

# Advisory Circular

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ISSUE NO. 44-1, 9 JUNE 2014

## **Part 44: Surveyor responsibilities and survey, certification, and maintenance for ships in maritime transport operations**

### **1. General**

#### **1.1 Purpose of advisory circulars**

Maritime New Zealand (MNZ) 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 MNZ 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, 44.1 supports Maritime Rules Part 44 and when a number reference such as 44.21 is used, it relates to a specific rule within Part 44.

#### **1.2 Application of Rule Part 44**

Maritime Rule Part 44 applies to:

- An applicant for a certificate of surveyor recognition
- The holder of a certificate of surveyor recognition
- A person whose qualifications or certification as a surveyor have been recognised under section 41(2) of the Maritime Transport Act 1994
- Survey, maintenance, certification and survey report requirements.

#### **1.3 Purpose**

The purpose of Rule Part 44 is to prescribe the process and requirements for the recognition of surveyors, and the requirements for survey, certification and maintenance of ships operated under a Maritime Transport Operator Certificate in accordance with Rule Part 19.

#### **1.4 Objective of rule**

The objective of the rule is to:

- provide a clear set of requirements in terms of application for recognition as a surveyor;

- -specify the matters the Director must be satisfied with before issuing a certificate of surveyor recognition;
- specify what a certificate of surveyor recognition entitles the holder to do
- specify the standards and requirements of recognised surveyors in terms of professional conduct and the performance of surveys;
- specify the requirements for the issue of a certificate of survey, and the information the certificate must convey; and
- specify the requirements for the issue of a Certificate of International Voyage.

The rule also makes provision for the transition of existing recognised surveyors and existing vessels from the present Safe Ship Management system and into the Maritime Transport Operator Safety System.

## **2. Supportive guidance to the rule part**

### **2.1 Subpart A: Surveyor Certification**

#### **Application for Certificate of Surveyor Recognition**

Rule 44.21 covers the requirements associated with an application for a Certificate of Surveyor Recognition. 'Application' refers to an initial or first application for recognition or any further application (renewal or extension) by a person already holding recognition.

An applicant must be a 'natural person' (an individual and not an entity such as a company or group of persons), and may be an employee of Maritime New Zealand.

Applications must be made in accordance with section 35 of the Maritime Transport Act, which requires an applicant to make their application in the prescribed form, and to include in their application contact details and an address for service in New Zealand.

Rule 44 21(2) sets out what other information the applicant must provide at the point of making an application. This includes the extent and type of surveys they intend to undertake, evidence of relevant qualifications, training or experience (to the satisfaction of the Director); and any other information relating to the applicant that the Director requires.

At the point of making an application the appropriate fee must be paid. The fees are prescribed in Schedules 1 and 2 of the Shipping (Charges) Regulations 2014 Those regulations prescribe an initial fee (this is what is paid on application) that covers the standard assessment elements of all such applications, and an hourly rate (also set in the regulations) for each additional hour Maritime New Zealand spends in assessing the application. Under Rule 44.21(4) this may include a written examination, an oral examination, or a practical assessment.

Maritime New Zealand has developed an application form and guidance material related to this subpart which can be found on our website [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz) at: <http://www.maritimenz.govt.nz/Commercial/Safety-management-systems/Surveyors/default.asp>

## Issue of Certificate of Surveyor Recognition

Rule 44.22 requires the Director to issue a Certificate of Surveyor Recognition if satisfied that the applicant meets specific criteria listed in this subpart of the rule. Those criteria are as follows:

- that the applicant meets the fit and proper person criteria set out in section 50 of the Maritime Transport Act. Under that section of the Act, the Director is required to have regard to a range of matters in determining whether a person seeking to be involved in maritime activities should be given that privilege
- that the applicant is competent (to undertake the activities that can be performed under a Certificate of Surveyor Recognition), and has the technical qualifications and experience to undertake surveys. In terms of these criteria, the technical qualifications and experience expected of an applicant will differ according to the type of surveys the application covers.
- that the applicant has agreed to satisfy any other conditions on the certificate that are imposed by the Director. Such conditions may be that the surveyor obtains a specific qualification prior to undertaking surveys on vessels of a particular size or operating limit.
- that the applicant has agreed to conduct every survey:
  - a) in a manner consistent with any requirements for the performance of survey as imposed by the Director under Rule Part 44. Rule Part 44.25 (3) enables the Director to impose such requirements, and Part 44.25(5) sets out the process the Director must follow before the Director exercises that power. This is set out later in this AC.
  - b) in a manner consistent with all applicable maritime rules and marine protection rules. Various rules specify requirements for the construction and design of vessels (dependent on size, operating limits, and usage) and the equipment that is used on vessels. It is against these requirements that a surveyor must survey a vessel.
  - c) in a manner consistent with industry best practice. At the time of preparing this AC the surveying profession in New Zealand is still developing as a recognised profession and it may be difficult to conclude what is accepted industry practice in many circumstances. This will change over time, and a surveyor should keep himself or herself updated on any developments in the surveyor's area of practice
  - d) taking into consideration any relevant guidelines (for survey or surveyors) recommended by the Director. 'Taking into consideration' is a lower threshold than 'in a manner consistent with' – because it leaves it up to the surveyor as to whether they will apply what is recommended in a guideline. They are not compelled to do so, but they should, at a minimum, consider the guideline recommendations and assess whether they should be applied in any particular survey.

Finally, the Director must issue a Certificate of Surveyor Recognition if satisfied that an applicant has agreed to exercise reasonable skill, care, competence and diligence at all times when providing the services under a Certificate of Recognition.

Rule 44.22(3) sets out what has to be included in the Certificate of Surveyor Recognition. This is a matter that rests with the Director of Maritime New Zealand, who issues the Certificate as a maritime document. The Certificate must include the name of the surveyor,

the Certificate's date of issue and date of expiry, and any conditions imposed on the surveyor.

### **Privileges of Certificate of Surveyor Recognition**

Rule 44.23 sets out activities that a surveyor is authorised to undertake under a Certificate of Surveyor Recognition (subject to any conditions that may have been imposed by the Director). These include (and are limited to):

- undertaking a survey of a ship under Part 44
- undertaking any other type of survey or inspection required by other maritime rules and marine protection rules. In practice, this is limited by the assigned categories on the surveyor's certificate of recognition and a condition that the surveyor is not to exceed the exercise of privileges in relation to these assigned categories.
- developing, approving, amending, or requiring an amendment to a survey plan. The requirement that each ship in a maritime transport operation has a survey plan is set out in Rule 19.43, and it is the responsibility of the operator that such a plan is developed and applied. A surveyor is however authorised under this part to develop the plan, notwithstanding that an operator could do the same. Whoever develops it, a survey plan must be approved by a surveyor; can only be amended by the operator with prior written approval from a surveyor; and must be amended if the surveyor requires.
- issuing a Certificate of Survey. Subpart B of Rule Part 44 sets out the details of Certificates of Survey, including their duration, the requirements the surveyor must be satisfied have been met before issuing a certificate, and the information that must be included on the certificate. This is covered under the heading Certificate of Survey in this AC.
- permitting, in writing, a ship without a valid Certificate of Survey to be relocated for the purposes set out in clause 4.2.1 of Appendix 2. The purposes (of relocation) set out in that clause are if the ship has to undergo a major repair or modification or if it has to be relocated for a survey.
- preparing an Initial Survey Portfolio and a report for an Initial Survey Portfolio. Appendix 1 of Part 44 sets out the requirements for the Issue of a Certificate of Survey for a new ship – defined in the rule as a commercial ship build on or after 1 July 2014; or a ship that becomes a commercial ship for the first time on or after that date. A surveyor cannot issue a Certificate of Survey for a new ship unless satisfied with the Initial Survey Portfolio (which the surveyor is authorised to prepare). Appendix 1 also requires that each Initial Survey Portfolio includes a report (which is again a document that the surveyor is authorised to prepare). The details of Appendix 1 are set out in this AC under that heading.
- approving 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 of this rule). Appendix 2 is described in this AC under that heading.

### **Duration of a Certificate of Surveyor Recognition**

Rule 44.24 prescribes that a Certificate of Surveyor Recognition may be issued for a period not exceeding 5 years. This sets an upper limit and does not compel the Director to issue each certificate for 5 years. It is however the general policy intent that certificates are ordinarily issued for that period unless there is good reason to set an expiry date less than 5 years from the date of issue.

## Standards and requirements of surveyors

Although not expressly described as such, Rule 44.25 (1) sets out the conduct or ethical standards required of a surveyor when exercising the privileges of a Certificate of Surveyor Recognition. These are generally accepted and applied standards of conduct relevant to a person delivering chargeable services in a professional capacity. A surveyor must:

- act with honesty, objectivity and integrity. Objectivity requires a surveyor to set aside any personal views / impressions / prejudice in regard to someone they are working for and to have regard only to the relevant technical factors or requirements.
- not misrepresent his or her competence. This also includes not misrepresenting experience or training. It relates both to written and verbal misrepresentation.
- not promise, give or accept inducements. Inducements include money, rewards, or favours of any kind that influence or that could reasonably be seen to influence the conduct or outcome of a service delivered by a surveyor.
- disclose in writing to the Director any conflict of interest that is likely to affect his or her professional judgement.
- not use confidential information for an improper purpose. In the course of their work a surveyor may be made party to personal or private information about individual operators, or commercially sensitive information relating to a maritime transport operation. While such information may not always be expressly conveyed as 'confidential', if a surveyor becomes party to it, they should not use it (share with another party, or offer to share it) for any improper (self-serving) purpose.
- Rule 44.25(2) sets out the matters the Director must have regard to in determining whether an applicant has the competency, technical qualifications and experience to undertake the surveys for which application is made. The Director may have regard to other matters but the ones listed must be taken into account when assessing the application:
  - the qualifications of the applicant;
  - any technical training that the applicant has completed; and
  - the applicant's knowledge of a range of named matters. These include the relevant legislation, and knowledge of ship design, construction, equipment and its use, and any national and international survey standards.

### *Requirements as to the performance of survey*

Under Rule 44.25(3) the Director can impose requirements as to the performance of surveys. Such requirements are about how surveys are performed not standards against which a vessel is surveyed. Only the rule prescribes the standard. For example: the standard prescribed in the rule may require a surveyor to ensure the construction of a ship provides strength for the safe operation of the ship in the sea and weather conditions likely to be encountered in the area of operation. The Survey Performance Requirements will state what parts of the hull and deck a surveyor must survey before determining that the construction provides the necessary strength. Another example of a survey performance requirement could be a requirement set by the Director that when performing a periodic survey of the hull of a fibreglass vessel, the surveyor must always inspect the external ballast for signs of corrosion or other deterioration of the ballast or fastenings, and for its secureness on the hull.

Where the Director has imposed any such requirements, a surveyor must comply with them when undertaking vessel surveys.

Rule 44.25 (5) sets out the process the Director must go through before imposing survey performance requirements. This includes notice of the intention to do so, and consultation with surveyors and other interested persons as the Director considers appropriate. Under the same sub-rule the Director must ensure that any requirements, any standards, and any guidelines are directly relevant to the survey or other function to be performed by a surveyor. The Director must also notify, as soon as practicable, any new or amended requirements, standards, or guidelines in relevant industry publications and on the Maritime New Zealand website.

#### *Availability of Certificate of Surveyor Recognition*

Rule 44.26 requires a surveyor to make their Certificate of Surveyor Recognition available at his or her place of business. To 'make available' is to provide on request. In practice, because the document will be A4 and laminated prior to issue it may be difficult to take it to every place where a surveyor conducts their business. The intent of the requirement is to ensure that surveyors, as is practical and depending on whether they have an office (which is a place of business as much as a vessel being surveyed), either carry their certificate or keep it at their office and in either case make it available on request.

#### *Obligation to notify Director of ship safety concerns*

Rule 44.27 obliges holders of a Certificate of Surveyor Recognition to notify the Director of ship safety concerns. The intention of this requirement is to reinforce to recognised surveyors that they have a both a specific and general professional duty to contribute to maintaining the safety of vessels operating under MOSS. The obligation applies if and when a surveyor has reasonable grounds on which to believe a ship is being operated with an existing safety issue that he or she considers would prevent the issue of a Certificate of Survey OR that a ship is operating without a valid certificate of survey.

The obligation applies both to ships that the surveyor has been commissioned to survey and more generally to any commercial ship in operation.

Examples of where the obligation would need to be exercised include the following:

- A surveyor surveys a vessel and advises the operator that there are 20 vessel failings that need to be remedied before the vessel can be issued with a Certificate of Survey. The operator refuses to fix the failings and instead asks another surveyor to undertake the survey. The vessel is issued a certificate of survey but the initially commissioned surveyor notes that several of the failings he identified have not been remedied and the vessel is in operation.
- A surveyor is at a marina for the purposes of undertaking a survey on vessel A. She notices that vessel B has structural hull damage which could affect its safe operation. However the owner is ignoring this risk and is taking passengers on board for a harbour sailing.
- A surveyor issues a certificate of survey on condition a vessel has 5 deficiencies repaired within 3 months. Four months later the surveyor sees the same vessel at close range while undertaking another survey and observes that several of the repairs he instructed have not been done.

In each of these examples, the surveyor had evidence to support a reasonable belief of legitimate ship safety concerns.

## **2.2 Subpart B: Certificate of Survey**

A certificate of survey is not a maritime document.

Although a surveyor could issue a certificate of survey for less than 5 years, the intention is that the survey cycle for the majority of vessels will be 5 years. In issuing a certificate the surveyor must be satisfied ship safety requirements have been met and may make the issue of the certificate subject to conditions, including limitations, as the surveyor considers appropriate.

The requirements which the surveyor must be satisfied have been met are set out in Rule 44.41(2).

The following requirements are specified in that sub-rule:

- sound and serviceable hull, superstructure, decks and valves
- sound and serviceable steering gear and propulsion system (if applicable)
- 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
- survey requirements have been met (as they differently relate to a new ship, an existing ship, a major repair or modification, or a change in the shop of a ship's certification (Appendix 1 and 2 of the Rule prescribe those requirements and are covered separately in this AC)
- a survey plan, maintenance plan, safety equipment list and spare parts list have been developed for each ship.

#### *Certificate of survey*

Rule 44.42 sets out the information that a surveyor must include on a Certificate of Survey. Maritime New Zealand has prepared a template certificate for use by surveyors and it is important that if the template is not used that a surveyor checks that all the information required under this rule is included. With the exception of 'any conditions imposed on the ship by the surveyor' (where there are no such conditions), all other information must be included.

#### *Surveyor provides survey report*

Rule 44.43 requires a surveyor to complete a survey report for each survey undertaken. This must be completed as soon as practicable and must in each case be provided to the Director. The report must be in a form acceptable to the Director and must include the details prescribed in clause 1.3 of Appendix 2. (For those details, refer to the coverage of Appendix 2 in this AC).

## **2.3 Subpart C: Certificate for International Voyage**

Rule 44.61 relates to the power of the Director to issue a certificate where a non-passenger vessel of less than 500 gross tonnage and 45 metres in length is intended to be taken on an international voyage. Under Rule 19.62(3)(c), the maritime transport operator must make an application for a certificate if such travel is intended.

A ship which plans to carry more than 12 passengers on an international voyage does not come under this provision of the rule and must comply with Rule Part 21 because it will be considered a SOLAS ship irrespective of its tonnage or length.

The application must include a current Certificate of Survey that has been issued for the vessel in regard to the intended voyage. Vessels which have been surveyed to unlimited operating limits do not have to resurvey the vessel for the international voyage and can include the certificate which has been given unlimited operating limits in the application. In the case of a vessel which is not surveyed to unlimited operating limits, such a Certificate of

Survey is particular to a voyage and may be issued by a recognised surveyor in accordance with the requirements in Rule 44.41. Those requirements include specified ship safety requirements, requirements as to the information that must be included on the Certificate of Survey, and requirements as to the documents that must be developed for the ship including a survey plan, maintenance plan, a safety equipment list and a spare parts list.

It is noted that in Rule 44.41(1) a Certificate of Survey may be issued for up to 5 years. Where a vessel which does not have unlimited operating limits has to be resurveyed for the purpose of assessing the vessel's fitness for an international voyage, the Certificate will apply only for the period between the voyage out of and back to New Zealand. Each repeat voyage requires its own Certificate for International Voyage and its own Certificate of Survey. Certificates of Survey issued to ships which do not hold unlimited operating limits and are undertaking an international voyage have no relationship to, or bearing on, an existing Certificate of Survey held for the vessel (as required under Rule 19.62(1) for the purpose of conducting a maritime transport operation).

For ships that are surveyed for unlimited operating limits and have been issued with a Certificate of Survey for 5 years, the Certificate of International Voyage will be issued for 5 years.

If the Director is satisfied that it is appropriate for the Certificate of International Voyage to be issued, in the circumstances particular to the application, he may do so. He or she may also impose conditions on the Certificate.

## 2.4 Subpart D: Transition and revocation

This subpart covers the transitioning of existing ships and existing surveyors from the Safe Ship Management System to the Maritime Transport Operating System.

### *Transition for existing ships*

Existing ships are not new ships. New Ships are defined as those built after 1 July 2014 or those that become a commercial ship for the first time on or after 1 July 2014.

Under Rule Part 44.81 a ship that has a Fit for Purpose Certificate and a current NZ Safe Ship Management (SSM) Certificate is deemed to have been issued with a Certificate of Survey (under this Part).

As long as the requirements of the Fit for Purpose Certificate are met, the deemed Certificate of Survey remains valid until the expiry date of the Fit for Purpose Certificate or the next inspection date for the ship (as set out in its approved maintenance plan under SSM). Whichever of these occurs earliest is the date on which the deemed Certificate of Survey lapses.

Where a ship has a Fit for Purpose Certificate, but does not have a current SSM Certificate immediately before 1 July 2014 it may be issued with a Certificate of Survey by a surveyor.

In issuing the Certificate of Survey, the surveyor is not required to apply all of the provisions of Appendix 2 but may apply those he or she considers appropriate. This is because a Fit for Purpose Certificate closely aligns with a Certificate of Survey in terms of its issue being contingent on the surveyor being satisfied that all applicable maritime and marine protection rules having been met.

### *Transition for existing surveyors*

If, on 1 July 2014, a person holds a certificate of recognition as a surveyor issued by the Director under Rule Part 46.29(1), that certificate will become a deemed Certificate of Surveyor Recognition under this rule.

The deemed Certificate remains valid until the expiry date of the certificate of surveyor recognition, but only if the surveyor continues to satisfy the existing conditions of the certificate. .

## **2.5 Appendix 1: Issue of a Certificate of Survey for a new ship**

This Appendix prescribes the details of the survey required by Rule 44.41(2)(b)(i), which goes to the requirements of the Initial Survey Portfolio.

A surveyor may not issue a Certificate of Survey for a new ship unless satisfied with the Initial Survey Portfolio in the following regards:

- that it is a complete record of initial surveys undertaken, and
- it contains a statement made by a surveyor in respect to each initial survey.

If exercising the discretion to impose conditions on a Certificate of Survey, the surveyor must also give due regard to any conditions or limitations that are included in the Initial Survey Report.

Each Initial Survey Portfolio must include a design report, a construction report, and an equipment report. Each report must have been completed by a surveyor or by a person whose qualifications or certifications as a surveyor have been recognised by the Director (in accordance with section 41(2) of the Maritime Transport Act).

Each report for the Initial Survey Portfolio has to be in a form acceptable to the Director and must include the information required in 1.1.3 of the Appendix. That information is:

- the name and signature of the person who completed the report
- the ship's MSA/MNZ number
- the scope of the ship's certification
- a statement from the person who completed the report confirming that the ship is fit for its intended use and meets the applicable requirements of all maritime safety and marine protection rules
- any conditions associated with the use of the ship that have been imposed by the person who completed the report, the ship designer, and the builder
- the date of the report.

Each Initial Survey Portfolio has to include a copy of the survey plan for the ship.

The Initial Survey Portfolio for each new ship must be supplied to the Director as soon as practicable after its completion. It must also be supplied to the maritime transport operator or ship owner, as applicable.

## **2.6 Appendix 2: Issue of Certificate of Survey for existing ships and surveys for major repair, major modification, or change of scope of certification**

This appendix prescribes the standards and details for surveys (which a surveyor must be satisfied have been met under rule 44.41(2)(b)(ii)), and survey reports (which a surveyor is required to provide under rule 44.43).

## **Survey Requirements**

A surveyor may only issue a Certificate of Survey for an existing ship according to the requirements set out in this appendix.

In terms of survey requirements, a surveyor must be satisfied that the ship continues to meet the requirements under rule 44.41(2). Those requirements go to the ship's safety, the development of a survey plan, a maintenance plan, a safety equipment list and a spare parts list. The surveyor must also be satisfied that the survey plan remains consistent with the requirements of rule 19.43. That rule covers the responsibilities and obligations of the maritime transport operator in terms of having a survey plan developed, applying the plan, making amendments to it, and making it available for inspection.

If a surveyor identifies any deficiencies in the course of conducting a survey, he or she must be satisfied that the repairs or renewals of equipment or ship parts have been made satisfactorily in terms of materials and workmanship, and that the ship continues to meet all applicable maritime rules and marine protection rules.

A surveyor may issue a Certificate of Survey where there are outstanding deficiencies or matters to be remedied but those deficiencies should not, at the time they are identified, affect the ship's safety, or its compliance with any maritime or marine protection rules. An example of a matter to be remedied may be a deteriorated item that will need repair or replacement within a few months but that is not currently affecting safety. The surveyor may make a condition on the Certificate of Survey that the item is repaired or replaced within a specified period. This same remedial action should be reflected in the ship's maintenance plan.

## **Survey Report Requirements**

Each survey report that is required under rule 44.43 has to be in a form acceptable to the Director. Maritime New Zealand has produced survey report templates and this is the acceptable form. The reports must include:

- the name and signature of the person who completed the report
- the MSA/MNZ number of the ship
- a statement that the ship and survey plan are maintained at the date of the survey
- any deficiencies, or operating limitations, and the dates by which any remedies must be completed (by the maritime transport operator) in order for the Certificate of Survey to remain valid
- the date of the survey, and
- the date on which the Certificate of Survey expires.

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

Where a surveyor undertakes a survey of a major repair, a major modification, or a change in a ship's scope of certification, he or she must do the following:

- assess the degree and nature of, and the risk associated with, the repair, modification or change of scope. (Note that for a major repair or modification the survey occurs both prior to the repair and after it has been completed. In the pre-repair or modification element of the survey, a surveyor must consider the above matters as these affect, at first instance, whether the repair or modification goes ahead).
- having undertaken an assessment of risk (as above), require the application of such provisions (under rule 44.41(2)) as the surveyor considers appropriate.

### **Relocation without a valid Certificate of Survey**

A surveyor may permit a ship without a valid Certificate of Survey to relocate for the purpose of undergoing a major repair, a major modification, or a survey. In granting such permission the surveyor may impose any conditions or limitations considered appropriate.

### 3. General enquiries

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