



## Maritime Transport Act 1994

### Maritime Rules

#### PART 21: AMENDMENT 2010

Pursuant to sections 34 and 36 of the Maritime Transport Act 1994 I, Nathan Guy, Acting Minister of Transport, hereby make the following maritime rules.

Signed at Wellington

This 19 day of October 2010

By NATHAN GUY

A handwritten signature in black ink, appearing to read "Nathan Guy", written over a faint, stylized graphic element that resembles a compass rose or a stylized letter 'G'.

Acting Minister of Transport



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## Part objective

The objective of *Part 21: Amendment 2010* is to make the approval issued to organisations to operate a safe ship management system a maritime document.

This is to ensure the Director has adequate regulatory tools to properly discharge her statutory obligations with respect to maritime safety, in particular:

- To exercise control over entry into the maritime transport system;
- To take such action as may be appropriate in the public interest to enforce the provisions of the Act.

The amendment will also provide certainty to SSM Organisations and the maritime industry about the Director's regulatory control over SSM Organisations. This includes the control mechanisms that the Director may exercise and the grounds on which they can be exercised. As the holders of maritime documents, SSM Organisations will be afforded the benefit of the procedural protections under the Maritime Transport Act including:

- Notice of any proposed adverse decision;
- Opportunity to be heard before an adverse decision is made;
- The right to appeal a decision of the Director to the District Court.

The Maritime Rules are subject to the Regulations (Disallowance) Act 1989, which requires that the rules are laid before the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for reviewing the rules.

## Extent of consultation

On 14 August 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 draft Part 21. A notice was also published in the *New Zealand Gazette* on 12 August 2010. Copies of the proposed amendment and the invitation to comment were sent to interested parties on 9 August and made publicly available on Maritime New Zealand's webpage. Comments on the proposed amendment were requested to be made by 20 August 2010 – subsequently extended until 17 September.

Five submissions were received. All amendments were reviewed and, where appropriate, the draft was amended.

## Entry into force

These rules come into force on 1 December 2010.

## 1 Rule 21.11 Definitions relating to Section 2

Rule 21.11 is amended as follows:

- (a) by omitting the definition of "Approved safe ship management system", and substituting the following:

**"Approved safe ship management system** means a safe ship management system that the Director has issued a Certificate of Approval or an Interim Certificate of Approval in respect of:"; and

- (b) by inserting the following definitions in the appropriate alphabetical order:

**"Certificate of Approval** means the maritime document issued under section 41 of the Act that is—

- (a) deemed by rule 21.11A(1) to be issued in accordance with this Part; or  
(b) issued under rule 21.12(1):

**Interim Certificate of Approval** means the maritime document issued under section 41 of the Act in accordance with rule 21.12(2):".

## 2 Rule 21.11A Transitional provisions and savings provision

Part 21 is amended by inserting the following rule after rule 21.11:

### **"21.11A Transitional provisions and savings provision**

- (1) An approval that—  
(a) was validly issued in accordance with section 2 of Part 21 before 1 December 2010; and  
(b) was in force immediately before 1 December 2010;  
is deemed to be a Certificate of Approval issued in accordance with this Part.
- (2) A Certificate of Approval deemed to be issued in accordance with this Part under subrule (1) is valid until the expiry date noted on the approval."

## 3 Rule 21.12 Safe ship management system

Rule 21.12 is amended by—

- (a) inserting in subrule (1) the words "under section 35 of the Act" after the words "If an organisation applies in writing"; and  
(b) inserting the word "and" after the words "ships of which they are the owners;" in subrule (1)(c)(ii); and  
(c) inserting the following paragraph after subrule (1)(c)(ii) and before the words "then the Director must grant approval in writing to that organisation's safe ship management system":

"(d) all other requirements of section 41 of the Act are met,"; and

- (d) omitting the words "then the Director must grant approval in writing to that organisation's safe ship management system" from where they appear after new subrule (1)(d), and substituting the following words:

"then the Director must grant a Certificate of Approval for that organisation's safe ship management system."; and

- (e) omitting subrule (2), and substituting the following subrule:

"(2) For the purpose of approving a safe ship management system, the Director may issue an Interim Certificate of Approval to permit an organisation to

operate a safe ship management system for a specified period and a maximum number of ships prior to the organisation's system obtaining the Certificate of Approval referred to in rule 21.12(1).

- (2A) An Interim Certificate of Approval may only be issued by the Director under section 41 if—
- (a) an organisation has applied under section 35 of the Act for a Certificate of Approval; and
  - (b) the organisation meets all prescribed requirements, other than the requirement to possess a certificate issued by a recognised accreditation body under rule 21.12(1)(a).”; and

- (e) omitting subrule 21.12(6), and substituting the following:

- “(6) It is a condition of every Certificate of Approval issued by the Director that—
- (a) the organisation continues to have a valid certificate issued by a recognised accreditation body indicating that the organisation has implemented a quality assurance system which has been approved by that body and is subject to continuing audit; and
  - (b) the scope and field of application of the organisation's quality assurance system continues to be for the safe management of ships in accordance with the New Zealand Safe Ship Management Code; and
  - (c) the organisation continues to have quality assured supplier status as referred to in rule 21.12(1)(c); and
  - (d) the organisation continues to meet the requirements of rules 21.12(3), 21.12(4), 21.12(5), 21.13(6), 21.13(8) and 21.13(10).”.

## Consultation Summary

*(This text does not form part of the rules contained in Part 21: Amendment 2010. It provides details of the consultation undertaken before making the rules. The rule numbers are those used in the Invitation to Comment draft.)*

Copies of the proposed amendment to Part 21 were circulated to all Safe Ship Management (SSM) Companies, the New Zealand Marine Transport Association and the Federation of Commercial Fisherman along with an invitation to comment. Additional material on the background to the proposed change was also sent to those parties, as well as a broader distribution list. All information was made publicly available on the Maritime New Zealand (MNZ) website.

Prior to the extension of time to make submission, Lloyds Register Asia and Survey Nelson Limited requested an extension of the consultation period. No submissions were received from those parties after the extension of time.

Five submissions were received.

Maurice Davis of CPG Global supported the proposed amendments and requested that "where appropriate, and if necessary, changes made as a result of the current process" should be incorporated into the draft Maritime Operator Safety System (MOSS) proposals.

*MNZ comments: The MOSS proposal is separate to this amendment. Submissions relevant to those proposed rule changes will be considered as part of that MOSS consultation process.*

Domonic Harvey of SGS New Zealand Limited (SGS) an existing safe ship management company advised that the proposed urgent amendment to Part 21 to make the SSM company approval a maritime document had his full support. It was noted that it was simple and more appropriate for the SSM company approval to be a maritime document issued under section 41 of the Maritime Transport Act (MTA) 1994. SGS also supported the requirement for Approved SSM companies to be ISO accredited organisation's operating appropriate Quality Management Systems specifically for the delivery of SSM. SGS did request the removal of the exclusion wording "other than the requirement to possess a certificate issued by a recognised accreditation body under rule 21.12(1)(a) from proposed Rule 21.12(2)(a)(ii)."

*MNZ comments: Under the existing rule, approval cannot be given until an organisation has certification from ISO. Before ISO will issue a certificate, a company must have sufficient records which ISO can assess. However, a company cannot operate and therefore generate records without the approval.*

*When a new company seeks approval, 21.12(2) is used to allow an organisation to operate as a SSM company for a limited period of time (3 months or 6 months, depending on the number of ships in the system) and accumulate records. ISO then comes in and audits the company against those records. When the certificate is issued by ISO, the company has all things it needs to obtain the approval document from MNZ. This is necessary to enable the current system to work. The amendment does not change this process but confirms that this interim approval is also a maritime document and more specifically identifies the circumstances under which the interim approval may be issued.*

Maritime Management Services (MMS), an existing SSM company, proposed a more substantive rewrite of the relevant sections of Part 21 than was proposed. An extract from a previous proposal was recommended to govern the approval process and conditions of approval. MMS expressed the view that the proposed amendment to Part 21 "amounts to tinkering around the edges of a flawed rule, and will have no discernable effect on vessel safety". The submission noted that the both the current rule and the proposed amendment makes reference to the requirement to have a quality assured supplier status and did not consider this should be maintained. MMS was of the view that deeming a certificate of approval to be a maritime document will not give the Director more effective control. MMS commented that the current rule 21.12 sets out a process for the removal of a safe ship management system company and provides the Director with a toolbox for removing SSM Company's approvals.

MNZ comments: *Substantive changes to Part 21 are the subject of the current MOSS proposal. This proposed rule change is targeted only at the narrow issue of the legal status of the approval that is given to organisations to operate a safe ship management system.*

*On the substantive matters raised, the current rule does provide a process for removing SSM Company approvals. However, the current rule only provides for withdrawal of an approval. There is no other mechanism for the Director to exercise control measures – it is essentially an all or nothing provision. The amendment will provide a better ‘toolbox’ for the Director and will provide for graduated control measures proportionate to the issue to be implemented, including the imposition of conditions or suspension.*

*In addition, there is no “process” under the current rule. By making the approval a maritime document, SSM Companies will be afforded procedural protections such as notice of any proposed adverse decision and the opportunity to be heard before a decision is made. A SSM Company will also have the right to appeal a decision of the Director to the District Court.*

Lloyd’s Register Asia, a class society that also operates a SSM System, in its submission raised the issue that the amendment would impact heavily on SSM companies and would change policy. It also commented that the rule referenced an out of date standard, and that as the appeal by Survey Nelson (from the decision of the High Court in *Survey Nelson v Director of Maritime New Zealand* HC Wellington, CIV-2009-485-2398) had not been held His Honour’s recommendations may be affected. The submission reiterated an earlier request that the issues could not be considered in the time available.

MNZ comments: *No further submission was received from Lloyds Register Asia after the extension of the submission period. MNZ disagrees that the proposed rule represents a change of policy. Until the decision in Survey Nelson, MNZ considered the approval of SSM Companies as a maritime document. While the Survey Nelson appeal is yet to be heard, the outcome on that appeal would not affect MNZ’s view that the approval should be a maritime document and that the rule should be unequivocal on this point. The proposed amendment does not alter the existing reference to the standard. No change is made to the rule in this respect as the amendment is targeted only at the narrow issue of the legal status of the approval that is given to organisations to operate a safe ship management system.*

New Zealand Marine Transport Association (NZMTA) made a submission opposing the proposed changes on the basis that insufficient time had been given to discuss the issue with members.

MNZ comments: *No further submission was received after the consultation period was extended. However at its subsequent Annual General Meeting NZMTA noted that it had no objection to the proposed amendment.*