

## Regulatory Operations

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### Guidelines for Applying for a Maritime or Marine Protection Rule Exemption

These guidelines are to help ship owners, operators, seafarers and surveyors apply to Maritime New Zealand (Maritime NZ) for an exemption from specified requirements in maritime and marine protection rules.

#### What is an exemption?

An exemption is the legal permission not to comply with a particular piece of New Zealand law. It is important to understand that the Director of Maritime NZ can only consider granting an exemption from requirements in maritime/marine protection rules if specific criteria are satisfied (see below). An exemption will not be possible if the specific rule states that an exemption cannot be granted. Your application must provide sufficient 'technical' reasons for the Director to be satisfied that the criteria are met **and** show that the risk to safety and risk of harm to the marine environment are not significantly increased. Your application must state the legal criteria under which you are applying.

#### What form should I use?

There are three forms available to request an exemption.

- Request for exemption from Maritime Rules (MSF143)
- Request for exemption from Marine Protection Rules (MSF144)
- Request for exemption from Maritime Rules Part 32: Seafarer Licensing (MSF145)

The forms set out all the details required to help Maritime NZ make a faster, more accurate decision. The forms can be found on the Maritime NZ website.

[www.maritimenz.govt.nz/exemptions](http://www.maritimenz.govt.nz/exemptions)

#### Exemption request details

On the form you will need to identify the rule requirement from which you are requesting an exemption. Make sure you include the Part number, the paragraph, and any levels of sub-paragraph. As a double check, also enter the text for that rule. For example:

*Rule Part 40C.12(1)(a)*

*(1) Except as provided in rule 40C.12(2), a new ship of 15 metres or more in length overall must be fitted with a vertically continuous collision bulkhead that is —*

*(a) watertight up to the freeboard deck.*

This ensures that you are referring to the correct rule and helps focus the application on what is required to gain an exemption to that rule.

For maritime and marine protection rules, excluding Part 32, a **ship surveyor** (recognised in the field to which the application is directed) must sign the form. Any necessary supporting information from the attending surveyor should be provided in writing. If there is not enough space on the form for the supporting information, then you should attach separate sheets or electronic documents, for example, MS Word or PDF files.

## Reason for exemption

You must provide information to support your exemption request. Your reason for an exemption request must align with at least one of the following criteria. You need to explain your reason for choosing the criteria. Some typical examples for each are set out below.

- a) In what way has the requirement from which you are seeking exemption been substantially complied with, and why is further compliance unnecessary?

Examples might include:

- *The recognised make of the equipment product specified in the rule is not available but an alternative that meets the same standard is proposed.*
- *Certification requires three months of sea service but applicant is slightly short of this for a specified reason.*

- b) In what way is the manner in which the requirement has been, or is sought to be fulfilled as effective as or more effective than actual compliance with the requirement?

Examples might include:

- *The rule requires a CO<sub>2</sub> flooding system but an AFFF system is fitted which meets the performance requirements and uses a more effective extinguishing agent.*
- *The collision bulkhead is located further aft than the rule permits but as the vessel has a planing hull this is more effective in meeting the rule's objectives.*

- c) Why, in this particular case, is the requirement in the rule clearly unreasonable or inappropriate?

Examples might include:

- *Portable fire extinguishers of the specified size are no longer available so smaller units with an equivalent aggregate volume will be installed.*
- *The requirement is technically impossible; the required spacing of structural members in the engine room means the engine cannot be physically installed in the space.*
- *The vessel is operating in an area designated as inshore limits but is to all intents and purposes enclosed limits. Inshore limits requirements for design are clearly unnecessary if the operation is restricted to enclosed limits.*

- d) What events have occurred which make the requirements unnecessary or inappropriate in this particular case?

Examples might include:

- *Consequences of the COVID-19 pandemic impacted the ability to comply with the specified requirement.*
- *A global shortage of a particular product impacted the ability to comply with the specified requirement.*

## Assessment of risk

### Risk to safety and risk of harm to the marine environment

You must explain how, in this particular case, the risk to safety and/or of harm to the marine environment is not significantly increased. You should do this by taking into account the purpose of the rule and explaining any action taken or provision made to reduce risk. Risk can be defined as **likelihood** multiplied by **consequence**. If either one of these components increases, then – for the risk to remain the same – the other must be reduced.

For example, if – as the result of granting an exemption – the likelihood of a hazardous situation or incident occurring is expected to increase, then the potential consequences or outcome of that incident needs to be reduced to keep the level of risk the same, and vice versa.

## Obligations under any international conventions

When assessing your application, Maritime NZ will consider whether granting the exemption would contravene any applicable international convention (maritime or other). If it would, then the exemption cannot be granted.

Some examples of rule parts which give effect to international conventions include (but are not limited to):

- Part 22: Collision Prevention (COLREGS)
- Part 32: Seafarer Certification (STCW)
- Part 40B: Design, Construction and Equipment – SOLAS Ships
- Part 47: Load Lines
- Part 48: Tonnage Measurement
- Part 51: Crew accommodation (ILO 92, ILO 133, Maritime Labour Convention)
- Part 52: Maritime Labour Convention
- Part 120: Discharge of Oil (MARPOL Annex I)
- Part 123B: Documents Record Books and Manuals (MARPOL Annex I)
- Part 199: Prevention of Air Pollution from Ships (MARPOL Annex VI)
- Part 300: Ballast.

For example, an application for an exemption from requirements related to navigation lights requirements in Part 22 will be considered against the corresponding COLREGS requirement. In some cases, and upon certain conditions, the conventions may permit exemptions to be granted from specific requirements. However, if there is no flexibility permitted on those requirements then to grant an exemption would put New Zealand in breach of its obligations under that convention. Therefore, an exemption must not be granted.

On the exemption application form, you are asked to verify that, to your knowledge, the requested exemption does not breach New Zealand's obligations under any international convention.

## Declaration

To complete the application form, you, or your surveyor, must sign the declaration. The declaration asks you to confirm that all other maritime and marine protection rules are being complied with. It also asks you to confirm that the risk to safety and risk of harm to the marine environment will not be significantly increased by the granting of the exemption.

It is important that you understand what you are confirming when you sign this declaration.

## Charging for exemptions

You will be invoiced once we have processed your application. A reference number and instructions explaining how to pay will be sent with the invoice.

You can pay:

- online using a credit card or debit card, or
- by internet banking or bank deposit.

This fee contributes to the costs of processing and assessing your application. Applications are charged at the hourly rate. The cost of an application will be higher if the exemption request requires more technical assessment. You will be charged for the work undertaken on the application – not the outcome. This means that if we decline your application you will still have to pay the fee. Note that in exceptional circumstances, the Director may waive the fee (either in full or in part).

Refer to the Maritime NZ website for more information about how to pay your fees:

[www.maritimenz.govt.nz/howtopay](http://www.maritimenz.govt.nz/howtopay)

## Exemption criteria that must be met

The criteria for granting exemptions are in sections 40AA (for maritime rules) and 395 (for marine protection rules) of the Maritime Transport Act 1994. The sections are virtually identical and set out the criteria under which the Director may grant exemptions. The Director, or delegated decision maker, must be satisfied that the following criteria are met before granting an exemption from a rule requirement.

### 1. International conventions must not be breached

An exemption cannot be granted if it would breach New Zealand's obligations under any international convention (such as the Collision Regulations or MARPOL). This is the first element of the assessment Maritime NZ makes. We will tell you if we cannot proceed with your application because this criterion is not met.

### 2. Reasons for exemption request

Your application must state which of the criteria listed below (at least one) is applicable to your exemption request and explain why.

- a) The requirement from which exemption is sought has been substantially complied with and further compliance is unnecessary (s. 40AA(2)(b)(i)).
- b) The manner in which the requirement has been, or is sought to be, fulfilled is as effective as, or more effective than, actual compliance with the requirement (s. 40AA(2)(b)(ii)).
- c) The requirement is clearly unreasonable or inappropriate in this particular case (s. 40AA(2)(b)(iii)).
- d) Events have occurred which make the requirements unnecessary or inappropriate in this particular case (s. 40AA(2)(b)(iv)).

### 3. Risk to safety must not be significantly increased

For exemptions from requirements in a maritime or marine protection rule, the risk to safety must be evaluated. The exemption must not be granted if it would significantly increase the risk to safety.

### 4. Risk of harm to the marine environment must not be significantly increased

For exemptions from marine protection rules on ballast water or for the purposes of implementing MARPOL Annex VI, the risk of harm to the environment, human health, property or resources must be evaluated.

For exemptions from other marine protection rules, the risk of harm to the marine environment must be evaluated.

The exemption must not be granted if it would significantly increase these risks.

Before granting an exemption, the Director must be satisfied that all four of the assessment criteria listed above are met.

## Factors Maritime New Zealand considers

When assessing an exemption, Maritime NZ considers both risk factors – the **likelihood** and the potential **consequences**:

- How does the requirement of the rule relate to safety (risk of what; risk to whom)?
- What affects the likelihood of the hazardous situation or incident occurring?
- Can its occurrence be made less likely, for example, by limiting exposure by changing hours of operation, the time the vessel spends in a particular area, the duration of the operation to which the exemption will apply etc?

- Is that situation or incident so unlikely that it won't need further mitigation if the rule requirement is relaxed?
- What factors affect the potential consequences of the hazardous situation or incident (for example, distance from shore, time of day, sea temperature, etc)?
- To what extent are these factors within the control of the vessel operator?
- Can any potential consequences be further reduced by other means?
- Are the potential consequences minor enough not to require further mitigation if the rule requirement is relaxed?

Measures to mitigate or lessen the severity of any hazards can be specific to the vessel or the way it is operated, or can be external, such as the characteristics of the location where it operates, for example, on a fixed route within a harbour. These mitigation measures may be imposed as conditions on the exemption.

If you propose alternatives, additional measures or mitigating circumstances in your application, you should show that you have taken into account the factors that affect your vessel and/or operation. You may include any of the following, where relevant.

### **Alternative equipment or arrangements specific to the vessel**

- Have you made alternative arrangements or implemented different equipment (and how is it to be used)?
- Is the proposed alternative equally or more effective in meeting the requirement and intent of the rule?
- What operating limitations or other constraints are associated with these arrangements or this equipment?
- Are there any knock-on effects of this alternative (for example, reduced crewing, increased weight of vessel, restrictions to access, etc)?

### **Additional mitigation measures**

- What other mitigating measures are you proposing?
- Are these measures practical, workable, reasonably fool proof, and readily enforced?

### **External factors**

- What external factors may reduce the risks (for example, the characteristics of the harbour, the presence of other traffic, etc)?
- Are these external factors constant or will they change during the period the exemption is in force?

### **Further considerations**

Maritime NZ may also consider:

- The intent of the rule and what objective is achieved by complying with it.
- Other exemptions already in place for this vessel. Although your application may be acceptable in itself, the cumulative effect of all exemptions may make it unacceptable.
- The decisions made previously for other vessels in similar circumstances.
- Minimum standards of safety which cannot be relaxed.
- The implications, if any, of declining the request.

## Conditions

If an exemption is granted, the Director may apply conditions to mitigate risk. For example, limitations may be put on operating areas, number of passengers, or hours of operation. An expiry date may also be imposed on the exemption to limit its period of validity.

## Example

This example shows some of the issues Maritime NZ may consider when assessing an application:

*An exemption from the requirement to carry a rescue boat is sought for a passenger vessel operating on a short cross-harbour route. The rule in question is in Part 40A.*

### How does the requirement of the rule relate to safety?

The main purpose of the rescue boat is to help recover a person in the water as a result of a man overboard (MOB) from the vessel. The risk being managed is that of an MOB incident. The risk is to the passengers. The rationale behind the rule is that a large vessel is not sufficiently manoeuvrable to rapidly respond if a person falls overboard and it can also be difficult to retrieve someone from the water. So a small, easily launched and highly manoeuvrable rescue craft is needed for this purpose.

### What factors affect the likelihood?

The likelihood of an MOB occurring depends on the opportunities for such an incident. For example: Are people able to wander around the deck during the passage? How high is the bulwark or handrails? Could crew slip during certain operations on exposed decks? What sea conditions are likely to be encountered?

### Can this likelihood be further reduced?

Mitigation measures might include restricting passenger access to open decks or having no open decks, increasing handrail heights, not allowing any children on open decks during passage etc.

Is the situation or potential incident sufficiently improbable so as not to require further mitigation?

You might argue that there is little opportunity for passengers to be on open decks because of the vessel's design, so the likelihood of someone falling overboard is extremely low. The effectiveness of any mitigating measures need to be closely examined. In reality, on this type of passenger vessel there will be open areas and some people will always want to be outside. Smoking will not be permitted in any inside areas, so in practice may be very difficult to restrict passengers' movements outside.

### What factors affect the potential consequences of the hazardous incident?

The vessel operates within a relatively confined and sheltered harbour and is never more than 0.5 miles from the shore. The harbour is always busy, with plenty of small craft on the water at most times and the vessel only operates between 7.30 am and 6.00 pm. However, there are strong tidal currents and anyone falling overboard may quickly be carried up or down the harbour, away from the vessel's normal route and potentially out into open waters. The harbour is in a southern location and survival times in the water during winter without protection will be quite short. In the winter, the first and last trips of the day will be during darkness.

During the summer, the vessel also operates one return service a day on a longer route to a different location, outside the main harbour. So, some of the factors affecting the potential consequences of an MOB may change.

**To what extent are these factors within the control of the operator?**

The operator can control the hours of operation but has limited control over any of other mitigating factors on which they base their case. In particular, any mitigation due to other vessels being readily available to assist cannot be relied upon.

**Can these consequences be further reduced?**

The consequence is a person falling in the water. Their chances of survival are affected by the time in the water and the water temperature (recovery time is critical) and their ability to stay afloat unaided. The only practicable mitigation measures are ones that reduce recovery time and ease of recovery. For example, an additional deckhand.

**Are the potential consequences minor enough not to require further mitigation?**

No. Any MOB situation is serious and requires a rapid response.

**Likely outcome**

Based on the considerations outlined above, this exemption is *likely* to be granted.