

Secondary Legislation



TE MANATŪ WAKA
MINISTRY OF TRANSPORT

MARITIME TRANSPORT ACT 1994

MARITIME RULES VARIOUS AMENDMENTS 2023

Pursuant to section 36 of the Maritime Transport Act 1994 I, Simeon Brown, Minister of Transport, having had regard to the criteria for making Maritime Rules in section 39(2) of the Maritime Transport Act 1994, hereby make the following Maritime Rules.

Signed at Wellington

This 13th day of December 2023

By Hon SIMEON BROWN

Minister of Transport

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Objective

The objective of the Maritime Rules Various Amendments 2023 is to update Maritime Rules Parts 19, 32, 40A, and 42B to address issues where the problem is clear and solutions are considered relatively straightforward and uncontroversial.

The objectives of the amendments to Part 19 are:

- to provide greater clarity on the process for renewal applications for Maritime Transport Operator Certificates;
- to recognise that an operator may have a significant history with the regulator and to take that into account in the renewal process; and
- to avoid any unintentional impacts on maritime transport operations, where renewal-processing takes longer than anticipated.

The objective of the amendments to Part 32 is to provide clarity regarding the exercise of non-STCW-F fishing privileges for marine engineers renewing a nationally limited MEC 4 or 5 certificate.

The objective of the amendments to Parts 40A and 42B is to provide a viable means of compliance for operators required to have portable fire extinguishers, by updating the minimum rating for fire fighting foam as applied to flammable and combustible liquids.

The authority for making Maritime Rules Various Amendments 2023 is found in sections 34(2) and 36(1)(b), (c), (f), (n), (o), (q), and (t), and section 451(4) of the Maritime Transport Act 1994.

Maritime Rules (rules) are secondary legislation under the Legislation Act 2019. Under that Act, the rules are required to be presented to the House of Representatives. The House may, by resolution, disallow any rule. The Regulations Review Committee is the select committee responsible for examining all secondary legislation and may consider any matter relating to secondary legislation and report on it to the House. Anyone can make a complaint to the Regulations Review Committee about the operation of secondary legislation.

Extent of consultation

Formal consultation on the proposed Maritime Rules Various Amendments 2023 (included as part of the consultation document *Maritime Rules and Marine Protection Rules Various Amendments 2023*) began on 22 August 2023 and concluded on 19 September 2023. Maritime New Zealand received 8 submissions during this period. The public were invited to comment on the draft rules via notification on the Maritime New Zealand website. Copies of the draft rules were made publicly available during the consultation. A summary of submissions is provided at the end of these rules.

Entry into force

These rules come into force 28 days after notice is given in the *New Zealand Gazette* of the making of the Maritime Rules Various Amendments 2023.

Amendments to Part 19: Maritime Transport Operator – Certification and Responsibilities

1 Part 19 Part objective

In Part 19, amend the Part objective as follows:

- (a) in the second paragraph, after "section 34(1)(c) and (g)", insert ", section 34(2),";
- (b) replace the last paragraph with the following:

"Maritime Rules (rules) are secondary legislation under the Legislation Act 2019. Under that Act, the rules are required to be presented to the House of Representatives. The House may, by resolution, disallow any rule. The Regulations Review Committee is the select committee responsible for examining all secondary legislation and may consider any matter relating to secondary legislation and report on it to the House. Anyone can make a complaint to the Regulations Review Committee about the operation of secondary legislation."

2 19.2 Definitions

In rule 19.2, insert the following definition in the appropriate alphabetical order:

"**audit** means any inspection or audit undergone or carried out under section 54 of the Act."

3 19.3 Requirement to hold Maritime Transport Operator Certificate

In rule 19.3, replace the rule under the heading with the following:

"A person who conducts a maritime transport operation must do so under the authority of, and in accordance with, a current Maritime Transport Operator Certificate."

4 19.21 Application for Maritime Transport Operator Certificate

Replace rule 19.21 with the following:

"19.21 Application for Maritime Transport Operator Certificate

- (1) The applicant for a Maritime Transport Operator Certificate must make the application as follows:
 - (a) if the applicant holds a current Maritime Transport Operator Certificate, the application may be made as an application for renewal under subrule (3);
 - (b) in every other case, the applicant must make an application for the grant of a Maritime Transport Operator Certificate under subrule (2).

Application for the grant of a certificate

- (2) The applicant for the grant of a Maritime Transport Operator Certificate must make an application in accordance with section 35 of the Act, and include, in a form required by the Director,—
 - (a) a Maritime Transport Operator Plan required under Subpart B; and
 - (b) a declaration, signed by the applicant, that the applicant will comply, and ensure compliance, with the policies and procedures set out in the Maritime Transport Operator Plan.

Application for renewal of a certificate

- (3) The applicant for renewal of a Maritime Transport Operator Certificate must make an application in accordance with section 35 of the Act, and include, in a form required by the Director, a declaration, signed by the applicant—
 - (a) that the applicant will comply, and ensure compliance, with the policies and procedures set out in the Maritime Transport Operator Plan; and

- (b) to the extent the applicant is able to declare, that—
 - (i) the Maritime Transport Operator Plan is up to date having taken into account any risks or changes to the maritime transport operation under the certificate, or any changes to the requirements applicable to the operation; and
 - (ii) all amendments in the Maritime Transport Operator Plan that require the Director's approval under rule 19.61(d) have been so approved; and
 - (iii) all findings of non-conformity arising from any audit of the maritime transport operation under the Maritime Transport Operator Certificate are fully resolved.
- (4) The applicant for renewal of a Maritime Transport Operator Certificate must keep the Director up-to-date with any changes to the Maritime Transport Operator Plan between the making of the application and the Director determining the application.

All applications

- (5) Every application must be submitted to the Director, with a payment of the appropriate application fee prescribed by the regulations made under the Act.
- (6) The applicant for the grant or renewal of a Maritime Transport Operator Certificate must provide further particulars or declarations about the applicant, application, or maritime transport operation and, in the case of a renewal application, the applicant's Maritime Transport Operator Plan, if required by the Director."

5 New rule 19.21A

After rule 19.21, before rule 19.22, insert the following rule 19.21A:

"19.21A Director's consideration of renewal applications

- (1) When considering an application for renewal of a Maritime Transport Operator Certificate under rule 19.22(1), the Director is not required to review the applicant's Maritime Transport Operator Plan unless the Director considers it appropriate in the circumstances to do so, taking into account the declaration provided under rule 19.21(3) and any further information or declarations the Director considers appropriate in the circumstances.
- (2) In determining whether the Director is satisfied of the matters in rule 19.22(1) in relation to an application for renewal of a Maritime Transport Operator Certificate (MTOC), the Director may, without limiting the general provisions in that rule, have regard to any of the following matters:
 - (a) the maritime transport operation under the MTOC:
 - (b) previous audits of the maritime transport operation:
 - (c) the length of time since the last audit of the maritime transport operation:
 - (d) the findings of any audit and any consequential actions taken or not taken by the holder of the MTOC:
 - (e) the level of scrutiny applied by Maritime NZ in respect of, and over the term of, the MTOC:
 - (f) any change made to the Maritime Transport Operator Plan (MTOC), and the reasons for that change:
 - (g) any change that should have been made to the MTOC but was not, and the reason for not making that change:
 - (h) the history of compliance with maritime safety and pollution requirements by the holder of the MTOC:
 - (i) any relevant information obtained through any site visit to the maritime transport operation:

- (j) any information or particulars acquired from the holder of the MTOC before or subsequent to the application being made:
- (k) any relevant information from any other source relating to the maritime transport operation:
- (l) any information about the implementation of the MTOP over the period the applicant has held the MTOC:
- (m) the MTOP, if required by the Director under rule 19.21(6)."

6 19.22 Issue of Maritime Transport Operator Certificate

In rule 19.22, in subrule (1), replace "issue" with "grant or renew".

7 19.23 Privileges of Maritime Transport Operator Certificate

In rule 19.23, delete "on and after 1 July 2014".

8 19.24 Duration of Maritime Transport Operator Certificate

Replace rule 19.24 with the following:

- "(1) Subject to subrule (3), a Maritime Transport Operator Certificate may be issued for a period not exceeding 10 years.
- (2) For the purposes of subrules (3) and (4):
- (a) **original certificate** means the Maritime Transport Operator Certificate to which an application for renewal, made in accordance with rule 19.21(1)(a), seeks to have renewed:
 - (b) **original certificate's expiry date** means the date being the last day of the period for which the original certificate was issued.
- (3) Where an original certificate will expire before the Director determines the renewal application relating to it, then, provided the certificate is not otherwise suspended or revoked by the Director,—
- (a) the original certificate's expiry date is extended until the Director determines the application or 9 months after the original certificate's expiry date, whichever is the sooner; and
 - (b) that original certificate does not expire, and is deemed to be current, until the Director determines the application or 9 months after the certificate's original expiry date, whichever is the sooner.
- (4) Where an original certificate's expiry date is extended under subrule (3) and the Director determines to renew that certificate, the new Maritime Transport Operator Certificate must be issued for a period not exceeding 10 years from original certificate's expiry date."

Amendments to Part 32: Seafarer Certification

9 32.20 Renewal of certificates

In Part 32, amend rule 32.20 as follows:

- (a) in subrule (5), after "does not authorise the holder to", insert "exercise the privilege set out in rule 32.51(1)(e), to":
- (b) in subrule (6), after "does not authorise the holder to", insert "exercise the privilege set out in rule 32.57(1)(c), to":
- (c) after subrule (6), insert the following subrule (7):
"(7) To avoid doubt, the holder of a MEC 4 or MEC 5 certificate that has been nationally limited as described in subrule (6) or (5), respectively, may still exercise the other fishing privileges set out in rules 32.57(1)(d) and (e) for MEC 4 or rules 32.51(1)(f), (g), and (h) for MEC 5, respectively."

10 32.51 Privileges of Marine engineer class 5

In Part 32, amend rule 32.51 as follows:

- (a) in subrule (1)(f), replace the full stop (".") with "; and":
- (b) in subrule (1), after subrule (1)(f), insert the following subrules (g) and (h):
"(g) a second engineer of a fishing ship of under 750 kilowatts propulsion power in all operational areas; and
(h) a second engineer of a fishing ship of any propulsion power within any of the following areas:
 - (i) inshore fishing limits:
 - (ii) the internal waters of New Zealand:
 - (iii) all rivers and other inland waters of New Zealand."

11 32.57 Privileges of Marine engineer class 4

In Part 32, amend rule 32.57 as follows:

- (a) in subrule (1)(c), replace the full stop (".") with "; and":
- (b) in subrule (1), after subrule (1)(c), insert the following subrules (d) and (e):
"(d) a chief engineer of a fishing ship of under 750 kilowatts propulsion power in the unlimited area; and
(e) a chief engineer of a fishing ship of any propulsion power within any of the following areas:
 - (i) inshore fishing limits:
 - (ii) the internal waters of New Zealand:
 - (iii) all rivers and other inland waters of New Zealand."

Amendments to Part 40A: Design, Construction and Equipment – Passenger Ships which are not SOLAS Ships

12 40A.74 Houseboats

In Part 40A, in rule 40A.74, in subrule (g)(vi), replace “rating 3A:30B” with “rating 3A:20B”.

Amendments to Part 42B: Safety Equipment – Fire Appliances Performance Standards

13 42B.57 Portable fire extinguishers

In Part 42B, in the table under rule 42B.57, in the row headed “For fires involving flammable and combustible liquids”, in columns 3 and 5, replace “foam: 30B” with “foam: 20B”.

Consultation details

This text does not form part of the rules, but provides details of the consultation undertaken in making the rules.

Maritime Rules Various Amendments 2023

Summary of public consultation

Formal consultation on the proposed Maritime Rules Various Amendments 2023 (included as part of the consultation document *Maritime Rules and Marine Protection Rules Various Amendments 2023*) began on 22 August 2023 and concluded on 19 September 2023.

By the close of the consultation period, 8 submissions were received representing a wide range of stakeholders and industry. Two of these submissions were received from iwi and Māori, providing feedback on matters unrelated to the subject of the proposed rules changes.

All submitters supported the proposed changes. In particular the amendments to Part 19 were seen as beneficial, in that the rules would acknowledge where an established record existed with operators, and could contribute to more efficient processing times for renewals. Submitters felt that having the rules cater for prior history would also support good practice by MTOC holders.

Useful feedback was provided to Maritime NZ on the implementation of the proposals for Parts 40A and 42B. This included technical advice, and suggestions for ensuring that the proposed change to the fire extinguisher rating would still adequately deal with fires on the types of ships captured by these changes. Maritime NZ has used this feedback in the development of guidance to support the changes, and to inform the ongoing and wider review of the 40 Series rules.

Other comments provided by submitters included that the validity period of an MTOC should start from the date that the Director issues the renewal, rather than the original MTOC expiry date.

After further consideration (including of submitter feedback) Maritime NZ's position is that the new MTOC period should start from the date of original expiry. This provides a more equitable approach for all operators, regardless of when the renewal is issued.

This is because having a renewed MTOC period start from the date of issue could mean that:

- some applicants would get more than 10 years on their existing MTOC, when an application is not processed before the MTOC expires. This might give inequitable benefits to an operator where processing delays resulted from issues with their operation.
- some applicants do not receive the full 10 year benefit of their existing certificate, where an application is processed before the existing certificate expires.

Some submitters also requested clarifications about the proposals. These included whether:

- operators have additional costs when applying for an extension while renewing their MTOC, if Maritime NZ did not process their application in a timely fashion.
- fishing privileges for nationally limited certificates could also be clarified in provisions for MEC 3 certificates (as opposed to just MEC 4 and 5).
- the impacts on operators of updating their existing (non-compliant) foam fire extinguishers could be mitigated by allowing compliance at or before the anniversary of their next survey after the rule comes into effect, allowing more time to source new extinguishers and dispose of non-compliant ones.

Maritime NZ's response is that:

- it is not anticipated that any extra costs will arise from extensions applied to MTOC renewal applications, providing the application is received on time.

- it is not appropriate to amend the rules to clarify fishing privileges for nationally limited MEC 3 certificates for two reasons. Firstly, MEC 3 certificates need to be STCW-F-aligned, meaning that a holder must have at least 12 months sea service to renew this certificate. Secondly, as a MEC 3 is a higher level certificate than MEC 4 or 5, the holder can exercise the relevant privileges on fishing vessels that fall outside the scope of STCW-F. There is no impact on the holder's ability to work on these vessels.
- operators will have some time to comply with the changes to Parts 40A and 42B, as the ban on PFAS will not be in force until 2025. Compliance can be demonstrated at the next survey after the rule changes are in effect.

Overall, no changes to the proposed amendments were identified from the results of the consultation. Some minor refinements were made to improve the clarity and readability of the rules during the final drafting and review stages.