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Regulations of the Minister of Infrastructure and the Environment of 16 June 2016, no. IENM/BSK-2016/113479, to amend the safety regulations of seagoing ships in relation to the method for calculating the verified gross mass of a packed container as a result of regulation 2, Part A, Chapter VI, of the International Convention for the Safety of Life at Sea (SOLAS Convention)

The Minister of Infrastructure and the Environment,

In view of Article 54 of the Ships Decree 2004;

DECREE:

ARTICLE I

Two articles are being inserted that read as follows after Article 44 of the Seagoing Ship Safety Regulations:

Article 44a. Method for calculating the verified gross mass of a packed container as a result of regulation 2, fourth paragraph (2), Part A, Chapter VI, of the International Convention for the Safety of Life at Sea

1. The determination of the verified gross mass of a packed container through calculation as referred to in regulation 2, fourth paragraph (2), Part A, Chapter VI of the SOLAS Convention takes place by using the sum of the mass determined in accordance with paragraphs two to five.
2. The mass of the cargo of the container is determined by the sum of the mass of the individually products packed therein or through information or documents supplied by third parties. For bulk products, it is permitted to determine the mass of the cargo based on the measuring moments during the production process of the bulk products such as flow rate determination through calibrated filling systems or through weighing.
3. The mass of the packaging of the products packed in the container is determined by taking the sum of the masses of the product packs as determined by the shipper or issued by the supplier of those packs or the information or documents issued by third parties with regard to this.
4. The mass of the pallets of the dunnage in the container is determined by taking the sum of the mass of the pallets or the dunnage in the container as determined by the shipper or issued by the supplier of the pallets or the dunnage or the information or documents issued by third parties.
5. The mass of the non-packed container as issued by the person who makes the container available to the shipper.
6. When determining the mass of a packed container through calculation, the "*Guidelines regarding the verified gross mass of a container carrying cargo*" established in circular MSC/Circ. 1475 of the International Maritime Organisation's Maritime Safety Committee are observed.



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Article 44b. Permitted deviation margin of the verified mass of a packed container

The verified gross mass of a packed container as referred to in regulation 2, fourth paragraph, Part A, Chapter VI, of the SOLAS Convention no longer deviates from the actual mass but by:

- a. 500 kilograms at most if the actual mass of the verified packed container is less than 10 tons;
- b. 5 mass percentage points at most if the actual mass of the verified packed container weighs 10 tons or more.

ARTICLE II

These regulations will come into force on 1 July 2016.

These regulations will be published in the Government Gazette including an explanatory note.

*The Minister of Infrastructure and the Environment,
M.H. Schultz van Haegen-Maas Geesteranus*



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EXPLANATORY NOTE

1 Introduction

The method for the determination of the verified gross mass of a packed container through calculation as referred to in regulation 2, fourth paragraph (2), Part A, Chapter VI of the SOLAS Convention has been established with the current amendment of the Seagoing Ship Safety Regulations (hereinafter to be referred to as the Regulations). This provides the elaboration to the amendment of regulation 2, Part A, Chapter VI, of the SOLAS Convention that will come into force on 1 July 2016.¹ This amendment deals with information that must be issued about packing containers on seagoing ships that has the objective to further safeguard the stability and safety of the ship, the seafarers and the marine environment by reducing the risk of losing containers at sea.

2 Implementing legislation

The aforementioned amendment of the SOLAS Convention consists of three parts. Firstly, the gross mass of packed containers to be loaded on to ships have been verified by weighing using a calibrated and certified equipment or through calculation in accordance with a certified method. Secondly, the shipper must include this information in the ship's documents and issue it to the captain or the shipowner prior to loading the ship. Thirdly, the captain is responsible that only containers are loaded regarding which the gross mass has been verified. This convention amendment will have an immediate effect on Dutch legislation with the exception of the establishment of the certified calculation method. This arises from the dynamic reference in Article 52 of the Ships Decree 2004. It has been established therein that the general regulations of Chapter VI, Part A, of the SOLAS Convention must be observed. It has been established in regulation 2, fourth paragraph (2), Part A, Chapter VI, of the SOLAS Convention that convention parties must establish a certified method for the calculation of the gross mass of a packed container. The specifics are established in this amendment regulation with regard to this obligation.

3 Main features of Articles 44a and 44b of the Seagoing Ship Safety Regulations

Based on regulation 2, first and second paragraphs, Part A, Chapter VI of the SOLAS Convention, shippers must issue correct information about the cargo well in advance to loading to the captain or his or her representative so that the precautions can be implemented that are required for a correct stowage and safe shipment of the cargo. This obligation has been expanded with the convention amendment. A certified method must be used that has been established by the competent authorities or the Convention State for the calculation of the gross mass of packed containers that are loaded at a Dutch port on to a seagoing ship. This has been established in regulation 2, fourth paragraph (2), of the SOLAS Convention. IMO has published a guide to support the implementation of the provision.² A method has been established in Article 44a of the regulations for all shippers of ships that depart from the Netherlands. The method corresponds with that which is set down in the aforementioned guide. The specifics of the method for the calculation have not been prescribed by the IMO and, therefore, national differences in methods and the implementation thereof cannot be excluded. In consultation with the sector, the decision was taken to use the method established in Article 44a of the regulations in the Netherlands with which the objective of regulation 2 of the SOLAS Convention is realised and the burden for business and industry and the government are limited as much as possible.

The gross mass must be established through weighing or calculation.

In the case of weighing, the packed container must have been weighed using calibrated and certified equipment. This has been set down in regulation 2, fourth paragraph (1), of the SOLAS Convention. In case of calculation, the mass of the container to be packed must have been calculated by adding together the masses of the parts of the cargo, the packs, the stowage material and the tare weight of the empty container. This has been established in regulation 2, fourth paragraph (2), of the SOLAS Convention. Prior to the convention amendment, the shipper already had an obligation to inform the captain or his or her representative about the mass of the packed containers so that safe shipment was possible. The method in which this could be done had not been arranged.

¹ Annex 19, MSC 93/22/Add.3, meeting MSC 93, established by the International Maritime Organisation (IMO) on 30 May 2014.

² Guidelines regarding the verified gross mass of a container carrying cargo, MSC.1/Circ. 1475, of 9 June 2014.



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Weighing

In practice, a packed container can be weighed using different methods:

1. The mass of the packed container can be established through calibrated and certified equipment from which the mass is read.
2. The mass of the packed container as well as the mass of the vehicle, vehicle combination or chassis on which it is placed are determined through calibrated and certified equipment from which the mass is read. The tare weight of the vehicle, vehicle combination or chassis is subtracted from the established weight as specified on the vehicle registration papers of the vehicle or chassis. The fuel still present in the tank is also subtracted from the weight.
3. The mass of the packed container is established by determining the mass of the empty container together with the vehicle, vehicle combination or chassis prior to the container being packed through reading the mass from calibrated and certified equipment. This weighing is repeated after the container is packed. The difference between both measurements gives the mass of the cargo. The mass of the cargo increased by the tare weight of the empty container gives the verified gross mass of the packed container.

The amendment to the SOLAS Convention has not led to a change in the weighing method. Based on regulation 2, fourth paragraph (1), of the SOLAS Convention, weighing must take place using calibrated and certified equipment. This has had no consequences for daily practice either because equipment falls under the scope of two European directives.

With regard to non-automatic weighing instruments, Directive 2014/31/EU of the European Parliament and the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments (recast; PbEU 2014, L96/107) applies. With regard to automatic weighing instruments, Directive 2014/32/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of measuring instruments (recast; PbEU 2014, L96/149) applies. Both Directives have been implemented in the Dutch Metrology Act.

Calculation

The determination of the verified gross mass of the packed container must take place by the shipper whilst observing Article 44a of the regulations. A description of the procedure to be followed in the business processes of the shipper can be a tool to prove that the verified gross mass has been determined in accordance with the method as described in Article 44a of the regulations. The establishment of such a procedure or work instruction is not an obligation for a shipper because a shipper must adhere to what is prescribed in Article 44a of the regulations. The shipper having, for example, an Authorised Economic Operator (AEO) permit (customs simplification (C) or security and safety (S)) or an ISO certificate in accordance with, for example, the NEN-ISO 9000 series or the NEN-ISO 28000:2007en standard is an indication for both the authorities and market parties that the shipper has anchored the method of Article 44a of the regulations correctly in the shipper's business processes. The NEN-ISO 9000 series includes standards for quality management systems. The NEN-ISO 28000:2007en standard includes standards for safety management systems for the logistics chain. The status of "Authorised Economic Operator" (AEO) can be obtained through the AEO permits issued by Customs, which simplifies cross-border trade.³ A correctly operating internal auditing system must, for example, be in place in order to obtain these permits. The aforementioned certifications and permits are not meant to be exhaustive. Holders of an AEO permit or an ISO certificate are deemed to have their administrative organisation and internal auditing organised in such a way that they will act in accordance with the provisions contained in Article 44a.

Permitted deviation margin

The IMO has not drawn up a standard in regulation 2, fourth paragraph, of the SOLAS Convention with regard to verification about the tolerances to be used between the verified gross mass of the packed container as specified by the shipper and the verified gross mass of the packed container as determined by the enforcer. This means that it can be unclear in enforcement practice whether a verified gross mass has

³ See: Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast, PbEU 2013, L 269/1).



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been determined correctly if it emerges that the actual mass deviates from the mass specified with regard to the verification. This lack of clarity is deemed unwanted by the sector. The permitted deviation margin has, therefore, been established in Article 44b with regard to the actual mass of a verified container. This deviation margin is based on the accuracy with which the stability calculations under the influence of the forces on the ship and the containers have been performed.

This margin corresponds to the deviation margins that are used within this context. A margin of 500 kilograms is used for packed containers with a verified gross mass of up to 10,000 kilograms. A fixed value of 500 kilograms has been selected for small masses because, in these cases, the deviations in the tare weight of the container, the packs and the anchorage material are relatively large. Similar deviations are being used in most neighbouring countries.

4 Consequences

Captain or shipowner obligation

It has been established in article 4, first paragraph (h), of the Ships Act that a captain must ensure that the cargo and stowage of his or her ship must meet the requirements of seaworthiness before undertaking a journey. Behaviour contrary to Section 4, first paragraph, of the Ships Act are criminal offences in accordance with Section 56, first paragraph, of the Ships Act. Based on regulation 2, first paragraph, section 6, Part A, Chapter VI, of the SOLAS Convention, the captain or the shipowner must ensure that the verified gross mass of containers to be loaded on-board of the ship is specified on the ship's papers for this purpose. If it has emerged that the verified gross mass of a container is not specified on the ship's papers for this purpose as referred to in paragraph 2.1.13 of the guide, this may mean that it may not be loaded or, if this has already taken place, that it must be unloaded before it departs and/or that it must be provided with a verified gross mass. If, in practice, it should be shown that a shipper has not issued or has issued an incomplete or incorrectly verified gross mass for a packed container, the shipowner or captain can, in the first instance, consult the relevant shipper.

Shippers

In practice, determining the verified gross mass of packed containers through weighing or calculation will be a part of the shippers' business process. The verified gross mass may be determined by the shipper, but may also be supplied by suppliers of part of the cargo or by third parties. Third parties are deemed to mean all parties other than the shipper or the supplier who have information about the mass of that part and are able to supply it. The tare weight of the empty container will be supplied by the person who makes the container available to the shipper. This can take place through (digital) delivery of the tare weight to the shipper or by reading the tare weight on the door of the container.

5 Monitoring and enforcement

The Dutch Human Environment and Transport Inspectorate has the task of monitoring compliance with and enforcing the Ships Act, the Ships Decree and the regulations based on them. The Human Environment and Transport Inspectorate uses existing international and harmonised inspection procedures with regard to this. They, for example, arise from the Paris Memorandum of Understanding (Paris MoU), Directive 2009/16/EC of the European Parliament and the Council of 23 April 2009 on port State control (PbEU 2009, L 131/57) and the intervention ladder of the Human Environment and Transport Inspectorate. Chapter VI of the SOLAS Convention that discusses safely loading seagoing ships is already a standard component of regular flag and port State controls. The new legislation will, therefore, be included in this.

The Human Environment and Transport Inspectorate can check whether the verified gross mass of the (packed) containers to be loaded is specified on the ship's papers with regard to regular controls within the framework of the Port State Control Act and in case of incidents on ships with a foreign flag. The relevant circulars of the IMO and any procedures of the shipping company that arise from the ISM Code⁴ will be observed within this context. This takes place within the context of flag State control with regard to ships with a Dutch flag.

⁴ The international safety code for shipping and for pollution prevention (International Safety Management Code; highlight the following search string), set down through resolution A.741(18) of 4 November 1993 by the General Meeting of the International Maritime Organisation.



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6 Financial consequences

The consequences that arise from the amendment of the SOLAS Convention about the verification of the mass are very difficult to estimate.

The option to determine the verified gross mass of packed containers through calculation may, in practice, have advantages when compared to weighing. Weighing is an activity that costs much time and money relatively speaking. If this can be avoided through calculation, this will have advantages. Calculation, however, will also incur costs. The more uniform the cargo of a container is, such as with regard to bulk products or identical products in large quantities, the less expensive calculation will be. This, however, is not the more favourable option in all cases when compared to weighing.

3 to 4 million containers are loaded on to seagoing ships in Dutch ports on an annual basis. Weighing a container is estimated to cost approximately € 130. This concerns both the costs for physically weighing and the additional administrative costs. The costs for calculation are estimated to be € 30 per container. It is being expected that, in due course, approximately 50% of containers will be verified through calculation. This, however, cannot currently be stated with certainty.

The mass of containers to be packed also had to be determined prior to these regulations. These costs were a part of the logistics process and cannot be easily separated from this. Part of the containers will already be verified abroad. Based on the above, the costs of the convention amendment are being estimated to be between € 200 and € 250 million in the Netherlands. It is being expected that more insight about the real costs that are the result of the convention amendment cannot be given before a year has elapsed after it has come into force.

7 Recommendations and consultation

The sector directly involved has frequently been consulted when planning the implementation of this amendment regulation. The representatives of the shipping companies, the road and inland shipping transport modalities, shippers and hauliers, stevedores and representatives of the different authorities such as the national police, customs and the Human Environment and Transport Inspectorate have, in particular, been consulted. No Internet consultation has taken place in view of the aforementioned and the strict implementation.

8 Coming into force and transitional law

These regulations will come into force on 1 July 2016. This is the date on which the amendment of regulation 2, fourth up to and including sixth paragraphs, Part A, Chapter IV of the SOLAS Convention will come into force. The required planning time for this regulation has meant that we have deviated from the minimum implementation period of two months. This is permitted based on ground for exemption 4, European or international legislation, of the system of fixed amendment moments.

The amendment of the SOLAS Convention does not have any transitional provisions.

*The Minister of Infrastructure and the Environment,
M.H. Schultz van Haegen-Maas Geesteranus*