) AMSA or an authorised organisation may approve a container that complies with the Container Convention.
- (3) For Chapter V of the Container Convention, if a container is approved under subsection 10(1) and it is subsequently modified by making changes to its structure, the owner of the container must apply to AMSA or an authorised organisation for approval of the modification.

11 Safety approval plate

- (1) If a container is approved by AMSA or an authorised organisation, the owner of a container must:
 - (a) ensure that a safety approval plate complies with the requirements for a safety approval plate mentioned in Annex 1 of the Container Convention; and
 - (b) ensure that the safety approval plate mentioned in Annex 1 of the Container Convention is permanently affixed to the container.

Penalty: 50 penalty units.

- (2) Subsection (1) is an offence of strict liability.
- (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 commits an offence if a container is marked with maximum operating gross mass markings that are inconsistent with the maximum operating gross mass indicated on the container's safety approval plate.

Penalty: 50 penalty units.

- (2) Subsection (1) is an offence of strict liability.
- (3) The owner is liable to a civil penalty if the person contravenes subsection (1).
Civil penalty: 50 penalty units.

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13 Removal of safety approval plate

- (1) The owner of a container must remove the container's safety approval plate if:
 - (a) the container has been modified in a way that would void the approval of the container and the information on the safety approval plate is no longer correct; or
 - (b) the container is removed from service and is not being maintained in accordance with the Container Convention; or
 - (c) approval of the container is withdrawn.
Penalty: 50 penalty units.
- (2) Subsection (1) is an offence of strict liability.
- (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 an authorised organisation considers that a container that is approved no longer complies with the Container Convention it may withdraw the approval issued for the container.
- (2) If the approval issued for a container is withdrawn under subsection (1), AMSA or an authorised organisation must give written notice of the withdrawal, within 14 days to:
 - (a) the owner of the container; and
 - (b) for an authorised organisation — AMSA.

Subdivision 2.2 Maintenance and examination of containers

15 Maintenance

- (1) The owner of a container must maintain the container in a safe condition in accordance with the requirements 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 an examination program

- (1) The owner of a container must ensure the container is periodically examined by AMSA or an authorised organisation in accordance with the requirements 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 approved under section 18 is in place.
- (3) The owner of a container must ensure that a container is examined after the repair of a defect in the container and before the container is loaded onto a vessel after the repair.
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 on the earlier of:
- the date the container would have been due for examination in accordance with the Container Convention, by AMSA or an authorised organisation; or
 - 30 months after the date of the examination under subsection (3).

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

17 Marking containers under a periodic examination scheme

- (1) The owner of a container under a periodic examination scheme must ensure that the container is marked in accordance with the Container Convention.

Penalty: 50 penalty units.

- (2) An examination or re-examination date must be marked permanently and legibly on the container by stamping, embossing, engraving or applying a decal.

Penalty: 50 penalty units.

- (3) A decal mentioned in subsection (2) must:

- comply with the colour code mentioned in the Container Convention; and
- include the date in the English language or in Arabic figures.

Penalty: 50 penalty units.

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

- (4) An examination date must not be marked on the container if the container does not comply with the Container Convention.

Penalty: 50 penalty units.

- (5) Subsections (1), (2) (3) or (4) are strict liability offences.

- (6) A person is liable to a civil penalty if the person contravenes subsection (1), (2), (3) or (4).

Civil penalty: 50 penalty units.

18 Approval of continuous examination program

- (1) The owner of a container may apply to AMSA for approval of a continuous examination program.

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

- (3) The owner of a container must also ensure that the container is examined:

- after refurbishment and before the container is loaded onto a vessel after the refurbishment; and
- for a container that is hired out by the owner of a container to another person — during the transportation of the container to an agreed port at the end of the hire arrangement, and before the container is loaded onto a vessel after the end of the hire arrangement.

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 on the earlier of:

- the day the container would have been due for examination in accordance with the Container Convention, by AMSA or an authorised 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) Subsections (3) and (4) are strict liability offences.

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

Civil penalty: 50 penalty units.

Note Guidance on approval of continuous examination programs is available from the AMSA website at <http://www.amsa.gov.au>.

19 Withdrawal of approval of continuous examination program

AMSA may withdraw approval for a continuous examination program 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 for which there is an AMSA approved continuous examination program must ensure that the container is marked permanently and legibly by stamping, embossing or engraving the letters 'ACEP (AUS)' on or near the safety approval plate.

Penalty: 50 penalty units.

(2) Subsection (1) is an offence of strict liability.

(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) Unless authorised by AMSA, a person must not load a container onto, 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 or does not have a valid safety approval plate; or

(b) for a container under a periodic examination scheme — the date marked on or near the safety approval plate for the container to be next examined has passed; or

(c) the letters 'ACEP' and identification of the approving Administration are not marked; or

(d) the container exceeds the maximum operating gross mass as marked on the safety approval plate.

Penalty: 50 penalty units.

(2) 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 person does not place on a container on the vessel a load exceeding the allowable stacking load for 1.8g indicated on the safety approval plate attached to the container.
Penalty: 50 penalty units.
- (2) Subsection (1) is an offence of strict liability.
- (3) A person is liable to a civil penalty if the person contravenes subsection (1).
Civil penalty: 50 penalty units.
- (4) If the container is approved for, and being used as, a one door off operation, the difference in allowable stacking load must be mentioned on the safety approval plate in accordance with the Container Convention.

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 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 issued by an approving competent authority 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 April 2019, that is not decided before 1 May 2019.
- (2) The application is taken to be an application for this Order.

26 Approval of offshore containers

- (1) The owner of an offshore container may apply to an approving competent authority for approval of an offshore container.
- (2) An approving competent authority may approve an offshore container that complies with the requirements for approval of offshore containers mentioned in the *Guidelines for the approval of offshore containers handled in open seas* by:
 - (a) design type; or
 - (b) individual approval.

27 Approval plate for offshore containers

- (1) If an offshore container is approved, an approval plate must be attached to the offshore container that meets the requirements of the *Guidelines for the approval of offshore containers handled in open seas*.

Penalty: 50 penalty units.
- (2) 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.

28 Maintenance and inspection of offshore containers

- (1) The owner of an offshore container must maintain the offshore container in a safe condition in accordance with the requirements for maintenance of offshore containers recommended by an approving competent authority.
- (2) The owner of an offshore container must ensure the container is periodically inspected in accordance with the requirements mentioned in the *Guidelines for the approval of offshore containers handled in open seas*.

Penalty: 50 penalty units.

Subdivision 3.2 Control measures for offshore containers

29 Certain offshore containers not to be loaded or unloaded

- (1) Unless authorised by AMSA, a person must not load an offshore container onto, 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 or does not have a valid approval plate; or
 - (b) the offshore container exceeds the maximum gross mass as marked on the approval plate; or
 - (c) the period since the last inspection date marked on the offshore container exceeds 12 months.

Penalty: 50 penalty units.
- (2) 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.

30 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 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>.