



CMS NEWSLETTER

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New Detailed Rules on the Implementation of Agreement for Ship Pollution Response Released on September 14th, 2012 & Developments on SPRO Issue

Outline

- ★ *New Detailed Rules of Maritime Safety Administration of the People's Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response* (hereinafter as "Detailed Rules") was released by China MSA on September 14th, 2012, with a new sample of Agreement for Ship Pollution Response (hereinafter as "the SPRO agreement").
- ★ Updated requirements on the SPRO issue.

Dear Sirs

New Detailed Rules was released by China MSA on September 14th, 2012, and the old one together with their related Notices are put an end.

By studying the new detailed rules carefully and comparing with the old one, it is understood that there are some points which will remarkably affect the ship operator's operation on SPRO agreement conclusion. We hereby summarize it as follows for our clients' reference:

1. The conclusion of SPRO agreement of some kind of ships is not mandatory.



In the Article 17 of the new detailed rules, following ships is not required compulsorily to sign SPRO agreement when they are entering into and exiting China's coastal ports or operating within China's coastal ports:

- River ships;
- LNG ships below 10,000 gross tons;
- Tanks carrying gasoline below 10,000 gross tons; and
- Unloaded liquid cargo ships below 10,000 gross tons.

2. The SPRO agreement is not a precondition for ship's entering into or exiting China's coastal ports or operating within China's coastal ports.

New detailed rules have deleted the relevant precondition request mentioned in article 25 of the old rules. Article 25 of the old rules (effective on June 1st, 2011) imposed that "When ships apply for port entrance or exit or operation within port, the valid SPRO agreement should be submitted to relevant party as a precondition."

In the item No. 4 of MSA Notice on the implement of the new detailed rules (as attached), MSA states that whether the ships have signed the SPRO agreements with approved local SPROs or not, can not be considered as a precondition for ship's port entrance or exit or operation within coastal ports.

However, in the same item, it is also mentioned that for those ships which do not hold valid SPRO agreements, the ships will be confronted with the discretion by local MSA. In our opinion, CMS do not recommend ship operators to take the risk not holding valid SPRO agreements when their ships enter into or exit or operate in Chinese coastal ports.

3. A new sample of SPRO agreement is released by China MSA.

China MSA released a new sample of the SPRO agreement (See attached). Only the rights and obligations of both parties are set out in the new sample. Other articles such as the original article 3 fees and expenses, article 5 confidential obligation, article 6 agreement effect and termination, article 7 liability for breach of contract, article 8 applicable law are allowed to be negotiable between both parties and concluded as the appendix to the standard sample agreement.



Two obligations which did not mentioned in the old sample agreement are setout in the new one:

- In case of oil and bulk HNS cargo transfer, loading and unloading, the agreed SPRO shall deploys the oil boom around the ships or takes other appropriate measures. (item 4 to article 2 of new sample agreement);
- Ship operator shall cooperate with agreed SPRO to carry out ship pollution emergency exercises. (item 4 to article 1 of new sample agreement).

Ship operators are recommended to seek their P& I Clubs' assistance on how to deal with the new format of SPRO agreement. It will be ease for the SPRO agreements' renewal in the coming year or next voyage. Actually, we know IG is preparing a revised IG contract and new FAQ which, we believe, will be available before long.

We are in the continuous effort of collecting updates on the regulations if any. Further information will be provided whenever available.

For more information, please visit our website: www.cmsonline.net

Appendix: Related Documents

1. MSA Notice regarding the detailed rules - 【2012】 NO. 658 (in Chinese Only)
2. Detailed Rules of Maritime Safety Administration of the People's Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response (in Chinese Only)
3. New sample of the SPRO agreement (in bilingual language)