

Reprint
as at 1 September 2016



**Health and Safety at Work (Major Hazard Facilities)
Regulations 2016**
(LI 2016/14)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 15th day of February 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under sections 24(1)(m), 211, 212, 213, 215, and 218 of the Health and Safety at Work Act 2015—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made after complying with sections 217 and 219 of that Act.

Enacting statement: amended, on 1 September 2016, by regulation 4 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Health and Safety at Work (Major Hazard Facilities) Regulations 2016.

2 Commencement

These regulations come into force on 4 April 2016.

Part 1 Preliminary provisions

3 Application

- (1) These regulations apply to a facility or proposed facility where specified hazardous substances are present or likely to be present in a quantity that is equal to or exceeds the lower threshold quantity.
- (2) These regulations do not apply to—
 - (a) an installation to which the Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016 apply; or
 - (b) a mining operation to which the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 apply; or
 - (c) a pipeline to which the Health and Safety in Employment (Pipelines) Regulations 1999 apply; or
 - (d) transit depots, as defined in regulation 3 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001; or
 - (e) designated transfer zones, as defined in regulation 11 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001; or
 - (ea) a facility operated by the Armed Forces where munitions are stored; or
 - (f) the transport of specified hazardous substances by road, rail, internal waterways, sea, or air to a facility.
- (3) In this regulation, **transport** includes—
 - (a) the loading of those substances onto other types of transport; and
 - (b) the unloading of those substances from other types of transport; and
 - (c) the transport of those substances to and from other types of transport; and
 - (d) the loading, unloading, and transport that is carried out at any place, including, but without limitation, at docks, wharves, and marshalling yards.

Regulation 3(2)(ea): inserted, on 1 September 2016, by regulation 5 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

Interpretation

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
Act means the Health and Safety at Work Act 2015

control measures means the measures to be implemented under regulation 30

design notice, in relation to an upper tier major hazard facility, means the notice required under regulation 40 and that contains the information required under Schedule 6

emergency plan means the plan required under regulation 31 and, for upper tier major hazard facilities, that contains the matters to be included under Schedule 3

facility means the whole area under the control of the same person where specified hazardous substances are present in 1 or more places, and, for the purposes of this definition, 2 or more areas under the control of the same person and separated only by a road, railway, inland waterway, pipeline, or other structure are treated as 1 whole area

local authority means a territorial authority within the meaning of section 5(1) of the Local Government Act 2002

local community—

- (a) means, at a minimum, all persons within a 1 km radius of any point on the perimeter of a major hazard facility; and
- (b) includes all persons in an area that might be affected by a major incident occurring at a major hazard facility

lower tier major hazard facility means a facility that WorkSafe has designated as a lower tier major hazard facility under regulation 19(1)

major accident prevention policy means the policy that a lower tier major hazard facility must prepare, retain, and implement under regulation 36

major hazard facility means a facility that WorkSafe has designated as a lower tier major hazard facility or an upper tier major hazard facility under regulation 19 or 20

major incident hazard means a hazard that has the potential to cause a major incident

notifiable incident includes a type of incident—

- (a) declared under regulation 33; and
- (b) that is required to be notified under regulation 34

off site means not on site

on site means at or in a facility

pipeline has the meaning set out in regulation 2 of the Health and Safety in Employment (Pipelines) Regulations 1999

proposed facility means—

- (a) an existing workplace that is to become a facility; or
- (b) a facility that is to be built in the future

readily accessible, in relation to a duty to provide a document, means that the document is capable of being accessed without difficulty in hard copy, electronic form, or other form

safety assessment,—

- (a) in relation to a lower tier major hazard facility, means the assessment conducted for the purposes of preparing and implementing a major accident prevention policy under regulation 36:
- (b) in relation to an upper tier major hazard facility, means the assessment conducted under regulation 38

safety case, in relation to an upper tier major hazard facility, means the document required under regulation 45 and that contains the information required under Schedule 7

safety-critical element means any part of a facility or its plant (including a computer program)—

- (a) that has the purpose of preventing, or limiting the effect of, a major incident; and
- (b) the failure of which could cause or contribute substantially to a major incident

safety management system,—

- (a) in relation to a lower tier major hazard facility, means the system established under regulation 36(4) that satisfies the requirements specified in Schedule 5:
- (b) in relation to an upper tier major hazard facility, means the system established and implemented under regulation 39 that satisfies the requirements specified in Schedule 5

threshold quantity means the lower threshold quantity or the upper threshold quantity

upper tier major hazard facility means a facility that WorkSafe has designated as an upper tier major hazard facility under regulation 19(2) or 20.

- (2) Unless the context otherwise requires, terms and expressions that are used but not defined in these regulations but that are defined in the Act have the same meaning as in the Act.

5 Meaning of specified hazardous substances

In these regulations, **specified hazardous substances** means table 1 or 2 hazardous substances.

6 Meaning of table 1 or 2 hazardous substances

In these regulations, **table 1 or 2 hazardous substances** means—

- (a) the hazardous substances specified in column 1 of table 2 of Schedule 2; and
- (b) the categories of hazardous substances referred to in column 1 of table 1 of Schedule 2.

7 Meaning of lower threshold quantity

- (1) In these regulations, **lower threshold quantity** means the quantity—
 - (a) specified in column 4 of table 1 or column 3 of table 2 of Schedule 2; and
 - (b) calculated in accordance with Part 3 of these regulations.
- (2) In calculating the lower threshold quantity, the maximum capacity of the facility must be taken into account, including—
 - (a) the maximum capacity of process vessels and interconnecting pipe systems that contain the hazardous substances;
 - (b) the maximum capacity of all storage tanks and other storage areas at the facility that could contain hazardous substances;
 - (c) the maximum capacity of the pipework outside process areas to contain hazardous substances;
 - (d) the maximum quantity of hazardous substances that could, in the event of failure, escape into the facility from the pipework that is connected to, terminates at, or crosses the facility;
 - (e) the maximum quantity of hazardous substances that are loaded into or onto, or unloaded from, vehicles, trailers, rolling stock, and ships (excluding any hazardous substances on board ships) that are from time to time present at the facility in the course of the facility's operations.
- (3) For the purposes of subclause (2), the exclusions in calculating the quantity of hazardous substances that are present or likely to be present at a facility, as specified in regulation 29, must be taken into account.

8 Meaning of upper threshold quantity

In these regulations, **upper threshold quantity** means the quantity—

- (a) specified in column 5 of table 1 or column 4 of table 2 of Schedule 2; and
- (b) calculated in accordance with Part 3 of these regulations.

9 Meaning of major incident

- (1) In these regulations, **major incident** means an uncontrolled event at a major hazard facility that—
 - (a) involves, or potentially involves, specified hazardous substances; and

- (b) exposes multiple persons to a serious risk to their health or safety (including a risk of death) arising from an immediate or imminent exposure to—
 - (i) 1 or more of those substances as a result of the event; or
 - (ii) the direct or indirect effects of the event.
- (2) Without limiting subclause (1), an **uncontrolled event** includes any of the following:
 - (a) escape, spillage, or leakage of a substance;
 - (b) implosion, explosion, or fire.

Compare: Model Work Health and Safety Regulations (Aust) r 531

10 Meaning of operator

- (1) In these regulations, **operator** means the PCBU who—
 - (a) manages or controls a facility or a proposed facility; and
 - (b) has the power to direct that the whole facility be shut down.
- (2) If more than 1 PCBU is an operator of all or part of the facility within the meaning of subclause (1),—
 - (a) 1 of the PCBUs must be nominated, by all or a simple majority of those operators, as the operator of the facility; and
 - (b) the person nominated under paragraph (a) is the operator of the facility for the purposes of these regulations.
- (3) If no person is nominated as an operator under subclause (2), each of the following persons is taken to be an operator of the facility for the purposes of these regulations:
 - (a) each operator, within the meaning of subclause (1), who is an individual;
 - (b) for each operator, within the meaning of subclause (1), that is not an individual, each officer of the body corporate.

Transitional, savings, and related provisions

11 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

Part 2

Notification, designation, and exemption of major hazard facilities

Notification process

11A Authorisation of certain facilities

A facility at which specified hazardous substances are present or likely to be present in a quantity that is equal to or exceeds the lower threshold quantity must not be operated unless the facility is designated under this Part.

Regulation 11A: inserted, on 1 September 2016, by regulation 6 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

12 Duty of operators to notify WorkSafe

- (1) The operator of a facility that existed on 4 April 2016 where, as at that date, specified hazardous substances were present or likely to be present in a quantity that is equal to or exceeds the lower threshold quantity must, in order to have the facility designated, notify WorkSafe in accordance with regulation 14—
 - (a) as soon as practicable (but no later than 3 months) after the operator becomes aware or ought reasonably to have become aware that the specified hazardous substances were present or likely to be present in a quantity that is equal to or exceeds the lower threshold quantity; or
 - (b) within any longer period that WorkSafe determines, if satisfied on application by the operator that there is a reasonable excuse for the delayed notification.
- (1A) The operator of a facility that existed on 4 April 2016 but which was not on that date a facility to which subclause (1) applies must, in order to have the facility designated, notify WorkSafe in accordance with regulation 14 as soon as practicable before there is any change to the facility due to which specified hazardous substances are present or likely to be present in a quantity that is equal to or exceeds the lower threshold quantity.
- (2) An operator who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000:
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 536

Regulation 12(1): replaced, on 1 September 2016, by regulation 7 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

Regulation 12(1A): inserted, on 1 September 2016, by regulation 7 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

13 Duty of operators of proposed facilities to notify WorkSafe

- (1) The operator of a proposed facility at which specified hazardous substances may be present in a quantity that is equal to or exceeds the lower threshold

quantity must, in order to have the proposed facility designated, notify WorkSafe in accordance with regulation 14 as soon as practicable before—

- (a) there is any change in an existing workplace due to which it becomes a facility;
 - (b) any contract is entered into for the construction or purchase of the facility.
- (2) An operator who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 537

Regulation 13(1): amended, on 1 September 2016, by regulation 8 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

14 Content of notification

- (1) A notification to WorkSafe under regulation 12 or 13 must—
- (a) be given in the manner and form required by WorkSafe; and
 - (b) include the information referred to in subclause (2).
- (2) The notification to WorkSafe must include the following information:
- (a) a brief description of the primary business activity or activities at the facility; and
 - (b) information about the operator; and
 - (c) sufficient information to identify the specified hazardous substances present or likely to be present at the facility; and
 - (d) the quantity and physical form (for example, solid, liquid, or gas) of the specified hazardous substances referred to in paragraph (c); and
 - (e) the contact details of a person with whom WorkSafe may communicate in relation to the information that is, or must be, contained in the notification; and
 - (f) the details of any enforcement action against the operator or an officer of the operator, under any legislation related to the management of health and safety or hazardous substances, taken either in New Zealand or in an overseas jurisdiction; and
 - (g) information about the land use and other activities in the area surrounding the facility or proposed facility; and
 - (h) any other additional information that WorkSafe requires for the purpose of determining—
 - (i) whether the facility or proposed facility is a major hazard facility; and

- (ii) the physical location of the facility or proposed facility.

Compare: Model Work Health and Safety Regulations (Aust) r 538; Control of Major Accident Hazards Regulations 2015 r 6 (UK)

15 WorkSafe must assess notification, make a decision, and notify operator of decision

- (1) WorkSafe must assess each notification given under regulation 12 or 13 and decide whether the quantity of specified hazardous substances, as listed in Schedule 2, that are present or likely to be present at a facility or may be present at a proposed facility—
- (a) equals or exceeds the lower threshold quantity but does not equal or exceed the upper threshold quantity (which means that the facility is a lower tier major hazard facility); or
 - (b) equals or exceeds the upper threshold quantity (which means that the facility is an upper tier major hazard facility); or
 - (c) is less than the lower threshold quantity (which means that the facility is neither a lower tier major hazard facility nor an upper tier major hazard facility).
- (2) WorkSafe must, as soon as practicable after making a decision under subclause (1), notify the operator in writing that the facility or proposed facility to which the notification relates is or will become—
- (a) a lower tier major hazard facility; or
 - (b) an upper tier major hazard facility; or
 - (c) neither a lower tier major hazard facility nor an upper tier major hazard facility.
- (3) For the purposes of carrying out its functions under subclause (1), WorkSafe may require an operator to provide further information specified by WorkSafe in relation to the facility, including information about—
- (a) the use or likely use of specified hazardous substances in the facility;
 - (b) the physical condition of the facility;
 - (c) the facility's state of repair.
- (4) The operator must comply with a request under subclause (3) within 45 days or any longer period as WorkSafe may allow.

Compare: Model Work Health and Safety Regulations (Aust) rr 542, 545

16 WorkSafe may conduct review of facility

- (1) WorkSafe may conduct a review of a facility or proposed facility if, after a notification given under regulation 12 or 13 or at any other time it considers appropriate, WorkSafe decides that—
- (a) the facility or proposed facility is a lower tier major hazard facility; and

- (b) there are reasonable grounds to believe that there is increased potential for a major incident to occur at the facility or proposed facility, having regard to the following:
 - (i) the quantity or combination of specified hazardous substances that are present or likely to be present; and
 - (ii) the types of activities within the facility involving specified hazardous substances; and
 - (iii) land use and other activities in the area surrounding the facility or proposed facility; and
 - (iv) any other matters that WorkSafe considers relevant.
- (2) The purpose of the review is to enable WorkSafe to determine whether the facility or proposed facility should be designated as an upper tier major hazard facility under regulation 20.
- (3) Before commencing a review, WorkSafe must give written notice of its intention to conduct the review, and the reasons for doing so, and of the opportunity to make a submission—
 - (a) to the contact person identified in the notification given under regulation 12 or 13; or
 - (b) in any other case, to the operator of the facility or proposed facility.
- (4) WorkSafe must—
 - (a) consider the submission if the recipient of the notice has made a submission in relation to the review; and
 - (b) consult those persons who WorkSafe considers have an interest in the outcome of the review, including—
 - (i) any representatives at the facility; and
 - (ii) the emergency services organisations that have responsibility for the area in which the facility is, or proposed facility is to be, located; and
 - (iii) the local authority within whose district the facility is, or proposed facility is to be, located.

Compare: Model Work Health and Safety Regulations (Aust) r 541

17 Duty to notify WorkSafe of proposed change in operator

- (1) A proposed new operator of a facility must notify WorkSafe in accordance with regulation 14.
- (2) The notification given under subclause (1) must be given—
 - (a) as soon as practicable after the proposed new operator becomes aware of the likely change in operator; and

- (b) no later than 2 months before the date on which the proposed new operator intends to begin operating the facility.
- (3) For the purposes of these regulations, a notification given under this regulation—
 - (a) should include only information that relates to the change in operator and that has changed since the earlier notification given in accordance with regulation 12 or 13; and
 - (b) is to be treated as a notification given under regulation 12 for an existing facility; and
 - (c) is subject to any review of the suitability of the new operator conducted under regulation 18; and
 - (d) must be assessed by WorkSafe to enable it to determine whether WorkSafe should request a revised safety case to be given under regulation 53.
- (4) An operator who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations (Aust) r 548

18 Suitability of operator

- (1) This regulation applies if WorkSafe decides to conduct a review into the suitability of the operator of a facility or proposed facility.
- (2) WorkSafe must decide whether to conduct a review within a period of 1 month after the date of receiving a notification given under regulation 12 or 13.
- (3) Before commencing a review, WorkSafe must give written notice of its intention to conduct the review, and the reasons for doing so, and of the opportunity to make a submission by a specified date, which must not be earlier than 30 days from the date of the notice,—
 - (a) to the contact person identified in the notification given under regulation 12 or 13; or
 - (b) in any other case, to the operator of the facility.
- (4) WorkSafe must—
 - (a) consider the submission if the recipient of the notice has made a submission in relation to the review; and
 - (b) consult interested parties, including (where relevant) government agencies in other jurisdictions that have a regulatory role in relation to major hazard facilities.
- (5) WorkSafe must complete the review—

- (a) within 3 months after receiving the submission; or
 - (b) if it does not receive a submission by the date specified in subclause (3), within 3 months after that date.
- (6) If WorkSafe decides on reasonable grounds that the operator of a facility or proposed facility is unlikely to meet the operator's obligations under these regulations, WorkSafe must, by notice in writing, prohibit the person from acting as the operator of the facility or proposed facility.

Compare: Model Work Health and Safety Regulations (Aust) r 543

Designation process

19 Mandatory designation as major hazard facility

- (1) If WorkSafe decides under regulation 15 that a facility or proposed facility is a lower tier major hazard facility, WorkSafe must designate that facility as a lower tier major hazard facility.
- (2) If WorkSafe decides under regulation 15 that a facility or proposed facility is an upper tier major hazard facility, WorkSafe must designate that facility as an upper tier major hazard facility.

Compare: Model Work Health and Safety Regulations (Aust) r 542

20 Discretionary designation of lower tier major hazard facility as upper tier major hazard facility

WorkSafe may designate a facility or a proposed facility as an upper tier major hazard facility if WorkSafe—

- (a) decides to conduct a review under regulation 16; and
- (b) on completion of the review (conducted having regard to the matters specified in regulation 16(1)(b)), considers that there is increased potential for a major incident to occur at that facility.

Compare: Model Work Health and Safety Regulations (Aust) r 541

21 Certificate and effect of designations and decisions

- (1) If WorkSafe makes a designation under regulation 19 or 20, or a decision under regulation 18, WorkSafe must give the relevant operator a certificate of the designation or decision that states—
- (a) the reasons for the designation or decision; and
 - (b) the date on which the designation or decision takes effect, which,—
 - (i) in the case of a designation, must be at least 28 days after the date of the certificate;
 - (ii) in the case of a decision, must be the date of the decision; and
 - (c) any conditions imposed on the designation under regulation 22.
- (2) WorkSafe must give the certificate—

- (a) as soon as practicable after making the decision under regulation 18:
 - (b) within 14 days of making the designation under regulation 19 or 20.
- (3) The effect of a decision under regulation 18 is that any exemption under section 220 of the Act does not apply to the facility.
- (4) A designation or decision remains in effect until revoked.
- Compare: Model Work Health and Safety Regulations (Aust) r 545

22 Conditions on designations of major hazard facilities

- (1) For the purpose of section 208 of the Act, WorkSafe may impose any conditions it considers reasonably appropriate on a designation made under—
- (a) regulation 19 (mandatory designation as major hazard facility); or
 - (b) regulation 20 (discretionary designation of lower tier major hazard facility as upper tier major hazard facility).
- (2) Without limiting subclause (1), WorkSafe may impose conditions in relation to 1 or more of the following:
- (a) additional control measures that must be implemented in relation to the carrying out of work or activities at the major hazard facility:
 - (b) the recording or keeping of additional information:
 - (c) the provision of additional information, training, and instruction to additional persons or classes of persons:
 - (d) the provision of additional information to WorkSafe:
 - (e) if the operator is any other person, the qualifications or duties, or both, of any officer of the operator.
- (2A) For the purpose of section 208 of the Act, it is a condition of the designation of a facility or proposed facility that the operator must provide any notification required by regulation 74.
- (3) The operator of a major hazard facility in relation to which any conditions are imposed under this regulation must ensure that the conditions are complied with.

Compare: Model Work Health and Safety Regulations (Aust) r 544

Regulation 22(1): amended, on 1 September 2016, by regulation 9(1) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

Regulation 22(2A): inserted, on 1 September 2016, by regulation 9(2) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

23 Revocation of designation as major hazard facility or decision as to suitability of operator

- (1) WorkSafe may revoke a designation made under regulation 19 or 20, or a decision made under regulation 18, if, after consultation with the operator, WorkSafe is satisfied that the reasons for the designation or decision no longer apply.

- (2) If subclause (1) applies, WorkSafe must give written notice of the revocation of the designation or decision to the operator.

Compare: Model Work Health and Safety Regulations (Aust) r 546

24 Renotification if quantity of specified hazardous substances increases

- (1) This regulation applies to a facility or a proposed facility in relation to which—
- (a) notification was given under regulation 12 or 13; and
 - (b) WorkSafe—
 - (i) has not conducted a review under regulation 16; or
 - (ii) on conducting a review, has not designated the facility as an upper tier major hazard facility under regulation 20.
- (2) The operator of a facility or proposed facility must renotify WorkSafe in accordance with regulation 12 or 13 if the quantity of specified hazardous substances that are present or likely to be present at the facility or proposed facility increases, or is likely to increase, to a level that exceeds the level previously notified to WorkSafe.
- (3) A person who contravenes subclause (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations (Aust) r 547

Prescribed requirements for exemptions

25 Prescribed requirements for WorkSafe granting exemption

- (1) WorkSafe must not grant an exemption under section 220 of the Act in respect of any provisions of these regulations unless it is satisfied that granting the exemption will result in a standard of safety (in relation to the operation of the facility or proposed facility) that is at least equivalent to the standard that would be achieved by compliance with the relevant provisions that the exemption relates to.
- (2) For the purposes of subclause (1), WorkSafe must have regard to all relevant matters, including whether the applicant—
- (a) is complying with the Act and these regulations; and
 - (b) has implemented adequate control measures to minimise the risk of a major incident occurring.

Part 3

Specified hazardous substances thresholds

26 Specified hazardous substances

- (1) The categories and names of specified hazardous substances are set out in Schedule 2.
- (2) Hazardous substances that meet the following criteria must be assigned to the most analogous category or named specified hazardous substance falling within the scope of these regulations:
 - (a) substances that are not subject to the Hazardous Substances (Classification) Regulations 2001 (including waste); and
 - (b) substances that are present, or are likely to be present, in a facility; and
 - (c) substances that possess, or are likely to possess, under the conditions found at the facility, equivalent properties in relation to their potential to cause a major incident.
- (3) Hazardous substances that the EPA has not approved under Part 5 of the Hazardous Substances and New Organisms Act 1996 must be classified in accordance with any applicable group standard that the EPA has issued under that Act.
- (4) If there is no applicable group standard for the hazardous substance, the operator must apply to the EPA so that the EPA may determine the classification of the substance for the purposes of these regulations.

Compare: Model Work Health and Safety Regulations (Aust) Schedule 15 cl 2

27 Threshold quantity of 1 specified hazardous substance

- (1) If a specified hazardous substance is referred to in table 2 of Schedule 2 and also falls within a category referred to in table 1 of Schedule 2, the threshold quantities in table 2 must be used.
- (2) If a specified hazardous substance is not referred to in table 2 of Schedule 2 and the substance falls within a category referred to in table 1 of Schedule 2, the threshold quantities in table 1 must be used.
- (3) If a specified hazardous substance is not referred to in table 2 of Schedule 2 and the substance appears to fall within more than 1 category referred to in table 1 of Schedule 2, the threshold quantity of the category that has the lower or lowest threshold quantity must be used.

Compare: Model Work Health and Safety Regulations (Aust) Schedule 15 cl 3

28 Threshold quantity of more than 1 specified hazardous substance

- (1) A facility with more than 1 specified hazardous substance is a lower tier major hazard facility if the following sum is greater than or equal to 1:

$$q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4/Q_{L4} + q_5/Q_{L5} + \dots$$

where—

q_x is the quantity of specified hazardous substance x (or category of specified hazardous substances x) falling within table 1 or table 2 of Schedule 2

Q_{LX} is the relevant quantity for specified hazardous substance x or category x from column 4 of table 1 or from column 3 of table 2 of Schedule 2.

- (2) A facility with more than 1 specified hazardous substance is an upper tier major hazard facility if the following sum is greater than or equal to 1:

$$q_1/Q_{U1} + q_2/Q_{U2} + q_3/Q_{U3} + q_4/Q_{U4} + q_5/Q_{U5} + \dots$$

where—

q_x is the quantity of specified hazardous substance x (or category of specified hazardous substances x) falling within table 1 or table 2 of Schedule 2

Q_{UX} is the relevant quantity for specified hazardous substance x or category x from column 5 of table 1 or from column 4 of table 2 of Schedule 2.

- (3) The calculation of threshold quantities of specified hazardous substances must be undertaken as follows:

(a) for health hazards (section H), quantities of specified hazardous substances listed in table 2 of Schedule 2 that fall within the HSNO classification of acutely toxic 6.1A, 6.1B, or 6.1C (inhalation route), or 6.9A (but only substances that produce specific, non-lethal target organ toxicity arising from a single exposure) must be added to quantities of specified hazardous substances falling within section H (items H1 to H3) of table 1 of Schedule 2:

(b) for physical hazards (section P), quantities of specified hazardous substances listed in table 2 of Schedule 2 that fall within the HSNO classification of explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, or oxidising liquids and solids must be added to quantities of specified hazardous substances falling within section P (items P1 to P8) of table 1 of Schedule 2:

(c) for other hazards (section O), quantities of specified hazardous substances listed in table 2 of Schedule 2 that fall within any of the HSNO classification of solids that emit flammable gas when in contact with water 4.3A (that also meet the criteria for the hazard statement EUH014, that also meet criteria (b), or that also meet the criteria for the hazard statement EUH029) must be added to quantities of specified hazardous substances falling within the same subcategory within section O (items O1 to O3) of table 1 of Schedule 2.

- (4) The relevant provisions of these regulations apply where any of the sums obtained under subclause (3) is greater than or equal to 1.

- (5) For the purposes of calculating the threshold quantities of specified hazardous substances under this regulation, the lowest threshold quantity for each subcategory referred to in subclause (3)(a) and (b) corresponding to the relevant classification must be used.

Compare: Model Work Health and Safety Regulations (Aust) Schedule 15 cl 4

29 Exclusions in calculating quantity of specified hazardous substances

- (1) For the purpose of calculating the quantity of specified hazardous substances that are present or likely to be present at a facility under regulation 27 or 28, specified hazardous substances that are present or likely to be present in an isolated quantity that is less than 2% of the relevant upper threshold quantity are excluded.
- (2) For the purposes of subclause (1), a specified hazardous substance is present or likely to be present in an **isolated quantity** if its location at a facility is such that it cannot, on its own, act as an initiator of a major incident elsewhere at that facility.

Part 4 Duties of operators

Subpart 1—Duties of all major hazard facility operators

Control measures

30 Duty to implement control measures

- (1) The operator of a major hazard facility must implement control measures that—
- (a) eliminate, so far as is reasonably practicable, the risk of a major incident occurring; or
 - (b) if it is not reasonably practicable to eliminate the risk of a major incident occurring, must minimise that risk so far as is reasonably practicable.
- (2) In the event of a major incident occurring at the facility, the control measures to be implemented by the operator must minimise its magnitude and the severity of its health and safety consequences so far as is reasonably practicable.
- (3) An assessment of whether doing something is reasonably practicable must be carried out in accordance with section 22 of the Act.
- (4) The operator of a major hazard facility must implement control measures that are designed to minimise, in the event that a major incident occurs, its magnitude and the severity of its consequences to persons both on site and off site.
- (5) An operator who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:

(b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 556

Requirements for emergency plans

31 Duty to prepare emergency plan

- (1) The operator of a major hazard facility must prepare an emergency plan for the facility that—
 - (a) effectively addresses all potential health and safety consequences of a major incident; and
 - (b) is specific to the facility and the major incident hazards identified in the safety assessment; and
 - (c) is integrated into the facility's safety management system; and
 - (d) is understandable by workers, visitors, and other people who are likely to be affected (to the extent necessary for them to fulfil their roles); and
 - (e) provides for the testing, review, and updating of emergency procedures, including the frequency of any testing, review, and updating; and
 - (f) in the case of an upper tier major hazard facility, includes all matters specified in Schedule 3.
- (2) An emergency plan for a lower tier major hazard facility may form part of any other management documentation for an emergency, including, without limitation, documentation required under—
 - (a) the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016; or
 - (b) the Hazardous Substances (Emergency Management) Regulations 2001.
- (3) The operator must, when developing and revising the emergency plan,—
 - (a) engage with workers at the major hazard facility, in accordance with regulation 65; and
 - (b) consult—
 - (i) the emergency services organisations that have responsibility for the area in which the facility is located; and
 - (ii) the local authority within whose district the facility is located, in relation to the potential off-site health and safety consequences of a major incident; and
 - (iii) the operators of any other nearby major hazard facilities.
- (4) The operator must ensure that the emergency plan addresses, to the extent that is reasonably practicable, the recommendations of the emergency services organisations consulted under subclause (3)(b), if the recommendations relate to—
 - (a) the content and effectiveness of the emergency plan; or

- (b) the testing proposed in the emergency plan.
- (5) The operator must have regard to any recommendations made by the local authority and any other person engaged with, or consulted, under subclause (3) in developing and revising the emergency plan.
- (6) The operator must—
 - (a) keep a copy of the emergency plan at the facility and ensure that the plan is readily accessible to persons who are required to use it; and
 - (b) ensure that the emergency services organisations consulted under subclause (3)(b) have access to the emergency plan.
- (7) The operator must immediately implement the emergency plan if—
 - (a) a major incident occurs; or
 - (b) there is an event at the facility that could reasonably be expected to lead to a major incident.
- (8) An operator who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 557, Schedule 16

32 Duty to test emergency plan

- (1) An operator of a major hazard facility must test an emergency plan in accordance with the testing and review provisions of the emergency plan.
- (2) The operator must—
 - (a) document the carrying out and the results of every test; and
 - (b) retain the documentation for at least 2 years.
- (3) An operator who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2001/123 r 33; Model Work Health and Safety Regulations (Aust) r 557(3)(a), (6)

Declaration of notifiable incidents

33 Declaration of notifiable incidents

The following incidents arising out of, or in connection with, a major hazard facility are declared to be notifiable incidents under section 24(1)(m) of the Act:

- (a) an unplanned event (other than a false alarm) that requires the emergency plan to be implemented:

- (b) an event that does not cause, but has the potential to cause, a major incident;
- (c) damage to, or failure of, a safety-critical element that requires intervention to ensure it will operate as designed.

Duty to notify notifiable incidents

34 Duty to notify notifiable incidents

- (1) An operator of a major hazard facility must notify WorkSafe of any notifiable incident declared under regulation 33 as soon as possible after the occurrence of the notifiable incident becomes known to the operator.
- (2) The notification required under subclause (1)—
 - (a) is in addition to the notification requirements set out in section 56 of the Act; and
 - (b) must include the information required under Schedule 4 to the extent that it is reasonably available to the operator at the time of notification.
- (3) Section 56(2) to (5) of the Act applies to notification given under subclause (1).
- (4) The operator must provide WorkSafe with an initial written report of the circumstances of any notifiable incident, including the information required under Part 1 of Schedule 4, by the later of—
 - (a) 7 days after the operator becomes aware of the notifiable incident; and
 - (b) any other date that WorkSafe specifies in writing.
- (5) The operator must provide WorkSafe with a detailed written report on any notifiable incident, including the information required under Parts 1 and 2 of Schedule 4, by the later of—
 - (a) 30 days after the operator becomes aware of the notifiable incident; and
 - (b) any other date that WorkSafe specifies in writing.
- (6) An operator who contravenes any of subclauses (1), (2), (4), and (5) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 78

Ongoing review

35 Duty to undertake ongoing review

- (1) The operator of a major hazard facility must review and, as necessary, revise the following (as relevant), in accordance with this regulation:
 - (a) the emergency plan; and
 - (b) the safety assessment; and

- (c) the major accident prevention policy; and
 - (d) the safety management system; and
 - (e) the safety case.
- (2) Without limiting subclause (1), the operator must conduct a review and revision in any of the following circumstances:
- (a) a change or proposed change at the major hazard facility has or would have the effect of—
 - (i) creating a hazard that has the potential to cause a major incident; or
 - (ii) increasing the likelihood of a major incident occurring; or
 - (iii) in relation to a major incident that may occur, increasing its magnitude or the severity of its health and safety consequences:
 - (b) a control measure no longer minimises the risk to the extent that is reasonably practicable:
 - (c) a new major incident hazard, or risk associated with that hazard, is identified:
 - (d) the results of engagement with workers indicate that a review is necessary:
 - (e) a health and safety representative requests a review because he or she reasonably believes that any of the circumstances specified in this subclause may affect the health and safety of a worker, and the operator has not adequately conducted a review in response to the circumstance:
 - (f) there is a change of operator.
- (3) In this regulation, **change or proposed change at the major hazard facility** means a change or proposed change of any kind, including any of the following:
- (a) a change to any plant, structure, process, specified hazardous substance, or other substance used in a process (including the introduction of a new plant, new structure, new process, or new hazardous substance):
 - (b) a change in the quantity of specified hazardous substances that are present or likely to be present at the facility:
 - (c) a change to the operation, or the nature of the operation, of the facility:
 - (d) a change to the facility's safety management system:
 - (e) an organisational change at the facility (including a change in its senior management).
- (4) An operator who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:

(b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 559

Subpart 2—Duty of lower tier major hazard facility operators

36 Duty to prepare, retain, and implement major accident prevention policy by establishing safety management system

- (1) The operator of a lower tier major hazard facility must—
 - (a) prepare and retain a major accident prevention policy for the facility; and
 - (b) implement the policy before the facility commences operations.
- (2) The purpose of the policy is to prevent the occurrence of major incidents and limit their consequences to persons at or near the facility by appropriate means, structures, and management systems.
- (3) The major accident prevention policy must—
 - (a) include measures that are proportionate to any major incident hazards presented by the facility; and
 - (b) describe the operator's overall goals and principles of action in relation to the control of major incident hazards; and
 - (c) be in writing.
- (4) The operator must implement the major accident prevention policy by establishing a safety management system that satisfies the requirements specified in Schedule 5.
- (5) The operator must, when preparing or revising a major accident prevention policy and when establishing and implementing the safety management system, engage with workers at the facility, in accordance with regulation 65.
- (6) An operator who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 17; Control of Major Accident Hazards Regulations 2015 r 7 (UK)

37 Duty to retain records of major accident prevention policy

- (1) The operator of a lower tier major hazard facility must make a record of—
 - (a) the major accident prevention policy for the facility;
 - (b) any revision of the policy;
 - (c) the findings and recommendations of any audit of the policy and safety management system;
 - (d) any actions that will be, or have been, taken to implement those recommendations.

- (2) The operator must retain a record (which may be in hard copy or electronic format) referred to in subclause (1) for at least 5 years after it was made and store copies—
 - (a) in a secure place at the lower tier major hazard facility; and
 - (b) at a separate address, nominated by the operator, for the lower tier major hazard facility.
- (3) An operator who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Subpart 3—Duties of upper tier major hazard facility operators

38 Duty to conduct safety assessment

- (1) The operator of an upper tier major hazard facility must conduct a safety assessment in relation to the operation of the facility.
- (2) A safety assessment must involve a comprehensive and systematic investigation and analysis of all aspects of risks to health and safety associated with all major incidents that could occur in the course of the operation of the facility, including the following:
 - (a) the identification of hazards and conditions that could lead to a major incident; and
 - (b) the nature of each hazard and potential major incident; and
 - (c) the risk associated with each of those hazards, including the likelihood and consequences (including the potential magnitude and the severity of the potential health and safety consequences) of each potential major incident; and
 - (d) the range of control measures considered; and
 - (e) the control measures that the operator decides to implement (*see* regulation 30).
- (3) In conducting a safety assessment, the operator must—
 - (a) consider major incident hazards and potential major incidents cumulatively as well as individually; and
 - (b) use assessment methods (including quantitative or qualitative methods, or both) that are suitable for assessing the major incident hazards and potential major incidents being considered; and
 - (c) engage with, and have regard to any advice and recommendations given by, workers at the facility, in accordance with regulation 65; and
 - (d) consult with, and have regard to any advice and recommendations given by,—

- (i) the emergency services organisations that have responsibility for the area in which the facility is located; and
 - (ii) WorkSafe or any government department or agency with a regulatory role under these regulations.
- (4) The operator must document all aspects of the safety assessment, including—
 - (a) the methods used in the investigation and analysis; and
 - (b) all identified major incident hazards and potential major incidents; and
 - (c) the criteria and methods used in identifying the major incident hazards and potential major incidents; and
 - (d) any conditions, including conditions external to the facility (for example, natural events occurring anywhere, or other events occurring in an area outside the facility), under which the hazards might give rise to major incidents; and
 - (e) the reasons for deciding which control measures to implement; and
 - (f) the other control measures that were considered but not implemented; and
 - (g) the reasons for not implementing the other control measures that were considered.
- (5) The operator must keep a copy of the safety assessment at the upper tier major hazard facility.
- (6) An operator who contravenes any of subclauses (1) to (4) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.
- (7) An operator who contravenes subclause (5) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations (Aust) rr 554, 555

39 Duty to establish and implement safety management system

- (1) The operator of an upper tier major hazard facility must establish and implement a safety management system for the operation of the facility in accordance with these regulations.
- (2) The safety management system must—
 - (a) provide a comprehensive and integrated system for the safe operation of the facility; and

- (b) provide a comprehensive and integrated system for the management of all aspects of risk control in relation to the occurrence and potential occurrence of major incidents at the facility; and
 - (c) be used by the operator as the primary means of ensuring the safe operation of the facility; and
 - (d) state the operator's specific safety objectives and describe the systems and procedures that will be used to achieve those objectives; and
 - (e) satisfy the requirements specified in Schedule 5; and
 - (f) be documented; and
 - (g) be readily accessible to persons who use it.
- (3) The operator must engage with workers at the facility during the design and implementation of the safety management system, in accordance with regulation 65.
- (4) An operator who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 558, Schedule 17

Part 5

Design notices and safety cases for upper tier major hazard facilities

Subpart 1—Requirements for design notice

40 Duty to give design notice

- (1) Before the design of a proposed facility where upper threshold quantities may be present is completed, the operator must—
- (a) prepare a design notice in accordance with subclause (2); and
 - (b) give the design notice to WorkSafe as soon as practicable after a design concept has been selected and before making a final investment decision or commencing development of a detailed design.
- (2) The design notice must contain the information required under Schedule 6, but only to the extent that the operator can be reasonably expected to provide the information at the time the design notice is given to WorkSafe.
- (3) The operator must notify WorkSafe of any material change to any matter described in the design notice, if that change occurs between—
- (a) the time of submission of the design notice under this regulation; and
 - (b) the time of submission of the safety case under regulation 45.

- (4) This regulation is subject to regulation 41.

Compare: SR 2013/208 r 22

41 Duty to review documents instead of giving design notice

- (1) Subject to subclause (2), an operator is not required to give a design notice to WorkSafe if the operator proposes to modify an existing upper tier major hazard facility.
- (2) An operator must review and, if necessary, revise the documents noted in subclause (3) (the **relevant documents**) if—
- (a) the operator proposes to modify an existing upper tier major hazard facility; and
 - (b) the elements of proposed modification are not adequately addressed in the relevant documents.
- (3) The relevant documents are—
- (a) the safety assessment;
 - (b) the emergency plan;
 - (c) the safety management system;
 - (d) the safety case.
- (4) An operator who contravenes subclause (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

42 Obligations of WorkSafe on receipt of design notice

On receipt of a design notice, WorkSafe must respond—

- (a) in writing; and
- (b) by indicating any matters that may create difficulties with accepting the safety case required under regulation 45, if those matters are not taken into account in the detailed design or the construction or commissioning stages; and
- (c) as soon as is reasonably practicable but no later than 3 months after the receipt of the notice.

Subpart 2—Requirements of safety case

General requirements

43 Prohibition on operating upper tier major hazard facility without accepted safety case

- (1) The operator of an upper tier major hazard facility must ensure that the facility is not operated unless there is an accepted safety case for the facility.

- (2) Subclause (1) does not apply to any upper tier major hazard facility that is subject to the transitional provision under clause 2 of Schedule 1.

Compare: SR 2013/208 r 25; Model Work Health and Safety Regulations (Aust) r 560

44 WorkSafe may extend time for lodging safety case

WorkSafe may extend the time within which an operator of an upper tier major hazard facility must give WorkSafe a completed safety case if—

- (a) the operator applies in writing to WorkSafe for an extension of time; and
- (b) WorkSafe is satisfied that there has been insufficient time to comply with regulations 45 and 46.

Compare: Model Work Health and Safety Regulations (Aust) r 549(2)

45 Duty to prepare safety case

- (1) An operator must prepare a safety case for an upper tier major hazard facility that contains the information required under Schedule 7.
- (2) An operator must, when preparing or revising a safety case, engage with the workers at the upper tier major hazard facility, in accordance with regulation 65.
- (3) A safety case must be given to WorkSafe,—
 - (a) for a proposed facility, at least 6 months before the date on which the operator intends to commence operating the facility or by any later date that WorkSafe specifies in writing; or
 - (b) for an existing upper tier major hazard facility, in accordance with clause 2 of Schedule 1 or by any later date that WorkSafe specifies in writing.
- (3A) The safety case given to WorkSafe must be accompanied by the relevant fee for assessing the safety case under regulation 70.
- (4) An operator who contravenes subclause (1) or (3) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: SR 2013/208 rr 26, 27; Model Work Health and Safety Regulations (Aust) r 561

Regulation 45(3A): inserted, on 1 September 2016, by regulation 10 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

46 Co-ordination of safety cases for multiple facilities

- (1) The operators of 2 or more upper tier major hazard facilities must co-ordinate the preparation of safety cases for their upper tier major hazard facilities if WorkSafe requires those operators to co-ordinate the preparation of safety cases.
- (2) WorkSafe must be satisfied on reasonable grounds that the co-ordinated preparation of safety cases is necessary in the interests of the safe operation and ef-

fective safety management of any or all of those upper tier major hazard facilities.

- (3) Subclause (1) is subject to subclause (2).
- (4) If WorkSafe requires the co-ordinated preparation of safety cases, each operator must provide the other operators with information concerning any circumstances at the operator's facility that could cause or contribute to a major incident hazard in relation to any of the other upper tier major hazard facilities.
- (5) An operator who contravenes subclause (1) or (4) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 562

Consideration of and decisions on safety cases

47 WorkSafe may request further information

- (1) After receiving a safety case or an amended safety case, WorkSafe may request an operator to give any further information about a matter set out in Schedule 7.
- (2) The request must—
 - (a) be in writing; and
 - (b) describe by reference to Schedule 7 the matter for which the further information is requested; and
 - (c) specify the date by which further information must be given, which must not be earlier than 30 days after the date on which the request is sent.
- (3) Any information given in response to a request must be treated as if it were part of the original safety case.

Compare: SR 2013/208 r 29

48 WorkSafe must notify operator of decision

- (1AA) WorkSafe must assess a safety case that is given to WorkSafe, along with the relevant fee, in accordance with regulation 45.
- (1) As soon as practicable and within 4 months of receiving a safety case or an amended safety case and the relevant fee, WorkSafe must—
 - (a) accept the safety case; or
 - (b) accept the safety case subject to conditions or limitations; or
 - (c) initially reject the safety case; or
 - (d) in the case of an amended safety case, finally reject the safety case.
 - (2) If WorkSafe requests further information under regulation 47, the 4-month period starts on the date WorkSafe receives the further information.

- (3) WorkSafe must as soon as practicable after making a decision about a safety case or an amended safety case notify the operator in writing of that decision.
- (4) If WorkSafe is unable to make a decision about a safety case or an amended safety case within 4 months of receiving it, WorkSafe must—
 - (a) notify the operator in writing of that fact as soon as practicable; and
 - (b) give the operator a proposed timetable for WorkSafe’s consideration of, and decision on, the safety case or amended safety case.

Compare: SR 2013/208 r 30

Regulation 48(1AA): inserted, on 1 September 2016, by regulation 11(1) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

Regulation 48(1): amended, on 1 September 2016, by regulation 11(2) of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

49 Criteria for acceptance of safety case

WorkSafe must accept a safety case for the operation of an upper tier major hazard facility if satisfied that—

- (a) the safety case contains all the information required under Schedule 7; and
- (b) when preparing the safety case, the operator has engaged with workers of the upper tier major hazard facility, in accordance with regulation 65; and
- (c) based on the information included in the safety case, compliance with the safety case is likely to constitute compliance with the requirements of these regulations; and
- (d) there is no reason to believe that the operator will not comply with the safety case; and
- (e) the safety case is appropriate for the upper tier major hazard facility and for the activities to be conducted at that facility.

Compare: SR 2013/208 r 31

50 WorkSafe may impose limitations or conditions on safety case

WorkSafe may, when accepting a safety case, impose limitations or conditions on the safety case that relate to the upper tier major hazard facility or the activities carried out at that facility.

Compare: SR 2013/208 r 32

51 WorkSafe may reject safety case

- (1) WorkSafe may initially reject a safety case if the safety case does not meet the criteria set out in regulation 49.
- (2) If WorkSafe initially rejects a safety case, WorkSafe must—
 - (a) notify the operator of the reasons for the decision; and

- (b) give the operator a reasonable opportunity to amend the safety case and resubmit it for acceptance.
- (3) If the operator gives WorkSafe an amended safety case, WorkSafe must—
 - (a) accept the safety case, if WorkSafe is satisfied that it meets all the criteria set out in regulation 49; or
 - (b) if it does not meet those criteria, finally reject the safety case.
- (4) If WorkSafe accepts the amended safety case, WorkSafe may impose limitations or conditions in accordance with regulation 50.
- (5) WorkSafe may finally reject a safety case, without complying with subclause (3), if the operator is prohibited from acting as an operator of a facility or proposed facility under regulation 18(6).
- (6) To avoid doubt, the fact that WorkSafe has finally rejected a safety case for an upper tier major hazard facility does not prevent the operator from giving WorkSafe a new safety case for that facility in accordance with regulation 45.

Compare: SR 2013/208 r 33

Revision of safety cases

52 Duty to revise safety case in certain situations

- (1) An operator of an upper tier major hazard facility in respect of which there is an accepted safety case must prepare a revised safety case and give it to WorkSafe if—
 - (a) the technical knowledge relied upon to formulate the safety case, including the knowledge of systems for identifying hazards and evaluating risks of major incidents, is outdated so that the safety case no longer adequately provides the information required under Schedule 7; or
 - (b) the operator proposes to modify, recommission, or decommission the upper tier major hazard facility or part of that facility, and the proposed modification, recommissioning, or decommissioning is not adequately addressed in the safety case; or
 - (c) a series of proposed modifications to the upper tier major hazard facility could result in a significant cumulative change in the overall level of risk of major incidents; or
 - (d) the operator proposes to change the safety management system significantly; or
 - (e) the activities to be carried out at the upper tier major hazard facility are different from the activities anticipated in the safety case; or
 - (f) there has been a significant increase in the level of risk associated with any major incident hazard.
- (2) If any of subclause (1)(a) to (f) applies, a revised safety case must be given to WorkSafe as soon as practicable.

- (2A) The revised safety case given to WorkSafe must be accompanied by the relevant fee for assessing the revised safety case under regulation 70.
- (3) WorkSafe may agree, in writing, that the revised safety case may take the form of revisions to a part or specified parts of the accepted safety case.
- (4) An operator who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 34

Regulation 52(2A): inserted, on 1 September 2016, by regulation 12 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

53 WorkSafe may request revised safety case

- (1) The operator of an upper tier major hazard facility in respect of which there is an accepted safety case must prepare a revised safety case and give it to WorkSafe if WorkSafe so requests in writing.
- (1A) The revised safety case given to WorkSafe must be accompanied by the relevant fee for assessing the revised safety case under regulation 70.
- (2) Without limiting subclause (1), WorkSafe may request a revised safety case if—
 - (a) WorkSafe becomes aware of any material change in circumstances relating to any information included in the safety case; and
 - (b) in WorkSafe’s opinion, the change in circumstances may have resulted in WorkSafe rejecting the safety case under regulation 51(1).
- (3) WorkSafe may agree in writing that the revised safety case may take the form of revisions to a part or specified parts of the accepted safety case.
- (4) A request under subclause (1) must include—
 - (a) the matters to be addressed by the revised safety case; and
 - (b) instructions on whether the safety case must be revised in whole or in part; and
 - (c) the date by which the revised safety case must be given, which must not be earlier than 30 days after the date on which the request is sent; and
 - (d) the grounds for the request.
- (5) The operator may make a submission to WorkSafe requesting WorkSafe to—
 - (a) withdraw the request for the revised safety case; or
 - (b) vary the matters to be addressed by the revised safety case; or
 - (c) allow the revised safety case to be given after the date proposed.
- (6) A submission under subclause (5) must be in writing, set out the reasons for the request, and be made—

- (a) no later than 21 days after the operator receives the request from WorkSafe; or
 - (b) by a later date specified by WorkSafe in writing.
- (7) If WorkSafe receives a submission from the operator under subclause (5), WorkSafe must—
- (a) withdraw the request for a revised safety case; or
 - (b) vary the request, whether in accordance with the submission made by the operator or otherwise; or
 - (c) require the revised safety case to be given to WorkSafe by a later date that WorkSafe specifies in writing; or
 - (d) reject the submission and confirm the request for a revised safety case.
- (8) WorkSafe must give the operator written notice of WorkSafe's decision, including the grounds for the decision if the operator's submission is rejected in whole or in part.
- (9) An operator who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 35

Regulation 53(1A): inserted, on 1 September 2016, by regulation 13 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

54 Duty to give revised safety case within 5 years

- (1) The operator of an upper tier major hazard facility in respect of which there is an accepted safety case must prepare a revised safety case and give it to WorkSafe no later than 5 years after the date on which a safety case for the upper tier major hazard facility was accepted.
- (1A) The revised safety case given to WorkSafe must be accompanied by the relevant fee for assessing the revised safety case under regulation 70.
- (2) WorkSafe may extend the period within which an operator must give a revised safety case if a revised safety case has been accepted within the 5-year period.
- (3) The operator must comply with regulations 46 (if applicable) and 65 when preparing the revised safety case.
- (4) An operator who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 36

Regulation 54(1A): inserted, on 1 September 2016, by regulation 14 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

55 Decision on revised safety case

- (1) If an operator provides a revised safety case to WorkSafe under any of regulations 52 to 54, regulations 47 to 51 apply, except as provided in subclause (2).
- (2) WorkSafe must make a decision, and notify the duty holder of the decision, in accordance with regulation 48 within 50 days of receiving the revised safety case (unless WorkSafe acts in accordance with regulation 48(4)).
- (3) To avoid doubt, the accepted safety case for the upper tier major hazard facility continues to have effect if WorkSafe finally rejects the revised safety case.

Compare: SR 2013/208 r 37

Withdrawal of acceptance of safety cases

56 WorkSafe may withdraw acceptance of safety case

- (1) WorkSafe may withdraw acceptance of a safety case if—
 - (a) an operator fails—
 - (i) to comply with regulation 57; or
 - (ii) to comply with a prohibition notice, a provisional improvement notice, or an improvement notice issued under the Act; or
 - (iii) to provide a revised safety case where required under regulation 52, 53, or 54; or
 - (b) WorkSafe has finally rejected a revised safety case; or
 - (c) the operator fails to pay the annual levy, if any, within the required time; or
 - (d) in WorkSafe’s opinion, the operator has failed to ensure that the facility is operated competently and safely.
- (2) Before withdrawing acceptance of a safety case, WorkSafe must give the operator 30 days’ notice, in writing, of the proposal to do so, together with—
 - (a) the grounds for WorkSafe’s proposal to withdraw acceptance of the safety case; and
 - (b) notice that the operator may make written submissions on the proposal to withdraw acceptance of the safety case; and
 - (c) a date by which the operator must make those submissions; and
 - (d) a date by which the withdrawal will become effective.
- (3) WorkSafe may provide a copy of the notice to any other person.
- (4) The operator may, by the date specified by WorkSafe, make written submissions to WorkSafe in relation to the proposed withdrawal.
- (5) Before making a final decision to withdraw acceptance of a safety case, WorkSafe must have regard to (as applicable)—

- (a) any written submissions made by the operator by the date specified by WorkSafe;
 - (b) any action taken by the operator to address a matter that was a ground for WorkSafe's proposal to withdraw acceptance of the safety case;
 - (c) any action taken by the operator to prevent recurrence of a matter that was a ground for WorkSafe's proposal to withdraw acceptance of the safety case.
- (6) If WorkSafe withdraws acceptance of a safety case under subclause (1)(d), the operator must immediately cease those activities at the upper tier major hazard facility that require a safety case under these regulations.

Compare: SR 2013/208 r 38

Compliance with safety case requirements

57 Duty to ensure compliance with safety case requirements

- (1) The operator must (as applicable) operate, modify, maintain, recommission, or decommission an upper tier major hazard facility in a manner that is consistent with the accepted safety case and any conditions or limitations imposed by WorkSafe.
- (2) In subclause (1), **upper tier major hazard facility** includes any part of that facility.
- (3) An operator who contravenes subclause (1) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 39

58 WorkSafe may consent to operator conducting activity otherwise than in accordance with safety case

- (1) Despite regulation 57, WorkSafe may consent in writing to an operator conducting an activity in a manner different from that set out in the accepted safety case for the upper tier major hazard facility.
- (2) Without limiting subclause (1), WorkSafe may give consent where—
 - (a) there has been an incident or emergency at the upper tier major hazard facility, or other unforeseen circumstances have arisen; and
 - (b) it is in the interests of the health and safety of persons at or near the upper tier major hazard facility to do so.
- (3) WorkSafe may not give consent under subclause (1) unless it is satisfied, on the basis of information that has been provided to or is readily accessible to WorkSafe, that the activity will not significantly increase existing risks, or create sig-

nificant new risks, to the health and safety of persons at or near the upper tier major hazard facility.

Compare: SR 2013/208 r 40

Record-keeping requirements

59 Duty to retain records of safety case

- (1) The operator must make a record of—
 - (a) the safety case for the upper tier major hazard facility;
 - (b) any revision to the safety case;
 - (c) the findings and recommendations of any audit of the safety case and safety management system;
 - (d) any actions that will be, or have been, taken to implement those recommendations.
- (2) The operator must retain a record (which may be in hard copy or electronic format) referred to in subclause (1) for at least 7 years after it was made and store copies—
 - (a) in a secure place at the upper tier major hazard facility; and
 - (b) at a separate address, nominated by the operator, for the upper tier major hazard facility.
- (3) An operator who contravenes this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: SR 2013/208 r 41

Part 6 Reviews and appeals

60 Decisions subject to review under these regulations

An operator may apply to WorkSafe in accordance with regulation 61 for a review of any decision made under the following regulations:

- (a) regulation 18(6) (suitability of operator);
- (b) regulation 19 (mandatory designation as major hazard facility);
- (c) regulation 20 (discretionary designation of lower tier major hazard facility as upper tier major hazard facility);
- (d) regulation 22(1) (conditions on designation of major hazard facilities);
- (e) regulation 23(1) (revocation of designation as major hazard facility or decision as to suitability of operator);

- (f) regulation 50 (WorkSafe may impose limitations or conditions on safety case):
- (g) regulation 51 (WorkSafe may reject safety case):
- (h) regulation 56 (WorkSafe may withdraw acceptance of safety case).

61 Process for applying for review

- (1) A review application must be given to WorkSafe in accordance with subclause (2).
- (2) The application must—
 - (a) be in writing;
 - (b) wherever practicable, be made on the form (if any) provided by WorkSafe for the purpose;
 - (c) identify the decision or decisions in respect of which it is made;
 - (d) state the operator's submissions in relation to the decision or decisions;
 - (e) be made within 1 month after the date on which WorkSafe gave written notice of the decision in respect of which the application is made.

62 WorkSafe to acknowledge receipt of review application

When WorkSafe receives a review application, it must send the applicant an acknowledgement that states when the review application was received.

63 Review decision

- (1) WorkSafe must make a review decision as soon as is reasonably practicable after receiving the application for review.
- (2) In making a decision on the review, WorkSafe must have regard to (as applicable)—
 - (a) any written submissions made by the operator under regulation 61(2)(d);
 - (b) any action taken by the operator to address a matter that was a ground for WorkSafe's original decision;
 - (c) any action taken by the operator to prevent recurrence of an event that was a ground for WorkSafe's original decision.
- (3) In its review decision, WorkSafe must—
 - (a) withdraw its original decision; or
 - (b) modify its original decision; or
 - (c) confirm its original decision.
- (4) A review decision must—
 - (a) be in writing; and
 - (b) contain the reasons for the decision.

64 Appeal to District Court

- (1) An operator may appeal to a District Court against a review decision made under regulation 63.
- (2) An appeal under this regulation must be brought within 28 days after the date on which the operator was notified in writing by WorkSafe of the decision appealed against, or within any further period that the court may allow.
- (3) The appeal—
 - (a) must be made by way of originating application in accordance with the District Courts Rules 2014; and
 - (b) must be filed in the office of the District Court nearest to the registered office of the operator (if the operator is not an individual) or the principal place of business of the operator (if the operator is an individual), or to the place of employment or work of the operator, as the case may require.
- (4) On hearing the appeal, the court may—
 - (a) confirm, vary, or reverse the decision appealed against; or
 - (b) refer the matter back to WorkSafe with directions to WorkSafe to reconsider the whole or any specified part of the review decision.
- (5) Subject to any order of the court, every review decision of WorkSafe against which an appeal is made continues in force and has effect according to its terms pending the determination of the appeal to the court.

Part 7

Miscellaneous provisions

General requirements

65 Duty to engage with workers

- (1) An operator must, when acting under a requirement to engage with workers under the provisions specified in subclause (2), ensure that there is engagement with, and participation of, workers and their representatives who are—
 - (a) identifiable at the time the requirement to engage arises; and
 - (b) in the case of workers, working, or likely to be working, at the major hazard facility.
- (2) The provisions are as follows:
 - (a) regulation 31(3)(a) (duty to prepare emergency plan):
 - (b) regulation 36(5) (duty to prepare and implement major accident prevention policy by establishing safety management system):
 - (c) regulation 38(3)(c) (duty to conduct safety assessment):

- (d) regulation 39(3) (duty to establish and implement safety management system);
 - (e) regulation 45(2) (duty to prepare safety case).
- (3) An operator who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: SR 2013/208 r 27; Model Work Health and Safety Regulations (Aust) r 575

66 Duty to provide general information for local community

- (1) The operator of an upper tier major hazard facility must take reasonable steps to provide the following information to the local community and the relevant local authority:
- (a) the name of the operator and location of that facility; and
 - (b) the name, position, and contact details of a person from whom information about that facility may be requested; and
 - (c) a general description of that facility's operation; and
 - (d) the means by which the local community will be informed of any major incident at that facility; and
 - (e) the actions, as specified in that facility's emergency plan, that members of the local community should take if a major incident occurs; and
 - (f) a summary of the safety case for that facility.
- (2) The operator must ensure that the information provided under subclause (1) is—
- (a) set out and expressed in a way that is understandable to persons who are not familiar with the upper tier major hazard facility and its operations; and
 - (b) reviewed and as necessary revised if a modification is made to the upper tier major hazard facility; and
 - (c) provided in a format that is readily accessible to the local community to enable the local community to be aware of the information; and
 - (d) provided within 3 months of WorkSafe accepting a safety case.
- (3) In complying with subclause (1), the operator is not required to disclose information that may lead to a threat to the security of the upper tier major hazard facility.
- (4) An operator of an upper tier major hazard facility who receives a written request from a person who reasonably believes that the occurrence of a major incident at that facility may adversely affect his or her health and safety must

give that person a copy of all the information provided to the local community under this regulation.

- (5) An operator who contravenes any of subclauses (1), (2), and (4) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 572

Notification requirement following major incident

67 Duty to notify local community and local authority in event of major incident

- (1) If a major incident occurs at a major hazard facility, the operator must take reasonable steps to provide the local community and the relevant local authority with information about the major incident, including—
- (a) a general description of the major incident that includes—
 - (i) the nature of the major incident (for example, fire, explosion, or spillage); and
 - (ii) details of the hazardous substances involved; and
 - (iii) the likely consequences of the major incident and its likely effects on health and safety; and
 - (b) the recommended actions that the members of the local community and the local authority should take to eliminate or minimise risks to health and safety; and
 - (c) a description of the actions the operator has taken or proposes to take to prevent the occurrence of a similar major incident.
- (2) The operator must notify—
- (a) the local community in a manner and using a format that is readily accessible to the local community to enable the local community to be aware of the information; and
 - (b) the local authority by means of a notice to the local authority's electronic address and postal address.
- (3) An operator who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations (Aust) r 573

*Duty of WorkSafe to provide information to public***68 Duty of WorkSafe to provide information to public**

- (1) WorkSafe must maintain a record on an Internet site (maintained by, or on behalf of, WorkSafe) in respect of each major hazard facility to which these regulations apply that includes—
 - (a) the name of the operator and the address of that facility;
 - (b) confirmation that the facility is subject to these regulations and a statement about which parts of these regulations apply to that facility;
 - (c) information about the type of the facility, as determined by WorkSafe (for example, lower tier major hazard facility or upper tier major hazard facility);
 - (d) a simple explanation of the activity or activities undertaken at that facility;
 - (e) the relevant hazard classifications of those specified hazardous substances at that facility that could cause or contribute to a major incident;
 - (f) an explanation, in general terms, of the characteristics of those substances that make them dangerous;
 - (g) general information about how the public will be warned in the event of a major incident at that facility;
 - (h) general information about how the public should act and any precautionary steps that people should take if a major incident occurs at that facility.
- (2) WorkSafe must ensure that the information referred to in subclause (1) is updated as soon as practicable after any relevant change.
- (3) In complying with subclause (1), WorkSafe is not required to disclose information that may lead to a threat to the security of a major hazard facility.

69 WorkSafe may require operator to provide further information

- (1) For the purpose of ensuring that WorkSafe is able to comply with regulation 68, WorkSafe may request an operator to provide information on any matter referred to in regulation 68(1) or (2).
- (2) The operator must comply with a request under subclause (1) as soon as practicable after receiving the request.
- (3) An operator who contravenes subclause (2) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Fees and levies

Heading: inserted, on 1 September 2016, by regulation 15 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

70 Fees for safety case assessment

- (1) The fee for assessing the safety case for a facility for the purpose of WorkSafe making a decision under regulation 48(1) is the relevant fee specified in the second column of Part 1 of Schedule 8, unless subclause (3) applies.
- (2) The fee for assessing a revised safety case for the facility for the purpose of WorkSafe making a decision under regulation 55 is the relevant fee specified in the second column of Part 2 of Schedule 8, unless subclause (3) applies.
- (3) If an operator operates more than 1 upper tier facility under safety management systems that are substantially the same,—
 - (a) the full fee specified in Part 1 or 2 of Schedule 8 applies to one of those major hazard facilities; and
 - (b) the discounted fee specified in Part 1 or 2 of Schedule 8 applies to each of the other major hazard facilities.
- (4) In subclause (3)(a), the major hazard facility to which the full fee applies is that facility, or one of those facilities, operated by the operator to which the highest fee under Part 1 or Part 2 of Schedule 8 applies.

Example 1

If the operator operates 1 or more Type 3 upper tier major hazard facilities under safety management systems that are substantially the same, that Type 3 upper tier major hazard facility (or one of those Type 3 major hazard facilities) is the facility to which the full fee applies.

Example 2

If the operator operates two Type 2 and two Type 1 upper tier major hazard facilities under safety management systems that are substantially the same, one of the Type 2 upper tier major hazard facilities is the facility to which the full fee applies.

- (5) The amounts of fees in Parts 1 and 2 of Schedule 8 are exclusive of any goods and services tax payable.
- (6) The amount of any unpaid fee is recoverable in any court of competent jurisdiction as a debt due to WorkSafe.

Regulation 70: inserted, on 1 September 2016, by regulation 15 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

71 WorkSafe may refund safety case assessment fee

WorkSafe may refund a fee paid under regulation 70 if the operator of the major hazard facility withdraws the safety case or revised safety case before WorkSafe begins assessing it.

Regulation 71: inserted, on 1 September 2016, by regulation 15 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

72 Payment of annual levy

- (1) The operator of a major hazard facility or of a proposed facility who has been given a certificate of the designation of the facility under Part 2 must pay to WorkSafe the relevant annual levy prescribed by this regulation.
- (2) The operator of a proposed facility referred to in subclause (1) is not required to pay an annual levy under this regulation until specified hazardous substances are for the first time present at the facility in a quantity that is equal to or exceeds the lower threshold quantity.
- (3) The amount of annual levy payable is the relevant amount specified in Part 3 of Schedule 8.
- (4) The amounts of levies in Part 3 of Schedule 8 are exclusive of any goods and services tax payable.
- (5) The levy is due on 1 July of each year and must be paid by 1 August of each year, except in the first year of operation as a designated major hazard facility.
- (6) In the first year of operation of a designated major hazard facility, the levy to be paid—
 - (a) is the amount calculated by WorkSafe in accordance with the following formula:

$$\text{\$L1} = \text{\$A} \times (\text{M} \div 12)$$

\\$L1 is the amount of levy payable in the first year of operation

\\$A is the relevant amount of annual levy specified in Part 3 of Schedule 8

M is the number of full months between the date on which designation of the facility takes effect (as stated in a certificate under regulation 21) and the following 1 July; and
 - (b) must be paid no later than 1 month after the date of WorkSafe's invoice for the levy.
- (7) WorkSafe may, on request by an operator, extend the time by which an annual levy must be paid.
- (8) WorkSafe must—
 - (a) account separately for each levy payment received; and
 - (b) pay each levy payment into a Crown Bank Account.
- (9) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to WorkSafe on behalf of the Crown.

Regulation 72: inserted, on 1 September 2016, by regulation 15 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

73 Review of fees and annual levies

- (1) The Minister must commence a review of the amounts of fees under regulation 70 and levies under regulation 72 by 1 September 2021.
- (2) Nothing in subclause (1) prevents the Minister from reviewing the fees and levies at any other time.

Regulation 73: inserted, on 1 September 2016, by regulation 15 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

74 Duty to notify of certain changes to major hazard facility

- (1) The operator of a major hazard facility must notify WorkSafe if a purpose or use of any specified hazardous substance at the facility changes in a way that has the effect of changing the facility from one type of major hazard facility referred to in Schedule 8 to another type of major hazard facility referred to in that schedule.
- (2) For the purpose of regulation 72(2), an operator of a proposed facility who has notified WorkSafe under regulation 13 must notify WorkSafe when specified hazardous substances are for the first time present at the facility in a quantity that is equal to or exceeds the lower threshold quantity.
- (3) Notification under subclause (1) or (2) must be given—
 - (a) as soon as practicable after the operator becomes aware, or ought reasonably to have become aware, of the circumstances giving rise to the obligation to notify; and
 - (b) in the manner and form required by WorkSafe.
- (4) Notification under subclause (2) must specify the date on which the quantity of specified hazardous substances present at the facility is equal to or exceeds the lower threshold quantity.

Regulation 74: inserted, on 1 September 2016, by regulation 15 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

Schedule 1

Transitional, savings, and related provisions

rr 11, 43

Part 1

Provisions relating to regulations as made

1 Transitional provision for Part 4

- (1) An operator of an existing facility that contains hazardous substances that exceed the lower threshold quantities is not required to comply with the requirements of Part 4 until 4 April 2018.
- (2) Despite subclause (1), regulation 34 applies to the operator of a major hazard facility only from the date on which WorkSafe notifies the operator that the facility is a major hazard facility.

2 Transitional provision for Part 5

- (1) The operator of an existing upper tier major hazard facility must give WorkSafe a completed safety case—
 - (a) no earlier than 4 December 2016; but
 - (b) no later than 4 April 2018.
- (2) As soon as practicable after receiving a safety case or an amended safety case, WorkSafe must—
 - (a) accept the safety case; or
 - (b) accept the safety case subject to conditions or limitations; or
 - (c) initially reject the safety case; or
 - (d) in the case of an amended safety case, finally reject the safety case.
- (3) WorkSafe must as soon as practicable after making a decision about a safety case or an amended safety case notify the operator in writing of that decision.
- (4) If WorkSafe is unable to make a decision about a safety case or an amended safety case within a reasonable amount of time after receiving it, WorkSafe must—
 - (a) notify the operator in writing of that fact as soon as practicable; and
 - (b) give the operator a proposed timetable for WorkSafe's consideration of, and decision on, the safety case or amended safety case.
- (5) WorkSafe must accept or finally reject the safety case no later than 4 April 2021.
- (6) Regulation 43 applies to the operator subject to WorkSafe accepting or finally rejecting the safety case.

- (7) If this clause applies, regulation 48 does not apply.
Compare: SR 2013/208 r 43

Part 2

Provisions relating to Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016

Schedule 1 Part 2: inserted, on 1 September 2016, by regulation 16 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

3 Interpretation

In this Part, **commencement date** means 1 September 2016.

4 Existing facilities not yet designated

- (1) This clause applies to—
- (a) a facility for which notification was given under regulation 12(1) as in force immediately before the commencement date, but which has not yet been designated; and
 - (b) a facility to which regulation 12(1) applies where the operator has not given notification in time to comply with that provision.
- (2) Regulation 11A does not apply to the facility between the date of notification and the date on which designation of the facility takes effect (as stated in a certificate under regulation 21).

5 Levy for major hazard facility already designated

- (1) This clause applies to an existing major hazard facility the designation of which takes effect (as stated in a certificate under regulation 21) before the commencement date.
- (2) The calculation under regulation 72(6) of the amount of levy payable in the first year of operation of the major hazard facility must not take into account the period before the commencement date during which the facility was designated.

rr 5, 6, 7, 8, 26, 27

Schedule 2 Specified hazardous substances

Table 1
Categories of specified hazardous substances

Column 1	Column 2	Column 3	Column 4	Column 5
Hazard category	HSNO classification ¹	GHS classification ²	Threshold quantities: lower tier requirements (tonnes)	Threshold quantities: upper tier requirements (tonnes)
Health hazards (section H)				
H1	6.1A—Substances that are acutely toxic, all exposure routes	Acute toxicity Category 1, all exposure routes	5	20
H2	6.1B—Substances that are acutely toxic, all exposure routes	Acute toxicity Category 2, all exposure routes	50	200
H3	6.1C—Substances that are acutely toxic, inhalation exposure route ³	Acute toxicity Category 3, inhalation exposure route ³		
	6.9A—Substances that are toxic to human target organs or systems, but only those that produce specific, non-lethal target organ toxicity arising from a single exposure	Specific target organ toxicity—single exposure Category 1 (STOT-SE)	50	200
Physical hazards (section P)				
Pla ^{4, 5, 6}	Unstable explosives; or 1.1—Substances and articles that have a mass explosion hazard 1.2—Substances and articles that have a projection hazard but not a mass explosion hazard	Unstable explosives; or Explosives, Division 1.1, 1.2, 1.3, 1.5, or 1.6; or Substances or mixtures having explosive properties according to Chapter 2.4.2.4.2 of the United Nations	10	50

Column 1	Column 2	Column 3	Column 4	Column 5
Hazard category	HSNO classification ¹	GHS classification ²	Threshold quantities: lower tier requirements (tonnes)	Threshold quantities: upper tier requirements (tonnes)
P 1b ⁷	1.3—Substances and articles that have a fire hazard and either a minor blast hazard or a minor projection hazard, or both, but not a mass explosion hazard	Recommendations on the Transport of Dangerous Goods Model Regulations, seventeenth revised edition, and that do not belong to the hazard classes organic peroxides or self-reactive substances and mixtures		
P 2	1.5—Very insensitive substances that have a mass explosion hazard			
P 3a ⁸	1.6—Extremely insensitive articles that do not have a mass explosion hazard or substances or mixtures having explosive properties according to Chapter 2.4.2.4.2 of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations, seventeenth revised edition, and that do not belong to the hazard classes organic peroxides or self-reactive substances and mixtures			
P 3b ⁹	1.4—Substances and articles that present no significant explosive hazard	Explosives, Division 1.4	50	200
	2.1.1A—Flammable gases: high hazard or 2.1.1B—Flammable gases: medium hazard	Flammable gases, Category 1 or 2	10	50
	Articles classified as 2.1.2A—Flammable aerosols containing flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A	“Flammable” aerosols, Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)	500 (net)
	Articles classified as 2.1.2A—Flammable aerosols not containing flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A	“Flammable” aerosols, Category 1 or 2, not containing flammable gases Category 1 or 2 or flammable liquids Category 1	5 000 (net)	50 000 (net)

Column 1	Column 2	Column 3	Column 4	Column 5
Hazard category	HSNO classification ¹	GHS classification ²	Threshold quantities: lower tier requirements (tonnes)	Threshold quantities: upper tier requirements (tonnes)
P4	5.1.2A— <i>Oxidising substances that are gases</i>	Oxidising gases, Category 1	50	200
P5a	3.1A— <i>Flammable liquids: very high hazard</i>	Flammable liquids, Category 1; or	10	50
P5b	3.1B— <i>Flammable liquid: high hazard</i> or 3.1C— <i>Flammable liquids: medium hazard</i> maintained at a temperature above their boiling point	Flammable liquids, Category 2 or 3 maintained at a temperature above their boiling point	50	200
P5c	3.1B— <i>Flammable liquid: high hazard</i> or 3.1C— <i>Flammable liquids: medium hazard</i> not covered by P5a and P5b	Flammable liquids, Category 2 or 3, where particular processing conditions, such as high pressure or high temperature, may create major-incident hazards	5 000	50 000
P6a	4.1.2A— <i>Self-reactive substances: type A</i> or 4.1.2B— <i>Self-reactive substances: type B</i> , or 5.2A— <i>Organic peroxides: type A</i> ; or 5.2B— <i>Organic peroxides: type B</i>	Self-reactive substances and mixtures, type A or B or organic peroxides, type A or B	10	50
P6b	4.1.2C— <i>Self-reactive substances: type C</i> , 4.1.2D— <i>Self-reactive substances: type D</i> , 4.1.2E— <i>Self-reactive substances: type E</i> , or 4.1.2F— <i>Self-reactive substances: type F</i> , or 5.2C— <i>Organic peroxides: type C</i> , 5.2D— <i>Organic peroxides: type D</i> , 5.2E—	Self-reactive substances and mixtures, type C, D, E, or F; or organic peroxides, type C, D, E, or F	50	200

Column 1	Column 2	Column 3	Column 4	Column 5
Hazard category	HSNO classification ¹	GHS classification ²	Threshold quantities: lower tier requirements (tonnes)	Threshold quantities: upper tier requirements (tonnes)
P7	<i>Organic peroxides: type E, or 5.2F— Organic peroxides: type F</i> 4.2A— <i>Spontaneously combustible substances: pyrophoric substances: high hazard</i>	Pyrophoric liquids, Category 1 Pyrophoric solids, Category 1	50	200
P8	5.1.1A— <i>Oxidising substances that are liquids or solids: high hazard, 5.1.1B— Oxidising substances that are liquids or solids: medium hazard, or 5.1.1C— Oxidising substances that are liquids or solids: low hazard</i>	Oxidising liquids, Category 1, 2, or 3 Oxidising solids, Category 1, 2, or 3	50	200
Other hazards (section O)				
O1	4.3A— <i>Solids that emit flammable gas when in contact with water: high hazard, that also meet the criteria for the hazard statement EUH014</i>	Substances or mixtures that react violently with water with hazard statement EUH014	100	500
O2	4.3A— <i>Solids that emit flammable gas when in contact with water: high hazard, criteria (b)</i>	Substances and mixtures that, when in contact with water, emit flammable gases Category 1	100	500
O3	4.3A— <i>Solids that emit flammable gas when in contact with water: high hazard, that also meet the criteria for the hazard statement EUH029</i>	Substances or mixtures that liberate toxic gas when in contact with water with hazard statement EUH029	50	200

¹ **HSNO classification** means a classification under the classification system described in regulation 4 of the Hazardous Substances (Classification) Regulations 2001.

² **GHS classification** means the United Nations *Globally Harmonized System of Classification and Labelling of Chemicals*, fifth revised edition. In this schedule, a reference to a GHS classification is for information only.

- 4
- ³ Hazardous substances that fall within HSN0 classification acutely toxic 6.1C via the oral route (H301) must fall under hazard category H2 acutely toxic in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example, due to lack of conclusive inhalation and dermal toxicity data.
- ⁴ The hazard category explosives includes explosive substances and articles.
- ⁵ If the quantity of the explosive substance contained in the article is known, that quantity must be considered for the purposes of these regulations. If the quantity of the explosive substance contained in the article is not known, then, for the purposes of these regulations, the whole article must be treated as explosive.
- ⁶ The threshold quantity of fireworks, within the meaning of regulation 3 of the Hazardous Substances (Fireworks) Regulations 2001, is calculated using the gross weight of the fireworks.
- ⁷ If explosives of Division 1.4 are unpacked or repacked, they must be assigned to the hazard category P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the Hazardous Substances (Classification) Regulations 2001.
- ⁸ Flammable aerosols are classified in accordance with HSN0 classification 2.1.2A and are assigned to this category if they contain flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A.
- ⁹ In order to use this hazard category, it must be documented that the aerosol dispenser does not contain flammable gas 2.1.1A or 2.1.1B or flammable liquids 3.1A.

Table 2
Names of specified hazardous substances

Column 1	Column 2	Column 3	Column 4
Hazardous substance	CAS number¹	Lower tier requirements	Upper tier requirements
		Threshold quantity (tonnes) for the application of—	
1 Ammonium nitrate ²	—	5 000	10 000
2 Ammonium nitrate ³	—	1 250	5 000
3 Ammonium nitrate ⁴	—	350	2 500
4 Ammonium nitrate ⁵	—	10	50
5 Potassium nitrate ⁶	—	5 000	10 000
6 Potassium nitrate ⁷	—	1 250	5 000
7 Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1	2
8 Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3	—	0.1
9 Bromine	7726-95-6	20	100
10 Chlorine	7782-50-5	10	25
11 Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dimickel trioxide	—	—	1
12 Ethyleneimine	151-56-4	10	20
13 Fluorine	7782-41-4	10	20
14 Formaldehyde (concentration \geq 90 %)	50-00-0	5	50
15 Hydrogen	1333-74-0	5	50
16 Hydrogen chloride (liquefied gas)	7647-01-0	25	250
17 Lead alkyls	—	5	50
18 Liquefied flammable gases, Category 1 or 2 (including LPG), and natural gas ⁸	—	50	200
19 Acetylene	74-86-2	5	50
20 Ethylene oxide	75-21-8	5	50
21 Propylene oxide	75-56-9	5	50

Column 1	Column 2	Column 3	Column 4
Hazardous substance	CAS number ¹	Threshold quantity (tonnes) for the application of— Lower tier requirements	Upper tier requirements
22 Methanol	67-56-1	500	5 000
23 4, 4'-Methylene bis (2-chloroaniline) and/or salts, in powder form	101-14-4		0.01
24 Methylisocyanate	624-83-9		0.15
25 Oxygen	7782-44-7	200	2 000
26 2,4 -Toluene diisocyanate	584-84-9	10	100
26 2,6 -Toluene diisocyanate	91-08-7		
27 Carbonyl dichloride (phosgene)	75-44-5	0.3	0.75
28 Arsine (arsenic trihydride)	7784-42-1	0.2	1
29 Phosphine (phosphorus trihydride)	7803-51-2	0.2	1
30 Sulphur dichloride	10545-99-0		1
31 Sulphur trioxide	7446-11-9	15	75
32 Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD) calculated in TCDD equivalent ⁹	—		0.001
33 The following carcinogens or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	—	0.5	2
34 Petroleum products and alternative fuels— (a) gasolines and naphthas: (b) kerosenes (including jet fuels): (c) alternative fuels serving the same purposes as, and with similar properties as regards flammability to, the products referred to in paragraph (a) or (b)	—	2 500	25 000
35 Anhydrous ammonia	7664-41-7	50	200

Column 1	Column 2	Column 3	Column 4
Hazardous substance	CAS number ¹	Threshold quantity (tonnes) for the application of— Lower tier requirements	Upper tier requirements
36 Boron trifluoride	7367-07-2	5	20
37 Hydrogen sulphide	7783-06-4	5	20
38 Piperidine	110-89-4	50	200
39 Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50	200
40 3-(2-Ethylhexyloxy)propylamin	5397-31-9	50	200
41 Propylamine ¹⁰	107-10-8	500	2 000
42 Tert-butyl acrylate ¹⁰	1663-39-4	200	500
43 2-Methyl-3-butenenitrile ¹⁰	16529-56-9	500	2 000
44 Tetrahydro-3,5-dimethyl-1,3,5-thiadiazine-2-thione (Dazomet) ¹⁰	533-74-4	100	200
45 Methyl acrylate ¹⁰	96-33-3	500	2 000
46 3-Methylpyridine ¹⁰	108-99-6	500	2 000
47 1-Bromo-3-chloropropane ¹⁰	109-70-6	500	2 000

¹ The Chemical Abstracts Service Registry number (CAS number) is for information only.

²**Ammonium nitrate (5 000/10 000): fertilisers capable of self-sustaining decomposition**

This footnote applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers containing ammonium nitrate with phosphate and/or potash) that are capable of self-sustaining decomposition according to the trough test (*see the UN Manual of Tests and Criteria*, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

- (a) between 15.75% (15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate) and 24.5% (24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate) by weight, and either with not more than 0.4% total combustible/organic materials or that fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJL 304, 21.11.2003, p 1); or
- (b) 15.75% by weight or less and unrestricted combustible materials.

³**Ammonium nitrate (1 250/5 000): fertiliser grade**

This footnote applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers that fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- (a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone, and/or calcium carbonate with a purity of at least 90%; or
- (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate; or
- (c) more than 28% (28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate) by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone, and/or calcium carbonate with a purity of at least 90%.

⁴**Ammonium nitrate (350/2 500): technical grade**

This footnote applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and that contain not more than 0.4% combustible substances; or
- (b) more than 28% by weight, and that contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

⁵**Ammonium nitrate (10/50): “off-specs” material and fertilisers not fulfilling the detonation test**

This footnote applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers, and ammonium nitrate-based compound/composite fertilisers referred to in footnotes 3, 4, and this footnote that are being or have been returned from the final user to a manufacturer, temporary storage, or reprocessing plant for a reworking, recycling, or treatment for safe use because they no longer comply with the specifications of footnotes 6 and 7; or
- (b) fertilisers referred to in paragraph (a) of footnote 3 and paragraph (a) of footnote 4 to tables 1 and 2 that do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

⁶Potassium nitrate (5 000/10 000)

This footnote applies to those composite potassium-nitrate-based fertilisers (in prilled/granular form) that have the same hazardous properties as pure potassium nitrate.

⁷Potassium nitrate (1 250/5 000)

This footnote applies to those composite potassium-nitrate-based fertilisers (in crystalline form) that have the same hazardous properties as pure potassium nitrate.

⁸Upgraded biogas

For the purpose of the implementation of these regulations, upgraded biogas is classified under this item if it has been processed in accordance with applicable standards for purified and upgraded biogas, ensuring a quality equivalent to that of natural gas, including the content of methane, and that has a maximum of 1% oxygen.

⁹Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

	WHO 2005 TEF		
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, Pe = penta, Hx = hexa, Hp = hepta, O = octa)
Reference—Van den Berg et al “The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds” in 93(2), *Toxicological Sciences* (2006), at pp 223 to 241.

¹⁰ In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these regulations, the lowest qualifying quantities apply.

Schedule 3

Matters to be included in emergency plan of major hazard facility

r 31

Site and hazard detail

- 1 The location of the facility, including its street address and the nearest intersection (if any).
- 2 A map—
 - (a) showing the site of the major hazard facility; and
 - (b) showing land use and occupancy, any major hazard facilities, and any hazardous substance storage sites that are known to the operator, within a 2 km radius of any point on the perimeter of the major hazard facility; and
 - (c) identifying all potentially hazardous inventories in the area that are known to the operator and the location of all staging points for emergency services organisations; and
 - (d) showing the muster areas to be used in the event of a major incident.
- 3 An inventory of all hazardous substances that are present or likely to be present at the facility and their location.
- 4 A brief description of the nature of the facility and its operation.
- 5 The maximum number of persons, including workers, likely to be present at the facility on a normal working day (including a day involving planned maintenance).
- 6 The emergency planning assumptions, including emergency measures planned for identified major incidents, and likely areas affected.
- 7 The protective resources available to control a major incident.
- 8 The emergency procedures.
- 9 The infrastructure (on site and off site) that may be affected by a major incident.

Command structure and site personnel

- 10 The command philosophy and structure to be activated in an emergency, so that it is clear what actions will be taken, who will take the actions, and how, when, and where they will be taken.
- 11 Details of the person or persons who can clarify the content of the emergency plan if necessary.
- 12 The contact details of, and the means of contacting, the persons at the facility who are responsible for liaising with emergency services organisations.
- 13 A list of 24-hour emergency contacts.

- 14 Arrangements for assisting emergency services organisations and nearby facilities with control actions taken in the surrounding area.

Notifications

- 15 In the event of a major incident or an event that could reasonably be expected to lead to a major incident, procedures for notifying the emergency services organisations.
- 16 While a major incident is occurring, and after it has occurred, procedures for providing the local community and the local authority (for the area in which the facility and its surroundings are located) with information about the major incident.
- 17 On-site and off-site warning systems.
- 18 Contact details for emergency services organisations and other support services that can assist in providing resources and in implementing evacuation plans in the event of a major incident.
- 19 On-site communication systems.

Resources and equipment

- 20 On-site emergency resources, including emergency equipment, firefighting and fire-suppression equipment, personnel, gas detectors, wind velocity detectors, sand, lime, neutralising agents, absorbents, spill bins, and decontamination equipment.
- 21 Off-site emergency resources, including arrangements for obtaining additional external resources (specific to the likely major incidents) to assist the control of major incidents.

Procedures

- 22 Procedures for the safe evacuation of, and accounting for, all people who are on site.
- 23 Procedures and control points for utilities, including gas, water, and electricity.
- 24 Procedures for the control of any incident involving hazardous substances.
- 25 Procedures for decontamination following an incident involving hazardous substances.

Schedule 4
Information required in notice of notifiable incident in major hazard facility

r 34

Part 1
Information relating to notifiable incident

- 1 Location where the notifiable incident occurred.
- 2 Name and address of the operator.
- 3 Time and date of notifiable incident.
- 4 Names and contact details of any witnesses.
- 5 Brief description of notifiable incident.
- 6 Work or activity being undertaken at time of notifiable incident.
- 7 Action to make workplace safe, including details of any disturbance of the workplace.
- 8 Whether an emergency response (in accordance with an emergency plan required under regulation 31) was initiated.

Injuries

- 9 Name of employer of injured person(s) (if different from information provided under clause 2).
- 10 Details of injured person(s), including name, date of birth, sex, residential address and telephone number, occupation or job title, details of injury, and details of job being undertaken.
- 11 Day of shift and hour of shift (for example, 5th day of 7, first hour of 12).

Unintended release of hazardous substances

- 12 Estimated quantity and composition of specified hazardous substances (if applicable) that escaped or burned, including known toxicity.
- 13 Duration of escape.
- 14 Weather conditions.

Serious damage

- 15 Plant damaged, and the extent of damage to plant.
- 16 Whether plant has been, or will be, shut down.

Action and cause

- 17 Immediate action taken or intended to be taken, if any, to prevent recurrence of incident.

- 18 Immediate cause analysis.

Part 2

Analysis and remedial action

- 1 Root cause analysis.
- 2 Actions to prevent occurrence of a similar incident, including the name of the responsible party and completion date.
- 3 Copies of all documentary material referred to or relied on (or both) in preparing this notice, which may include, without limitation, as appropriate,—
 - (a) witness statements:
 - (b) safety management system documents:
 - (c) drawings, diagrams, and photographs:
 - (d) third-party reports (audit, inspection, material analysis, etc):
 - (e) internal records and correspondence.

Schedule 5

Requirements of safety management system of major hazard facility

rr 36(4), 39

General

- 1 A safety management system must—
 - (a) be proportionate to the major incident hazards, activities, and complexity of the organisation of the major hazard facility; and
 - (b) be based on the assessment of risks associated with each major incident hazard.

Safety policy and specific safety objectives

- 2 As a part of the safety management system, the operator must develop a safety policy that—
 - (a) includes a statement of the operator's commitment, intentions, and principles in relation to the facility's overall health and safety performance; and
 - (b) provides a framework for action and for setting the facility's health and safety objectives and targets.
- 3 The safety management system must include a description of the means by which the operator's safety policy and specific safety objectives will be communicated to all persons who will participate in the implementation of the safety management system.

Organisation and personnel

- 4 The safety management system must identify the personnel involved in the implementation of the safety management system, including—
 - (a) the position description and location of those personnel; and
 - (b) the roles and responsibilities of those personnel.
- 5 The safety management system must describe the means of ensuring that those personnel—
 - (a) have the necessary knowledge and skills to enable them to undertake their allocated tasks and discharge their allocated responsibilities; and
 - (b) retain that knowledge and those skills.
- 6 The safety management system must include the arrangements for ensuring contractors and subcontractors are aware of their roles and responsibilities under the safety management system.

Identification and evaluation of major incident hazards

- 7 The safety management system must include the arrangements for the adoption and implementation of procedures for—
- (a) systematically identifying major incident hazards arising from normal and abnormal operations at the facility; and
 - (b) assessing the likelihood and severity of major incidents occurring.

Operational control

- 8 The safety management system must include the arrangements for the adoption and implementation of procedures and instructions for—
- (a) the safe operation and maintenance of plant; and
 - (b) plant processes; and
 - (c) permit-to-work systems; and
 - (d) maintaining equipment; and
 - (e) temporary stoppages (for example, start-ups and shutdowns).
- 9 The safety management system must include the arrangements for independent and competent persons to verify that safety-critical elements are or will be suitable and will remain in good repair and condition throughout the life cycle of the facility.
- 10 The safety management system must include the arrangements for the development and implementation of procedures for ensuring that changes in organisation, personnel, procedures, practices, plant, and equipment are analysed to identify—
- (a) any new major incident hazards; or
 - (b) the impact of the changes on—
 - (i) control practices; or
 - (ii) safety-critical elements; or
 - (iii) previously identified major incident hazards.

Planning for emergencies

- 11 The safety management system must include the arrangements for the adoption and implementation of procedures—
- (a) to identify foreseeable emergencies by systematic analysis; and
 - (b) to prepare, test, and review emergency plans to respond to emergencies.

Monitoring performance

- 12 The safety management system must include the arrangements for the adoption and implementation of procedures for—

- (a) routinely checking that activities under the safety management system are being conducted to a suitable standard; and
 - (b) investigating and taking corrective action in the case of non-compliance; and
 - (c) monitoring the performance of control measures designed to minimise risks from major incidents.
- 13 The safety management system must include a system for reporting—
- (a) major incidents and near misses; and
 - (b) failure of protective measures; and
 - (c) investigations and follow-up actions on the basis of lessons learnt.

Audit and review

- 14 The safety management system must include the arrangements for the adoption and implementation of procedures for—
- (a) checking that the safety management system is understood and is being complied with; and
 - (b) ensuring that the safety management system (in particular, the control measures and ongoing review) is being implemented and maintained in an effective state.
- 15 The safety management system must include provisions for—
- (a) the documented review of performance of the safety management system; and
 - (b) the updating of the safety management system by senior management following the review.

Schedule 6
Information required in design notice for upper tier major hazard facility

r 40

- 1 A description of the chosen design concept, including suitable diagrams.
- 2 A description of how the chosen design concept is intended to—
 - (a) eliminate the risks associated with each major incident hazard, to the extent that is reasonably practicable; or
 - (b) minimise those risks, to the extent that is reasonably practicable, if it is not reasonably practicable to eliminate those risks.
- 3 A general description of the means by which the operator will ensure that the structure and plant of the facility will be designed, selected, constructed, and commissioned in a way that will minimise, to the extent that is reasonably practicable, the risks associated with each major incident hazard.
- 4 A description of the nature of the facility and its operation, including a description of on-site activities and processes that involve specified hazardous substances.
- 5 A description of the specified hazardous substances that are expected to be present at the facility, including—
 - (a) their identity; and
 - (b) their quantity; and
 - (c) their physical, chemical, and toxicological characteristics (and any other hazardous characteristics); and
 - (d) their physical and chemical behaviour under normal conditions of use or under foreseeable abnormal conditions.
- 6 A description of the physical and chemical processes associated with the specified hazardous substances that are present at the facility.
- 7 A diagram of the facility's general layout, showing the main process units, the main storage areas, and major incident hazards.
- 8 A detailed scale plan of the facility and its surrounding area that shows—
 - (a) topographical information; and
 - (b) land use, occupancy, and activities, and other major hazard facilities and hazardous substance storage sites, within a 2 km radius of any point on the perimeter of the major hazard facility; and
 - (c) the location of any identified external conditions that could affect the safety of the major hazard facility.

Schedule 7
Information required in safety case for upper tier major hazard facility

rr 45, 47, 49, 52

Summary information

- 1 A summary of the safety assessment, including—
 - (a) the methodology used in the safety assessment; and
 - (b) a list of the major incidents identified in the safety assessment.
- 2 A summary of the safety management system.
- 3 A summary of the emergency plan.

Descriptive information

- 4 A description of the engagement carried out with workers in the preparation of the safety case.
- 5 A description of the nature of the facility and its operation, including a description of on-site activities and processes that involve specified hazardous substances.
- 6 The particulars of all relevant New Zealand and international standards that have been applied, or will be applied, in relation to the facility or the plant used on or in connection with the facility.
- 7 A description of the specified hazardous substances and any other hazardous substances that are expected to be present at the facility, including—
 - (a) their identification by name and by any other means necessary for clear identification; and
 - (b) their quantity; and
 - (c) their physical, chemical, and toxicological characteristics (and any other hazardous characteristics); and
 - (d) their physical and chemical behaviour under normal conditions of use or under foreseeable abnormal conditions.
- 8 A description of the physical and chemical processes associated with the specified hazardous substances that are present at the facility.

Diagram of facility

- 9 A diagram of the facility's general layout, showing—
 - (a) the main process units; and
 - (b) the main storage areas; and
 - (c) the control rooms; and
 - (d) the administrative buildings.

Pipelines

- 10 A description of any pipeline connected to the facility that has the potential to cause or contribute to a major incident, including details of—
- (a) the substances that it conveys; and
 - (b) its dimensions and layout; and
 - (c) its contained volume at declared maximum allowable operating pressure; and
 - (d) any equipment intended to ensure safety; and
 - (e) the design pressure (maximum allowable operating pressure) and temperature of its contents.

Scale plans

- 11 A detailed scale plan of the facility and its surrounding area that shows—
- (a) topographical information; and
 - (b) land use, occupancy, and activities, and other major hazard facilities and hazardous substance storage sites that are known to the operator, within a 2 km radius of any point on the perimeter of the upper tier major hazard facility; and
 - (c) the location of any identified external conditions that could affect the safety of the major hazard facility.

Operating and environmental conditions

- 12 The particulars of the design or operational limits associated with environmental conditions in which the facility has been designed to operate.

Demographic information

- 13 Demographic information about the local community, including surrounding land uses, within a 2 km radius of any point on the perimeter of the upper tier major hazard facility, that are permitted by the local authority.

Meteorological data

- 14 Meteorological data relevant to the estimation of the effects of any major incident.

Control and verification measures

- 15 A detailed description of the equipment, processes, and procedures that are the major incident control measures and the performance standards for the major incident control measures.
- 16 A list of roles, responsibilities, and any resources (internal and external) able to intervene in the event of any failure of a control measure.

- 17 A detailed description of the arrangements in place for independent and competent persons to verify that safety-critical elements are or will be suitable and will remain in good repair and condition throughout the life cycle of the facility, including a description of—
- (a) the nature and frequency of examination and testing; and
 - (b) review and revision arrangements; and
 - (c) arrangements for the making and preservation of records.

Proposed facilities

- 18 In relation to a proposed facility, a description of the steps that have been taken to ensure that safety has been incorporated into the design and construction of the upper tier major hazard facility.

Officer's statement

- 19 A statement signed by the officer of the operator (in the case of an operator who is an individual), or the most senior officer of the operator in New Zealand (in the case of any other operator), that—
- (a) the information provided under this schedule is accurate and up to date; and
 - (b) all persons to be involved in the implementation of the safety management system have the knowledge and skills necessary to enable them to carry out their role safely and competently; and
 - (c) the control measures to be implemented by the operator will—
 - (i) eliminate the risk of a major incident occurring, to the extent that is reasonably practicable; or
 - (ii) if it is not reasonably practicable to eliminate the risk of a major incident occurring, minimise the risk to the extent that is reasonably practicable; and
 - (d) in the event of a major incident occurring, the control measures to be implemented by the operator will minimise the incident's magnitude and the severity of health and safety consequences to the extent that is reasonably practicable.

Schedule 8

Fees and levies

rr 70, 72

Schedule 8: inserted, on 1 September 2016, by regulation 17 of the Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174).

1 Interpretation

- (1) In this schedule, a major hazard facility is a **Type 1** major hazard facility if 1 or more of the following apply:
- (a) every specified hazardous substance is only present or likely to be present for 1 or more of the following purposes:
 - (i) storage:
 - (ii) repacking:
 - (iii) distribution:
 - (b) every specified hazardous substance is only circulated in a closed circuit (including a refrigeration system):
 - (c) every specified hazardous substance is only used in a way that immediately consumes or dilutes the substance so that it ceases to be a specified hazardous substance.
- (2) In this schedule, a major hazard facility is a **Type 2** major hazard facility if it is neither Type 1 nor Type 3.
- (3) In this schedule, a major hazard facility is a **Type 3** major hazard facility if the specified hazardous substances present or likely to be present are used in a complex process that results in a physical or chemical change to the substances.
- (4) In subclause (3), a **complex process** includes the following:
- (a) multiple processes (other than the processes set out in subclause (1)):
 - (b) 1 or more chemical reactions:
 - (c) 1 or more processes at high or low temperature.

Part 1

Fees for assessment of new safety case

Type of upper tier major hazard facility	Fee (\$)	Discounted fee for each additional facility (\$)
Type 1	45,000	36,000
Type 2	56,000	44,800
Type 3	67,000	54,000

Part 2
Fees for assessment of revised safety case

Type of upper tier major hazard facility	Fee (\$)	Discounted fee for each additional facility (\$)
Type 1	20,000	16,000
Type 2	25,000	20,000
Type 3	30,000	24,000

Part 3
Annual levies for major hazard facility

Category of major hazard facility	Levy (\$)
Lower tier major hazard facility—Type 1	12,500
Lower tier major hazard facility—Type 2	15,000
Lower tier major hazard facility—Type 3	18,000
Upper tier major hazard facility—Type 1	23,000
Upper tier major hazard facility—Type 2	28,000
Upper tier major hazard facility—Type 3	34,000

Michael Webster,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

This is a reprint of the Health and Safety at Work (Major Hazard Facilities) Regulations 2016 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Health and Safety at Work (Major Hazard Facilities) Amendment Regulations 2016 (LI 2016/174)