



MINISTRY *of* TRANSPORT
TE MANATŪ WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Sections 387 and 390 of the Maritime Transport Act 1994

I, HARRY JAMES DUYNHOVEN, Minister for Transport Safety,

HEREBY MAKE the following marine protection rules.

SIGNED AT Wellington

this 17th day of November 2004

by **HARRY JAMES DUYNHOVEN**

Minister for Transport Safety

Marine Protection Rules

Part 102 Amendment 2004

CERTIFICATES OF INSURANCE

Maritime Transport Act 1994

Marine Protection Rules

PART 102 AMENDMENT 2004

CERTIFICATES OF INSURANCE

Marine Protection Rules

PART 102 AMENDMENT 2004

CERTIFICATES OF INSURANCE

Part Objective, Extent of Consultation and Commencement

Objective

The objective of the Part 102 Amendment 2004 is to provide more certainty of prompt and full settlement of claims for those parties that suffer damage or loss as the result of an oil pollution incident involving a non-tanker (carrying oil for propulsive power) or a small tanker (carrying both oil cargo and fuel oil).

The Part 102 Amendment is made pursuant to sections 387 and 390 of the Maritime Transport Act 1994.

Extent of Consultation

On 16 November 2002, the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 102 Amendment. A notice was also published in the *New Zealand Gazette* on 14 November 2002. The draft was posted on, and made available for downloading from, the MSA website. Comments on the Part were requested to be made by 17 January 2003.

Two written submissions were received on the Part 102 Amendment. One respondent made further oral comments. The submissions and oral comments were considered and, where appropriate, the proposed rules were amended to take account of the comments made. A further written submission commented on proposed new regulations that would invoke requirements for offshore installations to have public liability insurance for oil pollution damage.

Commencement

The Part 102 Amendment 2004, requiring regulated ships to carry public liability insurance, will come into force on 30 December 2004.

Marine Protection Rules

PART 102 AMENDMENT 2004

CERTIFICATES OF INSURANCE

Preliminary

A.1 Entry into force

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New Zealand Ships and Foreign Ships Registered in Non-CLC States

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Regulated Ships

A.7 Certificates of insurance for regulated ships

A.8 New Appendix 3 specifying the form of the certificate of insurance

Preliminary

A.1 Entry into force

These amendments come into force on 30 December 2004.

General

A.2 Contents

The list of contents to Part 102 is amended by substituting for the headings “Appendix 1—Regulated Ships” and “Appendix 2—Regulated Offshore Installations” the following text:

“Regulated ships

102.10 Application

102.11 Application For and Issue or Recognition of Certificate of Insurance

102.12 Conditions on Certificate of Insurance

Appendix 1 Regulated Oil Tankers

Appendix 2 Regulated Offshore Installations

Appendix 3 Regulated Ships”

A.3 Definitions

Rule 102.2 is amended by inserting the following definitions in the appropriate places –

“**Rating**” means an assessment, represented by a letter or a symbol or a number or by a combination of any of them, together with a word or words or an expression indicating their meaning, of an insurer’s ability to pay –

- (a) claims that the insurer is liable to pay at the time of the assessment, including an estimate of unreported claims; and
- (b) claims likely to arise in the future at the time that they arise:

“**Rating agency**” means a person or organisation rating insurers:

“**Regulated ship**” means a ship defined as such in the Maritime Transport (Certificates of Insurance) Regulations 2005;’

New Zealand Ships and Foreign Ships Registered in Non-CLC States

A.4 Rule 102.4

Rule 102.4 is amended by substituting for rule 102.4(2)(d) the following paragraph –

- “(d) the insurer or guarantor named in the application is financially capable of meeting the potential maximum liability of the owner of the ship as calculated in accordance with section 347 of the Act taking into account the rating of the insurer or guarantor by a rating agency, and the rating, if any, of that insurer or guarantor under the Insurance Companies (Ratings and Inspections) Act 1994; and”

Offshore Installations

A.5 Rule 102.7

Rule 102.7 is amended by substituting the words “Rules 102.8 and 102.9” for the words “Rules 102.10 and 102.11”.

A.6 Rule 102.8

Rule 102.8 is amended by substituting for rule 102.8(2)(d) the following paragraph –

- “(d) the insurer or guarantor named in the application is financially capable of meeting a claim for the full amount specified in the contract of insurance or other financial security taking into account the rating of the insurer or guarantor by a rating agency, and the rating, if any, of that insurer or guarantor under the Insurance Companies (Ratings and Inspections) Act 1994; and”

Regulated Ships

A.7 Certificates of insurance for regulated ships

Part 102 is amended by inserting the following new heading and rules –

“Regulated Ships

102.10 Application

Rules 102.11 and 102.12 apply to every regulated ship that is required by section 363 of the Act to have a current certificate of insurance in force, issued or recognised by the Director under section 270 of the Act.

102.11 Application for and issue or recognition of certificate of insurance

- (1) The owner of a regulated ship must ensure that every application for the issue or recognition of a certificate of insurance in respect of that ship is –
 - (a) submitted to the Director in accordance with section 269 of the Act; and
 - (b) accompanied by –
 - (i) such evidence of the existence of the contract of insurance or other financial security as the Director specifies; and
 - (ii) a translation into English, if the language of the certificate of insurance, for which recognition is sought, is not English.
- (2) The Director must issue or recognise a certificate of insurance for a regulated ship if he or she is satisfied that –
 - (a) the requirements of section 270 of the Act are met; and
 - (b) the contract of insurance or other financial security in respect of that ship provides public liability cover meeting the owner's potential liability under Part 25 of the Act, and is for a sum not less than the maximum liability of the owner of that ship as calculated in accordance with section 347 of the Act; and
 - (c) the contract of insurance or other financial security will be in force in respect of the regulated ship throughout the period for which the certificate of insurance is to be issued or recognised; and
 - (d) the insurer or guarantor named in the application is financially capable of meeting the potential maximum liability of the owner of the ship as calculated in accordance with section 347 of the Act taking into account the rating of the insurer or guarantor by a rating agency, and the rating, if any, of that insurer or guarantor under the Insurance Companies (Ratings and Inspections) Act 1994; and
 - (e) the insurer, party to the contract of insurance, complies with any provisions of the Insurance Companies (Ratings and Inspections) Act 1994 applicable to that insurer.
- (3) Every certificate issued or recognised by the Director for a regulated ship must –
 - (a) if the certificate is issued by the Director, be in the form specified in Appendix 3; and
 - (b) contain the following particulars –
 - (i) the name of the ship; and
 - (ii) the ship's port of registry; and
 - (iii) the name of the owner of the ship; and
 - (iv) the owner's principal place of business; and
 - (v) the nature of the contract of insurance or other financial security; and

- (vi) the name and principal place of business of the insurer or other person giving security for the regulated ship and the place of business where the insurance or security is established; and
- (vii) the period of validity of the insurance or other financial security; and
- (viii) the period of validity of the certificate of insurance, which may be issued for a maximum period of 12 months and must not exceed the period of validity of the insurance or other financial security.

102.12 Conditions on certificate of insurance

Every certificate of insurance issued or recognised by the Director, under section 270 of the Act, for a regulated ship is subject to the following conditions –

- (a) any modification of or variation to the contract of insurance or other financial security must be notified to the Director as soon as possible; and
- (b) the owner must obtain additional financial security to the satisfaction of the Director in the event of –
 - (i) any modification of or variation to the contract of insurance or other financial security; or
 - (ii) any change in circumstances affecting the financial capability of the insurer or guarantor;

which the Director considers likely to result in the owner being unable to meet the potential maximum liability calculated in accordance with section 347 of the Act.”

A.8 New Appendix 3 specifying the form of the certificate of insurance

- (1) The title of Appendix 1 of Part 102 is amended to read “Appendix 1 Regulated Oil Tankers”
- (2) Part 102 is amended by inserting the following appendix:

“Appendix 3 Regulated Ships

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF CIVIL LIABILITY FOR OIL POLLUTION DAMAGE FROM A REGULATED SHIP

Issued in accordance with the provisions of section 363 of the Maritime Transport Act 1994, the Maritime Transport (Certificates of Insurance) Regulations 2005 and rule 102.11 of Part 102 of the marine protection rules.

Name of ship	Distinctive number or letters	Port of registry	Name and address of owner

This is to certify that there is in force in respect of the above-mentioned ship a policy of insurance or other financial security that provides public liability cover to meet the owner's potential liability under Part 25 of the Maritime Transport Act 1994.

Type of security.....

Duration of security:

From.....

To.....

Name and address of the insurer(s) and/or guarantor(s)

Name.....

Address.....

This certificate is valid until.....

.....

Director of Maritime Safety

1. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
2. If security is furnished in several forms, these should be enumerated.
3. The entry "Duration of Security" must stipulate the date on which such security takes effect."