

# Marine Protection Rules

## Marine Protection Rule Part 102

### Certificates of insurance amendment 2018

#### Background

Under Part 26A of the Maritime Transport Act 1994, owners and operators of offshore installations are liable, in the event of a spill from their operations, for the full costs related to pollution damage to other parties, and costs incurred by public agencies in preventing, controlling and cleaning up a spill.

To provide a degree of assurance that operators are able to meet their financial liabilities under Part 26A, operators are also required to hold a Certificate of Insurance issued by Maritime New Zealand under Marine Protection Rule Part 102 (Part 102).

A Certificate of Insurance is issued once operators provide evidence of external financial assurance, such as insurance or other financial security, that meets their potential liabilities up to an amount specified in Part 102. If an operator is unable to pay clean-up costs and damages associated with a pollution incident, Part 102 provides an avenue for affected parties to make a claim to the insurers or third party guarantor named in the Certificate of Insurance. In a worst case scenario where an operator goes into receivership following a major incident, the requirements under Part 102 limit the Crown and other third parties' exposure to costs and damages.

Currently, Part 102 applies a fixed minimum requirement for all offshore installations, irrespective of the operation's type, possible risk or the potential impact of a spill. The minimum is currently set at 14 million International Monetary Fund Units of Account, or approximately NZ\$29 million. This amount is considered insufficient to cover the likely third party costs of a significant spill.

An amendment to Part 102 was made in 2017 but is still to be brought into force (2017 Amendment), available here: <https://www.maritimenz.govt.nz/rules/part-102/Part102-Amendment-2017.pdf>. Key changes were the:

- a. introduction of a scaled framework to determine the required level of financial assurance required for third party clean-up and compensation costs for each installation, from \$25 million to a maximum of \$600 million;
- b. provision for well containment<sup>1</sup> costs to be considered by the Director of Maritime NZ, in addition to clean-up and compensation costs; and
- c. exclusion of financial assurance requirements for third party economic losses that are not commonly covered by the global insurance market, to ensure that the regime is workable and insurable.

Please visit: <http://www.transport.govt.nz/sea/financial-security-regime-for-offshore-installations/> for further information on consultation undertaken previously in 2016 and 2017.

#### Purpose

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<sup>1</sup> Well containment refers to stopping the unintended flow of hydrocarbons from a blown-out well.

This new amendment proposes three key changes to the 2017 decisions for consideration:

- i. increasing the maximum level of financial assurance required for clean-up and compensation under the scaled framework (which is set out in the regulator guidance) from NZ\$600 million to NZ\$800 million;
- ii. fixing an in force date for the 2017 Part 102 amendment of 1 June 2018, bringing it into legal effect sooner than envisaged
- iii. transitional arrangements to provide existing operators of offshore installations a period of up to 1 year to adjust to the new regime.

The objectives of these three changes are to ensure the regime provides adequate protection in the event of a spill and implementing a framework that is insurable.

### ***Increasing the maximum level of financial assurance to NZ\$800 million***

This proposed amendment to Rule 102 would increase the maximum level of financial assurance for clean-up and compensation on the scaled framework from NZ\$600 million to NZ\$800 million. Previous consultation in December 2016 on proposed amendments to Part 102 included a proposal to increase the maximum level of assurance required for third party clean-up and compensation costs to NZ\$800 million.

The figure of NZ\$800 million was based on the modelling of a credible worst case spill scenario in New Zealand, conducted by Navigatus Consulting Ltd. The outcomes of this modelling work suggest that NZ\$800 million more closely reflects the level of risk to the Crown and other third parties in the event of a significant spill.

It is important to note that the operator has unlimited liability under Part 26A of the Maritime Transport Act, with Part 102 providing a level of financial assurance that the costs to clean up and compensate for a credible worst case scenario spill will be covered.

### ***Setting the entry into force date of the amendment***

Drilling is expected to occur in New Zealand waters over the 2018/2019 summer. Drilling activity presents more risk than ongoing production activities. Given this, it is imperative that the required levels of assurance are increased before drilling commences to better reflect the potential financial implications of clean-up and compensation costs. Intended operators will need several months to go through the process of arranging insurance, preparing and lodging applications and engaging with the regulator. The regulator will need time to consider the applications, make further enquiries that may be necessary and make decisions on the applications.

The 2017 amendment did not set a specific start date, but officials had anticipated that the rule would be brought into force in September 2018. However, to ensure that there is sufficient time to complete applications for any anticipated drilling under the amended rule, the entry into force date of the amended rule will be set at 1 June 2018.

## ***Additional transitional provisions***

### *Existing installations*

An existing installation will be defined as a regulated offshore installation referenced in rule 102.7 that was operating in New Zealand immediately before commencement of Marine Protection Rules Part 102 Amendment 2017. Existing installations have much lower risk of an oil spill than drilling operations.

The proposed amendment provides a transitional period for existing installations of up to 12 months following Part 102 coming into force. This will enable certificates for existing installations to remain in place until their expiry date.

The amendment also allows for applications from existing installations to continue to be processed under the old regime. These installations will have a window of until 1 August 2018 to have their application lodged. This three-month window will facilitate an orderly process for the updating of assurance requirements, for example, insurance policies.

All owners of existing installations will be required to be compliant with the new requirements by 1 June 2019. This will mean that any certificates issued for existing installations during the transitional period will be issued for less than 12 months.

### *New installations*

A new installation will be defined as either an offshore installation or an offshore installation that was not operating in New Zealand immediately before commencement of Marine Protection Rules Part 102 Amendment 2017.

All applications for new installations will be considered under the new rules from 1 June 2018. This means that all drilling activities carried out during the 2018/19 season will be covered by the new assurance requirements.

## **Making submissions**

The deadline for making submissions on the draft amendments to Part 102 is **Wednesday, 21 March 2018**. You may make comments by:

- Email: [info@transport.govt.nz](mailto:info@transport.govt.nz); or
- Post: Ministry of Transport  
PO Box 3175  
WELLINGTON 6140

## **Submissions are public information**

Your submission may be the subject of a request under the Official Information Act 1982, which could result in its publication. The withholding of particular submissions for any reason will be determined in accordance with the Official Information Act. If you feel that any part of your submission should be properly withheld under the Official Information Act, you should indicate this clearly. Further information about the Official Information Act is available at: <http://www.legislation.govt.nz>.