

Explanatory statement

Marine Orders Part 41 Amendment 2011 (No. 1) (Carriage of dangerous goods)

Authority

1. Part IV of the *Navigation Act 1912* (the *Act*) deals with ships and shipping. Subsection 191(1) of the Act (which is in Part IV) provides that the regulations may make provide for giving effect to the Safety Convention which is the *International Convention for the Safety of Life at Sea, 1974 (SOLAS)*.
2. The following provisions (also in Part IV of the Act) empower regulations to be made regarding dangerous goods, the notice of intention to ship dangerous goods and the carriage, loading and stowing of cargo and giving notices about cargo:
 - section 253A of the Act provides that regulations may be made in regard to the carriage of dangerous goods in ships
 - section 255 of the Act requires notice of intention to ship dangerous goods to be given in the manner and to the person prescribed
 - subsection 257(1) of the Act provides that regulations may make provide for the loading, stowing or carriage of cargo in ships or the unloading of cargo from ships
 - subsection 257(2) of the Act provides that regulations made in accordance with subsection 257(1) include regulations about giving notices about loading, or proposed loading, of cargo into ships.
3. Subsection 425(1) of the Act provides that the Governor-General may make regulations necessary or convenient for carrying out or giving effect to the Act.
4. Subsection 425(1AA) of the Act provides that AMSA may make orders about any matter (other than the imposition of penalties) mentioned in, among other Parts, Part IV of the Act for which regulations may be made.
5. Marine Orders Part 41, issue 10 (**MO 41**) was made under subsection 425 (1AA) of the Act, as is this instrument.

Purpose

6. MO 41 provides for loading, stowing, carriage and unloading dangerous goods.
7. MO 41 also gives effect to:
 - Parts A and D of Chapter VII (Carriage of Dangerous Goods) of SOLAS
 - the *International Maritime Dangerous Goods Code* (the **IMDG Code**)
 - the *International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on board ships* (the **INF Code**).
8. This instrument gives effect to amendments made to the IMDG Code by the Maritime Safety Committee (**MSC**) of the International Maritime Organization (**IMO**). IMO resolution MSC.294(87) adopted amendment 35-10 to the IMDG Code which will enter into force on 1 January 2012. The MSC also agreed that the amendments to the IMDG Code may apply on a voluntary basis from 1 January 2011.
9. The amendments in the Order also update provisions that deal with internal review of administrative decisions and update references to SOLAS.

Overview

10. This instrument gives effect to amendments to an international convention (SOLAS) to which Australia is a signatory. The impact of this instrument is therefore minor or machinery in nature. The Office of Best Practice Regulation has advised that the regulatory impact analysis was adequate and no further analysis in the form of a regulation impact statement is required (OBPR Reference number 11891).

11. The MSC adopted amendment 35-10 to the IMDG Code by Resolution MSC.294(87). Amendment 35-10 comes into force on 1 January 2012. The MSC also agreed that amendment 35-10 may apply in whole or in part on a voluntary basis as from 1 January 2011.

12. It is therefore intended that amendment 35-10 to the IMDG Code apply from commencement of this instrument (15 July 2011) to 31 December 2011 as an alternative to the current amendment 34-08 to the IMDG Code. From 1 January 2012, amendment 34-08 will cease to apply and only amendment 35-10 to the IMDG Code will apply.

13. Most of the amendments in amendment 35-10 to the IMDG Code are editorial in nature to clarify existing text. Non-editorial changes include:

- further harmonisation of the Code with UN Recommendations
- in Part 1 of the Code, a number of definitions have been revised and some new definitions have been inserted
- records of training of shore based personnel, received in accordance with Chapter 1.3 of the Code, must be kept by the employer for a period of time established by the competent authority
- records of all security training of shore based personnel should be kept by the employer for a period of time established by the competent authority (recommendatory)
- a new paragraph 2.0.2.10 has been added — a mixture or solution meeting the classification criteria of the Code that is not identified by name in the DG list and that is composed of two or more dangerous goods is to be assigned to an entry that has the proper shipping name, description, hazard class or division, subsidiary risks and packing group that most precisely describe the mixture or solution
- a substance listed by name and containing impurities (eg those deriving from the production process) or additives for stability or other purposes affecting its classification is to be considered a mixture or solution (see paragraphs 2.0.2.2 and 2.0.2.5)
- a number of new special provisions have been inserted (see chapter 3.3)
- a new paragraph 2.9.2.2 listing substances and articles of class 9 has been inserted
- packages containing dangerous goods in limited quantities need not be labelled or marked with the marine pollutant mark, proper shipping name or UN number of the contents, but must bear the marking shown in subsection 3.4.5.1 with minimum dimensions of 100 mm x 100 mm and same marking design for CTU (containing dangerous goods in limited quantities) placard but must have minimum dimensions of 250 mm x 250 mm
- as an alternative to paper documents the use of electronic data processing (EDP) and electronic data interchange (RDI) may be used (chapter 5.4)
- a new chapter (chapter 5.5 — special provisions applicable to fumigated cargo transport unit) has been inserted
- a new paragraph 6.2.2.9 (marking of UN metal hydride storage systems) has been inserted.

14. The entity currently responsible for internal review of decisions made by the Manager, Ship Inspections is the Deputy Chief Executive Officer Maritime Operations. This instrument will transfer this responsibility to the General Manager, Maritime Operations Division.

15. The opportunity has also been taken to update the reference in the notes to provision 1.1 and provision 8.1 in the Appendix to the most recent version of SOLAS.

Consultation

16. In addition to posting a copy of the draft of this instrument on AMSA's website, a copy of the draft of the order was provided to a range of stakeholders for comment, including the following organisations:

- American Bureau of Shipping (ABS)
- Australian Institute of Marine and Power Engineers (AIMPE)
- Australian Maritime Officers Union (AMOU)
- Australian Shipowners Association (ASA)
- Bureau Veritas (BV)
- China Classification Society (CCS)
- Class NK (NKK)
- Department of Infrastructure, Transport, Regional Development and Local Government (DITRD LG)
- Det Norske Veritas (DNV)
- Germanischer Lloyd (GL)
- Korean Register (KR)
- Lloyd's Register (LR)
- National Marine Safety Committee (NMSC)
- Registro Italiano Navale (RINA)
- Shipping Australia Limited (SAL).

17. Comments received were taken into account in preparing this instrument.

Documents incorporated by reference

18. This instrument incorporates by reference the International Maritime Dangerous Goods Code 2010 edition. MO 41 incorporates by reference the International Maritime Dangerous Goods Code 2008 edition, as well as:

- International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended
- International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on board ships.

19. Those publications may be purchased from:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR

Telephone +44(0)20 7735 7611

Facsimile +44(0)20 7587 3210

IMO website: <http://www.imo.org>

20. There is a list of distributors who maintain permanent stock of all IMO publications on the IMO website. Information on obtaining copies of IMO documents mentioned in this Order is

Commencement

21. Most amendments made by this instrument commence on 15 July 2011, except for the amendments made by Schedule 2 which commence on 1 January 2012.

Contents of this instrument

Schedule 1: Amendments commencing on 15 July 2011

22. Item [1] amends the note to refer to the most recent version of SOLAS.

23. Item [2] omits the definition of *Deputy Chief Executive Officer Maritime Operations* because the term is no longer used in the Part. Item [3] inserts a definition of *General Manager* because this entity will exercise functions under MO 41.

24. Item [6] inserts a new provision to require an employer to retain records of employee training in relation to handling, packing, stowing and carriage of dangerous goods. The records must be retained by the employer for the time that the employee remains employed by that employer and while that employee continues to be employed to handle, pack, stow or carry dangerous goods. This provision gives practical effect to the IMO resolution that recommends records of all security training of shore based personnel should be kept by the employer for a period of time established by the competent authority.

25. Item [9] inserts a new provision that allows the new IMDG Code (amendment 35-10) to apply as an alternative to the current IMDG Code (amendment 34-08) from commencement of this instrument (15 July 2011) to 31 December 2011. This gives effect to the IMO resolution which states that amendment 35-10 to the IMDG Code may apply in whole or in part on a voluntary basis from 1 January 2011. The new provision is repealed by Schedule 2 on 1 January 2012 which means that amendment 34-08 to the IMDG Code will cease to apply and only amendment 35-10 to the IMDG Code will apply from that date. This is consistent with the IMO resolution.

26. Item [14] amends the note to provision 8.1 of the Appendix to refer to the most recent version of SOLAS.

27. Item [15] replaces *Deputy Chief Executive Officer Maritime Operations* with *General Manager* throughout MO 41. This reflects the transfer of responsibility mentioned in paragraph 14.

Schedule 2: Amendments commencing on 1 January 2012

28. Item [1] amends the definition of *IMDG Code* so that amendment 35-10 to the IMDG Code replaces the current IMDG Code from 1 January 2012. From 1 January 2012, the current IMDG Code (amendment 34-08) will cease to apply and only amendment 35-10 to the IMDG Code will apply.

Legislative instrument

29. This instrument is a legislative instrument for the *Legislative Instruments Act 2003*.

Making the order

30. This instrument has been made by the Acting Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49 (4) of the *Australian Maritime Authority Act 1990*.