

Maritime Transport Act 1994

Maritime Rules

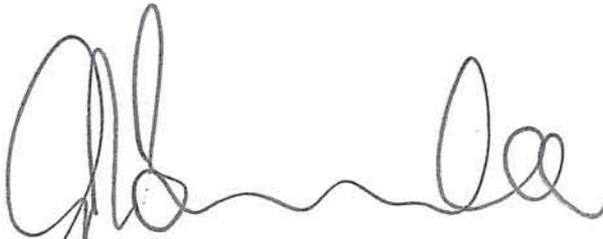
PART 44: SURVEYOR RESPONSIBILITIES AND SURVEY, CERTIFICATION, AND MAINTENANCE FOR SHIPS IN MARITIME TRANSPORT OPERATIONS

Pursuant to section 34 and section 36, and having regard to the criteria in section 39, of the Maritime Transport Act 1994 I, Gerry Brownlee, Minister of Transport, hereby make the following maritime rules.

Signed at Wellington

This 3RD day of OCTOBER 2013

By Hon GERRY BROWNLEE



Minister of Transport

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Part objective

Part 44 prescribes requirements for recognition as to who may be a surveyor and requirements for survey, certification, and maintenance of ships operated under a Maritime Transport Operator Certificate in accordance with Part 19.

The authority for Part 44 is found in section 34(1)(f)(ii) and section 36(1)(c), (f), (k), (o), (q), (v) and (w) of the Maritime Transport Act 1994.

Maritime rules are disallowable instruments under the Legislation Act 2012. Under that Act, the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under that Act.

Extent of consultation

On 12 April 2010, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed rules (Parts 19 and 44) to implement the proposed Maritime Operator Safety System. A notice was also published in the *Gazette*. In addition, copies of the draft rules and consultation documents were sent to interested parties and made publicly available on the internet. Comments on the proposed new Parts 19 and 44 were requested to be made by 29 July 2010.

Maritime New Zealand received 102 written submissions and 12 oral submissions. All submissions were reviewed and resulted in significant amendment to the draft rules and the need to undertake a second round of consultation.

On 28 April 2012, Maritime New Zealand published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the amended proposed rules (Parts 19 and 44) to implement the proposed Maritime Operator Safety System. A notice was also published in the *New Zealand Gazette*. In addition, copies of the draft rules and consultation documents were again sent to interested parties and made publicly available on the Maritime New Zealand website.

Approximately 100 RSS feed subscribers also received a consultation notification by email. Comments on the proposed new Parts 19 and 44 were requested to be made by 31 May 2012.

Maritime New Zealand received 69 written submissions and 12 oral submissions. All submissions were reviewed and amendment was made to the draft rules as appropriate. Submitters generally made points regarding both Parts or regarding the Maritime Operator Safety System as a whole.

Entry into force

Part 44 enters into force on 1 April 2014.

General

44.1 Application

This Part applies to—

- (a) an applicant for a Certificate of Surveyor Recognition issued in accordance with this Part:
- (b) the holder of a Certificate of Surveyor Recognition issued in accordance with this Part:
- (c) a person whose qualifications or certifications as a surveyor have been recognised by the Director in accordance with section 41(2) of the Act for the purposes of this Part.

44.2 Definitions

In this Part, unless the context otherwise requires—

Act means the Maritime Transport Act 1994:

category, in relation to a ship's scope of certification, means the intended purpose of the ship in terms of passenger ship, non-passenger ship, fishing ship, sailing ship, or any combination of these purposes:

Certificate for International Voyage means a certificate issued by the Director in accordance with rule 44.61:

Certificate of Survey means a certificate issued by a surveyor certifying that a ship meets the requirements of rule 44.41(2):

Certificate of Surveyor Recognition means a certificate issued by the Director under Subpart A which authorises a person to conduct surveys of ships and issue Certificates of Survey:

competency—

- (a) means the level of competence to be achieved in relation to the function;
- (b) may include a required level of knowledge, understanding, or demonstrated skill in particular tasks, duties, or responsibilities; and
- (c) **competence** and **competent** have corresponding meanings:

current, in relation to a Certificate of Surveyor Recognition, means that the certificate is valid, has not expired, and has not been suspended or revoked by the Director:

design means drawings, specifications, and calculations setting out a ship's structural integrity, watertightness and weathertightness, means of egress and access, intact stability and reserve of buoyancy, damage stability, and buoyancy:

equipment, in relation to a ship's equipment, means—

- (a) maritime products; and
- (b) the equipment applicable to the ship under Parts 40A, 40B, 40C, 40D, 40E, and 40F including equipment required for navigation, anchoring, emergency prevention, and emergency response:

existing ship means a ship that is not a new ship:

Fit for Purpose Certificate means a certificate issued by a surveyor in accordance with rule 21.13(2)(a):

Initial Survey Portfolio means the portfolio that is compiled by a surveyor under rule 44.41(2)(b)(i):

international voyage means a journey by water from—

- (a) a port in New Zealand to a port outside of New Zealand or vice versa; or
- (b) a port outside New Zealand to another port outside New Zealand:

length means 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline of which this length is measured is to be parallel to the designed waterline:

major modification means an alteration or modification of a ship, including the replacement, removal, or addition of any part of a ship, that is likely to—

- (a) significantly affect the structural integrity, tonnage, freeboard, cargo or passenger capacity, crew or passenger accommodation, conditions of assignment of load line, watertight subdivision, stability, or structural fire protection; or
- (b) result in significant changes to the propulsion machinery, auxiliary machinery, or steering or the method of propulsion of the ship:

major repair means a repair in respect of any damage, defect, breakdown or grounding of the ship that has or is likely to significantly affect the structural integrity, conditions of assignment of load line, watertight subdivision, stability, structural fire protection, main propulsion machinery, method of propulsion, steering gear, or vital auxiliary machinery of the ship:

maritime transport operator means the holder of a Maritime Transport Operator Certificate issued under Part 19:

new ship means—

- (a) a commercial ship built on or after 1 July 2014; or
- (b) a ship that becomes a commercial ship for the first time on or after 1 July 2014:

New Zealand Safe Ship Management Certificate means the maritime document issued by the Director under Part 5 of the Act in accordance with rule 21.13(7) or rule 21.13(11):

scope of certification, in relation to a ship, means the ship's category, activity, type, operating limits, minimum crew, maximum number of passengers on board, maximum number of people on board, and maximum cargo capacities:

surveyor means the holder of a Certificate of Surveyor Recognition issued under rule 44.22.

44.3 Requirement to hold Certificate of Surveyor Recognition

No person may, on or after 1 July 2014, survey a ship for the purpose of issuing a Certificate of Survey or issue a Certificate of Survey except under the authority of, and in accordance with, a current Certificate of Surveyor Recognition.

Subpart A: Surveyor certification

44.21 Application for Certificate of Surveyor Recognition

- (1) The applicant for a Certificate of Surveyor Recognition, or a further Certificate of Surveyor Recognition, must be a natural person and may be an employee of Maritime New Zealand.

- (2) The applicant must apply for a Certificate of Surveyor Recognition in accordance with section 35 of the Act and provide the following information, in a form acceptable to the Director:
 - (a) the extent and type of surveys that the applicant intends to undertake;
 - (b) evidence of holding relevant qualifications, or having relevant training or experience, in survey to the satisfaction of the Director; and
 - (c) such further particulars relating to the applicant as may be required by the Director.
- (3) Each application must be submitted to the Director with a payment of the appropriate application fee prescribed by regulations made under the Act.
- (4) The Director's assessment of a surveyor's competency may include one or more of the following:
 - (a) a written examination;
 - (b) an oral examination;
 - (c) a practical assessment.

44.22 Issue of Certificate of Surveyor Recognition

- (1) The Director must issue a Certificate of Surveyor Recognition if satisfied that the applicant—
 - (a) meets the fit and proper person criteria under section 50 of the Act and the applicable requirements of this Part;
 - (b) is competent and has the technical qualifications and experience to undertake the surveys for which the application is made;
 - (c) has agreed to satisfy, any other conditions imposed on the certificate by the Director under subrule (2);
 - (d) has agreed to conduct every survey—
 - (i) in a manner consistent with any requirements as to the performance of survey as imposed by the Director under this Part;
 - (ii) in a manner consistent with all applicable maritime rules and marine protection rules;
 - (iii) in a manner consistent with industry best practice; and
 - (iv) taking into consideration any relevant guidelines recommended by the Director; and
 - (e) has agreed to exercise reasonable skill, care, competence, and diligence at all times when providing services subject to this Part.
- (2) The Director may issue a Certificate of Surveyor Recognition subject to any conditions that he or she considers necessary and that are relevant to the types of survey the surveyor is authorised to perform.
- (3) A Certificate of Surveyor Recognition must include—
 - (a) the surveyor's name;
 - (b) the date of issue;
 - (c) the date of expiry; and

- (d) any conditions imposed by the Director under subrule (2) as he or she considers appropriate, including—
 - (i) any limitations on ship attributes, including ship size, material of construction, and scope of certification; and
 - (ii) any limitations on survey type, including design approval, construction approval, equipment approval, and survey plan approval; and
- (4) A Certificate of Surveyor Recognition is a maritime document.

44.23 Privileges of Certificate of Surveyor Recognition

Subject to the requirements of this Part and to any conditions imposed by the Director, a Certificate of Surveyor Recognition entitles the holder, on and after 1 July 2014, to—

- (a) undertake a survey of a ship for the purposes of this Part;
- (b) undertake any other type of survey or inspection required by maritime rules and marine protection rules;
- (c) issue a Certificate of Survey;
- (d) develop, approve, amend, or require amendment to a survey plan;
- (e) permit, in accordance with clause 1.4.2 of Appendix 2, in writing, a ship without a valid Certificate of Survey to be relocated for the purpose set out in that clause;
- (f) prepare any of the following reports required for the issue of a Certificate of Survey:
 - (i) an Initial Survey Portfolio under clause 1.1.2 of Appendix 1;
 - (ii) a report for the Initial Survey Portfolio under clause 1.1.3 of Appendix 1; and
- (g) approve a major repair or major modification to a ship or a change to a ship's scope of certification in accordance with clause 1.4.1 of Appendix 2.

44.24 Duration of Certificate of Surveyor Recognition

A Certificate of Surveyor Recognition may be issued for a period not exceeding 5 years.

44.25 Standards and requirements of surveyors

- (1) When exercising the privileges of a Certificate of Surveyor Recognition, a surveyor must:
 - (a) act with honesty, objectivity, and integrity;
 - (b) not misrepresent his or her competence;
 - (c) not promise, give, or accept inducements;
 - (d) disclose in writing to the Director any conflict of interest that is likely to affect his or her professional judgement; and
 - (e) not use confidential information for an improper purpose.
- (2) Without limiting the matters the Director may have regard to, in determining whether an applicant for a Certificate of Surveyor Recognition meets the requirements in rule 44.22(1)(b), the Director must have regard to the extent and type of surveys that are the subject of the application, and:
 - (a) the qualifications of the applicant;
 - (b) any technical training completed by the applicant; and
 - (c) the applicant's knowledge of—

- (i) the relevant legislation, including all maritime rules and marine protection rules;
 - (ii) ship design and construction;
 - (iii) ship structural defect recognition and rectification;
 - (iv) ship freeboard, seaworthiness, and stability;
 - (v) ship equipment, and its use, including—
 - (A) fire fighting and safety equipment;
 - (B) pollution prevention equipment;
 - (C) mooring and anchoring equipment; and
 - (D) navigation and communication equipment; and
 - (vi) any national and international survey standards.
- (3) The Director may impose requirements as to the performance of surveys.
- (4) When undertaking a survey, a surveyor must comply with any requirements imposed by the Director as to the performance of a survey.
- (5) Before imposing any requirements as to the performance of surveys, the Director must—
- (a) give reasonable notice to surveyors and other interested parties of his or her intention;
 - (b) consult with surveyors and other interested persons as he or she in each case considers appropriate;
 - (c) ensure that any standards, requirements, or guidelines are directly relevant to the survey or function to be performed by a surveyor; and
 - (d) notify, as soon as practicable, any new or amended standards, requirements, or guidelines in relevant industry publications and on the Maritime New Zealand website.

44.26 Availability of Certificate of Surveyor Recognition

A surveyor who holds a Certificate of Surveyor Recognition must make the certificate available at his or her place of business.

44.27 Obligation to notify Director of ship safety concerns

The holder of a Certificate of Surveyor Recognition must notify the Director, in a form acceptable to the Director, as soon as reasonably practicable, if he or she has reasonable grounds on which to believe that a ship is being operated—

- (a) with an existing safety issue that he or she considers would prevent the issue of a Certificate of Survey;
- (b) without a valid Certificate of Survey.

Subpart B: Certificate of Survey

44.41 Surveyor issues Certificate of Survey

- (1) A surveyor may issue a Certificate of Survey for a period not exceeding 5 years in accordance with subrules (2), and (3) subject to such conditions, including limitations, as the surveyor considers appropriate.
- (2) A surveyor must be satisfied that—

- (a) the following ship safety requirements are met:
 - (i) the hull, superstructure, decks, and valves of the ship are sound and serviceable;
 - (ii) the steering gear and propulsion system of the ship, if applicable, are sound and serviceable; and
 - (iii) the ship and the ship's equipment are in all respects fit for their intended use and operating limits and meet all applicable maritime rules and marine protection rules;
 - (b) the following survey requirements are met:
 - (i) for a new ship, the survey requirements of Appendix 1, including compiling the Initial Survey Portfolio;
 - (ii) for an existing ship, the survey requirements of Appendix 2; or
 - (iii) in relation to a major repair, a major modification, or a change in the scope of certification, the survey requirements of clause 1.4.1 of Appendix 2; and
 - (c) the following documents have been developed for each ship:
 - (i) a survey plan, as required by rule 19.43;
 - (ii) a maintenance plan, as required by rule 19.45; and
 - (iii) a safety equipment list and spare parts list, as required by rule 19.46.
- (3) A Certificate of Survey is not a maritime document.

44.42 Certificate of Survey

A surveyor must include the following information on a Certificate of Survey:

- (a) the date of the survey;
- (b) ship registration number, if applicable;
- (c) the MSA/MNZ number of the ship;
- (d) the name of the ship;
- (e) the length of the ship;
- (f) the total power in kilowatts of the propulsion machinery of the ship;
- (g) the scope of certification of the ship;
- (h) the tonnage of the ship, if applicable;
- (i) any conditions imposed on the ship by the surveyor;
- (j) the date of issue of the Certificate of Survey;
- (k) the date of expiry of the Certificate of Survey; and
- (l) the name and signature of the surveyor.

44.43 Surveyor provides survey report

A surveyor must, as soon as practicable following each survey, complete and provide a survey report, including the details prescribed in clause 1.3 of Appendix 2, to the Director, and, as applicable, to the maritime transport operator or ship owner.

Subpart C: Certificate for International Voyage

44.61 Director issues certificate for ship of less than 500 tons gross tonnage and less than 45 metres in length carrying 12 or less passengers undertaking international voyage

- (1) The Director may issue a Certificate for International Voyage for a ship of less than 500 tons gross tonnage and less than 45 metres in length carrying 12 or less passengers undertaking an international voyage, on application from an operator in accordance with rule 19.62(3)(c), for the purpose of certifying that the ship is fit for an international voyage if—
 - (a) a current Certificate of Survey has been issued for the ship in regard to the international voyage in accordance in the requirements set out in rule 44.41; and
 - (b) the Director is satisfied that it is appropriate in the circumstances for the Certificate of International Voyage to be issued.
- (2) The Director may impose any conditions or limitations on the Certificate of International Voyage as he or she considers appropriate.
- (3) A Certificate for International Voyage is not a maritime document.

Subpart D: Transition and revocation

44.81 Transition for existing ships

- (1) A ship that has a Fit for Purpose Certificate and a current New Zealand Safe Ship Management Certificate is deemed to have been issued with a Certificate of Survey under Appendix 2 that remains current until the earliest of the following dates provided the requirements of the Fit for Purpose Certificate are met:
 - (a) the expiry date of the Fit for Purpose Certificate;
 - (b) the next inspection date for that ship, as set out in its approved maintenance plan.
- (2) A ship that has a Fit for Purpose Certificate but that does not have a current New Zealand Safe Ship Management Certificate immediately before 01 July 2014 may be issued with a Certificate of Survey by a surveyor provided the surveyor—
 - (a) assesses any consequent risks associated with the ship's design, construction, equipment, and survey and maintenance planning;
 - (b) applies such provisions of Appendix 1 and Appendix 2 as the surveyor considers appropriate, taking into account the assessment made in paragraph (a); and

44.82 Transition for existing surveyors

A certificate recognising a person as a surveyor issued by the Director in accordance with rule 46.29(1) will be deemed to be a Certificate of Surveyor Recognition on and after 1 July 2014 and remain valid until the expiry date of the certificate of recognition if the surveyor continues to satisfy the existing conditions of the certificate, other than a condition requiring the surveyor to be a member of a New Zealand safe ship management company.

44.83 Revocation

Sections 2 and 5 of Part 46 of the Maritime Rules are revoked on 1 July 2014.

Appendix 1

Issue of Certificate of Survey for new ship

The details of the survey required by rule 44.41(2)(b)(i) are prescribed in this Appendix.

1.1 Issue of Certificate of Survey

1.1.1 A surveyor may issue a Certificate of Survey for a new ship provided that the surveyor—

- (a) is satisfied that the Initial Survey Portfolio associated with the ship contains—
 - (i) a complete record of the initial surveys undertaken, as referred to in clause 1.1.2; and
 - (ii) a statement made under clause 1.1.3(d) by a surveyor in respect of each initial survey; and
- (b) gives due regard to any conditions, including limitations, included in any survey report under clause 1.1.3(e), when exercising the surveyor's discretion to impose conditions under rule 44.41(1).

1.1.2 Each Initial Survey Portfolio must include the following reports for each ship in the maritime transport operation completed by a surveyor or a person whose qualifications or certifications as a surveyor have been recognised by the Director in accordance with section 41(2) of the Act for the purposes of this Part:

- (a) a design report that includes the ship's design and all the necessary drawings and specifications required to build a ship under survey to verify that the ship is fit in all respects for its intended service and operating limits and satisfies all applicable maritime rules and marine protection rules;
- (b) a construction report based on a physical inspection of the ship; and
- (c) an equipment report approving and listing the equipment of the ship based on a physical inspection of the ship.

1.1.3 Each report for the Initial Survey Portfolio must be in a form acceptable to the Director and must include—

- (a) the name and signature of the person who completed the report;
- (b) the MSA/MNZ number for the ship, where applicable;
- (c) the scope of certification for the ship;
- (d) a statement from the person who completed the report attesting to the fact that the ship is in all respects fit for its intended service and meets all relevant maritime safety and marine protection rules;
- (e) any conditions, including limitations, associated with the use of the ship, including those imposed by the person who completed the report, by the ship designer, and by the builder; and
- (f) the date of the report.

1.1.4 Each Initial Survey Portfolio must include a copy of the survey plan for the ship required by rule 19.43.

- 1.1.5 A surveyor must supply the Initial Survey Portfolio for each new ship to the maritime transport operator or the ship owner, as applicable, and to the Director as soon as is practicable following its completion.

Appendix 2

Issue of Certificate of Survey for existing ships and surveys for major repair, major modification, or change to scope of certification

The standards and details for surveys required by rule 44.41(2)(b)(ii) and (iii) and survey reports in accordance with rule 44.43 are prescribed in this Appendix.

1.1 Surveyor issues Certificate of Survey for existing ships

A surveyor may only issue a Certificate of Survey for an existing ship in accordance with the survey requirements prescribed in this Appendix.

1.2 Survey requirements

1.2.1 A surveyor must be satisfied that—

- (a) the ship continues to meet the requirements prescribed in rule 44.41(2); and
- (b) the survey plan remains consistent with the requirements of rule 19.43.

1.2.2 Where deficiencies have been recorded during a survey, the surveyor must be satisfied that—

- (a) the necessary repairs or renewals have been effectively made;
- (b) the material and workmanship of such repairs or renewals are satisfactory; and
- (c) the ship continues to meet all applicable maritime rules and marine protection rules.

1.3 Survey report requirements

1.3.1 Each survey report required by rule 44.43 must be in a form acceptable to the Director and include—

- (a) the name and signature of the person who completed the survey;
- (b) the MSA/MNZ number of the ship;
- (c) a statement attesting that the ship and its survey plan are maintained at the date of survey;
- (d) any deficiencies, operating limitations, and dates by which remedies must be completed by the maritime transport operator for the Certificate of Survey to remain valid;
- (e) the date of survey; and
- (f) date of expiry of the Certificate of Survey.

1.4 Major repair, major modification, or change to ship's scope of certification

1.4.1 A surveyor who undertakes a survey of a major repair, a major modification, or change to the ship's scope of certification must—

- (a) assess the degree and nature of, and risk associated with, the repair, modification, or change of scope; and
- (b) require the application of such provisions set out under rule 44.41(2) as the surveyor considers appropriate taking into account the assessment of risk made in paragraph (a).

- 1.4.2 A surveyor may, subject to such conditions, including limitations, as the surveyor considers appropriate, permit a ship without a valid Certificate of Survey to relocate for the purpose of undergoing a major repair or major modification to, or a survey of, the ship.

Part 44

Summary of Submissions

This Rule and Rule Part 19 were consulted in 2010 and 2012 as part of the proposed maritime transport safety system package. The consultation summary in Rule Part 19 covers the matters raised in relation to this Rule.