



MINISTRY of TRANSPORT
Te MANATU WAKA

WELLINGTON NEW ZEALAND

PURSUANT to Section 36 of the Maritime Transport Act 1994

I, MAURICE DONALD WILLIAMSON, Minister of Transport,

HEREBY MAKE the following maritime rules.

SIGNED AT Wellington

This

21

day of

September

1999

by **MAURICE DONALD WILLIAMSON**

Minister of Transport

Maritime Rules

Part 35

Training and Examinations

Maritime Transport Act 1994

Maritime Rules

PART 35

TRAINING AND EXAMINATIONS

Maritime Rules

PART 35

Part Objective, Extent of Consultation and Commencement

Objective

Section 1 of Part 35 prescribes the requirements for the approval of training providers for ship's personnel. Section 1 clarifies the roles of the training provider and the Director of Maritime Safety in respect of initial and on-going audits of the training provider's quality system.

Section 1 also establishes the procedure for becoming a Maritime Safety Authority recognised examiner and clarifies the requirements for persons wishing to become examiners. The rules provide for maintaining the quality of examiners by requiring that their skills be kept current.

Part 35 continues the examiner's power to require candidates that fail an oral examination on an important safety issue to obtain further sea service. Examiners who require candidates to undertake more sea service must inform the Maritime Safety Authority of the reasons for doing so, and inform the candidate in writing of the reasons for the sea service requirement and the areas the candidate should concentrate on improving while at sea.

Section 2 of Part 35 permits industry specific training leading to the issue of certificates of competency by organisations running specified operations. The intent of section 2 is to require an organisation to address the risks likely to be encountered by the operator of a specific vessel and to design a training framework to train an operator to avoid or minimise those risks.

Authority for making Part 35 is found in section 36(b) and (o) of the Maritime Transport Act 1994.

Extent of Consultation

On 17 April 1999 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 35. A notice was also published in the *New Zealand Gazette* on 22 April 1999. Eighty five copies of the draft Part 35, the invitation to comment, and the accompanying advisory circular were then sent automatically to interested parties. Comments on the Part were requested to be made by 1 June 1999.

Four submissions were received on Part 35. All submissions were considered and, where appropriate, the proposed rules were amended to take account of the comments made.

Commencement

Part 35 as amended was referred to and signed by the Minister of Transport.

Part 35 will come into force 28 days after the Part's notification in the *Gazette*.

MARITIME RULES

PART 35

TRAINING AND EXAMINATIONS

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General

35.1 Entry into force

Part 35 comes into force 28 days after notification in the *Gazette*.

35.2 Definitions

In Part 35:

“Act” means the Maritime Transport Act 1994:

“Approved” means approved in writing by the Director for the relevant purpose:

“Candidate” means a person who applies –

(a) to take an examination, or part of an examination, prescribed in Part 32; or

(b) to be issued with a certificate of competency under Part 32:

“Certificate of competency” means a certificate of competency issued under Part 32, except for the purposes of rules 35.10 and 35.11 where a certificate of competency means a certificate issued by an organisation approved in accordance with rules 35.10 and 35.11:

“Director” means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994:

“Enclosed water limits” means —

(a) the enclosed water limits set out in Appendix 1 of Part 20; and

(b) all New Zealand inland waters:

“Engineering certificate of competency” means a certificate of competency, the requirements for which are prescribed in any of rules 32.8 to 32.10 or 32.20 to 32.27:

“Examiner” means a person holding a maritime document issued under section 41 of the Act that entitles that person to act as an examiner for the purposes of this Part:

“Fishing boat” means a fishing ship registered under section 57 of the Fisheries Act 1983 or section 103 of the Fisheries Act 1996:

“Inshore limits” has the same meaning as in Part 20:

“Invigilator” means a person employed, contracted, or engaged by a training provider to oversee the conduct of a written examination:

“Length overall” means the length of the ship measured from the foreside of the head of the stem to the aftermost part of the transom or stern of the ship. Fittings (such as beltings, bowsprits, platforms, gantries, trim tabs, jet and outboard drive units) projecting beyond these terminal points must not be included in the length overall for the purposes

of this Part. Structures (such as bulbous bows, deckhouses, free flooding bait tanks and buoyancy tubing) projecting beyond these terminal points must be included in the length overall for the purposes of this Part:¹

"Nautical certificate of competency" means a certificate of competency, the requirements for which are prescribed in any of rules 32.8 to 32.19:

"Non-passenger ship" means a ship that carries no passengers:

"Part" means a group of rules made under the Maritime Transport Act 1994:

"Passenger" means any person carried on a ship, other than –

- (a) the master and members of the crew, and any other person employed or engaged in any capacity on board the ship on the business of the ship:
- (b) a person on board the ship either in pursuance of an obligation laid upon the master to carry shipwrecked, distressed, or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled:
- (c) a child under the age of 1 year:

"Restricted limits" means —

- (a) enclosed water limits; and
- (b) inshore limits:

"Rules" includes maritime rules and marine protection rules:

"Structured Training Programme" means a competency based training programme approved by the Director that takes place on and off the job according to a pre-determined programme for a certificate of competency:

"Training Course" means a training establishment based course approved by the Director for a certificate of competency:

"Training provider" means an education organisation offering training for certificates of competency issued under Part 32:

"Unit standard"² means a unit standard approved by the New Zealand Qualifications Authority.³

¹ See the Advisory Circular to Part 40A for further guidance and interpretation of this definition.

² This rule is only concerned with unit standards towards a Maritime Safety Authority certificate of competency.

³ A unit standard is not a training course.

Section 1 — Training Programmes and Training Providers

Audit Procedures

35.3 Approval and audit of training provider

- (1) A training provider must not offer or conduct a training course, a structured training programme, or a unit standard towards a certificate of competency, unless the Director has approved —
 - (a) a quality system for the training provider's organisation, in accordance with rule 35.3(2); and
 - (b) the training course, structured training programme, or unit standard, in accordance with rule 35.3(3).
- (2) The Director may approve a quality system submitted by a training provider if the Director —
 - (a) conducts an initial audit of the training provider, in accordance with Appendix 1; and
 - (b) is satisfied that the quality system implements the requirements of Appendix 2 to a standard acceptable to the Director.
- (3) The Director may approve —
 - (a) a training course if, after an audit complying with Appendix 1 has been performed, the Director is satisfied that the programme meets the standards specified in Appendix 3;
 - (b) a structured training programme if the Director is satisfied that the programme meets the standards specified in Appendix 4;
 - (c) a unit standard if the Director is satisfied that the unit standard is relevant to certificates of competency that may be issued under Part 32.
- (4) The Director may refuse to issue a certificate of competency to a candidate who has completed a training course, structured training programme or unit standard if the Director has reasonable grounds to believe that the training course, structured training programme or unit standard has not —
 - (a) been provided in accordance with the quality system of a training provider; and
 - (b) provided the level of training required by Part 32 in order for that certificate of competency to be issued.

Examiners

35.4 Recognition as an examiner

- (1) No person may act as an examiner in respect of a certificate of competency unless that person has been recognised as an examiner through the issue of a maritime document in accordance with rule 35.4(2) that authorises her or him to act as an examiner for that certificate of competency.
- (2) A person is entitled to a maritime document as an examiner if that person makes an application for that document under section 35⁴ of the Act and the Director is satisfied that the person —
 - (a) has qualifications acceptable to the Director for the certificates of competency for which the applicant intends to act as an examiner;⁵ and
 - (b) has either —
 - (i) undergone sea service or training acceptable to the Director; or
 - (ii) while being the holder of a delegation of the Director's powers under section 48 of the Act or being the holder of a maritime document as an examiner, in the last five years, —
 - (aa) examined at least two candidates for oral examinations in each year; and
 - (bb) if appropriate to the grade of certificate being examined, compiled or marked at least one written paper in each year; and⁶
 - (c) complies with all other requirements of section 41 of the Act.
- (3) The maritime document referred to in rule 35.4(2) —
 - (a) must specify the certificates of competency for which the holder of that document may act as an examiner; and
 - (b) shall be valid for a period specified by the Director, up to a maximum period of five years from the date of issue.⁷
- (4) The holder of a current delegation under section 48 of the Act is deemed to be the holder of a maritime document as an examiner for a period of 6 months from the date this Part comes into force.

⁴ Section 35 prescribes the requirements for application for maritime document.

⁵ See Advisory Circular for more information on the qualifications and experience acceptable to the Director to act as examiner in respect of the various certificates of competency.

⁶ If an examiner wishes to maintain her or his recognition but believes she or he will not be able to fulfil this requirement she or he should discuss this with the Nautical Examiner ahead of time.

⁷ The renewal of an examiner's maritime document will follow the same procedure as in rule 35.4(1).

Examination and Assessment Procedures

35.5 Moderation

An examiner must not conduct a written examination for a certificate of competency unless the Director —

- (a) has been provided with a copy of the examination paper and model answers for the paper; and
- (b) has verified that —
 - (i) the examination paper satisfactorily tests the candidate's knowledge of the applicable syllabus approved by the Director under Part 32; and
 - (ii) each question is allocated marks relative to its difficulty; and
 - (iii) the model answers provided in accordance with rule 35.5(a) are accurate.

35.6 Examinations

- (1) An examiner intending to examine any candidate for a certificate of competency must give the Director 14 days notice of the date and place of the examination.⁸
- (2) An examiner must ensure that written examinations required for the issue of certificates of competency —
 - (a) are taken in the order; and
 - (b) have a duration; and
 - (c) have pass marks and overall marks;approved by the Director.
- (3) An examiner must not mark a written examination required for the issue of a certificate of competency unless she or he holds a maritime document authorising her or him to act as an examiner for that certificate.
- (4) An examiner must not conduct an oral examination that is required for the issue of a certificate of competency, of any person that she or he has taught for that certificate.
- (5) An examiner must award marks for written examinations against an absolute standard with no scaling.
- (6) A candidate who fails to attend an examination at the time appointed by the examiner will be considered to have failed that examination unless she or he produces a medical certificate or other evidence satisfactory to the examiner of her or his inability to attend.

⁸ Notice should be given to the Maritime Safety Authority's Nautical or Engineering Examiner as appropriate. The MSA will provide the examination centre with a moderated written examination to be used for that examination.

- (7) Passes in oral and written examinations shall be valid —
 - (a) for engineering certificates of competency, —
 - (i) indefinitely for passes in unit 1 and unit 2 of the approved syllabus for marine engineer Class 1 and Class 2 certificates of competency; and
 - (ii) indefinitely for passes in mathematics for marine engineer Class 4 certificates of competency; and
 - (iii) for 24 months, for all other examinations; and
 - (b) for nautical certificates of competency, for 5 years.
- (8) No candidate who fails an examination may re-sit that examination until —
 - (a) three weeks have passed from the date of the failed examination; and
 - (b) the candidate has satisfactorily completed any extra sea service or training required pursuant to rule 35.8.

35.7 Examination results

An examiner who examines a candidate for a certificate of competency must, as soon as possible after the conclusion of the examination —

- (a) inform the candidate, in writing, of the results of the examination; and
- (b) forward the marks and results, in writing, to the Director.

35.8 Extra sea service or training

- (1) A candidate who, during an examination, shows insufficient knowledge of a topic relevant to the duties of the holder of the certificate of competency for which the candidate is being examined, which, if neglected, could lead to conditions whereby a ship on which the candidate serves is endangered, must not apply for re-examination until she or he has completed —
 - (a) extra sea-service of up to six months; or
 - (b) extra training; or
 - (c) extra sea-service of up to six months and extra training;as required by the examiner.⁹
- (2) An examiner who requires a candidate to undertake any extra sea service or training must —
 - (a) inform the candidate, in writing, of the reasons for the extra sea service or training and the areas of the candidate's knowledge that require improvement; and
 - (b) inform the Director¹⁰ as soon as possible of the length of sea service or type of training required and the reasons for that requirement.

⁹ Examiners may require the candidate to do extra sea service, simulator training, or re-attendance of the course.

35.9 Conduct of examinations

- (1) The invigilator for an examination must ensure that every candidate is made aware of the rules required by the training provider to be observed during the examination.¹¹
- (2) A candidate for an examination must observe the rules required by the training provider to be observed during the examination.
- (3) The Director may refuse to issue a certificate of competency to a candidate who violates the rules required by the training provider to be observed during the examination.

¹⁰ The Maritime Safety Authority's Nautical or Engineering examiner should be informed on the Director's behalf.

¹¹ The Advisory Circular contains suggested examination rules.

Section 2 — Training Framework and Approved Organisations for Industry Specific Training

35.10 Approval of organisations

- (1) The Director may, having regard to the risk to maritime safety existing in an organisation's maritime operation, approve that organisation to issue certificates of competency for the operation of —
 - (a) craft of six metres or less in length overall; or
 - (b) non-passenger boats which are not fishing boats, of 15 metres or less in length overall, and which operate only within restricted limits;

if the Director has approved, in accordance with rule 35.11, a training framework developed by the organisation for the certificates of competency that the organisation intends to issue.
- (2) Every approval made under rule 35.10(1) —
 - (a) must be in writing; and
 - (b) must prescribe the type of certificate or certificates that the organisation may issue; and
 - (c) must prescribe the class of applicants to whom the organisation may issue certificates; and
 - (d) is subject to any conditions that the Director considers, on reasonable grounds, are appropriate for the approval.
- (3) An approved organisation may only issue a certificate of competency if —
 - (a) that certificate —
 - (i) has been issued while the organisation has an approved training framework for the certificate; and
 - (ii) has been issued in accordance with an approved training framework; and
 - (iii) has been issued to a person who falls within the class of applicants prescribed in the approval; and
 - (b) the organisation has complied with every condition of their approval.

35.11 Training framework

- (1) The Director may approve a training framework for a certificate of competency if the Director is satisfied that the training framework —
 - (a) identifies the duties to be performed by the holder of the certificate and the training to be provided to enable the holder to undertake the duties; and

- (b) identifies the risks, including health and safety and environmental risks, involved in the operation of any ship to which the certificate relates; and
 - (c) identifies the training that will be given to enable applicants to recognise and avoid or respond to each risk identified under rule 35.11(1)(b); and
 - (d) identifies the skill level of persons providing training for applicants, including nautical, instruction, and assessment experience; and
 - (e) identifies how the training will be given to applicants, including —
 - (i) which parts of the training will be classroom based and which parts will be carried out on board a vessel; and
 - (ii) the length of time for the delivery of each lesson, including, if relevant, whether training will be undertaken in darkness; and
 - (iii) how applicants will be assessed; and
 - (f) outlines the training schedule; and
 - (g) outlines the minimum number of hours of boating experience required for the granting of the certificate; and
 - (h) identifies the medical and eyesight standards that will be required of the holder of the certificate; and
 - (i) identifies the requirements that existing operators must fulfil to be issued with the certificate; and
 - (j) outlines how continued proficiency of certificate holders will be maintained; and
 - (k) outlines how continued proficiency of persons providing training will be maintained; and
 - (l) identifies how the fit and proper person requirements of section 41 of the Act will be satisfied.¹²
- (2) The organisation must ensure that the form of the certificate issued to a successful applicant has been approved by the Director.

¹² Applicants for a certificate of competency may, for example, be required to fulfil the requirements of rule 32.39 (Testimonial) by supplying a testimonial to the organisation issuing the certificate.

Appendix 1 — Audit Requirements

1.1 Audits

Audits will be based on the ISO 9000 series standard that is most appropriate to the training provider's organisation, regardless of the standard that the training provider's quality system is based on.

1.2 Audit Team

Initial and subsequent audits must be carried out by a team including the Nautical Examiner or the Engineering Examiner or any other employee of the Maritime Safety Authority authorised by the Director.

1.3 Documentation

The audit team must check sufficient documentation to ensure that the quality system complies with the requirements of Appendix 2.

1.4 Physical Aspects

The audit team must check the facilities¹³ provided by the training provider to verify that the facilities are adequate for the purpose of training and examining candidates.

¹³ Factors affecting adequacy of facilities may include classroom layout and size; availability, quantity, and quality of technical equipment needed; extent of campus facilities; extent of external facilities.

Appendix 2 — Quality Systems for Training Providers

2.1 Purpose

The purpose of the quality system is to —

- (a) ensure that candidates for a certificate of competency are trained in all syllabus requirements, to a standard acceptable to the Director; and
- (b) ensure the fairness of the examination process.

2.2 NZQA and NZPPC

The providers of a training course or a structured training programme must be accredited and registered with the New Zealand Qualifications Authority or New Zealand Polytechnics Programmes Committee.

2.3 Systems

The quality system must include—

- (a) management systems that are suitable for supporting the provision of maritime training in accordance with the maritime rules and that are acceptable to the Director; and
- (b) systems for the provision of maritime training in accordance with the maritime rules, that are acceptable to the Director.

Appendix 3 — Standards for Training Courses

3.1 Documentation

Documentation for a training course must include —

- (a) timetables; and
- (b) teaching plans; and
- (c) qualifications, industrial experience, and teaching experience required of teaching staff; and
- (d) course notes for candidates; and
- (e) candidate learning outcomes; and
- (f) contracts with any off site training contractors; and
- (g) rules to be observed during examinations and practical assessments, including rules to prevent cheating and to prevent the disturbance of candidates;¹⁴ and
- (h) any other documentation considered relevant by the Director.

3.2 Physical resources

The training provider must provide facilities and learning resources for conducting the intended training course that are acceptable to the Director.¹⁵

¹⁴ The Advisory Circular contains suggested examination rules.

¹⁵ Facility and resource requirements may vary from course to course but will generally include classroom layout and size; availability, quantity, and quality of technical equipment needed; campus facilities; external facilities.

Appendix 4 — Standards for Structured Training Programmes

Documentation

Documentation for each programme must include—

- (a) qualifications and industry skill and knowledge required of assessors; and
- (b) candidate learning outcomes; and
- (c) training resources to be employed; and
- (d) procedures for keeping assessors up to date with changes in relevant legislation; and
- (e) any unit standards, observation records or assessment guides to be used in the programme; and
- (f) evidence that the training has been formally agreed between the trainer and the trainee, and if appropriate, the trainee's employer; and
- (g) any other documentation considered relevant by the Director.

Maritime Rules

PART 35

Consultation Details

(This text does not form part of the rules contained in Part 35. It provides details of the consultation undertaken in making the rules.)

Summary of Consultation

There were four submissions received on this rule. They were from the New Zealand Shipping Federation, the Seafood Industry Training Organisation, the Royal New Zealand Navy and one MSA Appointed Examiner.

General

The Seafood Industry Training Organisation commented that they support the Draft Rule with amendments based on recommendations "based around clarifying the intent of sections in the document not changing the intent of any of the sections."

A MSA appointed examiner suggested there should be a clause allowing the Director to "have discretionary rights in certain cases."

The Director has the power to make exemptions to maritime rules under section 47 of the Maritime Transport Act 1994.

35.2

Definitions

The Seafood Industry Training Organisation recommended the definition of 'course' be deleted as it is only used once in the rule where "the more appropriate term is 'training programme'".

We agree with the submission's suggestion that the definitions need altering to clarify the intent of the rule. The definition of "course" has been removed and a new definition of "training course" inserted.

The Seafood Industry Training Organisation suggested that 'structured training programme' be redefined to include the phrase 'approved by the Director' as this "brings the definition in line with the definition of 'training programme'".

We agree. The rule has been amended.

The Seafood Industry Training Organisation suggested that 'training programme' should be redefined as 'training course' and the definition amended to mean "a competency based training course approved by the Director for a certificate of competency that takes place primarily at a training provider to a predetermined programme." This was suggested as "(t)he draft rules have tried to distinguish between training provider courses and employer based training programmes. Using the term "Training Course" clearly distinguishes between the two."

We agree with the submission's suggestion that the term 'training course' be used. However, the definition of training course is simplified from that suggested in the submission.

35.3 Approval and audit of training provider

- (1) The Seafood Industry Training Organisation suggested that 'towards a certificate of competency' be inserted as this "clarifies that a training provider might offer training towards a certificate of competency rather than offering a certificate of competency, but regardless the training provider requires the Director's approval".

We agree that this clarifies the intent of the rule and therefore the rule has been amended.

35.4 Recognition as an Examiner

The Royal New Zealand Navy submitted that "(i)t is noted that... the Director of the Maritime Safety Authority may consider equivalent alternatives to the criteria as set out. This particular aspect is crucial, in our view, as we are still in the process of aligning Naval qualifications to Merchant service and would not like to see any impediments put in the way of that process."

The New Zealand Shipping Federation submitted that there did "not appear to be any remedy stated in this Rule for the Director to withdraw a maritime document from the examiner if the examiner is not performing. We suggest that the director has recourse to something like Section 50 of the Act."

Maritime Transport Act 1994, section 44 — Revocation of maritime documents applies in this case.

- (1)(b)(ii)(aa) A MSA appointed examiner submitted that an examiner be able to examine four candidates over two years "to allow for periods away. It is important for small areas of the country that are relatively remote from the main centres that a pool of examiners is maintained to ensure delivery to all at a reasonable cost."

A footnote has been added to inform examiners that they should contact the MSA in advance if they believe that they will not be able to fulfill their examination requirements due to other commitments. An individual exemption from this requirement will be considered.

Appendix 2 — Quality systems for training providers

- (2.2) The Seafood Industry Training Organisation recommended that this be amended to say 'structured training programmes, training courses or unit standards' as this "ensures that the three types of training defined in 35.2 Definitions are covered by this appendix."

We agree. The rule has been amended.

Appendix 3 — Standards for training courses

- 3.1(g) The New Zealand Shipping Federation suggested that 'and practical assessments' be included.

We agree. The rule has been amended.