



Australian Government
Australian Maritime Safety Authority

AMSA MO 2016/13

Marine Order 508 (National law amendment) 2016

I, Michael Kinley, Chief Executive Officer of the Australian Maritime Safety Authority, (the National Marine Safety Regulator under section 9 of the *Marine Safety (Domestic Commercial Vessel) National Law*), make this Order under subsection 163(1) of the *Marine Safety (Domestic Commercial Vessel) National Law*.

18 August 2016

Michael Kinley
Chief Executive Officer

1 Name of Order

This Order is *Marine Order 508 (National law amendment) 2016*.

2 Commencement

This Order commences on 1 September 2016.

3 Amendment of Marine Orders

Each Order mentioned in the title of a Schedule to this Order is amended in accordance with the Schedule.

Schedule 1 Marine Order 501 (Administration — national law) 2013

[1] After subsection 4(4)

insert

- (4A) Paragraph 143(4)(a) of the national law provides that an exemption may be granted on application in accordance with the regulations by a person.

[2] Section 7, definitions of *equivalent* and *equivalent guideline*

substitute

increased level of risk, for a vessel's operations, has the meaning given by section 13 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

[3] Section 7, after definition of *Pollution Prevention Act*

insert

recognised organisation — see section 14 of the *Navigation Act*.

Note For organisations that have been prescribed for this definition — see *Marine Order 1 (Administration) 2013*.

[4] After section 7

insert

7A Required certificates, licences or qualifications

- (1) A requirement to have a certificate or licence is a requirement to have a certificate or licence that is in force.
- (2) If a certificate or licence is revoked or suspended it ceases to be in force.
- (3) A requirement to have any other qualification is a requirement to have a qualification that has not been revoked, however described.
- (4) This section does not apply to a certificate of survey, certificate of operation or a certificate of competency.

Note 1 A certificate of survey, certificate of operation or certificate of competency also ceases to be in force if it is suspended or revoked — see sections 38, 48 and 60 of the national law.

[5] After subsection 8(2)

insert

- (3) For paragraph 143(4)(a) of the national law, the granting of an exemption under subsection 143(1) of the national law is a matter for which an application must be made in accordance with this Order.

[6] After subparagraph 9(a)(iv)

insert

- (v) be accompanied by any prescribed fee charged by the National Regulator for assessing the application; and

[7] Section 9, note 1

substitute

Note 1 For charging of fees by States etc — see section 9 of the National Law Act. For the prescribed fees that may be charged by the National Regulator — see Part 4 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

[8] Section 13

substitute

13 Decision on application and notification of decision

- (1) The National Regulator must, within the period mentioned in section 12:
 - (a) decide the application; and
 - (b) tell the applicant, in writing:
 - (i) the decision on the application and any conditions imposed; and

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- (ii) the reasons for the decision if the decision is not to approve the application.

Note A Marine Order that provides that an application may be made to the National Regulator in accordance with this Order may set out criteria to be considered when deciding the application.

- (2) If the National Regulator does not decide the application within the period mentioned in section 12, the National Regulator is taken to have decided not to approve the application.

[9] Section 15, note

substitute

Note The term **reviewable decision** is used here in a different context to that in which it is used in section 139 of the national law. Subsection 139(1) of the national law lists reviewable decisions made under the national law, including a decision not to grant an exemption on application. Those decisions are reviewable under Division 1 of Part 8 of the national law.

Schedule 2 Marine Order 503 (Certificates of survey — national law) 2013

(section 3)

[1] Section 6

after

Order:

insert

accredited marine surveyor means a person who is accredited under section 24 of the *Marine Safety (Domestic Commercial Vessel) National Law Regulation 2013*.

[2] Section 6, after definition of *application for design approval*

insert

deemed to satisfy solution has the same meaning as in the NSCV.

equivalent means of compliance means an equivalent means of compliance by a vessel with a requirement of this Order under which the vessel must comply with a standard mentioned in section 8.

load line certificate has the meaning given by section 6 of *Marine Order 507 (Load line certificates — national law) 2013*.

[3] Section 6, after definition of *new vessel*

insert

required outcome has the same meaning as in the NSCV.

[4] Section 6, note 1

after

- approved form

insert

- increased level of risk

[5] Section 11

substitute

11 Form of survey

- (1) For paragraph 38(1)(b) of the national law:
 - (a) a vessel must be surveyed in accordance with:
 - (i) for a new vessel — Section 4 of NSAMS; or
 - (ii) for an existing vessel — Section 4 of NSAMS, Section 14 of the USL Code or the survey process that applied to the vessel when it was last surveyed before 1 July 2013; and
 - (b) the survey must be conducted by:
 - (i) the National Regulator; or

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- (ii) an accredited marine surveyor; or
 - (iii) a recognised organisation; or
 - (iv) if it is an electrical survey conducted as part of a survey — a person who holds an electrical contractor licence (however described) issued by a State or Territory, or an accredited marine surveyor who is accredited to perform electrical surveys; and
- (c) the survey must be in accordance with any documents relating to the vessel approved by any of the following, unless the National Regulator considers that the survey does not need to be in accordance with the documents:
- (i) the National Regulator;
 - (ii) an accredited marine surveyor;
 - (iii) a recognised organisation;
 - (iv) a person the National Regulator is satisfied is competent to assess the documents.

Examples for paragraph (1)(c)

- 1 vessel plans
 - 2 stability calculations.
- (2) A person conducting an electrical survey mentioned in subparagraph (1)(b)(iv) must give a compliance report to the person conducting the survey of the vessel unless the person conducts both surveys.
- (3) For paragraph 38(1)(c) of the national law, the vessel must comply with the standard that applies to the vessel.

Note A decision not to issue a certificate of survey is a reviewable decision — see section 139 of the national law.

[6] Section 12

substitute

12 Criteria for issue of a certificate

- (1) For paragraph 38(1)(c) of the national law, the criteria for issue of a certificate of survey are that:
- (a) the application is made in accordance with section 10; and
 - (b) the National Regulator is satisfied that the vessel:
 - (i) has been surveyed in accordance with the standard mentioned for the vessel in section 8; and
 - (ii) meets the standard; and
 - (c) if *Marine Order 507 (Load line certificates — national law) 2013* applies to the vessel — a load line certificate is in force for the vessel.
- (2) For paragraph (1)(b), if an equivalent means of compliance has been approved by the National Regulator for the vessel, the vessel meets each requirement of the standard that the equivalent means replaces if the National Regulator is satisfied that the equivalent means has been implemented for the vessel.

[7] Section 14

omit

A certificate

insert

- (1) A certificate

[8] Paragraph 14(f)

substitute

(f) the vessel must continue to comply with the construction, subdivision, stability and equipment standards that apply to the vessel;

(fa) if there is an approval of an equivalent means of compliance in force for the vessel — the vessel continues to comply with each condition (if any) on the approval;

[9] Subparagraph 14(j)(ii)

omit

type;

insert

type.

[10] Paragraph 14(k)

omit

[11] Section 14, after the notes

insert

- (2) If an equivalent means of compliance relating to Section 4 of NSAMS or another survey process that applied to the vessel is in force for the vessel, any reference in paragraph (1)(a) or (f) to a standard is a reference to the standard other than those requirements to which the equivalent means of compliance applies.

[12] Paragraph 17(2)(d)

substitute

(d) ensuring that a vessel is not operated in contravention of a detention notice, a direction, an improvement notice or a prohibition notice.

[13] After section 19

insert

Division 4 Equivalent means of compliance

20 Application for equivalent means of compliance

- (1) A person may apply to the National Regulator for an equivalent means of compliance.

Note An application for an equivalent means of compliance must be made in accordance with *Marine Order 501 (Administration — national law) 2013* — see section 9.

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- (2) The National Regulator must:
- (a) approve the application; or
 - (b) refuse the application.
- (3) The National Regulator may approve the application if satisfied that the equivalent means of compliance proposed by the applicant:
- (a) for an application relating to compliance with a construction, subdivision, stability or equipment standard mentioned in paragraph 8(a) — is at least as effective as compliance with each requirement that the equivalent means is to replace; and
 - (b) for an application relating to compliance with the NSCV other than Part C Section 2 — meets the required outcomes of the NSCV that apply to the vessel to a level of safety that is equivalent to the deemed to satisfy solution of the NSCV that it is to replace; and
 - (c) for an application relating to compliance with the USL Code provisions mentioned in subparagraph 8(b)(ii), (iii) or (v) — is at least as effective as compliance with each requirement that the equivalent means is to replace; and
 - (d) for an application relating to compliance with section 4 of NSAMS or another survey process that applies the vessel — is at least as effective as compliance with each requirement that the equivalent means is to replace.
- (3) The National Regulator may impose conditions on the approval.
- (4) A decision under subsection (2) to refuse an application is a reviewable decision for section 16 of *Marine Order 501 (Administration — national law) 2013*.

21 Form of application

An application for an equivalent means of compliance must, in addition to complying with section 9 of *Marine Order 501 (Administration — national law) 2013*, include:

- (a) details of the requirements of the standards to which the application relates; and
- (b) a statement explaining how the proposed equivalent means of compliance is at least as effective as compliance with each requirement that the equivalent means is to replace; and
- (c) at least 1 document supporting the statement mentioned in paragraph (b).

Note If the application relates to the NSCV, the details may be of the required outcomes that the equivalent means of compliance is to meet. Also, the statement may explain how the equivalent means of compliance meets the detailed required outcomes to the same level of safety as the deemed to satisfy solution.

Examples for paragraph (c)

- 1 A report from an accredited marine surveyor.
- 2 National Association of Testing Authorities, Australia (NATA) testing results.
- 3 A mill test report.

22 Term of approval

- (1) An approval of an equivalent means of compliance:
 - (a) comes into force on the day it is issued; and
 - (b) expires on the day, if any, it is cancelled.
- (2) A decision to cancel an approval is a reviewable decision for section 16 of *Marine Order 501 (Administration — national law) 2013*.

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>.