

Draft Marine Protection (Parts 102 and 131) Amendment Rules

Pursuant to sections 387 and 390 of the Maritime Transport Act 1994, the Minister of Transport makes the following rules.

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Rules

1 Title

These rules are the Marine Protection (Parts 102 and 131) Amendment Rules 2019.

2 Commencement

These rules come into force on X.

Amendments to rule 102

3 Amendment of rule 102.2

In rule 102.2 insert the following definitions in their appropriate alphabetical order:

Joint Rig Committee means the committee known as the Joint Rig Committee, comprising members of the Lloyd's Market Association and the International Underwriting Association of London

EED 8/86 means the standard form wording for energy exploration and development insurance developed by the Joint Rig Committee in 1986

4 Amendment of rule 102.7

In rule 102.7 replace "102.8 and 102.9" with "102.8 to 102.9".

5 Rule 102.8

Replace 102.8 with:

102.8 Application for issue or recognition of certificate of insurance

The owner of a regulated offshore installation to which this rule applies must ensure that every application for the issue or recognition of a certificate of insurance for that regulated offshore installation is—

- (a) submitted to the Director in accordance with section 269 of the Act; and
- (b) accompanied by—
 - (i) such evidence of the existence of the contract of insurance or other financial security as the Director specifies; and
 - (ii) a translation into English if the language of the certificate of insurance for which recognition is sought is not English; and
- (c) accompanied by such information as may be reasonably required by the Director to determine whether the requirements of rule 102.8A(1)(a) are met in respect of each offshore installation for which a certificate of insurance is applied for including, but not limited to:
 - (i) the applicant's planned work programme during the period to which the certificate of insurance will apply;

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- (ii) the location of each installation to be covered by a certificate of insurance:
 - (iii) the nature of the hydrocarbon being explored or mined:
 - (iv) if the owner has, for the purpose of consideration under rule 102.8A, provided with its application a contract or contracts of insurance or other financial security for an amount that is less than \$1.2 billion—
 - (A) the total volume of hydrocarbon likely to be released in the event of a discharge of hydrocarbons; and
 - (B) the potential impact of hydrocarbon on the shoreline in the event of a discharge of hydrocarbons:
 - (v) the applicant's oil spill contingency plan under Marine Protection Rules Part 131.

102.8A Decision on application for issue or recognition of certificate of insurance

- (1) The Director must issue or recognise a certificate of insurance for a regulated offshore installation to which this rule applies where he or she is satisfied that—
 - (a) the contract or contracts of insurance or other financial security in respect of the regulated offshore installation will provide insurance or other financial security—
 - (i) for an amount—
 - (A) of \$1.2 billion or more; or
 - (B) not less than the amount required according to the scaled framework in Appendix 5; and
 - (ii) that is of a kind and scope suitable to meet at least the following types of the owner's potential liability under Part 26A of the Act:
 - (A) liability, in relation to the discharge or escape of a harmful substance or the dumping of any waste or other matter from the installation, for the costs of removing, containing, and rendering harmless the harmful substance, waste, or other matter under section 385B of the Act; and
 - (B) liability, in relation to the discharge or escape of a harmful substance or the dumping of any waste or other matter from the installation, for pollution damage to property under section 385C of the Act; and
 - (b) the contract or contracts of insurance or other financial security is, or are, governed by New Zealand law and enforceable by a court in New Zealand; and

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- (c) the insurer or provider of financial security named in the application is financially capable of meeting a claim for the full amount specified in the contract or contracts of insurance or other financial security taking into account the rating, if any, of that insurer or provider of financial security under the Insurance (Prudential Supervision) Act 2010 applicable to that insurer or other person; and
 - (d) the insurer or provider of financial security complies with any provisions of the Insurance (Prudential Supervision) Act 2010 applicable to that insurer or other person.
- (2) When applying the scaled framework in Appendix 5 for the purpose of rule 102.8A(1)(a)(i)(B), the Director—
- (a) must take into account—
 - (i) the nature of the hydrocarbon being explored or mined; and
 - (ii) the location of the exploration or mining activity; and
 - (iii) the total volume of hydrocarbon likely to be released in the event of an oil spill; and
 - (iv) the potential impact of hydrocarbon on the shoreline in the event of an oil spill; and
 - (v) relevant technical information, data, advice and guidance; and
 - (b) may accept an assurance by one or more members of a joint venture that the amount of insurance or other financial security held jointly by members of the joint venture will be apportioned in a particular manner.
- (3) For the purpose of rule 102.8A(1)(a)(ii), the Director may, without limitation, take into account the following in the contract or contracts of insurance or other financial security in respect of the regulated offshore installation—
- (a) any deductible, excess, or equivalent self-insured retention;
 - (b) any partial interest clause;
 - (c) any other insurance clause;
 - (d) any warranties, conditions, or exclusions;
 - (e) the possible effect of the owner's breach of its duty of utmost good faith;
 - (f) any choice of law or jurisdiction clause;
 - (g) any pay to be paid clause.
- (4) Without limiting rule 102.8A(1)(a)(ii), the Director may treat the requirements of rule 102.8A(1)(a)(ii) as met if the Director is satisfied that the contract or contracts of insurance or other financial security provides—
- (a) in respect of liability of a type prescribed in rule 102.8A(1)(a)(ii) arising from an out of control well, cover at least equivalent to that specified in Section C of EED 8/86; and

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- (b) in respect of liability of a type prescribed in rule 102.8A(1)(a)(ii) arising from a pipeline, storage facility, oil bunker or other possible source that is not a well, cover at least equivalent to that specified in Appendix 6.
- (5) If any contract of insurance or other financial security includes cover for first party claims by the operator in the event of loss of well control, the Director may take that contract into account under rule 102.8A(1)(a)(i) only to the extent of the residual third party cover that the Director determines is provided by the contract.

102.8B Particulars of certificate of insurance issued by Director

Every certificate issued by the Director for a regulated offshore installation to which this rule applies must be in the form specified in Appendix 2 and must contain the following particulars:

- (a) the name of the owner of the regulated offshore installation and the principal place of business of that owner; and
- (b) the nature of the contract or contracts of insurance or other financial security for the regulated offshore installation; and
- (c) the name and principal place of business of the insurer or other person providing financial security for the regulated offshore installation and the place of business where the insurance or other financial security is established; and
- (d) the period of validity of the insurance or other financial security in respect of the regulated offshore installation; and
- (e) the period of validity of the certificate of insurance, which must not exceed a period of 12 months.

6 Transitional provisions

- (1) In this rule,—
- (a) **commencement date** means the date on which these amendment rules come into force
- (b) **existing installation** means a regulated offshore installation referred to in rule 102.7 that was operating in New Zealand immediately before the commencement date
- (c) **new installation** means a regulated offshore installation referred to in rule 102.7 that was not operating in New Zealand immediately before the commencement date.
- (2) Nothing in these amendment rules affects the validity of a certificate of insurance issued in respect of an existing installation and that was in effect immediately before the commencement date.
- (3) If an application that meets the requirements of rule 102.8(1) (as it was immediately before the commencement date) in respect of an existing installation is

submitted (but not decided) before the commencement date, the application must be decided as if this amendment rule had not come into force.

- (4) If an application that meets the requirements of rule 102.8(1) (as it was immediately before the commencement date) in respect of an existing installation is submitted after the commencement date but before the first anniversary of the commencement date, the applicant may elect whether the Director considers the application under Part 102 as it was immediately before the commencement date or as it is after the commencement date.
- (5) An application in respect of a new installation that meets the requirements of rule 102.8(1) (as it was immediately before the commencement date) must be decided as if this amendment rule had not come into force if it is—
 - (a) submitted (but not decided) before the commencement date; or
 - (b) submitted within 3 months after the commencement date.
- (6) If in accordance with subrules (3), (4), or (5) the Director decides an application under the requirements of Part 102 as it was immediately before the commencement date the period of validity of any certificate of insurance issued is the shorter of—
 - (a) a period for which the certificate may be issued in accordance with rule 102.8(3)(e) (as it was before the commencement date); or
 - (b) the period remaining between the date of issue of the certificate and the first anniversary of the commencement date.

7 Appendix 5 added

Add the Appendix 5 set out in Schedule 1.

8 Appendix 6 added

Add the Appendix 6 set out in Schedule 2.

9 Revocation

The Marine Protection Rules Part 102 Amendment 2017 is revoked.

Amendments to Part 131

10 Amendment of rule 131.2

In rule 131.2 in the definition of “oil spill contingency plan” after “plan” insert “(including a well containment contingency plan)”.

11 Amendment of rule 131.24

In rule 131.24 replace subrule (1) with:

- (1) The Director may approve a proposed oil spill contingency plan for a period not exceeding 3 years if the Director is satisfied that—

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- (a) the proposed oil spill contingency plan complies with the requirements of the Schedule; and
 - (b) the applicant has the ability, including the financial resources, to implement the plan.

12 Amendment of Schedule

- (1) In the Schedule at the end of clause 1(h), replace the full stop (“.”) with “; and”; and
- (2) In the Schedule after clause 1(h) add:
 - (i) a well containment contingency plan.

WORKING DRAFT - NOT GOVERNMENT POLICY

Schedule 1
New Appendix inserted

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Appendix 5
Scaled framework

Score A: Total length of shoreline oiled

0 km	1 to 200 km	200 to 400 km	400 to 600 km	600 to 800 km	800 to 1,000 km	1,000 to 1,200 km	Over 1,200 km
0 points	1 point	2 points	3 points	4 points	5 points	6 points	7 points

Score B: Total volume reaching shore

0 bbls	1 to 5,000 bbls	5,000 to 40,000 bbls	40,000 to 80,000 bbls	80,000 to 120,000 bbls	120,000 to 160,000 bbls	160,000 to 200,000 bbls	200,000 to 240,000 bbls	240,000 to 280,000 bbls	Over 280,000 bbls
0 points	1 point	2 points	3 points	4 points	5 points	6 points	7 points	8 points	9 points

Score C: Hydrocarbon type

Dry gas	Other
0 points	1 point

Total Score

Score (total A+B+C)	Band	Insurance or other Financial security requirement
0	0 (dry gas)	NZ\$25 million
1	1	NZ\$50 million
2-3	2	NZ\$100 million
4-5	3	NZ\$200 million
6-7	4	NZ\$300 million
8-9	5	NZ\$450 million
10-11	6	NZ\$600 million
12-13	7	NZ\$800 million
14-15	8	NZ\$1 billion
16-17	9	NZ\$1.2 billion

Schedule 2
New Appendix inserted

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Appendix 6
**Minimum requirements for cover for pollution arising other than
from out of control well**

For the purpose of rule 102.8A(4)(b), the minimum cover is the market standard pollution cover buyback endorsement for offshore property that indemnifies the insured whether or not the well goes out of control, for all sums costs or expenses in respect of an event of insured damage to a pipeline, storage facility, oil bunker or other possible source that is not a well, that would be covered under Section C of EED 8/86 in the case of an out of control well, where the event—

- (a) was not intended or expected by the insured; and
- (b) occurs during the period of insurance; and
- (c) is discovered by the insured within 30 days of it arising; and
- (d) is reported to the insurer within 60 days of its discovery.

