

The status of guidance information issued by the Director of Maritime New Zealand

July 2018

Maritime New Zealand Position Statement

PS-08-18

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What this position statement contains

This position statement is aimed at maritime transport operators who are in MOSS. It explains how MOSS operators should treat guidance information issued by the Director of Maritime New Zealand or by industry.

Some MOSS operators are concerned that Rule 19.42(1)(b) makes it compulsory for them to follow guidance.

What the Rules say about guidance

Maritime Rules Part 19 sets out the requirements for MOSS.

Under MOSS a maritime transport operator must develop a Maritime Transport Operator Plan. The plan must include a safety system that identifies the safety risks in the operation and sets out processes and procedures to manage those risks.

Rule 19.42(1)(b) requires the operator's safety system to be consistent with safety guidelines and safety information provided by the Director of Maritime New Zealand and best practice information contained in relevant industry codes of practice.

How should a MOSS operator treat guidance?

Maritime NZ expects the content of a MOSS operator's safety system to align with guidance provided by the Director, and with industry codes of practice that have been developed to an appropriate standard.

This does not mean that an operator must always rigidly follow that guidance. But it does mean that their safety system should be compatible with or contain the same principles as guidance provided by the Director and/or suitable industry codes of practice.

A MOSS operator's safety system must:

- be relevant and applicable to the maritime transport operation
- provide an effective means to manage all reasonably foreseeable hazards
- provide an effective means to prevent harm and respond to an emergency.

Guidance explains how an operator can comply with the safety standards and practices they are required to meet. An operator should use guidance as a reference point when they are developing processes and procedures for their safety system.

A MOSS operator always has the option of applying an alternative approach to managing hazards. If an operator does not follow the guidance, they need to be able to show how their safety system identifies and manages safety risks in some other way. The key requirement is that the safety system is effective.

An alternative approach must:

- manage the hazard or hazards effectively; and
- be compatible with or contain the same principles as guidance provided by the Director and/or contained in recognised industry codes of practice.

What is a relevant industry code of practice?

Maritime NZ will recognise guidance contained in relevant industry codes of practice when it has been developed using the following criteria:

Good practice: The guidance should describe practices (controls) that are known to be effective in reducing the likelihood of harm, and reducing the severity of harm when it occurs.

Maritime NZ will not recognise guidance that simply records common industry practice if that practice has not been effective in reducing harm.

Relevant: The guidance should address a maritime matter that affects a number of people working across a number of maritime operations.

Specific regulatory requirements are identified: it should be clear to the reader whether the guidance applies to the maritime rules or the Health and Safety at Work Act 2015, or both.

Representation: People affected by the guidance (or suitable representatives) should be involved in developing it.

Consultation: People who are affected by the guidance should have an opportunity to comment on the content of the guidance before it is finalised.