

# Advisory Circular

ISSUE NO. 102-3, 20 OCTOBER 2020

## Part 102 Certificates of Insurance

### 1. General

#### 1.1 Purpose of advisory circulars

Maritime New Zealand (Maritime NZ) advisory circulars are designed to give assistance and explanations about the standards and requirements set out in the maritime rules. However, the notes in advisory circulars should not be treated as a substitute for the rules themselves, which are the law.

If an advisory circular sets out how a rule can be satisfied, then compliance with that advice ensures compliance with the rule. Other methods of complying with the rule may be possible, however Maritime NZ would first need to be satisfied that those alternative methods were of an equivalent standard to the advice in the advisory circular. The advisory circular would then be amended to include those equivalents.

This advisory circular 102-3 supports Maritime Rules Part 102 and when a number reference such as 102.8A is used it relates to a specific rule within Part 102.

#### 1.2 Application of Rules Part 102

It is important to note that Maritime Rules Part 102 applies to:

- ships that are required by section 363 or 363A of the Maritime Transport Act 1994 (the Act) to have a certificate of insurance issued, recognised or accepted by the Director of Maritime NZ (the Director) under section 270 and 271 of the Act
- every regulated offshore installation that is required by section 385H of the Act to have a current certificate of insurance in force issued, recognised or accepted by the Director under section 270 and 271 of the Act.

Subpart 1 of Part 102 outlines the requirements for public liability insurance for:

- regulated oil tankers carrying oil in bulk in excess of 2,000 tonnes;
- all ships of 400 gross tons or more, including small tankers carrying oil in bulk of 2,000 tonnes or less.

Subpart 2 of the rules outlines requirements for public liability insurance for offshore installations.

Part 102, as made by the Minister of Transport in June 1998, applied to oil tankers and offshore installations. An amendment to the rules in 2004 extended their application to all ships of 400 gross tons or more, including small tankers carrying oil in bulk of 2,000 tonnes or less. An amendment to the rules in May 2020 clarified and strengthened the requirements on owners of regulated offshore installations to hold insurance or other financial security in relation to the clean-up and compensation aspects of their liabilities towards property damage resulting from a significant oil spill and to be in a financial position (usually by holding insurance or other financial security) to implement the marine oil spill contingency plan (OSCP) approved by the Director.

## 1.3 Purpose

Part 102 is one element of the New Zealand liability and insurance regime intended to ensure that persons who suffer damage or loss as the result of an oil pollution incident involving ships or offshore installations are assured of prompt and full settlement of claims. This regime also ensures that the costs incurred by public agencies in dealing with an oil spill, including preventive measures, are readily recoverable.

## 1.4 Objective of rule

A principal objective of Part 102 is to give effect to the following:

- New Zealand obligations and privileges under the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 by requiring owners of oil tankers carrying more than 2,000 tons of oil in bulk as cargo, (regulated oil tankers), to hold insurance or financial security to cover potential liability for oil pollution damage;
- New Zealand obligations and privileges under the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 by requiring owners of ships of 1,000 gross tonnage and above to hold insurance cover for potential liability for the costs of cleaning up oil pollution or oil pollution damage from bunker oil (oil used on board ships for propulsion and other on board operations);
- national requirements for owners of ships of 400 gross tonnage and less than 1,000 gross tonnage to hold insurance for potential liability for the costs of cleaning up oil pollution costs and oil pollution damage from bunker oil and oil carried as cargo;
- national requirements for owners of offshore installations in New Zealand continental waters to hold insurance for potential liability for the costs of cleaning up oil pollution and oil pollution damage.

## 2. Supportive guidance to Part 102

### 2.1 Relationship of Part 102 to Other Legislation

Part 102 must be read in conjunction with the relevant sections of the Maritime Transport Act 1994. The relevant provisions are detailed below.

- s.363 requires certain ships (both New Zealand and foreign) to have certificates of insurance before entering or leaving any port in New Zealand or offshore terminal under New Zealand jurisdiction; the section also requires New Zealand ships operating outside New Zealand to have such insurance;
- s.365 requires certificates of insurance to be produced to specified officers;
- s.366 establishes the rights of third parties in respect of liability insurers;
- s.367 creates offences for breaches of the requirement to have certificates of insurance;
- s385H specifies that every regulated offshore installation must have a current certificate of insurance
- s385I specifies that the person in charge of a regulated offshore installation must produce any certificate of insurance required by section 385H on demand if requested by a harbourmaster, any officer of Customs, or the Director.
- s385J specifies Rights of third-party claimants against insurers of regulated offshore installations
- s385K sets out the offence provisions if, without reasonable excuse, a current certificate of insurance issued under the marine protection rules is not for the time being in force in respect of the regulated offshore installation.

Other relevant provisions include:

- the scheme of liability for oil pollution damage in Part 25 and 26A of the Act for regulated oil tankers and regulated offshore installations;
- the scheme of limitation of liability for maritime claims, including oil pollution damage, in Part 7 for ships not liable under Part 25;
- s270 concerning the issue, recognition and acceptance of marine protection documents (certificates of insurance are such documents);
- s272 concerning the suspension of marine protection documents or imposition of conditions
- s273 concerning revocation of marine protection documents.

## **2.2 Regulated ships**

The carriage of an original or certified copy of a normal P&I Club Certificate of Entry may meet the certificate of insurance requirements for regulated ships. The Director will accept such certificates where they meet the requirements of the rules.

If a regulated ship has no P&I cover, the owner will need to purchase a policy of insurance or obtain financial security to satisfy the requirements of Part 102. Cover must be sufficient to meet the limits of liability under Part 7 of the Act, as described below. Once the appropriate arrangements have been made, the owner must apply to the Director for a certificate of insurance. The form of insurance is specified in Appendix 3 to the rules.

## **2.3 Regulated oil tankers**

The insurance requirements for regulated oil tankers give effect to the provisions of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1971. The form of certificate specified in Appendix 1 of Part 102 is drawn from this international instrument.

## **2.4 Regulated offshore installations**

The owner of a regulated offshore installation is required to hold third party financial security of up to NZ \$1.2 billion to cover liability for clean-up and compensation, depending on the application of the Director's scaled framework and the results of modelling. A certificate of insurance must evidence this cover.

## **2.5 Calculation of insurance or financial security required**

Refer to the Maritime NZ document *Certificates of insurance for regulated offshore installations: Guidelines for applicants for issue or recognition of certificates of insurance for regulated offshore installations under Marine Protection Rules Part 102* for full information about how to ascertain the amount of financial security for clean-up and compensation that would be required as part of a Part 102 application.

The limits specified in section 347 apply to CLC ships (regulated oil tankers). The limits applied to ships other than regulated oil tankers are found in section 87 of the Maritime Transport Act.

## **2.6 Ratings by rating agencies**

The Director, in issuing and recognising a certificate of insurance, must be satisfied that the insurer is financially capable of meeting claims under Parts 25 and 26A of the Maritime Transport Act 1994, up to the limit of insurance or financial security they provide. In determining this, Part 102 requires the Director to consider the rating given to that insurer by a rating agency. Generally, the Director would expect a minimum rating of "A" from S&P Global Ratings (formerly Standard & Poor's) or "B+" from AM Best.

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